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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.

### WASHINGTON, DC

**WHEN:** January 29; at 9 am.

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

**RESERVATIONS:** Mildred Isler 202–523–3517

### PORTLAND, OR

**WHEN:** February 17; at 9 am.

**WHERE:** Bonneville Power Administration Auditorium, 1002 N.E. Holladay Street, Portland, OR.

**RESERVATIONS:** Call the Portland Federal Information Center on the following local numbers:

| | |
|---|---|
| Portland | 503–221–2222 |
| Seattle | 206–442–0570 |
| Tacoma | 206–383–5230 |

### LOS ANGELES, CA

**WHEN:** February 18; at 1:30 pm.

**WHERE:** Room 8544, Federal Building, 300 N. Los Angeles Street, Los Angeles, CA.

**RESERVATIONS:** Call the Los Angeles Federal Information Center, 213–894–3800

### SAN DIEGO, CA

**WHEN:** February 20; at 9 am.

**WHERE:** Room 2S31, Federal Building, 880 Front Street, San Diego, CA.

**RESERVATIONS:** Call the San Diego Federal Information Center, 619–293–6030

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# Rules and Regulations

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

## ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

**1 CFR Parts 302 and 305**

### Recommendations of the Administrative Conference Regarding Administrative Practice and Procedure

**AGENCY:** Administrative Conference of the United States.

**ACTION:** Recommendations and Bylaw Amendment.

**SUMMARY:** The Administrative Conference of the United States, at its Thirty-third Plenary Session, adopted five recommendations.

Recommendation 86–4, The Split-Enforcement Model for Agency Adjudication, calls to Congress' attention certain problems which have arisen when rulemaking and adjudication responsibilities are assigned to different agencies under the same regulatory statute, and suggests how these problems may be avoided in future legislation. Recommendation 86–5, Medicare Appeals, proposes improvements in the Medicare appeals process. Recommendation 86–6, Petitions for Rulemaking, suggests how agencies may improve handling of petitions for the issuance of rules. Recommendation 86–7, Case Management as a Tool for Improving Agency Adjudication, calls on the agencies to adopt improved management processes for the prompt and efficient handling of adjudicative proceedings. Recommendation 86–8, Acquiring the Services of "Neutrals" for Alternative Means of Dispute Resolution, seeks to help the agencies broaden the supply of qualified mediators and other neutrals who provide services in connection with the use of alternative means of dispute resolution.

The bylaw amendment provides for staggered terms for Conference members appointed pursuant to 5 U.S.C. 573(b)(6).

Recommendations of the Administrative Conference are published in full text in the **Federal Register** upon adoption. Complete lists of recommendations and statements, together with the texts of those deemed to be of continuing general interest, are published in the Code of Federal Regulations (1 CFR Parts 305 and 310).

**DATES:** These recommendations were adopted December 4–5, 1986; and issued December 19, 1986.

**FOR FURTHER INFORMATION CONTACT:** Richard K. Berg, General Counsel (202–254–7065).

**SUPPLEMENTARY INFORMATION:** The Administrative Conference of the United States was established by the Administrative Conference Act, 5 U.S.C. 571–576. The Conference studies the efficiency, adequacy and fairness of the administrative procedures used by federal agencies in carrying out administrative programs, and makes recommendations for improvements to the agencies, collectively or individually, and to the President, Congress, and the Judicial Conference of the United States (5 U.S.C. 574(l)).

At its Thirty-third Plenary Session, held December 4–5, 1986, the Assembly of the Administrative Conference of the United States adopted five recommendations.

Recommendation 86–4 is addressed to the statutory enforcement model in which rulemaking and adjudication responsibilities are assigned to separate agencies. A Conference study revealed that where enforcement responsibilities are split between two agencies, conflicts are likely to arise unless Congress specifies clearly the respective responsibilities of the agencies. The recommendation warns of this problem and suggests how these conflicts may be avoided. In particular it urges that Congress indicate to which agency the courts should look for authoritative expressions of law or policy.

Recommendation 86–5 suggests improvements in the Medicare appeals process. The Conference recommends, among other things, publication of standards used in making coverage and payment determinations, and allowing public comment on important interpretations of Medicare benefits and on decisions pertaining to the coverage of new technologies. The Conference also recommends improved notice to beneficiaries, and more timely review of hospital appeals. Finally, the Conference makes a number of specific suggestions for further research and study in this area.

Recommendation 86–6 advises agencies on how to improve their handling of petitions for the issuance, amendment, or repeal of rules. More specifically, agencies are advised to adopt procedural rules containing specified basic procedures for the processing of petitions for rulemaking. In addition, agencies are urged to take other steps, when warranted by the circumstances, to facilitate the response to petitions.

Recommendation 86–7 sets forth management processes to move cases along quickly within the bounds of fairness. It calls on administrative law judges, presiding officers, and all others who adjudicate or oversee proceedings to take steps to define key issues early, reduce parties' opportunity for procedural maneuvering, and decide cases more expeditiously. Agencies are encouraged, among other things, to use casehandling: flexible, step-by-step time goals to move cases promptly, management systems that pinpoint and deal with problem cases, and a variety of other methods to limit issues in contention and resolve disputes promptly.

Recommendation 86–8 seeks to help agencies broaden the supply of qualified mediators and other neutrals, inside and outside the government, to provide services for federal agencies' use of alternative means of dispute resolution. Following up on earlier Conference recommendations calling for agencies to employ these "ADR" methods in a broad range of controversies, the recommendation advises agencies on specific steps; addresses the qualifications that agencies should and should not require; encourages agencies to take advantage of opportunities to train and employ federal personnel as neutrals in resolving disputes; and recommends establishment of rosters of potential neutrals from which agencies could draw. It also addresses issues involved in agencies' procurement of the services of private parties to serve as neutrals in mediations, negotiated rulemakings, minitrials and arbitrations.

The transcript of the Plenary Session will be available for public inspection at the Conference's offices at Suite 500, 2120 L Street, N.W., Washington, D.C.

**List of Subjects**

*1 CFR Part 302*

Administrative practice and procedure.

*1 CFR Part 305*

Adjudication, Administrative practice and procedure, Alternative dispute resolution, Medicare, Rulemaking.

## PART 302—BYLAWS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

1. The authority citation for Part 302 continues to read as follows:

**Authority:** 5 U.S.C. 552, 571–576.

2. Paragraph (b) of 1 CFR 302.2 is revised to read as follows:

**§ 302.2 Membership.**

* * * * *

(b) Terms of Non-Government Members. Non-Government members are appointed by the Chairman with the approval of the Council. One-half of the non-Government memberships shall be filled by appointments made on or after July 1 of each year, and each term will expire on June 30 of the second year thereafter. To avoid shortening the term of any non-Government member in service as of the effective date of this paragraph (b), the Chairman shall, by random selection, designate one-half of the non-Government members to serve terms terminating on June 30, 1988, and the other half to serve terms terminating on June 30, 1989. No non-Government members, other than senior fellows, shall at any time be in continuous service beyond four full terms.

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## PART 305—RECOMMENDATIONS OF THE ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

2. The authority citation for Part 305 continues to read as follows:

**Authority:** 5 U.S.C. 571–576.

3. The table of contents to Part 305 of Title 1 CFR is amended to add the following new sections:

Sec.



4. Section 305.86–4 is added to Part 305 as follows:

**§ 305.86–4 The Split-Enforcement Model for Agency Adjudication (Recommendation No. 86–4).**

Separation of functions in administrative adjudication has usually been achieved through internal barriers within the agency which separate and insulate those employees who judge from those who investigate and prosecute. The chains of command, however, come together at the top in the person of the head or heads of the agency, who, through subordinates, are responsible for all three functions. Internal separation of functions is sanctioned and contemplated by the Administrative Procedure Act. When combined with the protections accorded to administrative law judges who preside over adjudicatory hearings, it appears, on the whole, to have worked satisfactorily in providing fair and impartial factfinding, while permitting the agency to speak with a single voice on matters of law and policy. Yet the experience with internal separation of functions has never entirely silenced the critics who argue that it is impossible to achieve evenhanded justice when enforcement and adjudicative functions are lodged in the same agency.

Congress has, therefore, on a number of occasions sought to carry separation of functions a step further. In the Occupational Safety and Health Act of 1970, an agency in the Department of Labor, the Occupational Safety and Health Administration (OSHA), was assigned the responsibility for promulgating industrial health and safety standards and for enforcing these standards through inspections and the filing of complaints against employers. The responsibility for adjudicating such complaints, however, was assigned to a wholly independent three-member agency, the Occupational Safety and Health Review Commission (OSHRC), which employs administrative law judges to hear enforcement cases brought by OSHA and to issue initial decisions subject to commission review. A similar division of responsibilities was created in the area of mine safety and health in the Federal Mine Safety and Health Amendments Act of 1977. This statute assigned rulemaking and enforcement to the Mine Safety and Health Administration in the Department of Labor and adjudication to the independent Federal Mine Safety and Health Review Commission (FMSHRC).[1]

[1] The system for enforcing certain provisions of the Federal Aviation Act also conforms generally to this model but was not part of the study. *See* 49, App. U.S.C. § 1903(a)(9).

An Administrative Conference study of the experience with the "split-enforcement model" used in the occupational safety and mine safety legislation was unable to conclude whether this model achieves greater fairness in adjudication than does the traditional structural model. Fairness is an important but an unquantifiable and subjective value. Therefore, the Conference takes no position on whether the split-enforcement model is preferable to a structure in which responsibilities for rulemaking, enforcement and adjudication are combined within a single agency. Our study did reveal, however, that because Congress, in enacting the Occupational Safety and Health Act, did not specify clearly the respective responsibilities of OSHA and OSHRC in resolving questions of law and policy, unnecessary conflicts have arisen between the agencies and there has been confusion expressed by reviewing courts over which agency's views were entitled to the greater deference. For a variety of reasons these conflicts and confusion have been largely avoided in the later enacted mine safety legislation.

**Recommendation**

1. Where Congress establishes an enforcement scheme in which rulemaking and prosecution are assigned to one agency and adjudication to another agency, it should make clear in which agency it intends to place programmatic responsibility and direct the courts to look to that agency for authoritative expressions of law or policy. Congress should also attempt to foresee other areas of potential conflict, such as control over litigation and settlements, and should so far as possible specify the respective responsibilities of each agency and the procedures for resolving disagreements.

2. Generally speaking, Congress should provide that in adjudicatory challenges to standards promulgated pursuant to agency statutory authority, the adjudicatory agency must accept the rulemaking agency's interpretation of the standard unless it can be shown that the rulemaking agency's interpretation is arbitrary, capricious, or otherwise not in accordance with the law. So far as is practical, the rulemaking agency should provide notice to the affected public concerning the administrative interpretation of its rules and regulations, the policies that they represent, and their intended implementation in enforcement.

3. Where uncertainties exist with regard to the responsibilities of agencies already implementing split-enforcement schemes, Congress should act to resolve those uncertainties consistent with the foregoing, if the agencies are unable to do so.

5. Section 305.86–5 is added to Part 305 as follows:

**§ 305.86–5 Medicare Appeals (Recommendation No. 86–5).**

The Medicare program, since 1965, provides health insurance for nearly all elderly and most disabled Americans. The program relies on hospitals, nursing homes and other health care institutions (under "Part A" of the program) and physicians and suppliers (under "Part B") to provide benefits to its beneficiaries.

This program, serving 30 million persons, has been administered since 1977 by the Health Care Financing Administration (HCFA), within the Department of Health and Human Services (HHS). Congress purposefully created a decentralized system, with implementation by localized carriers and intermediaries, primarily insurance companies. HCFA contracts with these organizations to administer the millions of claims made by beneficiaries each year and the resulting payments to providers. For Part A these organizations are known as "fiscal intermediaries" and for Part B they are referred to as "carriers." Additionally, statutorily-mandated peer review organizations (PROs), made up of physician controlled organizations under contract with HCFA, have been given new responsibility to decide many disputes raised by beneficiaries and hospitals under Part A. To guide its contractors, HCFA issues health insurance manuals containing detailed instructions, though they normally are not published through notice-and-comment rulemaking.

HCFA also issues "national coverage decisions" on whether new medical technologies and procedures are covered by Medicare. These decisions are sometimes made after a recommendation is sought from the HHS Office of Health Technology Assessment (OHTA). Only when OHTA advice is sought does HCFA publish notice in the **Federal Register**. In most cases, affected manufacturers, providers, and beneficiaries have no notice or opportunity to file comments on proposed action, and neither HCFA nor OHTA has published its decisionmaking procedures or its criteria for making these decisions.

Rapidly rising program expenditures, especially inflation in hosptial care costs, led Congress to take a number of steps to control costs. In 1982, the PRO system was created and was delegated important responsibility to deny Medicare payment for inappropriate or unnecessary services and to sanction providers for improper practices. In the following two years Congress froze physician charges for fifteen months and completely revamped the reimbursement system for hospitals by creating the "prospective payment system" under which Medicare pays hosptials a predetermined fixed price for each patient case (according to a classification system of some 470 Diagnosis Related Groupings or DRGs), regardless of the actual costs incurred in treating the patient. The prices are subject to annual updating and the classification system is to be reviewed annually. Congress created the advisory Prospective Payment Assessment Commission to participate in this process. Additionally, to mitigate fears that the prospective payment system might lead to unnecessary brief admissions or premature release of patients, Congress charged the PROs with the responsibility for monitoring hospital admissions and discharge practices. In the first years of this program, hospital admissions for the elderly declined for the first time since 1965, the average length of stay also declined and there was a greater utilization of outpatient services. Moreover, many hospitals have made record profits under the new system while reducing the rate of inflation in hospitals costs. There has also been a marked increase in physician (Part B) services, as patients have moved out of hospital and into outpatient care, and to greater reliance on home health services.

The Medicare appeals system is a patchwork with differing administrative and judicial review requirements for beneficiaries and providers and differing rules for Part A and Part B appeals.

Under Part A, most cases are beneficiary appeals primarily involving coverage determinations. Initial determinations are by PROs if hospital services are involved and by fiscal intermediaries for other Part A services. A reconsideration step is built in. After this "paper review," administrative review is then available by an administrative law judge in the Social Security Office of Hearings and Appeals if the amount in controversy exceeds $100 ($200 in hospital cases). The SSA Appeals Council may review and reverse the ALJ's decision on its own motion. Judicial review in the district court is available for the beneficiary if the amount in controversy is $1000 ($2000 in hospital cases).

Providers who have disputes concerning reimbursement under Part A (over $10,000) may bring appeals to the Provider Reimbursement Review Board (PRRB), a five-member board within HHS. (Appeals involving amounts between $1,000 and $10,000 are heard by fiscal intermediaries.) The Secretary may review PRRB decisions on his own motion and providers have a right to judicial review. The PRRB's effectiveness as an independent adjudicator of provider payments disputes has been called into question by provider groups who have raised concerns about its independence, jurisdiction, slowness and its procedures for handling group appeals. Moreover, the PRRB's role under the prospective payment system has been changing. The Board does retain jurisdiction over appeals remaining under the old system and over some key issues concerning allowable costs, and availability of payments under the new system. But, HCFA rulings and regulations have constrained the PRRB's jurisdiction in prospective payment rate cases and provided that it may not order retrospective correction of errors in those rates. Moreover, some key provider appeals such as those involving errors in DRG assignment have been transferred to PROs. No further review is available in such cases.

Until passage of the Omnibus Budget Reconciliation Act of 1986, Pub. L. 99–509, there was no administrative and judicial review of Part B claims. However, under the new law, beneficiaries with disputed claims of over $500 (and physicians who have accepted assignment of such claims) have a right to a hearing before an administrative law judge, and to subsequent judicial review if the claim exceeds $1,000. Previously there was no judicial review and beneficiaries with Part B claims exceeding $100 were limited to a "fair hearing" before an officer selected by the carrier. (This procedure will continue for claims between $100 and $500 under the new legislation.)

The new legislation also made several other important changes in the laws affecting Medicare. The legislation:

—authorized persons affiliated with providers to represent beneficiaries in Part A appeals as long as no financial liability is imposed in connection with the representation;
—requires that HCFA regulations regarding the Medicare program provide for a 60-day comment period;
—requires expanded notice procedures for medicare patients concerning their hospital discharge rights;
—mandates various new requirements on PROs to review beneficiary complaints and to review the quality of care provided; and
—expands appeal rights in home health care cases involving so-called "technical denials" of benefits.

The Conference welcomes these changes. Indeed, at the time of their enactment, the Conference was actively considering recommendations concerning some of them. Other aspects of the process, however, also deserve modification or, at least, further study. We therefore call upon HCFA to continue its efforts to improve the implementation of this important program by heeding the following specific suggestions.

**Recommendation**

*I. Publication of Policies*

A. The Health Care Financing Administration (HCFA) should keep up to date and provide reasonable access to all standards, guidelines and procedures used in making coverage and payment determinations under Part A and Part B of the Medicare program.

B. In promulgating interpretations of Medicare benefits likely to have substantial impact on the public, HCFA should adopt procedures that allow for public comment (either pre-promulgation or post-adoption). See ACUS Recommendation 76–5.

C. HCFA by regulation (or Congress by legislation if necessary) should require fiscal intermediaries and carriers to publish and provide reasonable access to all insurance industry rules or other screening devices used in making coverage and payment determinations under Part A and Part B.

D. HHS should introduce more openness and regularity into the procedure for issuing "national coverage decisions" pertaining to new medical technologies and procedures, through: (1) Development of published decisional criteria; (2) providing for notice and inviting comments in such cases, both in HCFA's decisionmaking process and in

the process by which the HHS Office of Health Technology Assessment supplies recommendations to HCFA; and (3) providing for internal administrative review or reconsideration of such decisions.

*II. Administrative Appeal Procedures*

A. HCFA should continue to develop and assess the adequacy and timing of notice to beneficiaries about coverage and payment decisions on medical benefits and appeal rights regarding these decisions.

B. Because of the increased caseload in Medicare appeals adjudication anticipated after the recent enactment of new appeal rights in Part B cases, HHS should consider whether modification of the existing adjudicatory system is necessary, including whether to establish a Medicare appeals division with its own administrative law judges and review procedure.

C. When resolving hospital rate appeals under the prospective payment system, the Provider Reimbursement Review Board should be authorized, by regulation (or, if necessary, by legislation) to assume jurisdiction of an individual hospital's appeal in a manner that affords timely relief to successful appellants.

*III. Suggestions for Further Study*

HCFA should undertake or support additional research in the following areas:

A. An empirical study of the role, performance and procedures of:

(1) Fiscal intermediaries and carriers in making coverage and payment determination under Part A and Part B;

(2) Peer review organizations in adjudicating Part A appeals by beneficiaries and by hospitals under the prospective payment system.

B. A comprehensive analysis of the current administrative arrangement by which hospital payment rates are updated under the prospective payment system (taking into account the need for fair ratemaking, timely resolution of disputes and budgetary controls), including an assessment of the Prospective Payment Assessment Commission in this process.

C. An examination of the future role and responsibilities of the Provider Reimbursement Review Board under the prospective payment system, including its jurisdiction, need for expedited review procedures for group appeals, qualifications for membership, adequacy of budget and administrative support, and the need for independence from the rest of the Department.

D. An examination of whether or not the implementation of the statutorily-mandated peer review program should be done to a greater extent through notice-and-comment rulemaking, rather than through reliance upon program instructions and contract provisions.

E. A study of HCFA's use of statistical sampling techniques to determine project overpayments to a provider for a given year, and whether the use of these techniques may effectively deny beneficaries or providers the opportunity to challenge payment determinations based on actual claims experience.

F. A study of whether, in hospital rate appeals, HCFA should allow retroactive correction of erroneous calculations of a hospital's payment rate for affected prior years under the prospective payment system, and payment to hospital accordingly.

G. A study of the process by which ALJ reversals of claim denials are implemented by intermediaries and providers, including the need for tighter accounting of payments to beneficiaries and reimbursements to providers.

H. An examination of the feasibility and utility of setting internal time guidelines for each stage of the Medicare appeals process, including reconsiderations; ALJ hearings and Appeals Council review.

6. Section 305.86–6 is added to Part 305 as follows:

**§ 305.86–6 Petitions for Rulemaking (Recommendation No. 86–6).**

The Administrative Procedure Act (APA) requires each federal agency to give interested persons the right to petition for the issuance, amendment, or repeal of a rule, 5 U.S.C. § 553(e). The APA also requires that agencies conclude matters presented to them within a reasonable time, 5 U.S.C. § 555(b), and give prompt notice of the denial of actions requested by interested persons, 5 U.S.C. § 555(e). The APA does not specify the procedures agencies must follow in receiving, considering, or disposing of public petitions for rulemaking.[1] However, agencies are expected to establish and publish such procedures in accordance with the public information section of the APA. *See* Attorney General's Manual on the Administrative Procedure Act 38 (1947). An Administrative Conference study of agency rulemaking petition procedures and practices found that while most agencies with rulemaking power have established some procedures governing petitions for rulemaking, few agencies have established sound practices in dealing with petitions or responded promptly to such petitions.

This Recommendation sets forth the basic procedures that the Conference believes should be incorporated into agency procedural rules governing petitions for rulemaking. In addition, the Conference encourages agencies to adopt certain other procedures and policies where appropriate and feasible. The Conference feels that, beyond this basic level, uniform specification of agency petition procedures would be undesirable because there are significant differences in the number and nature of petitions received by agencies and in the degree of sophistication of each agency's community of interested persons.

Agencies should review their rulemaking petition procedures and practices and, in accordance with this Recommendation, adopt measures that will ensure that the right to petition is a meaningful one. The existence of the right to petition reflects the value Congress has placed on public participation in the agency rulemaking process. The Administrative Conference has recognized, in past recommendations, the benefits flowing from public participation in agency rulemaking and from publication of the means for such participation.[2] The absence of published petition procedures, excessive or rigidly-enforced format requirements, and the failure to act promptly on petitions for rulemaking may undermine the public's right to file petitions for rulemaking.

Some agencies currently have petition-for-rulemaking procedures that are more elaborate than those recommended in this Recommendation. This Recommendation is not intended to express a judgment that such procedures are inappropriate or that the statutes mandating particular procedures should be amended. Nor is the Recommendation intended to alter the prior position of the Conference recommending elimination of the categorical exemptions of certain types of rulemaking from the APA's rulemaking requirements. *See* Recommendations 69–8 and 73–5. To the extent Congress or agencies adopt those recommendations, they should also expressly apply the right to petition to those types of rulemaking.

**Recommendation**

1. Agencies should establish by rule basic procedures for the receipt, consideration, and prompt disposition of petitions for rulemaking. These basic procedures should include: (a) Specification of the address(es) for the filing of petitions and an outline of the recommended contents of the petition, such as the name, address, and telephone number of the petitioner, the statutory authority for the action

[1] But other statutes expressly create the right to petition for rulemaking, and some of these statutes specify procedures to be followed in the petitioning process.

[2] *See* Recommendation 69–8, *Elimination of Certain Exemptions from the APA Rulemaking Requirements*, 1 C.F.R. § 305.69–8; Recommendation 71–6, *Public Participation in Administrative Hearings*, 1 C.F.R. § 305.71–6; Recommendation 73–5, *Elimination of the "Military or Foreign Affairs Function" Exemption from APA Rulemaking Requirements*, 1 C.F.R. § 305.73–5; Recommendation 76–5, *Interpretive Rules of General Applicability and Statements of General Policy*, 1 C.F.R. § 305.76–5; and Recommendation 83–2, *The "Good Cause" Exemption from APA Rulemaking Requirements*, 1 C.F.R. § 305.83–2.

requested, and a description of the rule to be issued, amended, or repealed; (b) maintenance of a publicly available petition file; and (c) provision for prompt notification to the petitioner of the action taken on the petition, with a summary explanatory statement.

2. In addition, agencies should, where appropriate and feasible:

a. make their petition procedures expressly applicable to all types of rules the agency has authority to adopt;

b. provide guidance on the type of data, argumentation, or other information the agency needs to consider petitions;

c. develop effective methods for providing notice to interested persons that a petition has been filed and identify the agency office or official to whom inquiries and comments should be made; and,

d. establish internal management controls to assure the timely processing of petitions for rulemaking, including deadlines for completing interim actions and reaching conclusions on petitions and systems to monitor compliance with those deadlines.

7. Section 305.86–7 is added to Part 305 as follows:

**§ 305.86–7 Case Management as a Tool for Improving Agency Adjudication (Recommendation No. 86–7).**

Reducing the delay, expense and unproductive legal maneuvering found in many adjudications is recognized as a crucial factor in achieving substantive justice. In recent years, the negative side effects of civil litigation and agency adjudication procedures have begun to receive increased attention, and many judges, informed scholars and other experienced observers now cite lawyer control of the pace and scope of most cases as a major impediment. In the federal judicial sphere, and increasingly in the state judiciary, a consensus is developing that efficient case management is part of the judicial function, on a par with the traditional duties of offering a fair hearing and a wise, impartial decision. Many federal district judges have begun to practice and advocate increased intervention to shape and delimit the pretrial or prehearing process.

Some federal agencies have begun to make regular use of case management processes wherein those who decide cases interject their informed judgment and experience early in the pretrial stage, and consistently thereafter, to move cases along as quickly as possible within the bounds of procedural fairness. One such agency is the Department of Health and Human Services ("HHS"), whose Departmental Grant Appeals Board ("DGAB" or "Board") makes active, planned use of special managerial procedures. The Board, which decides cases brought by state and local governments or other recipients of HHS grant funds, has a three-tiered process that relies extensively on use of action-forcing procedures for completing each stage of a case. The Board adjudicates almost all its cases—well over two hundred dispositions and one hundred written decisions annually with an average "amount in controversy" in excess of one million dollars—in three to nine months. Most disputes before it involve financial issues concerning the allowability of grantee expenditures, but the Board's jurisdiction extends also to disputes over grant terminations and some renewals. A recent study [1] indicates that the Board's process reduces the opportunity for maneuvering by the parties, facilitates an expeditious, inexpensive disposition of all but the most complex cases, and is overwhelmingly approved by most attorneys who practice before it.

The Board's success should not be discounted because won in an environment unusually favorable to efficient dispute resolution.[2] The fact is that similar procedures are now used with apparently equal success at other agencies. They merit the attention of appeals boards, administrative panels, administrative law judges ("ALJs") and all others involved in the decisional process. Though recognizing that many factors affect the procedures to be followed in any particular dispute, the Administrative Conference encourages this trend toward reducing the transaction costs of agency proceedings and believes that this is a key responsibility of all presiding officers and their supervisors. The Conference has, in several contexts, already called on federal agencies to make greater use of internal time limits,[3] alternative means of dispute resolution,[4] and case management and other techniques [5] to expedite and improve their case handling. The Conference now calls upon all personnel who conduct or oversee processing of adjudicative proceedings for the federal government to make more determined efforts to use the kinds of case management methods described below as may be appropriate.

**Recommendation**

The Conference encourages the prompt, efficient and inexpensive processing of adjudicative proceedings. Federal agencies engaged in formal and informal adjudication should consider applying the following case management methods to their proceedings, among them the following:

1. *Personnel management devices.* Use of internal agency guidelines for timely case processing and measurements of the quality of work products can maintain high levels of productivity and responsibility. If appropriately fashioned, they can do so without compromising independence of judgment. Agencies possess and should exercise the authority, consistent with the ALJ's or other presiding officer's decisional independence, to formulate written criteria for measuring case handling efficiency, prescribe procedures, and develop techniques for the expeditious and accurate disposition of cases. The experiences and opinions of presiding officers should play a large part in shaping these criteria and procedures. The criteria should take into account differences in categories of cases assigned to judges and in types of disposition (e.g., dismissals, dispositions with and without hearing). Where feasible, regular, computerized case status reports and supervision by higher level personnel should be used in furthering the systematic application of the criteria once they have been formulated.

2. *Step-by-step time goals.* Case management by presiding officers and their supervisors should be combined with procedures designed to move cases promptly through each step in the proceeding. These include (a) a program

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[1] This recommendation is based largely on the report "Model for Case Management: The Grant Appeals Board" by Richard B. Cappalli (1986), which explores how the methods described separately below interact in an integrated case management system.

[2] *E.g.*, a moderate caseload per judge, a shared program objective among all parties and a long-term relationship between the agency and the claimant.

[3] Recommendation 78–3 calls on all agencies to use particularized deadlines or time limits for the prompt disposition of adjudicatory and rulemaking proceedings, either by announcing schedules for particular cases or adopting rules with general timetables for their various categories of proceedings. *Time Limits on Agency Actions*, 1 CFR § 305.78–3. The Conference has also called on agencies to establish productivity norms and otherwise exercise their authority to prescribe procedures and techniques for accurate, expeditious disposition of Social Security claims and disputes under grants. *E.g., Procedures for Determining Social Security Disability Claims*, 1 CFR § 305.78–2; *Resolving Disputes under Federal Grant Programs*, 1 CFR § 305.82–2.

[4] Recommendation 86–3 calls on agencies to make greater use of mediation, negotiation, minitrials, and other "ADR" methods to reduce the delay and contentiousness accompanying many agency decisions. *Agency Use of Alternative Means of Dispute Resolution*, 1 CFR § 305.86–3. The Conference has called previously for using mediation, negotiation, informal conferences and similar innovations to decide certain kinds of disputes more effectively. *E.g., Procedures for Negotiating Proposed Regulations*, 1 CFR §§ 305.82–4, .85–5; *Negotiated Cleanup of Hazardous Waste Sites Under CERCLA*, 1 CFR § 305.84–4; *Resolving Disputes under Federal Grant Programs*, 1 CFR § 305.82–2.

[5] Many of the practices recommended herein reflect the advice contained in the *Manual for Administrative Law Judges*, prepared for the Conference by Merritt Ruhlen. Recommendation 73–3 advises on using case management in adjudicating benefit and compensation claims. It calls for continuous evaluation of adjudicative performance pursuant to standards for measuring the accuracy, timeliness and fairness of agency procedures. *Quality Assurance Systems in the Adjudication of Claims of Entitlement to Benefits or Compensation*, 1 CFR § 305.73–3. In addition, Recommendation 69–6 urges agencies to compile and use statistical caseload data about their proceedings. *Compilation of Statistics on Administrative Proceedings by Federal Departments and Agencies*, 1 CFR § 305.69–6.

of step-by-step time goals for the main stages of a proceeding, (b) a monitoring system that pinpoints problem cases, and (c) a management committed to expeditious processing. Time guidelines should be fixed in all cases for all decisional levels within the agency, largely with the input of presiding officers and others affected. While the guidelines should be flexible enough to accommodate exceptional cases and should maintain their non-obligatory nature, they should be sufficiently fixed to keep routine items moving and ensure that any delays are justified. Agencies should encourage a management commitment by including specific goals or duties of timely case processing in pertinent job descriptions.

3. *Expedited options.* Agencies should develop, and in some instances require parties to use, special expedited procedures. Different rules may need to be developed for handling small cases as well as for larger ones that do not raise complex legal or factual issues.

4. *Case file system.*

(a) Agencies should develop procedures to ensure early compilation of relevant documents in a case file. This will help the presiding officer delineate the legal and factual issues, the parties' positions and the basis for the action as promptly as possible. The presiding officer may then structure the process suitably and issue preliminary management directives.

(b) Disputes preceded by party interactions or investigations which create a substantial factual record, as in most contract and grant disputes, are especially amenable to this approach. Cases involving strong fact conflicts or in which data are peculiarly within the possession of one party who has motivations to suppress them may be less suitable for a case file system.

5. *Two stage resolution approaches.* In proceedings where the case file system is less appropriate, as where factual conflicts render discovery important, agencies should consider using a two-phase procedure.

(a) Phase one might be an abbreviated discovery phase directed by a responsible official, with the product of that discovery forming the "appeal file" for the next phase. Alternatively, parties could be channeled into a private dispute resolution mode, such as mediation, negotiation or arbitration, which, even if unsuccessful, can serve to define major issues and to advance development of the record. Before employing this alternative, agencies would have to determine whether the confidentiality rule that normally attaches to arbitration, medication and negotiation is so critical that it cannot be abandoned for the sake of a more efficient second stage.

(b) A second stage, if necessary, should proceed under active case management, as recommended.

6. *Seeking party concessions and offering mediation.* Presiding officers should promote party agreement and concessions on procedural and substantive issues, as well as on matters involving facts and documents, to reduce hearing time and sometimes avoid hearings altogether. Agencies should also (a) encourage decisional officers to resolve cases (or parts thereof) informally, (b) provide their officers training in mediation and other ADR methods, and (c) routinely offer parties the services of trained mediators.

7. *Questioning techniques.* (a) Requests for clarification or development of record. If a party makes a statement in a notice of appeal, brief, or other submission which a presiding officer does not understand, doubts, or wishes clarified, the officer should consider requiring the party to expand upon its position. The ambiguity may relate to a factual matter, or an interpretation of a legal precedent or a document. Similarly, by preliminary study of the case file, the presiding officer could identify missing information and require the party with access to such infomation to remedy the deficiency. The officer could also issue "invitations to brief" difficult questions of statutory interpretation or the like.

(b) Written questions for conference or hearing. The presiding officer should manage cases so as to limit issues, proof, and argument to core matters. Having ascertained the factual and legal ambiguities in each side's case by careful study of the briefs and documentation submitted, the presiding officer should structure a prehearing conference or hearing as a forum for addressing these ambiguities by seeking responses to carefully formulated questions and providing appropriate opportunity for rebuttal. In this way, and by otherwise seeking to identify the specific questions in dispute early on, the presiding officer would focus parties' attention on key issues and deflect unproductive procedural maneuvers.

8. *Time extension practices.* Time extensions should be granted only upon strong, documented justification. While procedural fairness mandates that deadlines may be extended for good cause, presiding officers should be aware that casual, customary extensions have serious negative effects on an adjudicatory system, its participants, and those wishing access thereto. Stern warnings accompanying justified extensions have had good success in curtailing lawyers' requests for additional time.

9. *Joint consideration of cases with common issues.* Whenever practicable and fair, cases involving common questions of law or fact should be consolidated and heard jointly. Consolidation could include unification of schedules, briefs, case files and hearings.

10. *Use of telephone conferences and hearings.* Presiding officers should take full advantage of telephone conferences as a means to hear motions, to hold prehearing conferences, and even to hear the merits of administrative proceedings where appropriate. While telephone conferences may be either employed regularly for handling selected matters or limited to a case-by-case basis at the suggestion of the presiding officer or counsel, experience suggests that maximum benefits are derived when telephone conferences are made presumptive for certain matters.

11. *Intra-agency review.* Any subsequent intra-agency review of an initial adjudicative decision should generally be conducted promptly pursuant to flexible, preestablished time guidelines and review standards.

12 *Training.* Agencies should offer, and presiding officers seek, training in case management, mediation, negotiation and similar methods, and should be alert to take advantage of them. The training should be carried out with the advice and aid of other federal agencies and groups with expertise.

8. Section 305.86–8 is added to Part 305 as follows:

**§ 305.86–8 Acquiring the Services of "Neutrals" for Alternative Means of Dispute Resolution (Recommendation No. 86–8).**

The Administrative Conference has repeatedly encouraged agencies to take advantage of mediation, negotiation, minitrials, binding arbitration and other alternative means of dispute resolution ("ADR").[1] While some agencies have begun

[1] In Recommendation 86–3, the Conference called on agencies, where not inconsistent with statutory authority, to adopt alternatives to litigation and trial-type hearings such as mediation, minitrials, arbitration and other "ADR" methods. *Agencies' Use of Alternative Means of Dispute Resolution*, 1 CFR 305.86–3. In the rulemaking sphere, Recommendations 82–4 and 85–5 have been instrumental in promoting agency experimentation with negotiated rulemaking, which involves convening potentially interested parties to negotiate the details of a proposed rule. *Procedures for Negotiating Proposed Regulations*, 1 CFR §§ 305.82–4 and .85–5. *See also, Negotiated Cleanup of Hazardous Waste Sites Under CERCLA*, 1 CFR 305.84–4; *Resolving Disputes Under Federal Grant Programs*, 1 CFR 305.82–2; and *Case Management as a Tool for Improving Agency Adjudication*, 1 CFR 305.86–7.

to employ these methods to reduce transaction costs and reach better results, many disputes are still being resolved with unnecessary formality, contentiousness and delay. This recommendation is aimed at helping agencies begin to explore specific avenues to expand their use of ADR services.

A key figure in the effective working of various modes of ADR, including negotiated rulemaking, is the "neutral"—a person, usually serving at the will of the parties, who generally presides and seeks to help the parties reach a resolution of their dispute. These neutrals, often highly skilled professionals with considerable training in techniques of dispute resolution, can be crucial to using ADR methods with success.[2] For agencies to use ADR effectively, they should take steps to develop routines for deciding when and how these persons can be employed, to identify qualified neutrals, and to acquire their services.

The diversity of roles played by neutrals and the uncertainty as to certain applicable legal requirements present complications for agencies considering uses of ADR. Neutrals may be specially trained and accredited, or may simply hold themselves out as having certain expertise, experience or credibility. They may be called on to make binding decisions, consistent with applicable statutory and regulatory requirements, when opposing positions cannot be reconciled, or they may simply render advice to the parties. Time may be of the essence in acquiring their services, as in many arbitrations, but in some instances may be a minor consideration. Costs of using outside neutrals may range from a few thousand dollars (for the services of a minitrial advisor) to six figures (for convening and facilitating a large-scale negotiated rulemaking). These differences render specific advice difficult to give in advance. Agencies, Congress, courts, and others who employ ADR methods or review their use should nonetheless observe certain guidelines intended to accomplish the following goals:

■ *Supply.* Broadening the base of qualified, acceptable individuals or organizations, inside and outside the government, to provide ADR services.

■ *Qualifications.* Insuring that neutrals have adequate skills, technical expertise, experience or other competence necessary to promote settlement, while avoiding being too exclusive in the selection process.

■ *Acquisition.* Identifying existing methods, or developing new techniques, for expeditiously acquiring the services of neutrals at a reasonable cost and in a manner which (a) insures a full and open opportunity to compete and (b) enables agencies to select the most qualified person to serve as a neutral, given that the protracted nature of the government procurement process is often inconsistent with the goals of ADR and the need to avoid delays.[3]

■ *Authority.* Minimizing any uncertainty under the "delegation" doctrine or similar theories that may adversely affect the authority of some neutrals to render a binding decision. This consideration, however, should not prove troublesome where neutrals merely aid the parties in reaching agreement (as in nearly all mediations, minitrials and negotiated rulemakings).

These proposals are intended to help agencies meet the challenge of reaching these goals in a time of reduced resources and in a milieu in which many affected interests may oppose change.

**Recommendation**

*A. Availability and Qualifications of Neutrals*

1. Agencies and reviewing bodies should pursue policies that will lead to an expanded, diverse supply of available neutrals, recognizing that the skills required to perform the services of a dispute resolution neutral will vary greatly depending on the nature and complexity of the issues, the ADR method employed, and the importance of the dispute. Agencies should avoid unduly limiting the pool of acceptable individuals though the use of overly restrictive qualification requirements, particularly once agencies have begun to make more regular use of ADR methods. While skill or experience in the process of resolving disputes, such as that possessed by mediators and arbitrators, is usually an important criterion in the selection of neutrals, and knowledge of the applicable statutory and regulatory schemes may at times be important, other specific qualifications should be required only when necessary for resolution of the dispute. For example:

(a) Agencies should not necessarily disqualify persons who have mediation, arbitration or judicial experience but no specific experience in the particular ADR process being pursued.

(b) While agencies should be careful not to select neutrals who have a personal or financial interest in the outcome, insisting upon "absolute neutrality"—*e.g.*, no prior affiliation with either the agency or the private industry involved—may unduly restrict the pool of available neutrals, particularly where the neutral neither renders a decision nor gives formal advice as to the outcome.

(c) Agencies should insist upon technical expertise in the substantive issues underlying the dispute or negotiated rulemaking only when the technical issues are so complex that the neutral could not effectively understand and communicate the parties' positions without it.

2. Agencies should take adavantage of opportunities to make use of government personnel as neutrals in resolving disputes. These persons may include agency officials not otherwise involved in the dispute or employees from other agencies with appropriate skills, administrative law judges, members of boards of contract appeals, and other responsible officials. The Administrative Conference, Federal Mediation and Conciliation Service ("FMCS"), the Department of Justice (particularly the Community Relations Service ("CRS")) and other interested agencies should work to encourage imaginative efforts at sharing the services of federal "neutrals," to remove obstacles to such sharing, and to increase parties' confidence in the selection process.

3. Congress should consider providing FMCS, CRS and other appropriate agencies with funding to train their own and other agencies' personnel in the particular skills needed to serve in minitrials, negotiated rulemakings, and other ADR proceedings.

4. The Administrative Conference, in consultation with FMCS, should assist other agencies in identifying neutrals and acquiring their services and in establishing rosters of neutral advisors, arbitrators, convenors, facilitators, mediators and other experts on which federal agencies could draw when they wished. The rosters should be based, insofar as possible, on full disclosure of relevant criteria (education, experience, skills, possible bias, and the like) rather than on strict requirements of actual ADR experience or professional certification. Agencies should also consider using rosters of private groups (*e.g.*, the American Arbitration Association). The Conference, FMCS or another information center should routinely compile data identifying disputes or rulemakings in which neutrals have participated so that agencies and parties in future proceedings can be directed to sources of information pertinent to their selection of neutrals.

5. Agencies should take advantage of opportunities to expose their employees to ADR proceedings for training purposes, and otherwise encourage their employees to acquire ADR skills. Employees trained in ADR should be listed on the rosters described above, and their services made available to other agencies.

[2] *See* the Glossary in the Appendix for brief descriptions of the roles of neutrals in various proceedings.

[3] While there may be situations in which agencies can obtain the services of a qualified outside neutral without following formal procurement procedures, acquisitions of neutrals' services are generally governed by the Competition in Contracting Act, Pub. L. No. 98-369, Title VII, 98 Stat. 1175, which mandates full and open competition for contracts to supply goods and services to the federal government, and the Federal Acquisition Regulations, 48 CFR Chapter 1, Parts 1-53, which sets forth detailed procedures for conducting competitive procurements.

*B. Acquiring Outside Neutrals' Services*

1. In situations where it is necessary or desirable to acquire dispute resolution services from outside the government, agencies should explore the following methods:

(a) When authorized to employ consultants or experts on a temporary basis (e.g., 5 U.S.C. § 3109), agencies should consider utilizing that authorization in furtherance of their ADR or negotiated rulemaking endeavors.

(b) Agencies contemplating ADR or negotiated rulemaking projects involving private neutrals should, as part of their acquisition planning process pursuant to the Federal Acquisition Regulation ("FAR") Part 7,[4] periodically give notice in the *Commerce Business Daily* and in professional publications of their needs and intentions,[5] so as to allow interested organizations and individual ADR neutrals to inform the agency of their interest and qualifications.

(c) Where speed is important and the amount of the contract is expected to be less than $25,000, agencies should use the streamlined small purchase procedures of Subpart 13.1 of the Federal Acquisition Regulation [6] in acquiring the services of outside neutrals, particularly minitrial neutral advisors, mediators and arbitrators.

(d) Agencies that foresee the need to hire private neutrals for numerous proceedings should consider the use of indefinite quantity contracts as vehicles for identifying and competitively acquiring the services of interested and qualified neutrals who can then be engaged on an expedited basis as the need arises. Agencies should, where possible, seek contracts with more than one supplier. In fashioning such indefinite quantity contracts, agencies should take care to comply with the following:

(1) Agency contracts should specify a minimum quantity, which could be a non-nominal dollar amount rather than a minimum quantity of services.[7]

(2) Negotiation of individual orders under the contract is desirable, but should generally adhere to the personnel, statements of work, and cost rates or ceilings set forth in the basic indefinite quantity contract, so as to minimize "sole source" issues.

(e) Agencies should also consider:

(1) Entering into joint projects for acquiring neutrals' services by using other agencies' contractual vehicles.

(2) Using other contracting techniques, such as basic ordering agreements and schedule contracts, where appropriate to meet their needs for neutrals' services.

(3) Proposing a deviation from the FAR or amending their FAR supplements, where appropriate.

(f) Agencies should evaluate contract proposals for ADR neutrals' services on the qualifications of the offeror, but cost alone should not be the controlling factor.[8]

2. The Civilian Agency Acquisition Council and Defense Acquisition Regulatory Council should be receptive to agency or Administrative Conference proposals for deviations from,[9] or amendments to, the FAR to adapt procurement procedures to the unique requirements of ADR processes, consistent with statutory mandates.

3. In the absence of appropriate considerations suggesting a different allocation of costs, in minitrials and arbitration the parties customarily should share equally in the costs of the neutrals' services.

Glossary

*Mediator.* A mediator is a neutral third party who attempts to assist parties in negotiating the substance of a settlement. A mediator has no authority to make any decisions that are binding on either party.

*Convenor/Facilitator.* Negotiated rulemakings generally proceed in two phases, one using a "convenor" and the other a "facilitator." In the first (convening) phase, a neutral called a convenor studies the regulatory issues, attempts to identify the potentially affected interests, and then advises the agency concerning the feasibility of convening representatives of these interests to negotiate a proposed rule. If the agency decides to go forward with negotiating sessions, the convenor assists in bringing the parties together. In the second (negotiating) phase, a neutral called a facilitator manages the meetings and coordinates discussions among the parties. When the parties request, a facilitator may act as a mediator, assisting the negotiators to reach consensus on the substance of a proposed rule. The roles of convenor and facilitator sometimes overlap, and often both functions are performed by the same person or persons. Neither a convenor nor a facilitator has authority to make decisions that are binding on the agency or on the participating outside parties.

*Neutral Advisor.* A minitrial is a structured settlement process in which each party to a dispute presents a highly abbreviated summary of its case before senior officials of each party authorized to settle the case. In this recommendation, it is presumed that the government is one party to the dispute. In some (but not all) minitrials, a neutral advisor participates by hearing the presentations of the parties and, optionally, providing further assistance in any subsequent attempt to reach a settlement. Typically, a neutral advisor is an individual selected by the parties. Duties of a neutral advisor may include presiding at the presentation, questioning witnesses, mediating settlement negotiations, and rendering an advisory opinion to the parties. In no event does a neutral advisor render a decision that is binding on any party to a minitrial.

*Arbitrator.* An arbitrator is a neutral third party who issues a decision on the issues in dispute after receiving evidence and hearing argument from the parties. Arbitration is a less formal alternative to adjudication or litigation, and an arbitrator's decision may or may not be binding. Arbitration may be chosen voluntarily by the parties, or it may be required by contract or statute as the exclusive dispute resolution mechanism.

Dated: December 19, 1986.

Richard K. Berg,

*General Counsel.*

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[4] 48 CFR Part 7.

[5] Agencies are required to give *Commerce Business Daily* notice for all contract solicitations in which the government's share is likely to exceed $10,000. 15 U.S.C. 637(e); 48 CFR 5.201(a). For procurements between $10,000 and $25,000 in which the agency reasonably expects to receive at least two offers, no such notice is required. Pub. L. No. 99-591, October 18, 1986, Title IX, Section 922.

[6] 48 CFR Subpart 13.1. This Subpart allows agencies to make purchases in amounts less than $25,000 without following all of the formalities prescribed in the FAR for ordinary procurements. If the procurement is for less than $10,000, the agency need not advertise it in advance in the *Commerce Business Daily*. 48 CFR 5.201(a). None of these provisions relieves the agency of its mandate to obtain competition.

[7] 48 CFR 16.504(a)(2).

[8] 48 CFR 15.605(c).

[9] 48 CFR 1.402.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 52

### United States Standards for Grades of Frozen Leafy Greens

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

**ACTION:** Final rule.

**SUMMARY:** The purpose of this final rule is to revise the voluntary United States Standards for Grades of Frozen Leafy Greens. The revision was developed by the U.S. Department of Agriculture at the request of the frozen vegetable industry. This final rule will change the allowance for blemishes in leaf style spinach by allowing a larger tolerance (area measurement) for blemished leaves. Its effect will be to improve the standards and encourage uniformity and consistency in commercial practices which will facilitate the trading of frozen leafy greens.

**EFFECTIVE DATE:** January 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Harold A. Machias, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6247.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures and Executive Order 12291 and has been designated as a "nonmajor" rule. It will not result in an annual effect on the economy of $100 million or more. There will be no major increase in cost or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. It will not result in significant adverse effects on competition, employment, investments, productivity, innovations, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, Pub. L. 96-354 (5 U.S.C. 601), because it reflects current marketing practices.

The current voluntary grade standards for frozen leafy greens have been in effect since October 12, 1983. The grade standards were last revised to include frozen spinach under the grade standards for frozen leafy greens since they contained similar narrative text. Spinach was included as a "type" of leafy greens.

In May 1984, the USDA received a request from the American Frozen Food Institute (AFFI) to change the U.S. grade standards for frozen leafy greens on the behalf of frozen spinach processors from California. The industry stated that applying frozen leafy greens allowances for blemished leaves to frozen spinach has resulted in a more restrictive tolerance than was applied to frozen spinach in the previous standards. Industry studies conducted by technical personnel indicated that increasing the tolerance for leaf style spinach from each four square centimeters to each six square centimeters, using the same acceptance quality level criteria, would be more in line with the previous grade standards.

On April 7, 1986, a proposed rule was published in the **Federal Register** (51 FR 11744). The comment filing period ended May 7, 1986. The National Food Processors Association (NFPA), a scientifically and technically based trade association that represents 600 food processing companies, commented on the proposal. NFPA's comment supported the proposal to revise the voluntary U.S. Standards for Grades of Frozen Leafy Greens to redefine the definition of blemished leaves for frozen leaf style spinach so that each six square centimeters of blemished area is counted as one defect. NFPA indicated this change will bring the standards in line with current industry practices and facilitate the trading of frozen leafy greens. No other comments were received.

After review of this comment and in order to improve the standards and encourage uniformity and consistency in commercial practices, the USDA hereby revises the grade standards by changing § 52.1374, Definitions of terms, (b) *Blemished.*

**List of Subjects in 7 CFR Part 52**

Fruits, Vegetables, Food grades and standards.

## PART 52—[AMENDED]

Accordingly, the Subpart—United States Standards for Grades of Frozen Leafy Greens (7 CFR Part 52.1371—52.1381) is amended as follows:

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

**Authority:** Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090, as amended (7 U.S.C. 1622, 1624).

2. In Part 52, § 52.1374, paragraph (b) is revised to read as follows:

**§ 52.1374 Definitions of terms.**

* * * * *

(b) *Blemished* means any unit affected by discoloration or other means to the extent that the appearance or eating quality is adversely affected. For leafy greens other than leaf style spinach, each 4 $cm^2$ in leaf style or each 2 $cm^2$ in chopped and pureed styles (aggregate area measurement) is counted as one defect. In leaf style spinach only, each 6 $cm^2$ is counted as one defect.

* * * * *

Done at Washington, DC on December 18, 1986.

**William T. Manley,**

*Deputy Administrator, Marketing Programs.*

[FR Doc. 86-29143 Filed 12-29-86; 8:45 am]

BILLING CODE 3410-02-M

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**Commodity Credit Corporation**

**7 CFR Part 1403**

## Referral of Delinquent Debt Information to Credit Reporting Agencies

**AGENCY:** Commodity Credit Corporation, Agriculture Department.

**ACTION:** Final rule.

**SUMMARY:** This final rule provides for the referral to credit reporting agencies of information with respect to delinquent debts owed to Commodity Credit Corporation (CCC). This action, which is usual and customary in commerce, is being taken as an incentive for delinquent debtors to repay debts owed to CCC.

**EFFECTIVE DATE:** December 30, 1986.

**FOR FURTHER INFORMATION CONTACT:** Dale R. Phillips, Claims Specialist, Fiscal Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013 (202) 447-4039.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major." It has been determined that the provisions of this rule will not result in: (1) Annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, federal, State or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or in the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action will not increase the federal paperwork burden for individuals, small businesses, and other persons.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental

consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

The titles and numbers of the Federal Domestic Assistance Programs to which this proposed rule applies are: Commodity Loans and Purchases, 10.051; Cotton Production Stabilization, 10.052; Dairy Indemnity Program, 10.053; Feed Grain Production Stabilization, 10.055; Storage Facilities and Equipment Loans, 10.056; Wheat Production Stabilization, 10.058; Rice Production Stabilization, 10.065; Grain Reserve Program 10.067; as listed in the Catalog of Federal Domestic Assistance.

**Background**

CCC makes loans, guarantees, and payments and enters into contracts in connection with its activities under which various individuals, organizations and entities become indebted to CCC. At the close of fiscal year 1986 the amount of delinquent debt owed to CCC exceeded $130,000,000.

CCC has authority under section 4(k) of the Commodity Credit Corporation Charter Act (15 U.S.C. 714b(k)) to make final and conclusive settlement and adjustment of any claims by or against the Corporation. As an aid in effective debt management, CCC will submit information to credit reporting agencies with respect to delinquent debts owed to CCC. This policy is consistent with customary business practices of the private sector, the Federal Claims Collection Standards (FCCS), (4 CFR Part 102), and Office of Management and Budget (OMB) Circular A–129.

The Debt Collection Act of 1982 (Act) (Pub. L. 97–365) amended section 3 of the Federal Claims Collection Act (FCCA) (31 U.S.C. 3711(f)) to authorize the head of an agency, in attempts to collect delinquent debts owed by an individual, to disclose information relating to such debts to a consumer reporting agency. The Act also amended the Privacy Act of 1974 (5 U.S.C. 552a(b)) to permit such disclosure of information under certain conditions.

This final rule establishes procedures under which CCC will refer information with respect to delinquent debts to credit reporting agencies.

In disclosing information with respect to delinquent debts, CCC will follow the requirements of the FCCS. Only that information directly related to the identity of the debtor and the history of the claim will be released. Debtor information will consist of: the debtor's name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor; the amount, status, and history of the claim; and the program under which the claim arose.

On March 25, 1986, CCC published a proposed rule in the **Federal Register** (51 FR 10222) concerning the referral of delinquent debt information to credit reporting agencies. The supplementary information contained in the proposed rule set forth the basis and purpose of the proposed rule. A 30-day period through April 24, 1986, was provided for written comments from the public with respect to the proposed rule. The only comment received was from the Office of Finance and Management (OFM), an agency within the Department of Agriculture. There were no comments received from the general public with respect to the proposed rule.

After considering the comment received, as well as modifications indicated from CCC's internal review of the proposed rule, CCC is adopting the proposed rule as a final rule with minor changes.

OFM suggested changes that, if adopted, would provide for referral of non-delinquent accounts of CCC to credit reporting agencies. It was OFM's position that such changes should be made in order for CCC's regulations to be consistent with USDA's interim rule on debt collection published at 50 FR 7721 (February 26, 1985) and OMB Circular A–129, which provide for the referral of all commercial debts to credit reporting agencies.

Due to the nature of CCC's operation, the reporting of only delinquent debts is consistent with such general policy. For example, price support loans made by CCC to producers are secured by collateral which may be forfeited to CCC in payment of the loans at maturity, with no liability on the part of the producers to CCC for any deficiency unless the deficiency is due to fraud, unauthorized removal, or similar cause. When a price support loan is made it will not be reported as a debt to a credit reporting agency because there may never be any liability on the part of the producer to pay any deficiency. However, when a claim arises for a loan deficiency for which the producer is liable, the amount thereof will be reported as a delinquent debt to credit reporting aqencies.

The Department of Agriculture has signed agreements with credit reporting agencies which may be used by all USDA agencies and staff offices. These agreements provide the necessary assurances to USDA agencies that the credit reporting agencies are in compliance with applicable laws relating to providing credit information. Accordingly, all references to such agreements and assurances have been changed to refer to agreements entered into by USDA, instead of CCC, with credit reporting agencies.

In 7 CFR 1403.22(b) the reference to a $100 threshhold has been deleted. All delinquent debts, regardless of amount, will be subject to referral to credit reporting agencies.

Finally, the 30-day time requirement for CCC to notify the credit reporting agencies of changes which have occurred with respect to a claim has been deleted in § 1403.26(a). The 30-day limit was too restrictive and did not allow CCC sufficient time to obtain information and accomplish record update. A statement has been added to § 1403.26(a) to indicate that changes will be made at each tape update submission, which is presently scheduled on a quarterly basis.

Except for minor, nonsubstantive changes in wording and format, the proposed rule published at 51 FR 10222 is adopted as a final rule, with the changes specified.

**List of Subjects in 7 CFR Part 1403**

Commodity Credit Corporation, Credit reporting procedures, Delinquent debts.

Accordingly, 7 CFR Part 1403 is amended as follows:

**Final Rule**

1. The authority citation for Part 1403 is revised to read as follows:

**Authority:** Sec. 4, Pub. L. 80–89, 62 Stat. 1070, as amended (15 U.S.C. 714b).

2. The Part heading of 7 CFR Part 1403 is revised to read as follows:

## PART 1403—DELINQUENT DEBTS

3. The Table of Contents is amended by adding a new subpart heading at the beginning and by adding the Table of Contents for Subpart B at the end as follows:

**Subpart A—Interest on Delinquent Debts**

* * * * *

**Subpart B—Referral of Delinquent Debt Information to Credit Reporting Agencies**

Sec.

Sec.
1403.27 Source of delinquent debt information.
1403.28 Information disclosure limitations.
1403.29 Attempts to locate debtor.
1403.30 Request for review of the indebtedness.
1403.31 Disclosure to credit reporting agencies.
1403.32 Request regarding information from a system of records.

4. Sections 1403.1 through 1403.6 are designated as Subpart A, and a new subpart heading is added before 7 CFR 1403.1 to read as follows:

## Subpart A—Interest on Delinquent Debts

5. A new Subpart B, consisting of §§ 1403.21 through 1403.32, is added following 7 CFR 1403.6 to read as follows:

## Subpart B—Referral of Delinquent Debt Information to Credit Reporting Agencies

### § 1403.21 Purpose.

This subpart specifies the procedures that will be followed and the rights that will be afforded to debtors in connection with the reporting by Commodity Credit Corporation (CCC) to credit reporting agencies of information with respect to delinquent debts owed to CCC.

### § 1403.22 Definitions.

(a) *"Credit reporting agency"* means—
(1) A reporting agency as defined at 4 CFR 102.5(a) or
(2) Any entity which has entered into an agreement with the Department of Agriculture (USDA) concerning the referral of credit information.
(b) *"Debt" and "claim"* are deemed synonymous and are used interchangeably herein. The debt or claim is an amount of money which has been determined by an appropriate agency official to be owed to CCC by any individual, organization or entity, except another federal agency, State, local or foreign government or agencies thereof, Indian tribal governments, or other public institutions. The debt or claim may have arisen from loans, loan guarantees, overpayments, fines, penalties, or other causes.
(c) *"Delinquent debt"* means:
(1) Any debt owed to CCC that has not been paid by the date specified in the applicable contract, agreement or initial notification of indebtedness; and
(2) Any overdue amount owed to CCC by a debtor which is the subject of an installment payment agreement which the debtor has failed to satisfy under the terms of such agreement.
(d) *"System of records"* means a group of any records under the control of CCC or ASCS from which information is retrieved by the name of the individual, organization or other entity or by some identifying number, symbol, or other identification assigned to the individual, organization or other entity.

### § 1403.23 Determination of delinquency.

Prior to disclosing information to a credit reporting agency in accordance with this subpart, the claims official who has jurisdiction over the claim shall be responsible for reviewing the claim and determining that it is valid and overdue.

### § 1403.24 Demand for payment.

The claims official responsible for carrying out the provisions of this subpart with respect to the debt shall send to the debtor appropriate written demands for payment in terms which inform the debtor of the consequences of failure to make payment, in accordance with guidelines established by the Executive Vice President, CCC, and consistent with the Federal Claims Collection Standards at 4 CFR 102.2.

### § 1403.25 Notice to debtor.

(a) In accordance with guidelines established by the Executive Vice President, CCC, the claims official responsible for disclosure of information with respect to the delinquent debts to a credit reporting agency shall send written notice to the debtor informing such debtor:
(1) Of the basis for the indebtedness;
(2) That the payment of the debt is overdue;
(3) That CCC intends to disclose to a credit reporting agency that the debtor is responsible for the debt and that such disclosure shall be made not less than 60 days after notification to such debtor;
(4) Of the specific information intended to be disclosed to the credit reporting agency;
(5) Of the rights of such debtor to a full explanation of the claim and to dispute any information in the records of CCC concerning the claim;
(6) Of the debtor's right to administrative appeal or review with respect to the claim and how such review shall be obtained; and
(7) Of the date on which or after which the information will be reported to the credit reporting agency.
(b) The content and delivery standards for demand letters and notices sent under this section shall be consistent with the Federal Claims Collection Standards at 4 CFR 102.2. It is contemplated that the demand under § 1403.24 and the notice under § 1403.25 will usually be combined into one document.

### § 1403.26 Subsequent disclosure and verification.

(a) CCC shall notify each credit reporting agency to which the original disclosure of delinquent debt information was made of any substantial change in the condition or amount of the claim. Changes in delinquent debt information which occur subsequent to submission of the original information will be reflected on the tape files submitted to the credit reporting agencies during the next scheduled update period. A substantial change in condition may include, but is not limited to, notice of death, cessation of business, or relocation of the debtor. A substantial change in the amount may include, but is not limited to, payments received, additional amounts due, or offsets made with respect to the debt.
(b) CCC shall promptly verify or correct, as appropriate, information about the claim on request of such credit reporting agency for verification of any or all information so disclosed. The records of the debtor shall reflect any correction resulting from such request.

### § 1403.27 Source of delinquent debt information.

Information provided to a credit reporting agency on delinquent debts shall be derived from systems of records maintained by CCC or ASCS.

### § 1403.28 Information disclosure limitations.

CCC shall limit delinquent debt information disclosed to credit reporting agencies to:
(a) the name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;
(b) the amount, status, and history of the claim; and
(c) the CCC program under which the claim arose.

### § 1403.29 Attempts to locate debtor.

Before disclosing delinquent debt information to a credit reporting agency, CCC shall take reasonable action to locate a debtor for whom CCC does not have a current address in order to send the notification provided for in § 1403.25 of this subpart.

### § 1403.30 Request for review of the indebtedness.

(a) Before disclosing delinquent debt information to a credit reporting agency, CCC shall, upon request of the debtor, provide for a review of the claim, including an opportunity for reconsideration of the initial decision concerning the existence or amount of the claim, in accordance with applicable

administrative appeal procedures set forth in 7 CFR Part 780. This review shall only consider defenses or arguments which were not available or could not have been available at any previous 7 CFR Part 780 appeal proceeding. It is not the purpose of the hearing provided by this section to reconsider previous decisions which are administratively final.

(b) Upon receipt of a request for review, within 30 days from the date of a notice to the debtor of intent to refer delinquent debt information to a credit reporting agency, CCC shall suspend its schedule for disclosure of delinquent debt information to a credit reporting agency until such time as a final decision is made on the request.

(c) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, notification shall inform the debtor of the scheduled date on or after which information concerning the debt will be provided to the credit reporting agency. The notification shall, if appropriate, also indicate any changes in the information to be disclosed to the extent such information differs from that provided in the initial notification.

**§ 1403.31 Disclosure to credit reporting agencies.**

(a) In accordance with guidelines established by the Executive Vice President, CCC, the responsible claims official shall report to credit reporting agencies delinquent debt information specified in § 1403.28.

(b) The agreements entered into by USDA and the appropriate credit reporting agencies provide the necessary assurances to CCC that the credit reporting agencies to which information will be provided are in compliance with the provisions of all the laws and regulations of the United States relating to providing credit information.

(c) Disclosure of information to credit reporting agencies shall be comprised of the information set forth in the initial determination or any modification thereof after notice and review as provided for by §§ 1403.25(a) and 1403.30.

(d) This section shall not apply to disclosure of delinquent debts when:

(1) The debtor has agreed to repay the debt, and such agreement is still valid; or

(2) The debtor has filed for review of the debt and the reviewing official or employee has not issued a decision on the review.

**§ 1403.32 Request regarding information from a system of records.**

(a) Upon written request of a debtor, CCC shall:

(1) Notify a debtor if a system of records maintained by CCC or ASCS contains any record pertaining to such debtor and permit access by the debtor to such records;

(2) Review a request by a debtor for correction or amendment to a record; and

(3) Consider an appeal by a debtor whose request for correction or amendment has been denied under paragraph (2) of this subsection.

(b) All requests or appeals under this section shall be made in accordance with the rules set forth in the Secretary's regulations at 7 CFR 1.110–1.123 and shall be submitted to the Director, Kansas City Management Office, ASCS/USDA, 8930 Ward Parkway, Kansas City, Missouri 64114.

Signed at Washington, DC, on December 19, 1986.

**Richard E. Lyng,**

*Secretary.*

[FR Doc. 86–29167 Filed 12–29–86; 8:45 am]

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**7 CFR Parts 1421 and 1427**

## Rice and Upland Cotton Programs

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** An interim rule published in the **Federal Register** on September 11, 1986 (51 FR 32297), that amended the regulations found at 7 CFR Parts 1421 and 1427 to implement (1) the 1986 rice marketing certificate program; (2) the upland cotton inventory protection program; and (3) the upland cotton first handler program is adopted as a final rule. These programs are authorized by section 603 of the Food Security Act of 1985 and section 103A(a)(5)(D) of the Agricultural Act of 1949, as amended.

**EFFECTIVE DATE:** December 30, 1986.

**FOR FURTHER INFORMATION CONTACT:** Charles V. Cunningham, Leader, Fibers Group, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 447–7954. The Final Regulatory Impact Analysis describing the options considered in developing this final rule is available on request from the above-named individual.

**SUPPLEMENTARY INFORMATION:** This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "major." It has been determined that these provisions will result in an annual effect on the economy of $100 million or more.

The titles and numbers of the Federal Assistance Programs to which this final rule applies are: Commodity Loans and Purchases—10.051; Rice Production Stabilization—10.065; and Cotton Production Stabilization—10.052 as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to the provisions of this final rule since the Commodity Credit Corporation ("CCC") is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this final rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

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

An interim rule was published in the **Federal Register** on September 11, 1986 (51 FR 32297), amending the regulations found at 7 CFR Parts 1421 and 1427 to implement the 1986 rice marketing certificate program (authorized by section 603 of the Food Security Act of 1985), the upland cotton inventory protection program, and the upland cotton first handler program (both authorized by section 103A(a)(5)(D) of the Agricultural Act of 1949, as amended). The interim rule provided for a 60-day public comment period which ended November 10, 1986. No comments were received with respect to the interim rule.

After a review of the interim rule, it was determined that no changes in the interim rule were necessary. Therefore, the interim rule will be adopted as a final rule without change.

**List of Subjects**

*7 CFR Part 1421*

Grains, Loan programs—agriculture, Price support program, Rice, Surety bonds, Warehouses.

*7 CFR Part 1427*

Cotton, Loan programs—agriculture, Packaging and containers, Price support programs, Surety bonds, Warehouses.

**Final Rule**

Accordingly, the interim rule published at 51 FR 32297, which amended 7 CFR Parts 1421 and 1427, is hereby adopted as a final rule without change.

Signed at Washington, DC, on December 22, 1986.

**Milton J. Hertz,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 86-29139 Filed 12-29-86; 8:45 am]

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**7 CFR Part 1446**

## Peanut Warehouse Storage Loans and Handler Operations for the 1986 Through 1990 Crops; Corrections

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Final rule; corrections.

**SUMMARY:** This document makes corrections by deleting extraneous or erroneous words which could result in incorrect interpretations in a Final Rule relating to peanuts which was published on Friday, December 12, 1986 (51 FR 44758).

**FOR FURTHER INFORMATION CONTACT:** David Kincannon (ASCS), 202-382-0152.

**SUPPLEMENTARY INFORMATION:** The following corrections are made in the **Federal Register** Document 86-27953 appearing on the following three pages.

On page 44760, center column, third paragraph down beginning with: "The June 17, 1986, interim rule . . .", 9th line, omit last word: "be", and on the 10th line omit the first word: "submitted".

**§ 1446.71 [Corrected]**

On page 44765, center column, § 1446.71 entitled "Administration", paragraph (b), entitled "Limitation of authority," in the fifth line of paragraph (b) omit the first word: "not".

**§ 1446.125 [Corrected]**

On page 44778, third column, § 1446.125 entitled "Loss of Peanuts," 6th line down, omit the second word: "shall".

**Milton J. Hertz,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 86-29138 Filed 12-29-86; 8:45 am]

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**Rural Electrification Administration**

**7 CFR Part 1784**

## Discounted Prepayments on REA Notes

**AGENCY:** Rural Electrification Administration, Agriculture Department.

**ACTION:** Interim Rule With Request for Comments.

**SUMMARY:** Rural Electrification Administration (REA) hereby amends 7 CFR Chapter XVII by adding Part 1784, Discounted Prepayments on REA Notes. The new part establishes policies and procedures to implement the provisions of section 306B of the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) ("Act"). Section 306B authorizes the Administrator of REA ("Administrator") to permit REA borrowers through September 30, 1987, to prepay REA Notes at the lesser of the outstanding balance due or the present value discounted from the face value at maturity at a rate set by the Administrator. These regulations provide a formula for computing the amount which the borrower must pay and establish certain other requirements which borrowers must meet. As a result of the interim rule, borrowers will be allowed, for a specific period, to prepay all outstanding REA Notes with private financing.

**DATE:** Interim Rule effective December 30, 1986; written comments must be received by REA January 29, 1987.

**ADDRESS:** Comments should be addressed to: Director, Program Analysis Staff, U.S. Department of Agriculture, Rural Electrification Administration, Room 0014-S, 14th & Independence Avenue, SW., Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Thomas M. Scanlon, Director, Program Analysis Staff, U.S. Department of Agriculture, Rural Electrification Administration, 14th & Independence Avenue, SW., Washington, DC 20250, Telephone: 202-382-1946.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Act, REA hereby amends 7 CFR Chapter XVII by adding a new part concerning discounted prepayments on REA Notes. This action has been reviewed in accordance with Executive Order 12291, Federal Regulations. This acting does not: (1) Have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs of prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets and therefore has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule does not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq. (1976)], and therefore, does not require an environmental impact statement or an environmental assessment. This program is listed in the Catalog of Federal Domestic Assistance under No. 10.850, Rural Electric Loans and Guarantees and No. 10.851, Rural Telephone Loans and Loan Guarantees. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

**Interim Rule With Request for Public Comment**

Public Law 99-509 requires that implementing regulations be issued within 60 days after the date of enactment, which was October 21, 1986. In order to meet this time frame, the Agency shortened the normal 30 day comment period on the proposed rule to 15 days. The draft comment period ended on December 17, 1986. Based on the comments the Agency received, a number of substantive changes have been made. In order to meet the statutory deadline for issuing implementing regulations and at the same time provide the public an additional opportunity to comment on the changes, REA is issuing an interim rule with request for public comment. Since the Act requires these regulations to be published and effective 60 days from October 21, 1986, REA finds that good cause exists to make the interim rule effective upon publication. The interim rule is effective upon publication, thereby enabling borrowers to proceed with the application procedure.

**Background**

REA provides long-term loans and loan guarantees to eligible borrowers for the purpose of furnishing and improving electric and telephone service in rural areas. The REA Notes evidencing the loans made pursuant to the Act bear

interest at either two or five percent. The REA Notes, as well as the proceeds from the sale, assignment or prepayment of the REA Notes are assets of the Rural Electrification and Telephone Revolving Fund ("Fund") to be used for such purposes as are permitted by the Act including honoring loan guarantees. Public Law 99–509, enacted October 21, 1986, amended the Act by adding section 306B which provides that REA Notes may not be sold nor prepaid at a value less than the face value of the outstanding balance, except when sold to or prepaid by the borrower at the lesser of the outstanding balance due on the REA Notes or their present value discounted from the face value at maturity at a rate set by the Administrator ("Discounted Present Value"). The exception is effective for the period ending September 30, 1987.

The regulations implement section 306B by providing a formula for computing the Discounted Present Value of REA Notes and establishing other terms and conditions of prepayment. The formula to determine the Discounted Present Value of the REA Notes uses, as the discount rate, the average yield on "'Aa" rated utilities published in Moody's Public Utility News Reports.

Among the terms and conditions of prepayment are the following:

(a) Borrowers must prepay all REA Notes;

(b) The borrower must agree, as a condition for additional loans or loan guarantees pursuant to Titles I, II, and III of the Act, that it will reimburse the Fund for losses associated with the prepayment of REA Notes; and

(c) Borrowers which are parties to wholesale power contracts with an REA financed power supplier will be required to provide assurances to the Administrator that they will meet their obligations to such power supplier.

**Comments**

In the Notice of Proposed Rulemaking (NPR), REA invited interested parties to file comments on or before December 17, 1986. Although some comments were received after that date, all responses received have been considered in preparing this Interim Rule with Request for Additional Comments.

In addition to Congressman Ed Jones, Chairman of the Subcommittee on Conservation, Credit and Rural Development, of the House Committee on Agriculture, comments were received from the nine different organizations. They are: (1) Vinson and Elkins, Attorneys at Law (on behalf the Guadalupe Valley Electric Cooperative, Guadalupe, Texas), (2) Missouri Telephone Company, Columbia, Missouri, (3) Basin Electric Power Cooperative, Bismarck, North Dakota, (4) Public Utilities No. 1 of Douglas County, East Wenatchee, Washington, (5) National Rural Utilities Cooperative Finance Corporation, Washington, D.C., (6) Colorado-Ute Electric Association, Inc., Montrose, Colorado, (7) National Rural Electric Cooperative Association, Washington, D.C., (8) National Rural Telecom Association and the United States Telephone Association, Washington, D.C., (joint comments), and (9) the National Telephone Cooperative Association.

Most of the comments opposed the provision of the rule that stated that borrowers who prepay at the Discounted Present Value could not seek additional financial assistance under the Act.

The regulations have been revised to provide that borrowers participating in the prepayment program are not precluded from obtaining additional financial assistance pursuant to the Act. Borrowers must agree, as a condition for additional loans or loan guarantees pursuant to Titles I, II and III of the Act, that they will reimburse the Fund for the losses associated with the prepayment of REA Notes. Prepayments offer an opportunity to implement a fundamental objective of the Act, that is, assisting borrowers to develop their ability to achieve the financial strength needed to enable them to satisfy their credit needs from their own financial organizations and other sources. (See, for example, the statement of Congressional policy, May 11, 1973, Public Law 93–82, 87 Stat. 65; 7 U.S.C. 930).

Those borrowers participating in the prepayment program will through the refinancing of debt improve their financial strength. This improvement comes at some cost to the Revolving Fund since the REA Notes will be prepaid at a discount from the Government's present value. The borrowers therefore receive a benefit from the prepayment while the Fund experiences a loss. Loans and loan guarantees are obligations of the Fund and therefore could deplete the Fund. The Agency believes that borrowers wishing to receive the benefits of the prepayments should agree to reimburse the Fund for losses associated with the prepayment of REA Notes as a condition to receiving additional loans and loan guarantees. Not only does this policy carry out the intent of Congress to move borrowers into private sector financing, it also represents prudent management of the Fund since it would preserve the remaining assets of the Fund, making the assets available for, among other purposes, financial assistance to borrowers who either were unable or unwilling to participate in the prepayment and hence did not receive the benefits associated with prepayment—the improvement in financial strength.

The next most often stated comment was the borrowers should not be required to prepay loans they have received from the Rural Telephone Bank (RTB), or from a non-REA lender under an REA guarantee. The comments argued that this provision would, in many cases, discourage prepayment and, in some cases, make it uneconomical.

After consideration of all of the comments, REA has revised the regulations to require only prepayments of direct and insured REA loans. This does not prohibit borrower from prepaying their RTB loans or REA guaranteed loans. However, it is no longer required.

One organization stated that REA should not require the prepayment of all REA direct and insured loans.

Although Pub. L. 99–509 does not specifically require the prepayment of all REA direct and insured loans, it does not prohibit such prepayment requirement. REA believes that this prepayment requirement is consistent with the objective of enabling and encouraging borrowers to obtain financing from private sources. In addition by allowing borrowers who participate in the program to retain even one outstanding loan from REA will mean that the REA servicing costs associated with that borrower will not be measurably reduced.

Another comment was in opposition to the requirement that borrowers not be permitted additional advances under approved loans. Borrowers will be allowed to continue to receive advances on RTB loans and guaranteed loans notwithstanding prepayment. Borrowers will be permitted to receive advances on REA loans until the prepayment agreement is executed.

Two organizations opposed the requirement that borrowers who participate in the program agree not to use tax-exempt financing to prepay REA loans. This requirement is consistent with the provisions of the Office of Management and Budget Circular A–70, Policies and Procedures for Federal Credit Programs, dated August 24, 1984. REA believes that it is within the discretion of the Administrator to impose such a requirement since to allow borrowers to use tax-exempt financing would have the effect of giving a third benefit to the borrower at the

expense of the Government. The first is the initial subsidy associated with the loan, the second is the discount on the prepayment itself, and the third would be the loss of revenue to the U.S. Treasury.

Another comment centered on whether REA financed power supply systems who have had one or more distribution systems prepay their REA loans, would still be eligible for the same level of financial assistance as power supply systems who did not have any distribution members participate in the program.

It is not REA's intention to restrict financial assistance to power supply systems based on their members' participation in the prepayment program. REA will consider providing financial assistance to meet the power supply needs of Act beneficiaries being served by those distribution borrowers participating in the prepayment program.

Another comment concerned the magnitude of participating in the program and the disposition of the proceeds. It is REA's intention that the proceeds will be used to meet the obligations of the Rural Electrification and Telephone Revolving Fund, including advances on approval loans, interest expense, payments under the guarantee provision, and any other legal obligations of the Fund.

At this time, REA does not know what the extent of participation by borrowers will be. However, the Administrator has reserved the right to restrict the applications which may be approved, taking into account the financial interests and administrative considerations of the Government.

**List of Subjects in 7 CFR Part 1784**

Administrative practice and procedure, Electric utilities, Telephone utilities.

In view of the above REA amends 7 CFR XVII by adding the following Part 1784.

## PART 1784—DISCOUNTED PREPAYMENTS ON REA NOTES

Secs.



**Authority:** 7 U.S.C. 901–950b; Title 1, Subtitle B, Pub. L. 99–509; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

### § 1784.1 Purpose.

This Part sets forth the policies and procedures of REA whereby electric and telephone borrowers may prepay outstanding REA Notes at the Discounted Present Value of the REA Notes with private financing.

### § 1784.2 Definitions.

As used in this Part:

(a) "Act" means the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*).

(b) "Administrator" means the Administrator of REA.

(c) "Discounted Present Value" shall have the meaning specified in § 1784.4.

(d) "Fund" means the Rural Electrification and Telephone Revolving Fund established pursuant to the Act.

(e) "REA" means the Rural Electrification Administration, an agency of the United States Department of Agriculture.

(f) "REA Loan Agreement" means the agreement between the borrower and REA providing for loans pursuant to the Act.

(g) "REA Notes" means those notes, bonds or other obligations evidencing indebtedness created by loans made pursuant to Titles I, II or III of the Act (7 U.S.C. 901–940).

### § 1784.3 Prepayment.

Through September 30, 1987, the Administrator may, pursuant to this Part, permit eligible electric and telephone borrowers to prepay all outstanding REA Notes issued or assumed by such borrowers and held in the Fund, upon paying the lesser of the outstanding balance or the Discounted Present Value.

### § 1784.4 Discounted Present Value.

The Discounted Present Value shall be calculated five business days before prepayment is made by summing the present values of all remaining payments by using the following formula:

$$\text{Present Value} = \sum_{k=1}^{n} \frac{P_k}{\prod_{i=1}^{k} \left[1.0 + \left(\frac{D1_i}{365} + \frac{D2_i}{366}\right) \times \bar{I}\right]}$$

Where:

$P_k$ = Total payment including interest, due on the $k^{th}$ payment date following the prepayment date.

n = Total number of remaining payments dates.

I = The discount rate, in decimals, which shall be the average rate on utility bonds bearing a rating of "Aa" as set forth in that issue of Moody's Public Utility News Reports most recently published prior to the date on which Discouted Present Value is calculated.

$D1_i$ = Number of days in the $i^{th}$ payment period that are in a non-leap year (365 day year).

$D2_i$ = Number of days in the $i^{th}$ payment period that are in a leap year (366 day year).

### § 1784.5 Eligibility criteria.

To be eligible to prepay REA Notes at the Discounted Present Value a borrower must comply with the following criteria:

(a) The borrower must be current on all payments due on its outstanding REA Notes and all other payment obligations owed to REA and the Rural Telephone Bank.

(b) The borrower must agree to prepay all of its outstanding REA Notes.

(c) The borrower must identify the source of private financing that will be used to refinance its outstanding REA Notes, which financing may not include obligations the income of which is exempt from taxation under the Internal Revenue Code of 1986.

(d) The borrower must have expended all funds advanced on account of the REA Notes for the purposes for which such funds were advanced.

(e) The borrower must agree to a rescission of the unadvanced balance of the REA Notes.

(f) The borrower must agree that the borrower, its successors or assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to Titles I, II and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between the

amount outstanding on the REA Note and the Discounted Present Value of the REA Note upon prepayment with interest accuring quarterly; the interest rates shall be the rates provided in the respective REA Notes.

(g) If the borrower is a party to a wholesale power contract with a power supplier financed pursuant to the Act, the borrower must provide the Administrator with such assurances as the Administrator may request that it will meet its obligations to the power supplier.

**§ 1784.6 Application procedure.**

Any borrower seeking to prepay its REA Notes under this Part should apply to the appropriate REA Area Director by submitting:

(a) A board resolution that: (1) Requests approval of the prepayment of the borrower's outstanding REA Notes, and (2) states the intent of the borrower to comply with all eligibility criteria set forth in Section 1784.5 of this Part.

(b) A list of all REA Notes together with the outstanding amount on such notes.

(c) Such additional information as the Administrator shall request.

**§ 1784.7 Approval of applications.**

The applications will ordinarily be reviewed and, if satisfactory, approved, and closing schedule based on the order in which executed prepayment agreements are received. The Administrator may limit the number of applications approved and closings scheduled from time to time taking into account, among other matters, the financial interests and administrative considerations of the Government.

**§ 1784.8 Prepayment agreement.**

Upon approving an application for prepayment under this Part, the Administrator shall notify the borrower and deliver to the borrower for its execution a prepayment agreement which shall set forth and provide:

(a) The REA Notes to be prepaid and when the Discounted Present Value will be calculated.

(b) The place and conditions for closing.

(c) Agreement that the unadvanced balance of REA Notes shall be rescinded.

(d) Agreement that the borrower, or its successors or assigns, shall pay to the Government, as a condition of receiving additional loans or loan guarantees pursuant to Titles I, II and III of the Act, an amount equal to the aggregate of the difference with respect to each of the REA Notes between the amount outstanding on the REA Note and the Discounted Present Value of the REA Note upon prepayment with interest accruing quarterly; the interest rates shall be the rates provided in the respective REA Notes.

(e) Assurances that the borrower will meet its obligations to any power supplier financed pursuant to the Act.

(f) Such other terms and conditions as the Administrator deems appropriate.

**§ 1784.9 Security.**

If, after prepayment of REA Notes, the Government should continue to hold liens on the borrower's property that secure loans made or guaranteed pursuant to the Act, the Administrator of REA or the Governor of the Rural Telephone Bank, as the case may be, will consider request for the accommodation of such liens for the purpose of providing security for loans the proceeds of which were used to prepay REA Notes. Such lien accommodations shall be limited in amount to the Discounted Present Value of the REA Notes plus such costs, as the Administrator shall determine to be reasonable, incurred by the borrower in obtaining such loans.

**§ 1784.10 Loan fund audit.**

Within 6 months of closing REA shall have the right to audit transactions involving the REA construction fund established and maintained by the borrower pursuant to the terms of the REA Loan Agreement and to inspect all books, records, accounts and other documents and papers of the borrower. Should REA determine that the borrower has made disbursements of funds advanced pursuant to REA Notes which do not comply with the requirements of the REA Loan Agreement, the borrower shall be required to pay to the Government an amount equal to the difference between the amount which the borrower prepaid on such REA Notes evidencing REA loan funds which were improperly disbursed and the amount which the borrower would otherwise have been required to return to the Government as a result of noncompliance if the borrower had not prepaid such REA Notes. (See 7 CFR 1711)

**§ 1784.11 Closing.**

(a) The borrower shall be responsible for obtaining all approvals necessary to consummate the transaction as required by the prepayment agreement including such approvals as may be required by regulatory bodies and other lenders.

(b) The REA Notes shall be prepaid at a closing to be held in accordance with the prepayment agreement; provided, however, that no closing may be scheduled for after September 30, 1987. At closing, a borrower shall prepay the REA Notes by paying to the Government an amount equal to the Discounted Present Value of the REA Notes. The closing shall otherwise be conducted as prescribed in the prepayment agreement.

**§ 1784.12 Other prepayments.**

REA loan documentation generally permits borrowers to prepay REA Notes by paying the outstanding balance due thereon. Nothing in this Part shall prohibit any borrower from prepaying its outstanding REA Notes in accordance with the terms thereof. The provisions of this Part shall not be applicable to such prepayment.

Dated: December 24, 1986.

**Jack Van Mark,**

*Acting Administrator.*

[FR Doc. 86-29291 Filed 12-29-86; 8:45 am]

BILLING CODE 3410-15-M

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## Animal and Plant Health Inspection Service

### 9 CFR Part 78

**[Docket No. 86-122]**

## Brucellosis in Cattle; State and Area Classifications; Correction

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

**ACTION:** Interim rule; correction.

**SUMMARY:** APHIS is correcting the amendatory language of an interim rule which amended the regulations by changing the brucellosis classification status of certain locations. The interim rule published on December 1, 1986 (51 FR 43170-43172) amended § 78.20 but should have amended § 78.41. Accordingly, APHIS is correcting those regulations as set forth below.

**FOR FURTHER INFORMATION CONTACT:** Dr. Jan D. Huber at (301) 436-5965.

### Correction

The following corrections are made to FR Doc. 86-26936, published on December 1, 1986, on pages 43170-43172:

**§ 78.41 [Correctly amended]**

1. On page 43171, third column, Part 78, amendatory language for item two is corrected to read as follows:

"2. In § 78.41, paragraph (c), the listing for 'Florida' is revised to read as follows:"

2. The heading for "§ 78.20" is corrected to read "§ 78.41."

3. On page 43171, third column, Part 78, amendatory language for items three

and four are corrected to read as follows:

"3. In § 78.41, paragraph (c), the listing for 'Texas' is revised to read as follows:"

"4. In § 78.41, paragraph (d), the listing for 'Florida' is amended by removing the following counties: Citrus, Flagler, Hernando, Lake, Levy, Marion, Orange, Pasco, Pinellas, Seminole, Sumter, and Volusia".

4. On page 43172, first column, Part 78, amendatory language for item five is corrected to read as follows:

"5. In § 78.41, paragraph (d), the listing for 'Texas' is amended by removing the following counties: Bastrop, Caldwell, Denton, Dimmit, Falls, Frio, Gonzales, Grayson, Guadalupe, Lee, Milam, and Wilson".

Done in Washington, DC, this 23rd day of December, 1986.

J.K. Atwell,

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

[FR Doc. 86-29137 Filed 12-29-86; 8:45 am]

BILLING CODE 3410-34-M

## FEDERAL HOME LOAN BANK BOARD

### 12 CFR Part 563

[No. 86-1260]

### Regulation of Direct Investment by Insured Institutions

Dated: December 23, 1986.

**AGENCY:** Federal Home Loan Bank Board.

**ACTION:** Interim rule.

**SUMMARY:** The Federal Home Loan Bank Board ("Board"), as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is adopting an interim final amendment to its regulation governing investments by institutions the accounts of which are insured by the FSLIC ("insured institutions") in equity securities, real estate, service corporations, and operating subsidiaries ("direct investments"). This amendment will defer the expiration of the rule from January 1, 1987, to March 15, 1987. The Board also intends shortly to reopen the comment period through February 6, 1987 on the proposal of September 11, 1986, to extend the direct investment rule for two years. During this time, the Board will hold a public hearing on January 29 and January 30, 1987, concerning extension of the direct investment rule for a longer period. The Board will extend the comment period regarding the proposal and announce the time and place of the hearing and the procedures that will govern its conduct of the hearing in a separate notice to be published in the **Federal Register.**

**EFFECTIVE DATE:** January 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Christina M. Gattuso, Staff Attorney, (202) 377-6649, Regulations and Legislation Division, Office of General Counsel; or Joseph A. McKenzie, Director, Policy Analysis Division, Office of Policy and Economic Research, (202) 377-6763; Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:** On January 31, 1985, the Board adopted a new regulation governing direct investments by insured institutions. Board Res. No. 85-79-A, 50 FR 6912 (Feb. 19, 1985) (codified at 12 CFR 563.9-8). The regulation created a process of supervisory review and approval by the Board's Principal Supervisory Agents ("PSAs") of certain types of direct investment and of aggregate direct investment above certain threshold amounts. The regulation includes qualitative criteria for investment by institutions in equity securities, as well as diversification requirements applicable to investment in any one issuer of securities or in any one real estate project. The direct investment regulation was designed to allow institutions the flexibility to exercise their investment powers, as independently authorized by applicable law, in a manner that would expose neither the institutions themselves nor the FSLIC insurance fund to an unacceptable level of risk. At the same time, the Board sought to ensure that these institutions continued to fulfill their obligations to provide economical home financing.

Because of the complexity of the problems the rule sought to address, the Board believed it important to assess, after sufficient experience with the rule, whether the approach taken was effective in controlling risk and whether further regulatory action was required. 50 FR at 6927. Therefore, by its own terms, the direct investment rule was to expire on January 1, 1987.

On September 11, 1986, the Board proposed to amend the direct investment rule to defer its expiration from January 1, 1987 to January 1, 1989. Board Res. No. 86-962, 51 FR 32925 (Sept. 17, 1986). Since publication of the proposal, the Board has received written public comments, which are summarized below. In addition to comments on many of the substantive aspects of the direct investment rule, the Board has also received petitions from thirty-two members of the Federal Home Loan Bank System ("FHLBank System") requesting a public hearing on issues raised by the proposal. Those petitioners have asserted that under its own regulations the Board is required to provide a public hearing. For the reasons discussed below, the Board has concluded that it is not bound to afford the petitioners a hearing with respect to this rulemaking. Nonetheless, the Board has concluded that such a hearing would aid informed decisionmaking and thereby serve the public interest. Therefore, on January 29 and 30, 1987, the Board will hold a public hearing on the direct investment rule, including the issues of whether the rule is needed and, if so, in what form. The particulars of the hearing—its time, place, duration, and the procedures that will govern it—will be announced shortly in the **Federal Register.**

In the meantime, pending completion and review of the hearing proceedings, the Board finds that the public interest is best served by reopening the comment period and by a short delay in the expiration of the direct investment rule. Two reasons support this delay.

First, the Board lacked a quorum at a time when it would otherwise have been able to act upon the proposal. The new Board members, in particular, need more time to weigh the issues prior to deciding them. Extending the comment period and holding a hearing will be productive of this end.

Second, the Board believes that preservation of the status quo with regard to insured institutions' direct investments is appropriate to ensure the orderly outcome of its public hearing. Having determined that it will hold a hearing, the Board believes it would be unwise to alter its direct investment regulation, or to allow the rule to expire, until it has had the opportunity to consider carefully the results of the hearing. To modify the regulation in the meantime would undermine the role of the hearing in the Board's deliberative process. Moreover, lapse or modification of the rule now would subject insured institutions to uncertainty stemming from their inability to determine, in advance of final action by the Board following the hearing, what rule would govern their direct investments. Accordingly, the Board today adopts an interim rule that delays the direct investment regulation's expiration date until March 15, 1987.

### Summary and Discussion of Comments

The Board received 83 public comments in response to the proposal. The majority of comments (45) were

submitted by insured institutions. Of the remainder, 7 were submitted by industry trade associations, 5 by law firms representing insured institutions, 3 by economic consultants representing insured institutions, and 23 by Members of Congress.

Six comments expressed support for the proposal. Three comments supported the proposal with certain suggested modifications. Nineteen comments opposed the proposal. Twenty-eight comments requested an extension of the comment period and thirty-two members of the Federal Home Loan Bank System ("FHLBank System") petitioned for a hearing on the proposed rule. Although the comment period ended on October 17, 1986, the Board has considered late-filed letters in an effort to maximize public participation in the rulemaking. After carefully considering the issues raised by the comments, which are fully discussed below, the Board has determined to defer expiration of the direct investment regulation only to March 15, 1987. Additionally, as discussed in more detail below, the Board determined to reopen the public comment period until February 6, 1987 and to hold a public hearing on the direct investment rule.

**Procedural Issues**

The Board believes that its decision to hold a hearing is, in itself, adequate response to those commenters who raised procedural objections to its proposal. Because the Board disagrees with the rationale set forth by those commenters, it is taking this opportunity to summarize and respond to their views so that the record will contain a clear statement of reasons for the Board's action.

*A. Comment Period Extension*

Many commenters asserted that the comment period following publication of the proposal was inadequate and requested various extensions of the comment period. One commenter argued that the scope of the requested comments was impermissibly narrow. Two commenters contended that the duration of the comment period, the Board's lack of express statutory authority to adopt the rule, and the Board's failure to consider regulatory alternatives violated the Administrative Procedure Act ("APA") (5 U.S.C. 551 *et seq.*). Thirty-two members of the FHLBank System petitioned for a public hearing on the proposal pursuant to 12 CFR 507.10.

The comment period following publication of the proposal extended from September 17, 1986 until October 17, 1986. The APA does not require any specific time period for public comment on proposals. However, the Board's policies (Board Res. No. 80–584, 45 FR 63135 (Sept. 23, 1980)) and rules (12 CFR 508.13) generally provides for 60-day comment periods in the absence of circumstances justifying a shorter period, which in no event may be less than 15 days. The Board has received and considered 83 public comments. As it noted in the proposal, the Board provided for a 30-day rather than a 60-day comment period because the direct investment regulation had been previously published for public comment and because the public interest required prompt Board action.

*B. Public Hearing*

As discussed above, the Board has determined to hold a public hearing with respect to whether, and for how long, the expiration of the direct investment rule should be delayed after March 15, 1987. The Board wishes to emphasize that its decision to hold a public hearing, as discussed above, is discretionary; the Board is not legally bound to follow such a procedure. The Board believes that a hearing will aid its decisionmaking process for several reasons. First, some of the issues raised in the comments bear further study. Moreover, since publication of the direct investment proposal in September 1986, two new members have been appointed to the Board. A public hearing and the additional time for study and review that such a hearing will afford the new Board an opportunity for careful deliberation before undertaking final action with respect to direct investment.

However, neither the APA nor the Board's regulations require a public evidentiary hearing in connection with the type of informal rulemaking involved here. *See generally* 5 U.S.C. 553; 12 CFR Parts 507–09 (1986). The rule is one of general applicability; it is not adjudicatory in nature. Consequently, a hearing is not required under the APA; however, the Board may, in its discretion, determine to hold such a hearing under the APA. With regard to the interim extension of the rule the Board is today adopting, the Board believes that its consideration of the written data, views, and arguments submitted by interested members of the public with respect to the direct investment proposal enables it to discharge its administrative responsibilities in a fully satisfactory manner without the delay that a hearing would entail.

Two commenters asserted that the terms of § 507.10 are nondiscretionary and therefore the Board is required to hold a public hearing on the proposal if 25 members of the FHLBank System petitioned for such a hearing pursuant to § 507.10. Section 507.10 provides, in pertinent part, that "[a]fter receipt of written requests therefor to the Secretary to the Board . . . of at least 25 members of the Federal Home Loan Bank System . . . the Board will fix a time and place for a hearing *on a proposed amendment* or upon an expiring regulation *relating to Federal Home Loan Banks to which petitioners object.*" 12 CFR 507.10 (1986) (emphasis added). As noted above, the Board has received petitions for a hearing from 32 members of the FHLBank System.

These commenters argued that the Board is required to hold a hearing on the proposal because the direct investment regulation relates to the FHLBanks for the following reasons. First, the rule is directed at the safety and credit eligibility of member institutions, which, in turn, affect the activities and stability of a primary creditor of those institutions, the FHLBanks. Second, the Board has also linked the direct investment rule to the paramount purpose and function of the FHLBanks—"maintenance of a system of sound and economic home financing." 50 FR 6912 (Feb. 19, 1985). Third, the Board has directly involved the FHLBanks, through the PSA system, in the administration and operation of the direct investment rule.

The Board finds these contentions unpersuasive. A review of the history of § 507.10 shows that this provision has been included in the FHLBank System regulations since 1940, when it was added to provide substantially the same procedures relating to amendments as were set forth at the time in the regulations governing Federal associations and FSLIC-insured institutions.[1] From 1940 to 1948, the provision required the Board to set a hearing "on a proposed amendment or upon an existing regulation to which petitioners object." In 1948, the Board substantially narrowed the right to a hearing by amending the section to read "on a proposed amendment or upon an existing regulation *relating to Federal Home Loan Banks* to which petitioners object." 13 FR 8263, 8264 (1948) (emphasis added).

As noted above, the regulations for the Federal Savings and Loan System

[1] From 1938 through 1949, the regulations governing Federal associations and FSLIC-insured institutions provided that upon written request from seven FSLAC members or 50 Federal associations (or 50 insured institutions), the Board will fix a time and place for a hearing "on a proposed amendment or upon an existing regulation to which petitioners object." *See* 24 CFR 201.2, 301.22 (1948).

and the FSLIC contained identical, parallel provisions from 1938 through 1949. See 24 CFR 201.2, 301.22 (1948). In 1949, these provisions were substantially revised and provided that Federal associations or FSLIC-insured institutions could request a hearing with respect to any application or petition which was denied or disapproved by the Board.[2] 14 FR 3980, 3981 (1949); 15 FR 680, 686 (1950). In 1970, these sections were revoked. 35 FR 2509, 2515 (1970).

Based on the history of § 507.10 which shows that its applicability has become increasingly narrow, the Board concludes that the section applies only to proposed amendments and existing regulations whose primary function is to regulate the activities and operations of FHLBanks.[3] Consequently, the Board does not believe that the direct investment regulation, which primarily acts to regulate investment activities of insured institutions, is the type of regulation contemplated by § 507.10. Therefore, the Board finds that § 507.10 does not mandate a hearing on the proposed extension of the direct investment regulation.

### Statutory Authority

Several commenters contended that extension of the direct investment rule would exceed the Board's statutory authority. These commenters asserted that the Board has no statutory authority to extend a regulation that preempts the enactments of state legislatures authorizing unlimited or less restrictive direct investment by insured institutions. These commenters also argued that the proposal is in direct contravention of Congressional purpose in creating the dual banking system.

The same issues were raised by commenters with respect to the promulgation of the direct investment rule and were fully addressed by the Board in the preamble to the reproposed rule of December 1984 ("December Reproposal") and the 1985 final direct investment regulation.[4] *See* Board Res. No. 84–715, 49 FR 48743 (Dec. 14, 1984), Board Res. No. 85–79–A, 50 FR 6912 (Feb. 19, 1985).

As explained at length in the preamble to both the December Reproposal and the final rule, the Board believes that these commenters take an unduly restrictive view of the Board's authority and responsibility to carry out the purpose of title IV of the National Housing Act ("NHA") (12 U.S.C. 1724–30) and the Federal Home Loan Bank Act ("Bank Act") (12 U.S.C. 1421–29). Among the most important purposes of these two acts is the development and maintenance of a system of sound and economical home financing. An additional, closely related purpose of the NHA is the protection of the FSLIC fund and depositors from undue risk. The Board continues to believe that the direct investment regulation enables the Board to carry out both of these objectives without intruding upon the regulatory power of the states. For a more detailed discussion of the Board's statutory authority to adopt this proposal, *see*, 50 FR at 6913–14 and 49 FR at 48745–46.

### Description of Interim Rule

While the arguments and evidence offered by commenters raise important issues which merit further review, the Board also believes that a limited extension is appropriate for the reasons discussed above. Consequently, as discussed above, the Board has determined to defer the expiration date of the rule to March 15, 1987, and, in a separate notice soon to be published in the **Federal Register**, to reopen the comment period on the September 11, 1986, proposal through February 6, 1987, and to announce a public hearing on January 29 and 30, 1987.

### Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Need for and objectives of the rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Issues raised by Comments and Agency Assessment and Response.*

These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

3. *Significant alternatives minimizing small-entity impact and agency response.*

The requirements of the interim final regulation are based upon the Board's determination that it needs further time to decide upon the merits of the issues presented and that the public interest requires that the status quo be maintained for a brief period pending Board action.

### List of Subjects in 12 CFR Part 563

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

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

## SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

## PART 563—OPERATIONS

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

**Authority:** Sec. 10, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 4, 80 Stat. 824, sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 202, 96 Stat. 1489, as amended (12 U.S.C. 1729(f)); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); Reorg. Plan No. 3 of 1947, 12 FR 1981, 3 CFR, 1943–1948 Comp., p. 1071.

### § 563.9–8 [Amended]

2. Paragraph (h) of § 563.9–8 is amended by removing the date "January 1, 1987" and inserting in lieu thereof the date "March 15, 1987."

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

*Acting Secretary.*

[FR Doc. 86–29286 Filed 12–29–86; 8:45 am]

BILLING CODE 6720–01–M

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[2] In 1949, section 141.2 (formerly § 201.2) was redesignated as section 142.2 and was revised to read, in pertinent part, as follows: "Any person who has made an application or petition to the Board pursuant to any provision of Parts 143 [Incorporation, Organization and Conversion], 144 [Charter and Bylaws], 145 [Operations], or 146 [Merger, Dissolution and Reorganization] may request a hearing thereon, provided such application or petition has been denied or disapproved by the Board." 14 FR 3980, 3981 (1949). In 1950, § 161.22 (formerly § 301.22) was redesignated as § 167.2 and the text of the section was revised to conform to § 142.2 with the only major difference in language being "pursuant to any provision of Parts 162 [Application for Insurance], 163 [Operations], 164 [Settlement of Insurance], or 165 [Termination of Insurance] . . ." 15 FR 680, 686 (1950).

[3] The Board notes that the courts have consistently held that an agency's interpretation of its own regulations is controlling unless plainly erroneous or inconsistent. *See, e.g., United States* v. *Larionoff*, 431 U.S. 864 (1977); *Belco Petroleum Corp.* v. *Federal Regulatory Commission*, 589 F.2d 661 (D.C. Cir. 1978). *See also Udall* v. *Tallman*, 380 U.S. 1, 4 (1968) ("[t]he Secretary's interpretation may not be the only one permitted by the language of the orders, but it is clearly a reasonable interpretation; courts must therefore respect it.").

[4] The Board initially proposed the direct investment rule for comment on May 10, 1984. *See* Board Res. No. 84–227, 49 FR 20719 (May 16, 1984). On the basis of comments received, the Board modified the May proposal and issued a reproposed rule on direct investment. *See* Board Res. 84–715, 49 FR 48743 (Dec. 14, 1984). On January 31, 1985, the Board adopted the final direct investment rule. *See* Board Res. No. 85–79–A, 50 FR 6912 (Feb. 19, 1985).

## DEPARTMENT OF COMMERCE

### 15 CFR Part 21

[Docket No. 60468-6205]

### Debt Collection Act of 1982; Administrative Offset

**AGENCY:** Department of Commerce.

**ACTION:** Final rule.

**SUMMARY:** The Debt Collection Act of 1982 (Pub. L. 97-365) authorizes the Federal Government to collect debts owed it by means of administrative offset (31 U.S.C. 3716). This final rule establishes procedures which the Department of Commerce (hereinafter referred to as "the Department") will follow in making administrative offsets.

**EFFECTIVE DATE:** These regulations shall take effect January 29, 1987.

**FOR FURTHER INFORMATION CONTACT:** Roger J. Mallet, Office of Finance and Federal Assistance, Office of the Secretary, Department of Commerce, Room 6827, Herbert C. Hoover Building, 14th & Constitution Avenue, NW., Washington, DC 20230, telephone (202) 377-2324.

**SUPPLEMENTARY INFORMATION:** The Debt Collection Act of 1982 (the Act) amends the Federal Claims Collection Act of 1966 by enhancing the Government's ability to collect money owed it through the establishment of new debt collection techniques such as administrative offset. This rule contains the Department's provisions to implement administrative offsets in collecting delinquent accounts. The provisions are consistent with the Federal Claims Collection Standards issued jointly by the Department of Justice and the General Accounting Office (4 CFR 101.1 et seq.).

The Act states that administrative offset is the withholding of money payable by the United States to, or held by the United States on behalf of a person, to satisfy a debt owed the United States by that person. For example, an administrative offset could be initiated by the Department against payments to be made by another Federal department or agency to a debtor on a Federal loan, contract, or a grant. For administrative offset, the Act requires that the agency observe notice and procedural requirements before any offset is made. Administrative offsets may be made to satisfy an outstanding debt up to ten years from the date the Government's right to collect the debt first accrued. In defining "person", the Act states that administrative offset does not apply to an agency of the United States Government, or of a State or local government.

The administrative offset procedures issued by the Department cover such aspects of offset as: (1) Coordinating collection action with another Federal agency (for example, when the Commerce Department needs another Federal agency to collect the money by offset), (2) notifying debtors prior to offsets being made, (3) providing the debtor with the opportunity to review the Department's records related to the particular debt, (4) providing the debtor with the opportunity to enter into a debt repayment agreement with the Department, and (5) establishing time periods in which the debtor must notify the Department of his or her election of any of these procedures. Review of the record includes a review by the debtor of the written record pertaining to the debt, and, in some situations, an oral hearing. The conditions for these two procedures are outlined in this rule.

Specific procedures, based on regulations (5 CFR Part 831, Subpart R) issued by the Director, Office of Personnel Management (OPM), for offset against amounts payable from the civil service retirement and disability fund are covered in this rule.

### Executive Order 12291

This final rule has been reviewed and has been determined not to be a "major rule" as defined in Executive Order 12291 dated February 17, 1981, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, state or local Government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

### Regulatory Flexibility Act

The Department believes that this rule will have no "significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, Stat. 1164 (5 U.S.C. 605(b)). The General Counsel has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. This conclusion is reached because the rule does not, in itself, impose any additional requirements upon small entities, accordingly, no regulatory flexibility analysis is required.

### Paperwork Reduction Act

Under section 3518 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.3(C), the information contained in this regulation is not subject to the Office of Management and Budget review and approval.

### Discussion of Final Rule

The Department published a proposed rule on administrative offsets in the **Federal Register** (51 FR 18605) on May 21, 1986. The proposed rule provided for a 30-day comment period. The comment period ended June 20, 1986, and during that time no comments were received from the public. Therefore, the proposed rule with minor changes is being published as the Department's final rule pertaining to administrative offset. In developing the final rule, two sections of the proposed rule—s 21.9, Stay of Offset, and s 21.14, Notice of Offset—were removed from the text and the remaining sections renumbered accordingly.

The provisions of § 21.9 included rights already provided to a debtor by other provisions of the Department's Administrative Offset Regulations, that is (1) the right to request a review of the determination of indebtedness or the opportunity to enter into a written repayment agreement; and (2) until these processes are completed, administrative offset would not ordinarily be taken unless such action is necessary to prevent substantial prejudice to the Government's ability to collect the debt. Section 21.14, Notice of Offset, provided that a final notice be sent to a debtor before the actual offset takes place.

During final review of the regulations, the Department decided that both sections should be removed because they did not advance or increase a debtor's rights but would only serve to further delay pursuit of the remedy or create the possibility that the offset collection procedures could become substantially more complicated than contemplated under the Federal Debt Collection Act. It was also determined that removal of these sections would not affect the debtor's right to due process as required by 31 U.S.C. 3716 or as already provided by other provisions of these regulations.

Other minor changes were made to clarify wording regarding receipt of documents which would allow the Department to control the established period of times designated for specific actions.

### List of Subjects in 15 CFR Part 21

Claims.

For the reasons set forth above, Part 21 will be added to 15 CFR Subtitle A to read as follows:

## PART 21—ADMINISTRATIVE OFFSET

Sec.



Authority: 31 U.S.C. 3716; 4 CFR Part 102.

### § 21.1 Definitions.

For purposes of this subpart:

(a) The term "administrative offset" means satisfying a debt by withholding of money payable by the Department to, or held by the Department on behalf of a person, to satisfy a debt owed the Federal Government by that person.

(b) The term "person" includes individuals, businesses, organizations and other entities, but does not include any agency of the United States, or any State or local government.

(c) The terms "claim" and "debt" are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another Federal agency, a State or local government, or Indian Tribal Government.

(d) Agency means:

(1) An Executive department, military department, Government corporation, or independent establishment as defined in 5 U.S.C. 101, 102, 103, or 104, respectively.

(2) The United States Postal Service; or

(3) The Postal Rate Commission.

(e) Debtor means the same as "person."

(f) "Department" means the Department of Commerce.

(g) "Secretary" means the Secretary of the Department of Commerce.

(h) "Assistant Secretary for Administration" means the Assistant Secretary for Administration of the Department of Commerce.

(i) "United States" includes an "agency" of the United States.

(j) "Waiver" means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by a person to the United States.

(k) "Departmental Unit" means an individual operating or administrative component within the Department of Commerce.

(l) "Departmental Unit Head" means the head of an individual operating or administrative component within the Department of Commerce responsible for debt collection.

(m) "Notice of Intent" means a demand notice sent by the Department to the debtor indicating not only the amount due, but also the Department's intent to offset all or some of the amount due from other source(s) of Federal payment(s) that may be due the debtor.

(n) "Workout Group" means Departmental debt collection specialist(s) assigned to collection of a delinquent debt when the claim is 30 or more days past due.

### § 21.2 Purpose and scope.

(a) The regulations in this subpart establish procedures to implement section 10 of the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. 3716. Among other things, this statute authorizes the heads of each agency to collect a claim arising under an agency program by means of administrative offset, except that no claim may be collected by such means if outstanding for more than 10 years after the agency's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.

(b) Unless otherwise provided for by statute, these regulations do not apply to an agency of the United States, a State government, or unit of general local government. In addition, these procedures do not apply to debts arising under the Internal Revenue Code (26 U.S.C. 1–9602), the Social Security Act (42 U.S.C. 301–1397f), the tariff laws of the United States; or to contracts covered by the Contract Dispute Act of 1978 (41 U.S.C. 601–613).

(c) The regulations cover debts owed to the United States from any person, organization or entity, including debts owed by current and former Department employee, or other Federal employees, while employed in one capacity or another by the Department of Commerce.

(d) Debts or payments which are not subject to administrative offset under 31 U.S.C. 3716, unless otherwise provided for by contract or law, may be collected by administrative offset under the common law or other applicable statutory authority.

(e) Departmental unit head (and designees) will use administrative offset to collect delinquent claims which are certain in amount in every instance and which collection is determined to be feasible and not prohibited by law.

### § 21.3 Department responsibilities.

(a) Each Departmental unit which has delinquent debts owed under its program is responsible for collecting its claims by means of administrative offset when appropriate and best suited to further and protect all the Government's interests.

(b) The Departmental unit head (or designee) will determine the feasibility and cost effectiveness of collection by administrative offset on a case-by-case basis, exercising sound discretion in pursuing such offsets, and will consider the following:

(1) The debtor's financial condition;

(2) Whether offset would substantially interfere with or defeat the purposes of the Federal program authorizing the payments against which offset is comtemplated; and

(3) Whether offset best serves to further and protect all of the interests of the United States.

(c) Before advising the debtor that the delinquent debt will be subject to administrative offset, the Departmental unit workout group shall review the claim and determine that the debt is valid and overdue. In the case where a debt arises under the programs of two or more Department of Commerce units, or in such other instances as the Assistant Secretary for Administration or his/her designee may deem appropriate, the Assistant Secretary, or his or her designee, may determine which Departmental unit workout group or official(s) shall have responsibility for carrying out the provisions of this subpart.

(d) Administrative offset shall be considered by Department units only after attempting to collect a claim under section 3(a) of the Federal Claims Collection Act of 1966, as amended;

except that no claim under this Act that has been outstanding for more than 10 years after the debt first accrued may be collected by means of administrative offset, unless facts, material to the right to collect the debt, were not known and could not reasonably have been known by the official of the Department who was charged with the responsibility to discover and collect such debts. When the debt first accrued should be determined according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415.

**§ 21.4 Notification requirements before offset.**

A debt is considered delinquent by the Department if it is not paid within 15 days of the due date, or if there is no due date, within 30 days of the billing date.

(a) The Departmental unit head (and designees) responsible for carrying out the provisions of this subpart with respect to the debt shall ensure that appropriate written demands are sent to the debtor in terms which inform the debtor of the consequences of failure to cooperate in payment of the debt. The first demand letter should be sent within ten (10) days after the date the debt becomes delinquent. A total of three progressively stronger written demand letters, at not more than 30 calendar day intervals, will normally be made unless (1) a response to the first or second demand indicates that a further demand would be futile; (2) the debtor's response does not require any or immediate rebuttal; and/or (3) the bureau determines to pursue offset under the procedures specified in 4 CFR 102.3, Collection by Administrative Offset. In determining the timing of the demand letters, Departmental unit heads should give due regard to the need to act promptly; so as a general rule, if it is necessary to refer the debt to the Department of Justice for action, such referral can be made within one year of the final determination of the facts and the amount of the debt. When Departmental unit heads (and designees) deem it appropriate to protect the Government's interests (for example, to prevent the statute of limitations, 28 U.S.C. 2415, from expiring), written demand for payment may be preceded by other appropriate collection actions (also see § 21.10(c)).

(b) The Department official responsible for collection of the debt (generally an accounting or finance officer) shall ensure that an initial written demand notice is sent to the debtor, informing such debtor of:

(1) The amount and basis for the indebtedness and whatever rights the debtor may have to seek review within the Department;

(2) The applicable standards for assessing interest, penalties, and administrative costs (4 CFR 102.13);

(3) That the debtor has a right to inspect and copy Department records related to the debt, as determined by responsible Departmental official(s), and that such request to inspect and copy must be postmarked or received by the Department no later than 30 days after the date of the (first) demand letter;

(4) The name, mailing address, and telephone number of the Department workout group employee who can provide a full explanation of the claim and answer all related questions, as well as explain procedures to the debtor for inspecting and copying records related to the debt.

(c) The responsible Department officials shall exercise due care to insure that demand letters are mailed or hand delivered on the same day that they are actually dated. If evidence suggests that the debtor is no longer located at the address of record, reasonable action shall be taken by the Departmental unit workout group to obtain a current address, including skip-trace assistance from the Internal Revenue Service and/or private sector credit reporting bureaus.

(d) Where applicable, the Departmental unit workout group must inform the debtor in a second demand letter, (Notice of Intent) of:

(1) The nature and amount of the debt;

(2) That the Department intends to collect the debt by administrative offset until the debt and all accumulated interest and other charges are paid in full;

(3) That the debtor has a right to obtain review within the Department of the initial determination of indebtedness, and that such request to have a review of the basis of indebtedness must be postmarked or received by the Department no later than 30 days after the date of the second demand letter (Notice of Intent); and

(4) That the debtor may enter into a written agreement with the responsible Department official(s) to repay the debt if such a request is made and received by the Department no later than 30 days after the date of the second demand letter (Notice of Intent).

If the sum of the proposed offset does not fully cover the amount of the debt owed, the Departmental unit workout group shall also include in this second demand letter (Notice of Intent) the notice provisions to debtors required by the Debt Collection Act of 1982, and other regulations of the Department, pertaining to disclosure of the delinquent debt to credit reporting agencies, referral to private collection agencies, salary offset, possible Internal Revenue Service offset of tax refunds, and referral of the debt to the Justice Department for action to the extent inclusion of such is appropriate and practical.

(5) That if payment or a request for review is not received within the 30-day period, the offset process will be initiated.

**§ 21.5 Exceptions to notification requirements.**

(a) In cases where the notice specified in § 21.4 has previously been provided to the debtor in connection with the same debt under some other proceeding, such as a final audit resolution determination, the Department is not required to duplicate those requirements before effecting administrative offset.

(b) If the time before payment is to be made to the debtor does not reasonably permit the completion of the procedures specified in § 21.4, and failure to take offset would substantially prejudice the Government's ability to collect the debt, then administrative offset action will be taken without notification. The offset will be promptly followed by the completion of the procedures specified in § 21.4 (also see § 21.10(c)).

**§ 21.6 Written agreement to repay debt.**

(a) A debtor will be provided with an opportunity to enter into a written agreement with the responsible Departmental official(s) to repay the debt owed if the following conditions are met and if specific conditions exist that limit his or her ability to immediately repay the debt.

(1) Notification by debtor. The debtor may, in response to the first written demand or Notice of Intent, propose a written agreement for delayed lump sum or installment payments to repay the debt as an alternative to administrative offset. Any debtor who wishes to do this must submit a proposed written agreement signed by the debtor to repay the debt, including interest, penalties, and administrative costs determined by the Department as due. This proposed written agreement must be received by the workout group individual specified in § 21.4(b)(4) within 60 calendar days of the date of the Department's initial written demand letter, or if in response to the Notice of Intent, within 30 calendar days of the date of the Department's Notice of Intent.

(2) Department response. In response to timely notification by the debtor as

described in paragraph (a)(1) of this section, the Departmental unit head (or designee) will notify the debtor within 30 calendar days whether the debtor's proposed written agreement for repayment is acceptable. It is within the discretion of the Departmental unit head (or designee) to accept a repayment agreement instead of proceeding by offset. However, if the debt is delinquent and the debtor has not disputed its existence or amount, the Departmental unit head (or designee) should accept a repayment agreement instead of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience. Before accepting a repayment agreement, the Departmental unit head (or designee) will also consider factors such as the financial statements provided by the debtor, the amount of the debt, the length of the proposed repayment period (generally not to exceed 3 years), whether the debtor is willing to sign a confess-judgment note or give collateral, and past dealings with the debtor. In making this determination, the Departmental unit head (or designee) will balance the Department's interest in collecting the debt against the financial hardship to the debtor (see § 21.18). A Departmental unit head (or designee) may deem a repayment plan to be abrogated if the debtor should, after the repayment plan is signed, fail to comply with the terms of the plan.

**§ 21.7 Review of Department records related to the debt.**

(a) *Notification by debtor.* A debtor who intends to inspect or copy Department records related to the debt must send a letter to the Departmental unit workout group employee specified in § 21.4(b)(4) stating his or her intentions. The letter must be postmarked or received by the Department within 30 calendar days of the date of the Department's *first* demand letter.

(b) *Department response.* In response to timely notification by the debtor as described in paragraph (a) of this section, the Departmental unit workout group will notify the debtor within 10 days of the request of the location and time when the debtor may inspect or copy agency records related to the debt, as well as provide the debtor with the name and telephone number of the contact person who may provide assistance to the debtor for ensuring that copies are made of all appropriate documents related to the debt. The debtor may also request that such records be copied and mailed. The responsible Department official(s) will provide access to records within 15 days from the date of the debtor's request for access, or mail the records to the debtor within such time period. Mailing of records by Departmental official(s) will be by certified or registered mail. The debtor will have 25 days from the date of access or 30 days from the date the records were mailed, to review the records and pay the debt or to petition the Department of a review of the determination of indebtedness.

**§ 21.8 Review within the Department of a determination of indebtedness.**

(a) Notification by debtor. A debtor who receives an initial demand for payment under the procedures, or a Notice of Intent (see § 21.4(d)), has the right to request Department review of the determination of indebtedness. To exercises this right, the debtor must send a letter requesting review to the Departmental unit workout group individual identified in § 21.4(b)(4). The letter must explain why the debtor seeks review and must be postmarked within 60 calendar days of the date of the first demand letter, (or 30 days from the Notice of Intent), or if a request has been made by the debtor to copy or have relevant records mailed, within the calendar-day time period provided in § 21.7(b), above.

(b) *Department response.* In response to a timely request for review of the initial determination of indebtedness, the Departmental unit head (or designee) will notify the debtor whether review will be by (1) oral hearing, or (2) by administrative review of the record. The notice to the debtor will include the procedures (see § 21.11) used by Departmental officials for administrative review of the record, or will include information on the date, location and procedures to be used if review is by an oral hearing.

**§ 21.9 Types of reviews.**

The Department will provide the debtor with an opportunity for an oral hearing, or an administrative review of the documentation relating to the debt, under the following conditions.

(a) *Oral hearing.* The Departmental unit head (or designee) will provide the debtor with a reasonable opportunity for hearing if:

(1) An applicable statute authorizes or requires the Department to consider waiver of the indebtedness, the debtor requests waiver of the indebtedness involved, and the waiver determination turns on credibility or veracity; or

(2) The debtor requests reconsideration of the debt and the Departmental unit head (or designee) determines that the question of the indebtedness cannot be resolved by review of the documentary evidence.

An oral hearing need not be a formal (evidentiary type) hearing. However, hearing officials should carefully document all significant matters discussed at the hearing.

(b) *Administrative review of written record.* Unless the Departmental unit head (or designee) determines that an oral hearing is required (see paragraph (a) of this section), the unit head (or designee) will provide for a review of the written record(s) (a review of the documentary evidence related to the debt, in the form of a "paper hearing").

**§ 21.10 Review procedures.**

(a) The oral hearing will be conducted as follows:

(1) The hearing official will take necessary steps to ensure that the hearing is conducted in a fair and expeditious manner. If necessary, the hearing officer may administer oaths of affirmation.

(2) The hearing official need not use the formal rules of evidence with regard to admissibility of evidence or the use of evidence once admitted. However, parties may object to clearly irrelevant material.

(3) The hearing official will record all significant matters discussed at the hearing. There will be no "official" record or transcript provided for these hearings.

(4) A debtor may represent himself or herself or may be represented by an attorney or other person. The Department will be represented by the General Counsel or his designee.

(5) The General Counsel (or designee) will proceed first by presenting evidence on the relevant issues. The debtor then presents his or her evidence regarding these issues. The General Counsel then may offer evidence to rebut or clarify the evidence introduced by the debtor.

(b) *Administrative review of the record:* The Departmental unit head (or designee) will designate an official of the Department as hearing official who will review administrative determinations of indebtedness which are not reviewable under criteria provided in § 21.9(a) for justifying an oral hearing. The hearing official will review all material related to the debt which is in the possession of the Department. The hearing official will make a determination based upon a review of this written record, which may include a request for reconsideration of the determination of indebtedness, or such other relevant material submitted by the debtor.

(c) The Department may effect an administrative offset against a payment to be made to a debtor prior to the completion of any of the due process procedures required by this section, if failure to take the offset would substantially prejudice the Department's ability to collect the debt. For example, if the time before the payment is to be made to the debtor by another Federal department or agency would not reasonably permit the completion of due process procedures, the offset may be accomplished by the Department. Such offset prior to completion of due process review hearing will be promptly followed by the completion of review and decision by the hearing official on the validity of the debt. Amounts recovered by offset in these instances, but later found not owed to the agency, will be promptly refunded.

**§ 21.11 Determination of indebtedness.**

(a) Following the hearing or the review of the record, the hearing official will issue a written decision which includes the supporting rationale for the decision. The decision of the hearing official is the Department unit's final action with regard to the particular administrative offset.

(b) Copies of the hearing official's decision will be distributed to the General Counsel (or designee) for the Department, the Director of the Department's Office of Finance and Federal Assistance, the appropriate Departmental unit accounting/finance officer, the debtor and the debtor's attorney or other representative, if applicable.

(c) If appropriate, this decision shall inform the debtor of the scheduled date on or after which administrative offset will begin. The decision shall also, if appropriate, indicate any changes in the information to the extent such information differs from that provided in the initial notification under § 21.4.

**§ 21.12 Coordinating administrative offset within the Department and with other Federal agencies.**

Departmental units will cooperate with other Federal departments and agencies in effecting collection by administrative offset. Whenever possible, Departmental units should comply with requests from within the Department and from other Federal agencies to initiate administrative offset procedures to collect debts owed the United States, unless the requesting office or agency has not complied with the Federal Claims Collections Standards, or the agency's implementing regulations, or the request would otherwise be contrary to law or the best interests of the United States.

(a) *When the Department is owed the debt.* When the Department is owed a debt, but another Federal agency is responsible for making the payment to the debtor against which administrative offset is sought, the other agency will not initiate the requested administrative offset until the Department provides responsible officials at that agency with a written certification that the debtor owes the Department a debt (including the amount and basis for the debt and the due date of the payment) and that the Department has complied with the applicable provisions of Part 102, "Standards for the Administrative Collection of Claims," of the Federal Claims Collection Standards, as well as the Department's implementing regulations on administrative offsets.

(b) When another agency is owed the debt. The Department may administratively offset money it owes to a person who is indebted to another agency if requested to do so by that agency. Such a request must be accompanied by a certification by the requesting agency that the person owes the debt (including the amount and basis for the debt) and that the creditor agency has complied with the applicable Federal Claims Collection Standards, as well as the agency implementing regulations on administrative offsets. The request from another Federal agency for Department cooperation in the offset should be sent to:

Director, Office of Finance and Federal Assistance, Room 6827, Herbert C. Hoover Building, Washington, D.C. 20230

**§ 21.13 Procedures for administrative offset: single debts.**

(a) Administrative offset will commence 31 days after the date of the Notice of Intent, unless the debtor has requested a hearing (see § 21.8) or has entered into a repayment agreement (see § 21.6).

(b) When there is review of the debt within the Department, administrative offset will begin after the hearing officer's determination has been issued under § 21.11 and a copy of the determination is received by the Departmental unit's accounting or finance office, except for the provision provided in § 21.10(c) when immediate action is determined necessary to ensure the Department's position in collection of the delinquent debt.

**§ 21.14 Procedures for administrative offset: multiple debts.**

The Departmental units will follow the procedures identified in (§ 21.13) for the administrative offset of a single debt. However, when collecting multiple debts by administrative offset, responsible Departmental officials should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

**§ 21.15 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.**

(a) Unless otherwise prohibited by law, the Department may request that monies which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect debts owed to the United States by the debtor. Such requests shall be made by the Departmental unit workout officials to the appropriate officials of the Office of Personnel Management (OPM) in accordance with their regulations and procedures.

(b) When making a request for administrative offset under paragraph (a) of the section, the responsible workout group debt collection official shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount and basis for the debt;

(2) The Department has complied with all applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The Department has complied with the requirements of the applicable provisions of the Federal Claims Collection Standards and these regulations, including any required hearing or review.

(c) If a Departmental unit workout group decides to request administrative offset under paragraph (a) of this section, the responsible debt collection official should make the request as soon as practical after completion of the applicable due process procedures so the Office of Personnel Management may identify and "flag" the debtor's account in anticipation of the time when the debtor becomes eligible and requests to receive payments from the fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the fund, and if at least a year has elapsed since the administrative offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing to the appropriate

Departmental unit head (or designee) that changed financial circumstances would render the offset unjust.

(d) If the Department collects part or all of the debt by other means before deductions are made or completed under paragraph (a) of this section, the Department official responsible for collecting the debt will act promptly to modify or terminate the agency's request for administrative offset under paragraph (a) of this section.

(e) In accordance with procedures established by the Office of Personnel Management, the Department may request an offset from the Civil Service Retirement and Disability Fund prior to completion of due process procedures.

**§ 21.16 Collection against a judgment.**

Collection by administrative offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

**§ 21.17 Liquidation of collateral.**

If the Department holds security or collateral which may be liquidated through the exercise of a power of sale in the security instrument, or a nonjudicial foreclosure, liquidation should be accomplished by such procedures if the debtor fails to pay the debt within a reasonable time after demand or pursuant to the contract of the parties, unless the cost of disposing of the collateral would be disproportionate to its value or special circumstances require judicial foreclosure. The Department collection official should provide the debtor with reasonable notice of the sale, an accounting of any surplus proceeds, and any other procedures required by contract or law. Collection from other sources, including liquidation of security or collateral, is not a prerequisite to requiring payment by a surety or insurance concern unless such action is expressly required by statute or contract.

**§ 21.18 Collection in installments.**

(a) Whenever feasible, and unless otherwise provided by law, debts owed to the United States, together with interest, penalties, and administrative costs should be collected in one lump sum. This is true whether the debt is being collected by administrative offset or by another method, including voluntary payment. However, if the debtor is financially unable to pay the indebtedness in one lump sum, the responsible Departmental official(s) may accept repayment in regular installments (See § 21.6). Prior to approving such repayments, financial statements shall be required from the debtor who represents that he/she is unable to pay the debt in one lump sum. A responsible Departmental official who agrees to accept payment in regular installments should obtain a legally enforceable written agreement from the debtor which specifies all of the terms of the arrangement and which contains a provision accelerating the debt in the event the debtor defaults. The size and frequency of installment payments should bear a reasonable relationship to the size of the debt and the debtor's ability to pay. If possible, the installment payments should be sufficient in size and frequency to liquidate the Government's claim in not more than three years. Installment payments of less than $50 per month should be accepted only if justifiable on the grounds of financial hardship or for some other reasonable cause. If the debt is an unsecured claim for administrative collection, attempts should be made to obtain an executed confess-judgment note, comparable to the Department of Justice Form USA–70a, from a debtor when the total amount of the deferred installments will exceed $750. Such notes may be sought when an unsecured obligation of a lesser amount is involved. When attempting to obtain confess-judgment notes, Departmental units should provide their debtors with written explanation of the consequences of signing the note, and should maintain documentation sufficient to demonstrate that the debtor has signed the note knowingly and voluntarily. Security for deferred payments other than a confess-judgment note may be accepted in appropriate cases. A Departmental units head (or designee) may accept installment payments notwithstanding the refusal of a debtor to execute a confess-judgment note or to give other security.

(b) If the debtor owes more than one debt and designates how a voluntary installment payment is to be applied as among those debts, that designation must be followed. If the debtor does not designate the application of the payment, the Department debt collection official should apply payments to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special attention to applicable statutes of limitations.

**§ 21.19 Additional administrative collection action.**

Nothing contained in this subpart is intended to preclude the utilization of any other administrative remedy which may be available.

Dated: December 22, 1986.

Sonya G. Stewart,

*Director, Office of Finance and Federal Assistance.*

[FR Doc. 86–29183 Filed 12–29–86; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 175

**[Docket No. 85F–0484]**

## Indirect Food Additives: Adhesives and Components of Coatings

**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 synthetic paraffin components for food-contact use. This action responds to a petition filed by Moore and Munger Marketing, Inc.

**DATES:** Effective December 30, 1986. Objections by January 29, 1987.

**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:** Julius Smith, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of November 4, 1985 (50 FR 45874), FDA announced that a petition (FAP 5B3891) had been filed by Moore and Munger Marketing, Inc., 140 Sherman St., Fairfield, CT 06430, proposing that § 175.250 *Paraffin (synthetic)* (21 CFR 175.250) be amended to provide for the safe use of synthetic paraffin components for food-contact use.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the additive is safe for the proposed use, and that the food additive regulations 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. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before January 29, 1987, 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 175**

Adhesives, Food additives, Food packaging.

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 175 is amended as follows:

## PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 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 and 5.61.

2. Section 175.250 is amended by adding a new sentence at the end of paragraph (a) and by revising paragraph (b)(1) to read as follows:

**§ 175.250 Paraffin (synthetic).**

(a) * * * This mixture can be fractionated into its components by a solvent separation method, using synthetic isoparaffinic petroleum hydrocarbons complying with § 178.3530 of this chapter.

(b) * * *

(1) *Congealing point.* There is no specification for the congealing point of synthetic paraffin components, except those components that have a congealing point below 93° C when used in contact with food Types III, IVA, V, VIIA, and IX identified in Table 1 of § 176.170(c) of this chapter and under conditions of use E, F, and G described in Table 2 of § 176.170(c) of this chapter shall be limited to a concentration not exceeding 15 percent by weight of the finished coating. The congealing point shall be determined by ASTM method D938–71 (Reapproved 1981), "Standard Test Method for Congealing Point of Petroleum Waxes, Including Petrolatum," which is incorporated by reference. Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

* * * * *

Dated: December 18, 1986.

**Sanford A. Miller,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 86–29120 Filed 12–29–86; 8:45 am]

BILLING CODE 4160–01–M

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**21 CFR Parts 176 and 178**

**[Docket No. 86F–0059]**

## Indirect Food Additives; Paper and Paperboard Components; Adjuvants, Production Aids, and Sanitizers

**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 dipropylene glycol dibenzoate in polyvinyl acetate coatings for paper and paperboard intended to contract aqueous and fatty food and to correct the Chemical Abstracts Registry Number currently listed for the additive in the food additive regulations. This action responds to a petition filed by Velsicol Chemical Corp.

**DATES:** Effective December 30, 1986; objections by January 29, 1987.

**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:** Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HH–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of March 14, 1986 (51 FR 8898), FDA announced that a petition (FAP 5B3893) had been filed by Velsicol Chemical Corp., 341 East Ohio St., Chicago, IL 60611 (now 5600 North River Rd., Rosemont, IL 60018), proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of dipropylene glycol dibenzoate in polyvinyl acetate coatings intended to contact food. The petition also requested the correction of the Chemical Abstracts Registry Number currently listed for dipropylene glycol dibenzoate in § 176.180 *Components of paper and paperboard in contact with dry food* (21 CFR 176.180) to read "CAS Reg. No. 27138–31–4".

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed use of the additive as a plasticizer for polyvinyl acetate coatings on paper and paperboard in contact with aqueous and fatty food is safe, and that § 176.170 should be amended as set forth below. FDA is also correcting the Chemical Abstracts Registry Number for dipropylene glycol dibenzoate in § 176.180. Finally, the agency is deleting the entry for dipropylene glycol dibenzoate in § 178.3740 *Plasticizers in polymeric substances* (21 CFR § 178.3740) because the listing is redundant with the listing of the additive in 21 CFR 176.180 and in the new entry in 21 CFR 176.170.

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 5B3893 (March 14, 1986; 51 FR 8898). 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 January 29, 1987, 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 Parts 176 and 178**

Food Additives; Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Food Safety and Applied Nutrition, Parts 176 and 178 are amended as follows:

## PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR Part 176 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, 5.61.

2. Section 176.170 is amended in paragraph (b)(2) by alphabetically inserting a new item in the table to read as follows:

**§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.**

* * * * *

(b) * * *

(2) * * *

| List of substances | Limitations |
|---|---|
| * * * * * | |
| Dipropylene glycol dibenzoate (CAS Reg. No. 27138-31-4). | 1. For use only as a plasticizer for polyvinyl acetate coatings at a level not to exceed 5 percent by weight of the coating solids under conditions described in paragraph (c) of this section, table 2, condition of use E.<br>2. For use only as a plasticizer for polyvinly acetate coatings at a level not to exceed 10 percent by weight of the coating solids under conditions described in paragraph (c) of this section, table 2, conditions of use F and G. |
| * * * * * | |

* * * * *

**§ 176.180 [Amended]**

3. Section 176.180 *Components of paper and paperboard in contact with dry food* is amended in the table in paragraph (b)(2) by revising the Chemical Abstracts Registry Number under the item "Dipropylene glycol dibenzoate" to read "CAS Reg. No. 27138–31–4."

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

4. The authority citation for 21 CFR Part 178 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, 5.61.

**§ 178.3740 [Amended]**

5. Section 178.3740 *Plasticizers in polymeric substances* is amended in paragraph (b) in the table by removing the item "Dipropylene glycol dibenzoate."

Dated: December 18, 1986.

**Sanford A. Miller,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 86–29119 Filed 12–29–86; 8:45 am]

BILLING CODE 4610-01-M

## 21 CFR Part 178

**[Docket No. 86F-0163]**

### Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for additional uses of calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl)-phosphonate] as a stabilizer in articles or components of articles intended to contact food. This action is in response to a petition filed by Ciba-Geigy Corp.

**DATES:** Effective December 30, 1986; objections by January 29, 1987.

**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:** Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of May 13, 1986 (51 FR 17537), FDA announced that a petition (FAP 6B3920) had been filed by Ciba-Geigy, Corp., Three Skyline Dr., Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) of the food additive regulations be amended to provide for additional uses of calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl)-phosphonate] as a stabilizer in articles or components of articles intended to contact food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations 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. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before January 29, 1987, 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 178

Food additives, Food packaging.

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 of the Center for Food Safety and Applied Nutrition, Part 178 is amended as follows:

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR Part 178 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 and 5.61.

2. In § 178.2010(b) by adding 12 new entries to the list of limitations for "Calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl) phosphonate]" to read as follows:

**§ 178.2010 Antioxidants and/or stabilizers for polymers.**

* * * * *

(b) * * *

| Substances | Limitations |
|---|---|
| * * * * * | |
| Calcium bis[monoethyl(3,5-di-*tert*-butyl-4-hydroxybenzyl)phosphonate] (CAS Reg. No. 65140-91-2). | For Use Only: * * *<br>3. In adhesives complying with § 175.105 of this chapter.<br>4. At levels not to exceed 0.5 percent by weight of pressure-sensitive adhesives complying with § 175.125 of this chapter.<br>5. At levels not to exceed 0.5 percent by weight of rosins and rosin derivatives complying with § 175.300(b)(3)(v) of this chapter.<br>6. At levels not to exceed 0.5 percent by weight of can end cement formulations complying with § 175.300(b)(3)(xxxi) of this chapter.<br>7. At levels not to exceed 0.5 percent by weight of side seam cement formulations complying with § 175.300(b)(3)(xxxii) of this chapter.<br>8. At levels not to exceed 0.5 percent by weight of petroleum alicyclic hydrocarbon resins complying with § 175.320(b)(3) of this chapter.<br>9. At levels not to exceed 0.5 percent by weight of rosin and rosin derivatives complying with § 176.170(a)(5) of this chapter; and petroleum alicyclic hydrocarbon resins, or the hydrogenated product thereof, complying with § 176.170(b)(2) of this chapter.<br>10. At levels not to exceed 0.5 percent by weight of resins and polymers used as components of paper and paperboard in contact with dry food in compliance with § 176.180 of this chapter.<br>11. At levels not to exceed 0.5 percent by weight of closures with sealing gaskets complying with § 177.1210 of this chapter.<br>12. At levels not to exceed 0.5 percent by weight of the finished rubber article complying with § 177.2600 of this chapter.<br>13. At levels not to exceed 0.5 percent by weight of petroleum hydrocarbon resin and rosins and rosin derivatives complying with § 178.3800(b).<br>14. At levels not to exceed 0.5 percent by weight of reinforced wax complying with § 178.3850. |
| * * * * * | |

Dated: December 18, 1986.

**Sanford A. Miller,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 86-29122 Filed 12-29-86; 8:45 am]

BILLING CODE 4160-01-M

## 21 CFR Part 510

## Animal Drugs, Feeds, and Related Products; Change of Sponsor

**AGENCY:** Food and Drug Administration.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the change of sponsor of a new animal drug application (NADA) from Western Research Laboratories, Inc., to Pharmaceutical Basics, Inc.

**EFFECTIVE DATE:** December 30, 1986.

**FOR FURTHER INFORMATION CONTACT:** David L. Gordon, Center for Veterinary Medicine (HFV-238), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6243.

**SUPPLEMENTARY INFORMATION:** Pharmaceutical Basics, Inc., 301 South Cherokee St., Denver, CO 80223, has informed FDA of a change of sponsor of NADA 102-824 for phenylbutazone tablets from Western Research Laboratories, Inc. Pharmaceutical Basics, Inc., a wholly owned subsidiary of VPF, Inc., has confirmed the change of ownership. In addition, the change of sponsor from Western Research Laboratories, Inc., to Pharmaceutical Basics, Inc., has been confirmed. This change of sponsor does not involve any changes in manufacturing facilities, equipment, procedures, or production personnel. The regulations in 21 CFR 510.600(c)(1) and 21 CFR 510.600(c)(2) are amended to reflect the new sponsor.

As a result of this action, Western Research Laboratories, Inc., is no longer the sponsor of any approved NADA's. Therefore, 21 CFR 510.600(c) is amended to remove the firm.

**List of Subjects in 21 CFR Part 510**

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

## PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

**Authority:** Sec. 512, 701(a), 52 Stat. 1055, 82 Stat. 343–351 (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by removing the entry for "Western Research Laboratories, Inc.," and adding a new sponsor entry alphabetically, and in paragraph (c)(2) by revising the entry for "000832," to read as follows:

**§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.**

* * * * *

(c) * * *

(1) * * *

| Firm name and address | Drug labeler code |
|---|---|
| * * * * * | |
| Pharmaceutical Basics, Inc., 301 South Cherokee St., Denver, CO 80223 | 000832 |
| * * * * * | |

(2) * * *

| Drug labeler code | Firm name and address |
|---|---|
| * * * * * | |
| 000832 | Pharmaceutical Basics, Inc., 301 South Cherokee St., Denver, CO 80223. |
| * * * * * | |

Dated: December 19, 1986.

Marvin A. Norcross,

*Associate Director for New Animal Drug Evaluation.*

[FR Doc. 86-29118 Filed 12-29-86; 8:45 am]

BILLING CODE 4160-01-M

## DEPARTMENT OF STATE

### 22 CFR Parts 121, 123, 124, 125, 126, 127, 128

**[Departmental Regulations 108.855]**

### South Africa and the International Traffic in Arms Regulations (ITAR)

**AGENCY:** Department of State.

**ACTION:** Final rule.

**SUMMARY:** The Comprehensive Anti-Apartheid Act of October 2, 1986, (Pub. L. 99–440), as amended, contains a prohibition on the export of items on the U.S. Munitions List to South Africa. This final rule implements the requirements of the Act. It also makes several unrelated amendments to the ITAR to correct or clarify certain provisions.

**EFFECTIVE DATE:** December 30, 1986.

**FOR FURTHER INFORMATION CONTACT:** J. Smaldone, Chief, Arms Licensing Division, Office of Munitions Control, (202) 235–9761, or Edward Cummings, Office of the Legal Adviser, Department of State, (202) 647–4110.

**SUPPLEMENTARY INFORMATION:** Section 317 of the Comprehensive Anti-Apartheid Act of 1986, (October 2, 1986, Pub. L. 99–440), as amended, (the Act) provides that no item on the United States Munitions List (22 CFR Part 121) may be exported to South Africa. Exceptions are provided under certain limited circumstances for items that are not covered by the United Nations Security Council Embargo against South Africa. Section 318 of the Act provides that licenses may not be issued in such exceptional circumstances unless Congress is notified thirty days in advance.

Section 317 of the Act codifies existing U.S. policy on the enforcement of the U.N. arms embargo. The embargo had its origin in 1962, when President Kennedy decided not to permit any further sales to South Africa of arms which might be used to enforce that country's apartheid policy. On August 7, 1963, the U.N. Security Council adopted Resolution 181, which called upon all states voluntarily to ". . . cease forthwith the sale and shipment of arms, ammunition of all types, and military vehicles to South Africa." In response to this request, the U.S. arms embargo was extended in 1963 to cover all arms sales. The policy was outlined in a United Nations speech in August of that year by Ambassador Adlai Stevenson, who told the Security Council that the United States expected to bring to an end the sale of all military equipment to the South African Government by the end of 1963. Ambassador Stevenson specified that exceptions would be permitted for the fulfillment of existing contracts and that the United States reserved the right to interpret this policy in the light of requirements for ensuring international peace and security. He added that the United States was taking this step to show its deep concern about South Africa's failure to abandon apartheid.

The guidelines for executing this policy were established in 1964 and prohibited the sale of items for use in combat or training by military, paramilitary, or police forces. The guidelines prohibited the sale of all military equipment and items of significant use in training or combat, as well as equipment and materials for the production and maintenance of arms and ammunition. They provided for the contractual and common defense exceptions to which Ambassador Stevenson had referred and also contained a provision for dealing with so-called gray area cases. They specified that items of distinct nonmilitary utility (but in no case any arms, ammunition, or items of a weapons nature) could be exported to South Africa if ordered by and for civilian nongovernmental users.

On November 4, 1977, the Security Council adopted a mandatory resolution (No. 418) under Chapter VII of the U.N. Charter Act. The Security Council required that all States ". . . cease forthwith any provision to South Africa of arms and related materials of all types, including the sale or transfer of weapons and ammunition, military vehicles and equipment, paramilitary police equipment, and spare parts for the aforementioned, and shall cease as well the provision of all types of equipment and supplies, and grant of licensing arrangements, for the manufacture or maintenance of the aforementioned." On November 28, 1986, the Security Council adopted voluntary Resolution 591, which broadens the embargo.

The U.S. has strictly enforced the U.N. arms embargo. No exceptions have been made to the prohibitions contained in Security Council Resolution 418 since it entered into force.

It has also been the policy of the U.S. to prohibit exports to South Africa of certain articles not covered by the U.N. embargo. The U.S. embargo continues to be broader than that contained in Security Council Resolutions 418 and 591. Both the State and Commerce Departments have promulgated rules to implement the U.S. policy.

For example, the Department of State does not license any export of U.S. Munitions List items to the South African Government, including the military or police. Section 126.1 of the ITAR provides that it is the policy of the United States to deny licenses and other approvals with respect to defense articles and defense services destined for or originating in certain countries, including any country with respect to which the United States maintains an arms embargo. South Africa is such a country. The U.S. Munitions List does

contain items that are not covered by the 1977 U.N. embargo, and exceptions have been considered in exceptional cases for exports of some of these items to non-governmental entities in South Africa. Exceptions have been permitted since the entry into force of the U.N. embargo only if the item was clearly not covered by the U.N. embargo. The licenses granted in recent years have been for items such as cryptographic devices for automatic teller machines to be used by commercial banks.

In addition to these rules, the Commerce Department has promulgated rules to prohibit exports of items (e.g., computers) subject to its export jurisdiction which might be used by the police and military and apartheid enforcing agencies. These regulations also implement section 108(n) of the Export Administration Amendments Act of 1985 (July 12, 1985, Pub. L. 99–64, 99 Stat. 137, 50 U.S.C. App. 2405 note). Items under the export jurisdiction of Commerce may not be exported to the military or police in South Africa. The only exceptions relate to medical supplies and devices to be used to prevent unlawful interference with international civil aviation.

Finally, the U.S. voted in favor of the voluntary Security Council arms import embargo of December 13, 1984 (Resolution 558). Section 1(d) of the President's Executive Order on South Africa of September 9, 1985 ordered a strict implementation of this import embargo, and Treasury has published the necessary regulations (see 50 FR 42157 and 27 CFR 47.21 (category XXII) and § 47.52(c)). The U.S. has gone beyond the terms of the voluntary embargo (e.g., by prohibiting the import of manufacturing data to produce South African weapons in the U.S.). Section 302 of the Act codifies this import prohibition, and no changes to State or Treasury regulations are necessary to implement this prohibition.

The Comprehensive Anti-Apartheid Act includes a specific provision on Munitions List exports largely because of some uncertainty regarding existing U.S. practice. The Department of State accordingly believes that it would be advisable to amend the ITAR to make clear the requirements of the U.N. embargo and the Act.

In addition, changes are made to other provisions in the ITAR to correct technical errors or omissions in the final rule of December 6, 1984 revising the ITAR (49 FR 47682). These changes also clarify or update the requirements of the ITAR and standarize some of the clauses and information required with respect to commercial agreements relating to defense articles.

For example, questions have arisen as to who must complete the required end user certificate with respect to manufacturing license agreements. Section 124.10 is amended to make clear that the foreign end user must complete the form. Section 124.14 is amended by requiring that agreements on exports to warehouses outside the U.S. contain the standard clause (currently in § 124.9) on the duration of certain obligations after the termination of the agreements. Section 126.8 is revised to make clear when prior approval is required to make certain proposals with respect to arms sales and agreements.

The following amendments deal with a foreign affairs function of the United States and are thus excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. The basic regulations that are amended by this final rule were the subject of public comment because of the desirability of obtaining the public's views. However, the amendments deal with statutory requirements that have entered into force and consequently the regulations are promulgated as a final rule.

**List of Subjects in 22 CFR Parts 121, 123, 124, 125, 126, 127, and 128**

Arms and Munitions exports.

Accordingly, for the reasons set forth in the preamble, Title 22, Chapter I, Subchapter M, of the Code of Federal Regulations, is amended as set forth below:

## PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for Part 121 continues to read as follows:

**Authority:** Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 121.1, Category VIII, paragraphs (g) and (j) are redesignated as paragraphs (j) and (g), respectively, and paragraphs (h) and newly redesignated (j) are revised to read as follows:

**§ 121.1 General. The United States Munitions List.**

* * * * *

**Category VIII—Aircraft, Spacecraft, and Associated Equipment**

* * * * *

(h) Developmental aircraft and components thereof which have a significant military applicability, excluding aircraft components concerning which Federal Aviation Agency certification has been granted.

* * * * *

(j) Components, parts, accessories, attachments, and associated equipment (including ground support equipment) specifically designed or modified for the articles in paragraphs (a) through (i) of this category, excluding aircraft tires and propellors used with reciprocating engines.

## PART 123—LICENSES FOR THE EXPORT OF DEFENSE ARTICLES

3. The authority citation for Part 123 continues to read as follows:

**Authority:** Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

**§ 123.10 [Amended]**

4. In § 123.10, paragraph (e) is amended by changing the phrase "significant military equipment" to "major defense equipment."

## PART 124—MANUFACTURING LICENSE AGREEMENTS, TECHNICAL ASSISTANCE AGREEMENTS, AND OTHER DEFENSE SERVICES

5. The authority citation for Part 124 continues to read as follows:

**Authority:** Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

6. In § 124.10, paragraph (a)(4) is amended by revising the first sentence and paragraph (b) is amended by revising paragraph (1) to read as follows:

**§ 124.10 Additional clauses required only in manufacturing license agreements.**

(a) * * *

(4) "If the U.S. Government has made financial or other contributions to the design and development of any licensed article, any charges for technical assistance or know-how relating to the item in connection with purchases of such articles from licensee or sublicensees with funds derived through the U.S. Government must be proportionately reduced to reflect the U.S. Government contributions, and subject to the provisions of paragraphs (a) (2) and (3) of this section, no other royalties, fees or other charges may be assessed against U.S. Government funded purchases of such articles. * * *

* * * * *

(b) * * *

(1) "A completed nontransfer and use certificate (DSP–83) must be executed by the foreign end-user and submitted to the Department of State of the United States before any transfer may take place."

* * * * *

7. In § 124.12, paragraph (a)(7) is added to read as follows:

**§ 124.12 Required information in letters of transmittal.**

(a) * * *

(7) A statement indicating whether any foreign military sales credits or loan guarantees are or will be involved in financing the agreement.

* * * * *

8. In § 124.14, paragraph (c) is amended to add new paragraph (8) to read as follows:

**§ 124.14 Exports to warehouses or distribution points outside the United States.**

* * * * *

(c) * * *

(8) "All provisions in this agreement which refer to the United States Government and the Department of State will remain binding on the parties after the termination of the agreement."

* * * * *

## PART 125—LICENSES FOR THE EXPORT OF TECHNICAL DATA AND CLASSIFIED DEFENSE ARTICLES

9. The authority citation for Part 125 continues to read as follows:

**Authority:** Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

10. In § 125.4, paragraph (a) is amended by revising the second sentence and paragraph (b)(5) and the first sentence of paragraph (b)(13) are revised to read as follows:

**§ 125.4 Exemptions of general applicability.**

(a) * * * These exemptions, except for paragraph (b)(13) of this section, do not apply to exports to proscribed destinations under § 126.1. * * *

* * * * *

(b) * * *

(5) Technical data in the form of basic operations, maintenance, and training information relating to a defense article lawfully exported or authorized for export to the same recipient. This exemption applies only to exports by the original exporter. Intermediate or depot-level repair and maintenance information may be exported only under a license or agreement approved specifically for that purpose;

* * * * *

(13) Technical data approved for public release (i.e., unlimited distribution) by the cognizant U.S. Government department or agency.

* * *

* * * * *

## PART 126—GENERAL POLICIES AND PROVISIONS

11. The authority citation for Part 126 is revised to read as follows:

**Authority:** Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958 (42 FR 4311, January 18, 1977); E.O. 11322, 32 FR 119; 22 U.S.C. 2658; Sec. 317, Comprehensive Anti-Apartheid Act of 1986 (22 U.S.C. 5067); E.O. 12571 (51 FR 39505, October 27, 1986).

12. In § 126.1, the last sentence in paragraph (a) is revised and paragraph (c) is added to read as follows:

**§ 126.1 Prohibited shipments to or from certain countries.**

(a) *General.* * * * The exemptions provided in the regulations in this subchapter, except § 123.17 and § 125.4(b)(13) of this subchapter, do not apply with respect to exports to or originating in any of such proscribed countries or areas.

* * * * *

(c) *South Africa.* South Africa is subject to an arms embargo and thus to the policy specified in paragraph (a) of this section. In accordance with section 317 of the Comprehensive Anti-Apartheid Act of 1986 (Pub. L. 99-440), exceptions may be made to this policy only if the Assistant Secretary for Politico-Military Affairs determines that (1) the item is not covered by United Nations Security Council Resolution 418 of November 4, 1977 and (2) the item is to be exported solely for commercial purposes and not for use by the armed forces, police, or other security forces of South Africa or for any other similar purpose. Such exceptions are subject to the prior congressional notification requirements specified in section 318 of that Act.

13. Section 126.8 is revised to read as follows:

**§ 126.8 Proposals to foreign persons relating to significant military equipment.**

(a) *General.* Certain proposals to foreign persons for the sale or manufacture abroad of significant military equipment require either the prior approval of, or prior notification to, the Office of Munitions Control.

(1) Sale of significant military equipment: prior approval requirement. The approval of the Office of Munitions Control is required before a U.S. person may make a proposal or presentation designed to constitute a basis for a decision on the part of any foreign person to purchase significant military equipment on the United States Munitions List whenever all the following conditions are met:

(i) The value of the significant military equipment to be sold is $14,000,000 or more; and

(ii) The equipment is intended for use by the armed forces of any foreign country other than a member of the North Atlantic Treaty Organization, Australia, New Zealand, or Japan; and

(iii) The sale would involve the export from the United States of any defense article or the furnishing abroad of any defense service including technical data; and

(iv) The identical significant military equipment has not been previously licensed for permanent export or approved for sale under the Foreign Military Sales Program of the Department of Defense, to any foreign country.

(2) Sale of significant military equipment: prior notification requirement. The Office of Munitions Control must be notified in writing at least thirty days in advance of any proposal or presentation concerning the sale of significant military equipment whenever the conditions specified in paragraphs (a)(1) (i) through (iii) of this section are met and the identical equipment has been previously licensed for permanent export or approved for sale under the FMS Program to any foreign country.

(3) Manufacture abroad of significant military equipment. The approval of the Office of Munitions Control is required before a U.S. person may make a proposal or presentation designed to constitute a basis for a decision on the part of any foreign person to enter into any manufacturing license agreement or technical assistance agreement for the production or assembly of significant military equipment, regardless of dollar value, in any foreign country, whenever (i) the equipment is intended for use by the armed forces of any foreign country; and (ii) the agreement would involve the export from the United States of any defense article or the furnishing abroad of any defense service including technical data.

(b) *Definition of "Proposal or Presentation".* The terms "proposal or presentation designed to constitute a basis for a decision . . . to purchase" or to "enter into any . . . agreement" mean the communication of information in sufficient detail that the person communicating that information knows or should know that it would permit an intended purchaser to decide either to acquire the particular equipment in question or to enter into the manufacturing license agreement or technical assistance agreement. For example, a presentation which describes

the equipment's performance characteristics, price, and probable availability for delivery would require prior notification or approval, as appropriate, where the conditions specified in paragraph (a) of this section are met. By contrast, the following would not require prior notification or approval: advertising or other reporting in a publication of general circulation; preliminary discussions to ascertain market potential; or merely calling attention to the fact that a company manufactures a particular item of significant military equipment.

(c) *Satisfaction of Requirements.* (1) The requirement of this section for prior approval is met by any of the following:

(i) A written statement from the Office of Munitions Control approving the proposed sale or agreement or approving the making of a proposal or presentation.

(ii) A license issued under § 125.2 or § 125.3 for the export of technical data relating to the proposed sale or agreement to the country concerned.

(iii) A temporary export license issued under § 123.27 relating to the proposed sale or agreement for a demonstration to the armed forces of the country of export.

(iv) With respect to manufacturing license agreements or technical assistance agreements, the application for export licenses pursuant to the two preceding subparagraphs must state that they are related to possible agreements of this kind.

(2) The requirement of this section for prior notification is met by informing the Office of Munitions Control by letter at least 30 days before making the proposal or presentation. The letter must comply with the procedures set forth in paragraph (d) of this section and must identify the relevant license, approval, or FMS case by which the identical equipment had previously been authorized for permanent export or sale. The Office of Munitions Control will provide written acknowedgement of such prior notification to confirm compliance with this requirement and the commencement of the 30-day notification period.

(d) *Procedures.* Unless a license has been obtained pursuant to § 126.8(c)(ii) or (iii), a request for prior approval to make a proposal or presentation with respect to significant military equipment, or a 30-day prior notification regarding the sale of such equipment, must be made by letter to the Office of Munitions Control. The letter must outline in detail the intended transaction, including usage of the equipment involved and the country (or countries) involved. Seven copies of the letter should be provided as well as seven copies of suitable descriptive information concerning the equipment.

(e) *Statement to accompany licensing requests.* (1) Every application for an export license or other approval to implement a sale or agreement which meets the criteria specified in paragraph (a) of this section must be accompanied by a statement from the applicant which either:

(i) Refers to a specific notification made or approval previously granted with respect to the transaction; or

(ii) Certifies that no proposal or presentation requiring prior notification or approval has been made.

(2) The Department of State may require a similar statement from the Foreign Military Sales contractor concerned in any case where the United States Government receives a request for a letter of offer for a sale which meets the criteria specified in paragraph (a) of this section.

(f) *Penalties.* In addition to other remedies and penalties prescribed by law or this subchapter, a failure to satisfy the prior approval or prior notification requirements of this section may be considered to be a reason for disapproval of a license, agreement or sale under the FMS Program.

(g) *License for technical data.* Nothing in this section constitutes or is to be construed as an exemption from the licensing requirement for the export of technical data that is embodied in any proposal or presentation made to any foreign persons.

## PART 127—VIOLATIONS AND PENALTIES

14. The authority citation for Part 127 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311, 22 U.S.C. 401; 22 U.S.C. 2658.

**§§ 127.6, 127.7, 127.8, and 127.9 [Amended]**

15. In Part 127, remove the words "Director, Bureau of Politico-Military Affairs" and add in their place, the words "Assistant Secretary for Politico-Military Affairs" in the following places.

(a) Section 127.6(a) introductory text and (b).

(b) Section 127.7(b).

(c) Section 127.8.

(d) Section 127.9(a).

## PART 128—ADMINISTRATIVE PROCEDURES

16. The authority citation for Part 128 continues to read as follows:

Authority: Sec. 38, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2778); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658; E.O. 12291, 46 FR 1981.

**§§ 128.4, 128.9, 128.10, 128.11, and 128.13 [Amended]**

17. In Part 128, remove the words "Director, Bureau of Politico-Military Affairs" and add in their place, the words "Assistant Secretary for Politico-Military Affairs" in the following places:

(a) Section 128.4(b).

(b) Section 128.9(b).

(c) Section 128.10.

(d) Section 128.11(a) and (b).

(e) Section 128.13(c).

(f) Section 128.15(a).

(g) Section 128.15(b)(4).

Dated: December 19, 1986.

**John C. Whitehead,**

*Deputy Secretary of State.*

[FR Doc. 86-29100 Filed 12-29-86; 8:45 am]

BILLING CODE 4710-26-M

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 301

**[T.D. 8118]**

## Disclosure of Return Information to the Bureau of the Census

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations to authorize the disclosure of an additional item of return information to the Bureau of the Census for use in statutory statistical programs, delete the authority to disclose those items of return information which the Bureau no longer needs for such programs, and delete the authority of the Federal Trade Commission to obtain return information for certain statistical purposes and transfer such authority to the Bureau of the Census. The amendments to the regulations will provide guidance to Internal Revenue Service personnel responsible for disclosure of this information.

**DATES:** The amendments to the regulations are effective as of December 30, 1986.

**FOR FURTHER INFORMATION CONTACT:** David E. Dickinson of the Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224 (Attention: CC:LR:T) (202-566-6655, not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

On March 28, 1986, the **Federal Register** published proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) unber section 6103 of the Internal Revenue Code of 1954 (51 FR 10635). Under section 6103(j)(1) of the Code, upon written request from the Secretary of Commerce, the Internal Revenue Service is to furnish the Bureau of the Census such tax return information as may be prescribed by Treasury regulations for statutorily authorized statistical activities. An itemized description of such return information is currently provided by § 301.6103(j)(1)–1 of the Regulations on Procedure and Administration. Similar disclosures to the Federal Trade Commission for a limited statistical purpose are authorized by section 6103(j)(2) of the Code and § 301.6103(j)(2)–1 of the regulations.

Further, because employment tax returns and employment tax return information are filed initially with the Social Security Administration rather than the Internal Revenue Service under the combined annual wage reporting system, the regulations also authorize the Social Security Administration to disclose directly to the Census Bureau and FTC certain employment tax return information, subject to statutory restrictions designed to protect the confidentiality of such information.

Periodically, the disclosure regulations are amended to reflect the changing statistical needs of the Census Bureau for tax information, and this rulemaking updates the regulations.

The Service did not receive any written comments in response to the notice of proposed rulemaking. No public hearing was requested or held. Accordingly, the proposed regulations are adopted as proposed.

**Description of Amendments to Regulations**

In properly conducting economic censuses as part of its economic statistics programs, the Census Bureau needs the employer identification number of each affiliated corporation listed on Form 851.

On the other hand, the Census Bureau no longer uses certain information from employment tax returns.

These regulations amend § 301.6103(j)(1)–1 to add the above item to the list of disclosable tax return information while deleting those employment tax return items no longer required.

Also, because responsibility for preparation of the Quarterly Financial Report has been shifted from the FTC to the Census Bureau, these amendments reflect this shift by deleting present regulatory authority to disclose certain corporation tax return information to the FTC and moving it to the Census Bureau.

**Non-Applicability of Executive Order 12291**

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore is not required.

**Regulatory Flexibility Analysis**

Although a notice of proposed rulemaking that solicited public comment was issued, the Internal Revenue Service concluded when the notice was issued that the regulations are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 did not apply. Accordingly, the final regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

**Drafting Information**

The principal author of these regulations is David E. Dickinson of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations both on matters of substance and style.

**List of Subjects in 26 CFR Part 301**

Administrative practice and procedure, Bankruptcy, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Penalties, Pensions, Statistics, Taxes, Disclosure of information, Filing requirements.

*Amendments to the Regulations*

Accordingly, 26 CFR Part 301 is amended by adopting, without change, the regulations proposed as a notice of proposed rulemaking published in the **Federal Register** on March 28, 1986 (51 FR 10635), to read as follows:

## PART 301—[AMENDED]

**Paragraph 1.** The authority for Part 301 is amended by adding the following citation:

**Authority:** 26 U.S.C. 7805. * * * Section 301.6103(j)(1)–1 also issued under 26 U.S.C. 6103(j).

**Par. 2.** Section 301.6103(j)(1)–1 is amended by revising paragraph (b)(2)(iii), by revising paragraph (b)(3)(xi) and (xii) and adding a new paragraph (b)(3)(xiii) immediately thereafter, and by revising paragraph (b)(5) and adding a new paragraph (b)(6) immediately thereafter. The introductory text of paragraph (b)(2) is republished. The revised and added provisions read as follows:

**§ 301.6103(j)(1)–1 Disclosures of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.**

* * * * *

(b) *Disclosure of return information to officers and employees of the Bureau of the Census.* * * *

(2) Officers or employees of the Service will disclose to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting, as authorized by Chapter 5 of Title 13, United States Code, demographic, economic, and agricultural statistics programs and censuses and related program evaluation—* * *

(iii) From an employment tax return—

(A) Taxpayer identifying number (as described in section 6109) of the employer,

(B) Total compensation reported,

(C) Master file tax account number,

(D) Taxable period covered by such return,

(E) Employer code,

(F) Decument locator number,

(G) Record code,

(H) Total number of individuals employed in the taxable period covered by the return,

(I) Total taxable wages paid for purposes of Chapter 21, and

(J) Total taxable tip income reported for purposes of chapter 21; and * * *

(3) * * *

(xi) From Form 1065, including Schedule F, if any, total sales of livestock and produce raised and other farm income and gross and net profits from farming;

(xii) From Form 1120S, the names and taxpayer identifying numbers of, and the number of shares of stock owned by, no more than 10 shareholders of the corporation; and

(xiii) From Form 851, the employer identification number of each corporation named on such return.

* * * * *

(5) Subject to the requirements of paragraph (d) of this section and § 301.6103(p)(2)(B)–1, officers or employees of the Social Security Administration to whom the following return information has been disclosed as provided by section 6103(l) (1)(A) or (5)

may disclose such return information to officers and employees of the Bureau of the Census for necessary purposes described in paragraph (b) (2) or (3) of this section—

(i) From Form SS–4, all information reflected on such return; and

(ii) From Form 1040, Schedule SE—

(A) Taxpayer identifying number of self-employed individual,

(B) Business activities subject to the tax imposed by Chapter 21,

(C) Net earnings from farming,

(D) Net earnings from nonfarming activities,

(E) Total net earnings from self-employment, and

(F) Taxable self-employment income for purposes of chapter 2.

(6)(i) Officers or employees of the Service will disclose the following return information (but not including return information described in section 6103(o)(2)) reflected on the return of a corporation with respect to the tax imposed by Chapter 1 to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, developing and preparing, as authorized by law, the Quarterly Financial Report—

(A) From the business master files of the Service—

(*1*) Taxpayer identity information (as defined in section 6103(b)(6)),

(*2*) Consolidated return and final return indicators,

(*3*) Principal industrial activity code,

(*4*) Partial year indicator,

(*5*) Annual accounting period,

(*6*) Gross receipts less returns and allowances,

(*7*) Net income or loss, and

(*8*) Total assets; and

(B) From Form SS–4—

(*1*) Month and year in which such return was executed,

(*2*) Taxpayer identity information,

(*3*) Principal industrial activity, geographic, firm size, and reason for application codes.

(ii) Subject to the requirements of paragraph (d) of this section and § 301.6103(p)(2)(B)–1, officers or employees of the Social Security Administration to whom return information described in paragraph (b)(6)(i)(B) of this section with respect to a corporation has been disclosed as provided by section 6103(l)(1)(A) may disclose such return information to officers and employees of the Bureau of the Census for a purpose described in this paragraph (b)(6).

* * * * *

**§ 301.6103(j)(2)–1 [Removed]**

**Par. 3** Section 301.6103(j)(2)–1 is removed.

**Lawrence B. Gibbs,**

*Commissioner of Internal Revenue.*

Approved: December 16, 1986.

**J. Roger Mentz,**

*Assistant Secretary of the Treasury.*

[FR Doc. 86–29193 Filed 12–29–86; 8:45 am]

BILLING CODE 4830–01–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD5–026]**

### Temporary Deviation From Drawbridge Operation Regulations for Bridge Across Atlantic Intracoastal Waterway, at Fairfield, NC

**AGENCY:** Coast Guard, DOT.

**ACTION:** Drawbridge operation; deviation from regulation.

**SUMMARY:** The Coast Guard has granted a temporary deviation from the regulations for the drawbridge across the Atlantic Intracoastal Waterway at mile 113.8 at Fairfield, North Carolina. The purpose of this deviation from the regulations is to allow the project contractor for the U.S. Army Corps of Engineers, the owner of the bridge, to renovate and repair the bridge without interruptions for bridge openings during specified hours each day. The repairs are expected to be completed by February 15, 1987.

**DATES:** This temporary deviation from the regulations becomes effective on December 15, 1986, and terminates on February 15, 1987, or earlier if bridge repairs are completed ahead of schedule.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or telephone number (804) 398–6222.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would have been impracticable since the request for the regulation was not received until December 1, 1986, and there was insufficient time remaining to publish a proposal in advance of the repairs without delaying needed repairs to this bridge.

Recent emergency repairs to this bridge have just been completed, and the contractor for the current maintenance project is on site and prepared to proceed with the work. Also, the work is taking place during a time of year when vessel traffic on the Atlantic Intracoastal Waterway is at a minimum, thereby reducing the adverse effects of the temporary deviation on waterway traffic.

**Drafting Information:**

The drafters of this notice are Ann B. Deaton, project officer, and CDR Robert J. Reining, project attorney.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Temporary Deviation From Drawbridge Regulations**

In consideration of the foregoing, the regulations in § 117.5 of Title 33, Code of Federal Regulations, do not apply to the bridge across the Atlantic Intracoastal Waterway, mile 113.8, at Fairfield, North Carolina.

From December 15, 1986, until February 15, 1987, of earlier if bridge repairs are completed ahead of schedule, the bridge may remain closed to vessel traffic from 8 a.m. to 5 p.m. daily, except that, the bridge shall open at 12 noon for all accumulated and approaching vessels. At all other times, the bridge shall open on signal.

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g), 117.35(d).

Dated: December 12, 1986.

**B.F. Hollingsworth,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 86–29050 Filed 12–29–86; 8:45 am]

BILLING CODE 4910–14–M

### Federal Railroad Administration

### 49 CFR Part 225

**[Docket No. RAR–2, Notice No. 8]**

### Adjustment of Monetary Threshold for Reporting Accidents/Incidents

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** This rule increases the reporting threshold from $4,900 to $5,200 for railroad accidents/incidents involving property damage that occurs during calendar year 1987. This action is needed to ensure that the FRA reporting

requirements reflect cost increases that have occurred since the reporting threshold was last computed in 1984. In addition, FRA is amending one section in 49 CFR Part 225 to make a minor technical improvement in the regulation.

**EFFECTIVE DATE:** This rule becomes effective on January 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Principal Program Person: Gloria D. Swanson, Office of Safety, (RRS–21), FRA, 400 Seventh Street SW., Washington, DC 20590, Phone (202) 366–0538.

**SUPPLEMENTARY INFORMATION:**

## Background

Section 225.19(c) of 49 CFR requires that the dollar figure that constitutes the reporting threshold for railroad accidents/incidents will be adjusted every two years, in accordance with the procedures outlined in Appendix A to Part 225. Based on increased cost for labor and material, the FRA has determined that the current reporting threshold of $4,900 should be increased to $5,200, and §§ 225.5 and 225.19 are being amended accordingly. Appendix A is also being amended to reflect the most recent calculations and procedures used to determine the new threshold.

In addition, FRA is revising § 225.7(a) to change the mailing address for requesting copies of reports.

## Regulatory Impact

This proposal has been evaulated in accordance with existing regulatory policies. It will not have an adverse economic impact on any entity because it does not place any new requirements or burdens on the public. Accordingly, it is certified that the proposal will not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not constitute a major Federal action significantly affecting the quality of the human environment and, therefore, an Environmental Impact Statement is not required. The proposal does not constitute a major rule under the terms of Executive Order 12291 and does not constitute a significant rule under the Department of Transportation regulatory policies and procedures. Moreover, the economic consequences of the proposal are so minimal that it does not warrant further regulatory evaluation. The information collection requirements of the existing regulation have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and will remain unchanged through adoption of this proposal.

## Notice and Public Procedure

Since the amendment merely adjusts the reporting threshold for accidents/incidents in accordance with procedures specified in long standing regulation (49 CFR 225.19) and imposes no additional burden on any person, the FRA concludes that notice and public procedure are not necessary. In addition, FRA is making this rule effective in less than thirty days so that accident data will be compiled on a uniform basis throughout calendar year 1987.

## List of Subjects in 49 CFR Part 225

Railroad safety.

For reasons set out in the preamble, Part 225 of Chapter II of Title 49 of the Code of Federal Regulations is amended as follows:

## PART 225—[AMENDED]

1. The authority for 49 CFR Part 225 is revised to read as follows:

Authority: Secs. 1 and 6, Accident Reports Act (45 U.S.C. 38 and 42); Sec. 6 (e) and (f), Department of Transportation Act (49 U.S.C. 1655 (e) and (f)); Secs. 202 and 208, Federal Railroad Safety Act of 1970 (45 U.S.C. §§ 431 and 471); Sec. 1.49 (g) and (m), Regulations of the Office of the Secretary of Transportation (49 CFR 1.49 (g) and (m)).

2. By revising § 225.5(b)(2) to read as follows:

**§ 225.5 Definitions.**

As used in the part—

* * * * *

(b) "Accident/Incident" means:

* * * * *

(2) Any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in more than $5,200 in damages to railroad on-track equipment, signals, tract, track structures, and roadbed;

* * * * *

3. By revising § 225.7(a) to read as follows:

**§ 225.7 Public examination and use of reports.**

(a) Accident/Incident reports made by railroads in compliance with these rules shall be available to the public in the manner prescribed by Part 7 of this Title. Accident/Incident reports may be inspected at the Office of Safety, Federal Railroad Administration, 400 Seventh Street, SW., Washington, DC 20590. Written requests for a copy of a report should be addressed to the Executive Director, FRA, 400 Seventh Street, SW., Washington, DC 20590, and be accompanied by the appropriate fee prescribed in Part 7 of this Title. To facilitate expedited handling, each request should be clearly marked "Request for Accident/Incident Report."

* * * * *

**§ 225.19 [Amended]**

4. By revising the second sentence in § 225.19(b) and by revising the first, third and fifth sentences of § 225.19(c) to read as follows:

* * * * *

(b) *Group I—Rail-highway grade crossing.* * * * In addition, whenever a rail-highway grade crossing accident/incident results in more than $5,200 damages to railroad on-track equipment, signals, tracks, track structures, or roadbed, that accident/incident must be reported to the FRA on Form FRA F6180.54. * * *

(c) *Group II—Rail Equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment (standing or moving) that results in more than $5,200 in damages to railroad on-track equipment, signals, track, track structures, or roadbed, including labor costs and all other costs for repair or replacement in kind. * * * If the property of more than one railroad is involved in an accident/incident, the $5,200 threshold is calculated by including the damages suffered by all of the railroads involved. * * * The $5,200 reporting threshold will be reviewed periodically and will be adjusted in increments of $100 every 2 years in accordance with the procedures outlined in Appendix A of this part.

* * * * *

5. By revising Appendix A to read as follows:

**Appendix A—Procedure for Determining Reporting Threshold**

1. Wage figures used for track direct labor rates will be based on the "Average straight time rate" shown in the "Recapitulation of Group of Employees," for Group 300 Maintenance of Way Structures Employees. This information appears in the most recent annual edition (Year 1985) of "Statement A300 of the Interstate Commerce Commission, Bureau of Accounts, Wage Statistics of Class I Railroads in the United States."

2. Wage figures used for mechanical direct labor rates will be based on the "Average straight time rate" shown in the "Recapitulation of Group of Employees," for Group 400 Maintenance of Equipment and Stores Employees. This information appears in the most recent annual edition (Year 1985) of "Statement A300 of the Interstate Commerce Commission, Bureau of Accounts,

Wage Statistics of Class 1 Railroads in the United States."

3. Fringe benefit surcharges will be added to the average straight time rates for mechanical and track employees based on the Railroad Cost Index data developed for the Interstate Commerce Commission under the provisions of 49 CFR Part 1102. This information was published in summarized form in the September 24, 1984 edition of the **Federal Register** (49 FR 37481).

4. To calculate the index number for mechanical labor, divide the present (1986) mechanical wage rate of $20.48 by the previous (1984) mechanical wage rate of $19.16. The result is a mechanical labor index number of 1.07 for 1986.

5. The track labor index number is calculated by dividing the present (1986) track wage rate of $19.23 by the previous (1984) track wage rate of $18.02. The result is a track labor index number of 1.07 for 1986.

6. Calculation of the labor index number is as follows: [(track labor index number) 1.07 × .20] + [mechanical labor index number) 1.07 × .80] = labor index number of 1.07.

7. The mechanical material index number is calculated by first totaling the present (1986) cost of the following mechanical materials:

| Quantity | Description | 1984 | 1986 |
|---|---|---|---|
| 8 | 33" CS wheels | $1,983 | $1,940 |
| 8 | 6 by 11" roller bearings | 1,221 | 1,235 |
| 4 | Roller bearing axles | 1,783 | 1,946 |
| 4 | 6 by 11" roller bearing truck sides (750 lbs). | 3,399 | 3,397 |
| 2 | 6 by 11" truck bolsters (1,060 lbs). | 2,533 | 2,532 |
| 2 | E coupiers | 686 | 534 |
| 4 | Brake beams | 315 | 339 |
| 1 | AB cylinder | 96 | 95 |
| 1 | AB reservoir | 263 | 299 |
| 1 | ABD control valve | 1,155 | 1,250 |
| 500 lbs | Steel bar | 445 | 500 |
| 1,000 lbs | Steel sheets | 890 | 1,000 |
| 1,000 lbs | Steel plates | 890 | 1,000 |
| 8 | Brake shoes | 52 | 58 |
| 8 | Roller bearing adapters | 151 | 140 |
| 24 | Outer coil springs | 222 | 174 |
| 800 | Board feet hardwood lumber. | 408 | 376 |
| 1 | Traction motor | 34,400 | 36,500 |
| 60 feet | 1¼" brake pipe | 65 | 66 |
| 1 | Hand brake | 225 | 245 |
| | Total mechanical material. | 51,182 | 53,626 |

The mechanical material index number is determined by dividing the present (1986) total cost for these mechanical materials ($53,626) by the previous (1984) total cost for mechanical materials ($51,182). The result is 1.05.

8. The track material index number is calculated by first totaling the present (1986) cost of the following track materials:

| *Quantity* | *Description* | *1984* | 1986 |
|---|---|---|---|
| 4,500 | Ties, wooden | $81,000 | $99,000 |
| 250 tons | Rail | 137,500 | 140,000 |
| 90 tons | Tie plates | 49,500 | 50,400 |
| 27,000 | Spikes (5.8 tons) | 4,408 | 4,408 |
| 800 | Joint bars (25.4 tons). | 22,000 | 24,000 |
| 2,000 | Track bolts | 1,200 | 3,000 |
| 1 | Frog | 4,300 | 4,300 |
| 1 | Switch | 4,000 | 4,000 |
| | Total track material. | 303,908 | 329,108 |

The track material index number is determined by dividing the present (1986) total cost for these track materials ($329,108) by the previous (1984) total cost for track materials ($303,908). The result is 1.08.

9. Calculation of the material index number is as follows: [(track material index number) 1.08 × .20] + [(mechanical material index number 1.05 x .80] = material index number of 1.06.

10. Calculation of the threshold index number is as follows: [(labor index number) 1.07 × .40] + [(material index number) 1.06 × .60] = threshold index number of 1.06.

11. In order to calculate the new reporting threshold, multiply the existing reporting threshold $4,900 by the threshold index number of 1.06. The result is $5,194. This result, when rounded to the nearest $100.00, is the new accident/incident reporting threshold figure of $5,200.

Issued in Washington, DC on December 23, 1986.

**John H. Riley,**

*Administrator.*

[FR Doc. 86-29165 Filed 12-29-86; 8:45 am]

BILLING CODE 4910-06-M

# Proposed Rules

Federal Register
Vol. 51, No. 249
Tuesday, December 30, 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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 831

### Civil Service Retirement System; Court-Ordered Payments

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The Office of Personnel Management (OPM) proposes to expedite the processing of court-ordered payments and competing claims for benefits from the Civil Service Retirement System through a change in administrative procedures. This proposed rule also establishes age 18 as the age for direct payment of survivor annuity benefits and clarifies certain terminology.

**DATE:** Comment must be received on or before January 29, 1987.

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

Send court orders affecting retirement benefits under Subpart Q of Part 831 to the Office of Retirement Programs, Office of Personnel Management, P.O. Box 17, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Rochester, (202) 632–4682.

**SUPPLEMENTARY INFORMATION:** The current regulations for processing cases involving competing claimants (§ 831.109(g) of Title 5, Code of Federal Regulations) and court orders affecting benefits payable from the Civil Service Retirement and Disability Fund (Subpart Q of Part 831 of Title 5, Code of Federal Regulations) require a time-consuming, three-step process involving two reviews within OPM and then providing that OPM's "final" decision, if contested, be reviewed by the Merit Systems Protection Board (MSPB) before payments are started. This proposed rule would eliminate the "initial decision" step. OPM would simply issue a "final" decision and offer an opportunity to appeal directly to MSPB. This would give full weight to the statutory requirement relating to court orders and competing claimants, and would streamline the processing of these cases and eliminate the "escrowing" of funds, allowing payment to the person(s) found to be entitled as soon as our final decision is issued. Payment would continue pending the outcome of any appeal to the MSPB.

Section 831.111 proposes to incorporate existing administrative practices into regulation. Section 8334 of title 5, United States Code, limits the right to make deposits and redeposits to "employees." The Civil Service Commission (CSC)—predecessor to OPM—used a broad definition of "employee" for this purpose. In addition to "employee," "former employees" are also allowed to make deposits or redeposits up to time of final adjudication of an annuity application, if: (1) They are entitled to an annuity based on other service for which contributions have been made; or (2) they had begun installment payments on a redeposit while currently employed but did not complete the redeposit prior to separation. We are proposing to incorporate this CSC definition, which OPM has continued to use into regulation in § 831.111(a).

Proposed § 831.111(b) is intended to clarify the rule for determining whether an individual died as an emplopyee, a separated employee, or a retiree. The status assigned affects the entitlement of survivors. The two factors to be considered are: (1) Whether the person separated from his or her position in the Federal service; and (2) whether the person met all the requirements for retirement including filing an application.

Under these proposed rules, if the person was not separated from the service at the time of death, he or she was an "employee." If the person was separated from the service at the time of death and met all the requirements for retirement including filing an application, he or she was a "retiree." If the person was separated from the service at the time of death, but did not qualify for retirement or did not apply, he or she was a "separated employee" and, except as provided in section 8341(f) of title 5, United States Code, the person's survivor(s) would be qualified only for a lump-sum payment of unpaid retirement deductions.

Proposed § 831.111(c) would state that a person becomes a retiree rather than an employee for survivor election purposes on the date that annuity begins to accrue. This definition would conform with the definition of "time of retirement" for survivor election purposes in § 831.603.

Proposed § 831.112 would allow payment of survivor annuity benefits directly to children who have attained age 18, regardless of the age of majority in the jurisdiction where the child resides. This is a rule of administrative convenience and is consistent with other Federal policies, such as the voting rights and responsibilities granted 18-year-olds under the 26th Amendment.

These proposed regulations also make a number of changes in Subpart Q, which deals with court orders requiring payment of civil service retirement benefits to legally separated or former spouses. The most significant of these changes is the definition of "qualifying court order," under § 831.1704. Previously, an order that divided benefits but specifically directed the employee to pay the former spouse was not considered a qualifying court order if the employee objected to direct payment by OPM. We are proposing to amend § 831.1704 to make such orders qualifying unless the court expressly instructs us *not* to pay the former spouse directly. In other words, in the absence of a specific prohibition within the court order itself, OPM now will apportion an employee's retirement benefits based on an order that directs the employee to pay the former spouse—as long as the order is otherwise qualifying.

The amendment proposed in § 831.1705 would require people requesting that we honor court orders affecting future benefits of employees who have not yet retired to provide the affected employee's current address so we can give notice of our intent to honor the order.

OPM routinely receives state court orders requiring payment of a portion of a retiree's civil service retirement annuity to a legally separated or former spouse and reaches an "initial" decision concerning the validity and applicability

of these court orders. However, before implementing this decision (i.e., starting court-ordered payments), current regulations provide the retiree a 30-day period following the notice during which he or she may contest the court order. If contested, payments are further delayed until all administrative appeals—including an appeal to the MSPB—have been exhausted. The court-ordered payments are in effect "escrowed" during the entire period.

In order to begin the payments required under 5 U.S.C. 8345(j) more expeditiously, proposed § 831.1707 sets up one-step decisionmaking procedures for handling court orders that affect employee retirements benefits. Parallel procedures for handling order awarding former spouse survivor annuities are adopted in proposed § 831.1708. Both sections require us to review the order as soon as we have received all the documentation required under § 831.1705. This is a change from the prior rule that we would not determine whether an order is qualifying until benefits became payable.

Both sections require that we notify all known parties affected by our decision on whether the order is qualifying. Decisions under these sections will be executed immediately if benefits are payable. The previous period of 30 days to contest the OPM decision is eliminated. An affected party who disagrees with our decision may appeal to the MSPB.

To allow a reasonable time for processing, court orders will be applied only to benefits accruing on or after the first day of the second month after receipt of the required documentation (§ 831.1711(a)(3)).

Proposed § 831.1709(c) would eliminate the current "escrow" requirement while the validity of an order is being challenged in court. The proposed practice is to honor without delay any order that we determine to be valid, unless a court directs otherwise.

Because of the change proposed in the definition of qualifying court order in § 831.1704, Guideline V in Appendix A of Subpart Q is no longer correct or necessary, and we are proposing to eliminate it.

**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 these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will only affect retirement payments to retired Government employees and spouses.

**List of Subjects in 5 CFR Part 831**

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

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

## PART 831—RETIREMENT

Accordingly, OPM proposes to amend 5 CFR Part 831 as follows:

### Subpart A—Administration and General Provisions

1. The authority citation for Subpart A of Part 831 continues to read as follows:

**Authority:** 5 U.S.C. 8347; § 831.102 also issued under 5 U.S.C. 8334; § 831.106 also issued under 5 U.S.C. 552a; § 831.108 also issued under 5 U.S.C. 8336(d)(2).

2. In § 831.109, paragraphs (a) and (g) are revised and a new paragraph (b)(3) is added to read as follows:

**§ 831.109 Initial decision and reconsideration.**

(a) *Who may file.* Except as noted in paragraphs (b), (c), and (g) of this section, any individual or agency whose rights or interests under the Civil Service Retirement System are affected by an initial decision by OPM may request OPM to review its initial decision.

(b) * * *

(3) A decision on court orders affecting civil service retirement benefits will be made in accordance with Subpart Q of this part.

* * * * *

(g) *Competing claimants.* (1) Competing claimants are applicants for survivor benefits based on the service of an employee or Member when—

(i) A benefit is payable based on the service of the employee or Member; and

(ii) Two or more claimants have applied for benefits based on the service of the employee or Member; and

(iii) An OPM decision in favor of one claimant will adversely affect another claimant(s).

(2) In cases involving competing claimants, the Associate Director or his or her designee will issue a final decision that will be in writing, will fully set forth findings and conclusions, and will contain notice of the right to appeal provided in § 831.110. Copies of the final decision will be sent to all competing claimants.

(3)(i) When OPM receives applications from competing claimants before any payments are made based on the service of the employee or Member, OPM will begin payments to the claimant(s) found entitled in the decision issued under paragraph (g)(2) of this section.

(ii) When OPM does not receive an application from a competing claimant(s) until after another person has begun to receive payments based on the service of the employee or Member, the payments will continue until a decision is issued under paragraph (g)(2) of this section. When a decision is issued under paragraph (g)(2) of this section, OPM will—

(A) If OPM affirms its earlier decision, continue payments to the claimant(s) who was originally determined to be entitled; and

(B) If OPM reverses its earlier decision, suspend payment to the claimant(s) who was originally determined to be entitled and immediately begin payment to the claimant(s) determined to be entitled in OPM's decision under paragraph (g)(2) of this section. OPM will not take action to collect the overpayment until the time limit for filing an appeal has expired or MSPB has issued a final decision on a timely appeal, whichever comes later.

3. New §§ 831.111 and 831.112 are added to Subpart A to read as follows:

**§ 831.111 Definitions of employee.**

(a) *Determinations involving an employee's ability to make a deposit or redeposit.* For purposes of making a deposit or redeposit under section 8334 of title 5, United States Code, "employee" means—

(1) A person currently employed in a position subject to the civil service retirement law; and

(2) A former employee (whose annuity has not been finally adjudicated) who retains civil service retirement annuity rights based on a separation from a position in which retirement deductions were properly withheld and remain (or have been redeposited in whole or in part) in the Civil Service Retirement and Disability Fund.

(d) *Determinations involving survivor benefits at an employee's or former employee's death.*

(1) "Employee" for purposes of determining a person's status at the time of death means that the employee had not been separated from the service prior to his or her death, even if the person had applied for retirement and the application had been approved.

(2) "Retiree" or "annuitant" for purposes of determining a person's

status at the time of death means that the person had been separated from the service and had met all the requirements to receive an annuity including having filed an application for the annuity prior to his or her death.

(c) *Determinations involving an election of survivor benefits.* Except as provided in paragraph (b) of this section, for purposes of survivor benefit elections, a person ceases to be an "employee" and becomes a "retiree" or "annuitant" on the date when the person's annuity begins to accrue, even if that date is before the date of separation from service.

**§ 831.112 Payments to children.**

For purposes of section 8345(e) of title 5, United States Code, people who have attained age 18 are considered adults regardless of the age of majority in the jurisdication in which they reside.

## Subpart Q—Court Orders Affecting Civil Service Retirement Benefits

4. The authority citation for Subpart Q of Part 831 continues to read as follows:

**Authority: 5 U.S.C. 8347.**

**§ 831.1703 [Amended]**

5. In § 831.1703, the definition of "Associate Director" is revised to read as follows:

"Associate Director" means the Associate Director for Retirement and Insurance in the OPM or an OPM official authorized to act on his or her behalf.

* * * * *

6. In § 831.1704, paragraph (c)(1) is revised to read as follows:

**§ 831.1704 Qualifying court orders.**

* * * * *

(c)(1) For purposes of payment from employee retirement benefits, the court order must either state the former spouse's entitlement to a portion of employee retirement benefits, or direct an employee, Member, or retiree to pay a portion of employee retirement benefits to the former spouse. OPM will not pay a former spouse directly if the court order expressly instructs OPM not to do so.

* * * * *

7. In § 831.1705, paragraph (b)(4) is revised and a new paragraph (b)(5) is added to read as follows:

**§ 831.1705 Applications by former spouse.**

* * * * *

(b) * * *

(4) The current mailing address of the former spouse; and

(5) If the employee has not retired under CSRS or died, the current mailing address of the employee.

* * * * *

8. Sections 831.1707, 831.1708, and 831.1709 are revised to read as follows:

**§ 831.1707 Processing court orders affecting employee retirement benefits.**

(a) Upon receipt of a court order affecting employee retirement benefits without an item of documentation required under § 831.1705, the Associate Director will notify the person submitting the order which item(s) is necessary to document the claim and that the claim cannot be processed without the missing item(s).

(b) Upon receipt of a court order affecting employee retirement benefits with all the documentation required under § 831.1705, the Associate Director will review the court order to determine whether it is a qualifying court order under § 831.1704 and whether the employee or Member affected by the order is receiving or entitled to receive employee retirement benefits.

(c) If the Associate Director determines that the order is not a qualifying court order, the Associate Director will send a notice to the employee and a final decision to the former spouse.

(1) The notice to the employee will state that OPM has received a court order from the former spouse but OPM has determined that the court order is not a qualifying court order.

(2) The final decision to the former spouse will—

(i) Acknowledge receipt of the court order;

(ii) State that the court order is not a qualifying court order and identify the paragraph(s) of § 831.1704 under which the court order failed to qualify; and

(iii) State the right to appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal.

(d) If the Associate Director determines that the court order is a qualifying court order and the employee is immediately eligible to receive employee retirement benefits, the Associate Director will send a final decision to both the employee and the former spouse.

(1) The final decision to the employee will state—

(i) That OPM has received a court order affecting employee retirement benefits and the date that OPM received the documentation required by § 831.1705;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) The effect that compliance with the court order will have on employee retirement benefits;

(v) How the former spouse's share of retirement benefits was computed;

(vi) In cases affecting annuity payments, that the retiree's annuity will be reduced effective with benefits accruing on the first day of the second month after OPM's receipt of the required documentation;

(vii) That the order must be honored unless entitlement terminates under § 831.1709; and

(viii) That the employee may appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal.

(2) The final decision to the former spouse will state—

(i) That OPM has received the court order affecting employee retirement benefits and the date that OPM received the documentation required by § 831.1705;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse's share of retirement benefits was computed;

(v) That, if the former spouse disagrees with the computation, he or she may appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal;

(vi) In cases affecting annuity payments, that the former spouse's share of the retiree's annuity will begin to accrue effective on the first day of the second month after OPM's receipt of the required documentation and will be paid on the first day of the month after accrual; and

(vii) The order will continue to be honored unless entitlement terminates under § 831.1709.

(e) If the Associate Director determines that the court order is a qualifying court order and the employee is not immediately eligible to receive employee retirement benefits, the Associate Director will send a final decision to both the employee and the former spouse.

(1) The final decision to the employee will state—

(i) That OPM has received a court order affecting employee retirement benefits and the date when OPM received the documentation required by § 831.1705;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) The effect that compliance with the court order will have, under current law and regulations, on future employee retirement benefits, when payable;

(v) How the former spouse's share of retirement benefits would be computed under current law and regulations;

(vi) That the order must be honored unless entitlement terminates under § 831.1709; and

(vii) That the employee may appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal.

(2) The final decision to the former spouse will state—

(i) That OPM has received the court order affecting employee retirement benefits and the date when OPM received the documentation required by § 831.1705;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse's share of retirement benefits would be computed under current law and regulations;

(v) That, if the former spouse disagrees with the computation, he or she may appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal;

(vi) That, in accordance with § 831.1706, nothing is payable before employee retirement benefits are payable to the employee; and

(vii) That the order will be honored when employee retirement benefits become payable unless entitlement terminates under § 831.1709.

**§ 831.1708 Processing court orders affecting survivor annuity benefits.**

(a) Upon receipt of a court order affecting survivor annuity benefits without an item of documentation required under § 831.1705, the Associate Director will notify the person submitting the order which item(s) is necessary to document the claim and that the claim cannot be processed without the missing item(s).

(b) Upon receipt of a court order affecting survivor annuity benefits with all the documentation required under § 831.1705, the Associate Director will review the court order to determine whether it is a qualifying order under § 831.1704 and whether the employee or Member affected by the order is receiving employee retirement benefits or has died.

(c) If the Associate Director determines that the order is not a qualifying court order, the Associate Director will send a notice to the employee or survivor and a final decision to the former spouse.

(1) The notice to the employee or survivor will state that OPM has received a court order from the former spouse but OPM has determined that the court order is not a qualifying court order.

(2) The final decision to the former spouse will—

(i) Acknowledge receipt of the court order;

(ii) State that the court order is not a qualifying court order and the law and regulations under which the court order failed to qualify; and

(iii) State the right to appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal.

(d) If the Associate Director determines that the court order is a qualifying court order and the employee has died, the Associate Director will send a final decision to the former spouse and other claimant whose interest is adversely affected by the court order.

(1) The final decision to any other claimant whose interest is adversely affected by the court order will state—

(i) That OPM has received a court order affecting the survivor annuity benefits and the date that OPM received the documentation required by § 831.1705;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) The effect that compliance with the court order will have on the claimant's entitlement to benefits;

(v) That the order must be honored unless entitlement terminates under § 831.1709; and

(vi) That the claimant may appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal.

(2) The final decision to the former spouse will state—

(i) That OPM has received the court order affecting the survivor annuity benefits and the date that OPM received the documentation required by § 831.1705;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse's survivor annuity was computed;

(v) That, if the former spouse disagrees with the computation, he or she may appeal to the Merit Systems Protection Board and the procedure and time limit for submitting and appeal;

(vi) That the survivor annuity will begin to accrue effective on the first day of the second month after OPM's receipt of the required documentation; and

(vii) That the order will continue to be honored unless entitlement terminates under § 831.1709.

(e) If the Associate Director determines that the court order is a qualifying court order and the employee is alive and receiving a retirement annuity, the Associate Director will send a final decision to both the retiree and the former spouse.

(1) The final decision to the retiree will state—

(i) That OPM has received a court order awarding survivor annuity benefits and the date that OPM received the documentation required by § 831.1705;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) The effect that compliance with the court order will have on annuity benefits and survivor election;

(v) How the amount of reduction to provide the former spouse annuity benefit was computed;

(vi) That the reduction will be effective on the first day of the second month after receipt of the documentation required by § 831.1705;

(vii) That the order must be honored unless entitlement terminates under § 831.1709; and

(viii) That the employee may appeal the decision to the Merit Systems Protection Board and the procedures and time limit for submitting an appeal.

(2) The final decision to the former spouse will state—

(i) That OPM has received the court order awarding survivor annuity benefits and the date that OPM received the documentation required by § 831.1705;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse annuity benefit will be computed;

(v) That, if the former spouse disagrees with the computation, he or she may appeal to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal;

(vi) That nothing is payable before the death of the retiree; and

(vii) That the order will be honored unless entitlement terminates under § 831.1709.

(f) If the Associate Director determines that the court order is a qualifying court order and the employee has not retired, the Associate Director will send a final decision to both the employee and the former spouse.

(1) The final decision to the employee will state—

(i) That OPM has received a court order awarding survivor annuity benefits and the date that OPM received the documentation required by § 831.1705;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) The effect that compliance with the court order will have, under current law and regulations on future annuity benefits, when payable;

(v) How the reduction in future annuity benefits would be computed under current law and regulations;

(vi) That the order must be honored unless entitlement terminates under § 831.1709; and

(vii) That the employee may appeal the decision to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal.

(2) The final decision to the former spouse will state—

(i) That OPM has received the court order awarding survivor benefits and the date that OPM received the documentation required by § 831.1705;

(ii) The applicable law and regulations under which OPM is required to comply with the court order;

(iii) That the order is a qualifying court order under applicable law and regulations;

(iv) How the former spouse's survivor annuity benefits would be computed under current law and regulations;

(v) That, if the former spouse disagrees with the computation, he or she may appeal to the Merit Systems Protection Board and the procedure and time limit for submitting an appeal;

(vi) That nothing is payable before the death of the employee; and

(vii) That the order will be honored when the employee dies unless entitlement terminates under § 831.1709.

**§ 831.1709 Termination of former spouse benefits.**

(a) OPM will terminate, a recurring payment of or a future interest in, employee retirement benefits to a former spouse whenever—

(1) The retiree dies;

(2) A contemporaneous or subsequent court order supersedes or sets aside the qualifying court order or directs that OPM stop the payments; or

(3) Termination is required by the terms of the court order awarding benefits to the former spouse.

(b) OPM will terminate, a recurring payment of or a future interest in, survivor annuity benefits to a former spouse whenever—

(1) The former spouse dies;

(2) The former spouse remarries before attaining age 55;

(3) A contemporaneous or subsequent court order determines that the qualifying court order awarding the survivor annuity benefits is invalid; or

(4) Termination is required by the terms of the court order awarding benefits to the former spouse.

(c) OPM will honor a qualifying court order that appears valid on its face despite the pendency of an appeal or other attack on the validity of the qualifying court order unless the original or reviewing court has issued a stay of the qualifying court order or has ordered OPM not to honor the qualifying court order pending the appellate or collateral review. Automatic stays under state law will not be honored unless the original or reviewing court issues a document suspending the effect of the qualifying court order pending the review of the qualifying court order.

9. In § 831.1711, paragraph (a)(3) is revised to read as follows:

**§ 831.1711 Effective dates.**

(a) * * *

(3) Benefits payable to a former spouse from a retiree's annuity begin to accrue no earlier than the first day of the second month after OPM's receipt of the required documentation, and terminate no later than the last day of the month before the death of the retiree.

* * * * *

**Appendix A to Subpart Q of Part 831—Guidelines for Interpreting State Court Orders Dividing Civil Service Retirement Benefits [Amended]**

10. In Appendix A to Subpart Q of Part 831, Guideline V is removed.

[FR Doc. 86-29192 Filed 12-29-86; 8:45 am]
BILLING CODE 6325-01-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 50

**[Docket No. PRM-50-46]**

### State of Maine; Filing of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Receipt of Petition for Rulemaking.

**SUMMARY:** The Commission is publishing for public comment this notice of receipt of a petition for rulemaking dated October 14, 1986, which was filed with the Commission by the State of Maine. The petition was docketed by the Commission on October 17, 1986, and has been assigned Docket No. PRM-50-46. The petitioner requests that the Commission amend its regulations in three areas pertaining to emergency planning.

**DATE:** Submit comments by March 2, 1987. Comment received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch. For a copy of the petition write: Division of Rules and Records, Office of Administration, 4000 MNBB, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

**FOR FURTHER INFORMATION CONTACT:** Michael T. Lesar, Acting Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-7086 or Toll Free (800) 368-5642.

**SUPPLEMENTARY INFORMATION:**

#### I. Grounds for the Petition

In support of the three areas that the petitioner requested be amended, the petitioner offers that under § 50.47(c)(2), the plume exposure pathway emergency

planning zone is generally about 10 miles in radius and the emergency planning zone for the ingestion pathway is an area about 50 miles in radius. The petitioner states that as a result of the Chernobyl nuclear disaster, Russia evacuated roughly 135,000 people within a 19-mile radius around Chernobyl, and that the fallout from the accident reached all over Europe, contaminating crops, milk, and animals.

The petitioner further states that, notwithstanding Three Mile Island and Chernobyl, the nuclear industry has argued, in recent discussions in the Advisory Committee on Reactor Safeguards, that a 2-mile emergency planning zone is sufficient for evacuation purposes.

**II. Proposed Amendments to 10 CFR Part 50**

The petitioner proposes that § 50.47 be amended to—

1. Expand both the emergency planning zone for the plume exposure pathway and for the ingestion pathway;

2. Require that emergency planning be done before any construction of a nuclear facility is permitted and that the governor or governors of any affected State approve the emergency plans as a precondition to construction; and

3. Require that offsite emergency preparedness findings be made before any fuel loading and/or low power operations are permitted.

Dated at Washington, DC this 22d day of December 1986.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 86-29190 Filed 12-29-86; 8:45 am]

BILLING CODE 7590-01-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Parts 229 and 249

**[Release Nos. 33-6681, 34-23912; File No. S7-30-86]**

### Disclosure of the Effects of Inflation and Changes in Prices

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rules.

**SUMMARY:** The Commission proposes to amend its rules governing the disclosure of the effects of inflation and changes in prices to conform them with the provisions of a statement of financial accounting standards that has been approved for issuance by the Financial Accounting Standards Board ("FASB"). These proposed rules would amend Items 302 and 303 of Regulation S-K; Item 9 to Part 1 of the test of Form 20-F; and Sections 501.05, 504, and 505 of the Codification of Financial Reporting Policies. The Commission is proposing rule amendments at this time to facilitate its prompt action on a final FASB standard. The FASB has issued an exposure draft that would eliminate the requirement for companies to disclose supplemental information of the effects of inflation and changes in prices and the Board approved final issuance of this standard on December 2, 1986. Such disclosure requirements apply currently to publicly traded companies that meet certain size tests. The Commission's rules embrace these supplemental disclosures by allowing registrants to combine these disclosures with other disclosures required by the Commission. These proposed rule amendments will delete references to the FASB requirements while continuing to encourage registrants to voluntarily present quantified supplemental disclosures on the effects of inflation and changes in prices. However, Regulation S-K will continue to require registrants to discuss, where material, the impact of inflation on their financial statements in Management's Discussion and Analysis ("MD&A"). These existing rules provide for considerable flexibility in the form of a narrative discussion of management's views. No specific numerical financial data need be presented. This release also clarifies that registrants are not required to indicate in their Management's Discussion and Analysis that inflation has no material impact on their financial statements when such is the case.

Item 329.302 of Regulation S-K currently indicates that information on the effects of changing prices on business enterprises shall be presented by registrants subject to the reporting provisions of applicable statements of Financial Accounting Standards issued by the FASB. The purpose of this rule was to require the presentation as supplementary financial information the disclosure called for by SFAS 33, as amended on various occasions. The Commission interprets this rule to encompass the most recent amendment to SFAS 33 which, in effect, makes the presentation of this data voluntary for financial reports filed with the Commission after December 2, 1986.

**DATE:** Comments should be received by the Commission on or before January 29, 1987.

**ADDRESS:** Comments should refer to File No. S7-30-86 and be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Washington, DC 20549. All comments will be available for public inspection at the Commission's Public Reference Room.

**FOR FURTHER INFORMATION CONTACT:** James R. Bradow, Office of the Chief Accountant (202-272-2130), or Howard P. Hodges, Jr., Division of Corporate Finance (202-272-2553), Securities and Exchange Commission, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The FASB's exposure draft, "Financial Reporting and Changing Prices" (dated September 30, 1986),[1] provides a summary of Statement of Financial Accounting Standards No. 33 as well as the Board's and others activities in reviewing this Statement since it was introduced in 1979. Statement of Financial Accounting Standards No. 89, approved by the FASB on December 2, 1986, adopts the provisions of this Exposure Draft with no substantive changes.[2] This Statement is effective for financial statements issued after December 2, 1986. The FASB received substantial input in response to its decision to commit itself to a comprehensive review of SFAS 33 five years after its issuance in 1979. SFAS 89, which is the result of this comprehensive review, eliminates the requirement to present supplementary information on the effects of changing prices while continuing to encourage reporting of this, or similar, information. This Statement includes guidelines on measurement and presentation of supplementary information on the effects of inflation and changing prices for those enterprises that wish to continue making the disclosures. These guidelines are principally a codification of the current FASB standards dealing with disclosure of inflation-adjusted information. SFAS 89 indicates, however, that entities are not discouraged from experimenting with other forms of disclosure.

The Commission has issued various releases relative to the presentation of inflation-adjusted information. On March 23, 1976, the Commission issued Accounting Series Release No. 190 that mandated disclosure of replacement cost data for certain registrants. In that release, the Commission encouraged

[1] Copies of the Exposure Draft are available from the Financial Accounting Standards Board, High Ridge Park, P.O. Box 3821, Stamford, Connecticut, 06905-0821.

[2] This final Statement is expected to be available from the FASB around December 20, 1986. See prior footnote for information on requesting copies of FASB documents.

experimentation with replacement cost disclosures and permitted considerable flexibility in the way the disclosures could be displayed. To encourage development of these disclosures in good faith, the Commission in Accounting Series Release No. 203 (December 9, 1976) provided a "safe harbor" to those registrants that disclosed such information. These "safe harbor" rules were expanded in Accounting Series Release No. 287 (February 17, 1981) and will remain in place for those registrants that provide voluntary disclosure of inflation-adjusted information as discussed in this release.

Accounting Series Release No. 299 (September 28, 1981) indicated the need for all registrants to provide a meaningful discussion of the effects of changing prices on the registrant's business as part of their Management's Discussion and Analysis. That release contains various illustrations of the types of narrative disclosures made by registrants in their MD&A. Those illustrations should continue to be useful to registrants when responding to the requirements of Item 303(a) of Regulation S–K with regard to disclosure of the impact of inflation. However, Item 303(a) does not require registrants to discuss the impact of inflation when such impact does not materially affect the financial statements.

The Commission concurs with the FASB in encouraging experimentation with disclosures on the impact of inflation on financial statements, while reminding registrants that any such disclosures need to present a balanced picture of the impacts of inflation and not be misleading. Item 303(a) of Regulation S–K continues to allow registrants that elect to voluntarily disclose quantified supplemental information on the effects of changing prices to either combine such presentation with their MD&A or include it elsewhere in their annual report with appropriate cross-referencing to the MD&A.

### Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the proposed amendments will not, if adopted, have a significant impact on a substantial number of small entities. This certification, including the reasons therefore, is attached to this release.

### Request for Comment

The Commission invites written comments on the proposed amendments as described herein. Pursuant to section 23(a) of the Securities Exchange Act, the Commission has considered the impact of these proposals on competition and is not aware at this time of any burden that the proposals, if adopted, would impose on competition. However, the Commission specifically invites comments as to whether the proposed amendments would have an adverse effect on competition. Comments on this inquiry will be considered by the Commission in complying with its responsibilities under the Act. (17 C.F.R. 229.303(a).)

### List of Subjects in 17 CFR Parts 229 and 249

Reporting and recordkeeping requirements, Securities.

### Text of Proposed Rules

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

## PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for Part 229 continues to read, in part, as follows:

**Authority:** Secs. 6, 7, 8, 10, 19(a), 48 Stat. 78, 79, 81, 85; secs. 12, 13, 14, 15(d), 23(a), 48 Stat. 892, 894, 901; secs. 205, 209, 48 Stat. 906, 908; sec. 203(a), 49 Stat. 704; secs. 1, 3, 8, 49 Stat. 1375, 1377, 1379; sec. 301, 54 Stat. 857; secs. 8, 202, 68 Stat. 685, 686; secs. 3, 4, 5, 6, 78 Stat. 565–568, 569, 570–574; sec. 1, 79 Stat. 1051; secs. 1, 2, 3, 82 Stat. 454, 455; secs. 1, 2, 3–5, 28(c) 84 Stat. 1435, 1497; sec. 105(b) 88 Stat. 1503; secs. 8, 9, 10, 11, 89 Stat. 117, 118, 119, 155; 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 781, 78m, 78n, 781(d), 78w(a)

* * * * *

### § 229.301 [Amended]

2. By amending the Instructions to § 229.301 to remove paragraph 3 and redesignate paragraphs 4 through 8 as paragraphs 3 through 7.

### § 229.302 [Amended]

3. By amending § 229.302 to remove paragraph (b) and redesignate paragraph (c) as paragraph (b) of § 229.302.

4. By amending § 229.303 by revising paragraphs 8 and 9 to the *Instructions to Paragraph* 303(a) to read as follows:

### § 229.303 (Item 303) Management's discussion and analysis of financial condition and results of operations.

(a) *Full fiscal years.* * * *

**Instructions to Paragraph 303(a).**

* * * * *

8. Registrants may discuss the effects of inflation and changes in prices in whatever manner appears appropriate under the circumstances. All that is required is a brief textual presentation of management's views. No specific numerical financial data need be presented except as Rule 3–20(c) of Regulation S–X (§ 210.3–20(c) of this chapter) otherwise requires. However, registrants may elect to voluntarily disclose supplemental information on the effects of changing prices as provided for in Statement of Financial Accounting Standards No. 89, "Financial Reporting and Changing Prices" or through other supplemental disclosures. The Commission encourages experimentation with these disclosures on order to provide the most meaningful presentation of the impact of price changes on the registrant's financial statements.

9. Registrants that elect to disclose supplementary information on the effects of changing prices may combine such explanations with the discussion and analysis required pursuant to this Item or may supply such information separately with appropriate cross-reference.

* * * * *

## PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for Part 249 continues to read as follows:

**Authority:** *The Securities Act of 1934*, 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

### § 249.220 [Amended]

6. By amending Form 20–F, § 249.220(f) by removing paragraph 8 under Item 9 and redesignating paragraphs 9, 10, 11 and 12 as paragraphs 8, 9, 10 and 11.

### Codification Update

The "Codification of Financial Reporting Policies" announced in Financing Reporting Release 1 [April 15, 1982] [47 FR 21028] is updated to:

1. Delete the text of old § 501.05.a, entitled as follows:

501.05.a General.

2. Add new § 501.05.a. as follows:

*501.05.a. General.*

The Commission believes that management for all registered companies should focus on translating the potentially confusing situation concerning inflation into a meaningful discussion of the effects of changing prices on the registrant's business. Consequently, Item 303 requires that registrants include at least a narrative discussion of the effects of inflation and changing prices, where material. The Commission's objective is to elicit useful disclosures concerning the impact of inflation without imposing an undue computational burden. Registrants may elect to provide supplemental disclosure on the effects of inflation and changing prices as provided for in SFAS 89, "Financial Reporting and

Changing Prices," or otherwise. Registrants that elect to include these supplemental disclosures are allowed to provide a cross reference to the location of such information.

3. Delete the text of old § 501.05.e., entitled as follows:

*501.05.e Impact of Inflation on Plant Assets and Depreciation.*

4. Add new § 501.05.e., as follows:

*501.05.e Impact of Inflation on Plant Assets and Depreciation.*

Under generally accepted accounting principles, companies record plant assets at actual cost and allocate these costs to income over the assets; useful lives. During inflationary periods, therefore, depreciation charges are understated and net income overstated under the historical cost model to the extent that the current costs of plant assets exceed original costs. The Commission encourages narrative discussion of the extent of the difference between historical cost and current cost. Information on relative asset ages can also assist users in developing their own estimates of price-adjusted amounts.

5. Delete the second paragraph of section 504, entitled as follows:

*504 Selected Financial Data*

6. Include in section 504 the following as the new second paragraph:

The deletion of summary of operations and the substitution of selected Financial Data reflected the Commission's concern that operations summaries duplicated information otherwise available in income statements and may have unduly emphasized income over other enterprise performance measures. The Commission recognizes that a detailed specification of the contents or format of a summary might not cure the preceived deficiencies. Accordingly, the revisions strike a reasonable balance between specified content and a flexible approach which permits registrants to select the data which best indicates performance. For example, those registrants who present information relating to the impact of inflation and current prices on their business are encouraged to combine this information with the information required by the rule.

7. Delete the text of old section 505, entitled as follows:

*505 Information on the Effects of Changing Prices*

8. Add new section 505, as follows:

*505 Information on the Effects of Changing Prices*

The Commission provides a safe harbor rule for information on the effects of changing prices disclosed by registrants pursuant to Item 303 Regulation D–K relating to the management's discussion and analysis. This safe harbor was provided by amendment of the previously existing safe harbor rule for projections (adopted as a part of the rules and regulations under the various Securities Acts) to extend its coverage to information on the effects of changing prices.

By The Commission.

**Jonathan G. Katz,**

*Secretary.*

December 18, 1986.

**Regulatory Flexibility Act Certification**

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify, pursuant to 5 U.S.C. 605(b) that the proposed amendments to Regulation S–K and Form 20–F to eliminate mandated disclosure regarding inflation and changes in prices, contained in Securities Act Release No. 6681 will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the amendments, if adopted, do not and will not affect small entities. Registrants voluntarily providing such information under the proposed amendments would be permitted to discuss the effects of inflation and changing prices in any appropriate manner.

**John S.R. Shad,**

*Chairman.*

December 18, 1986.

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 310 and 314

**[Docket No. 86N–0392]**

## Revision of Rules Governing Postmarketing Reporting of Adverse Drug Reactions

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to revise the regulations governing the postmarketing reporting of adverse drug reactions. Specifically, the agency is proposing to modify the regulation's 15-day Alert reports. The proposed changes would focus FDA's prompt review on those reports that are truly significant in order to provide more safety to people who use therapeutic medicinals. In addition, the agency is proposing to clarify the reporting obligations of a drug firm conducting a clinical or epidemiological study with a marketed drug. The changes are intended to improve the effectiveness of the adverse drug reaction reporting process.

**DATE:** Comments by March 2, 1987.

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

**FOR FURTHER INFORMATION CONTACT:** Steven H. Unger, Center for Drugs and Biologics (HFN–362), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8049.

**SUPPLEMENTARY INFORMATION:** FDA is proposing several changes to the rules governing the reporting of adverse drug experiences associated with the use of marketed new drug products to improve patient safety by improving the effectiveness of FDA's postmarketing surveillance of these products.

The Primary purpose of FDA's adverse drug experience reporting system is to signal potentially serious safety problems with marketed drugs, focusing especially on newly marketed drugs. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the marketed drug provides, for the first time, the opportunity to collect information on rare, latent, and long-term effects. Signals are obtained from a variety of sources, including reports from patients, treating physicians, foreign regulatory agencies, and clinical investigators. Information derived from the adverse drug experience reporting system contributes directly to increased public health protection because such information enables FDA to make important changes to the product's labeling (such as adding a new warning) and, when necessary, to initiate removal of a new drug from the market.

The current regulations (21 CFR 314.80) require that a drug manufacturer (and any other person whose name appears on the labeling of a drug product) make a 15-day "Alert report" for (1) any adverse experience associated with use of its product that is both serious and unexpected; and (2) any significant increase in the frequency of any adverse drug experience that is both serious and expected. Other adverse experiences are required to be reported at quarterly intervals for the first 3 years following approval, and annually thereafter. The regulations define "serious," "unexpected," and "increased frequency" in order to clarify the 15-day reporting requirement. These regulations were published in the **Federal Register** of February 22, 1985 (50 FR 7452), and become effective August 22, 1985. A minor change to the definition of "increased frequency" was published in the **Federal Register** of July 3, 1986 (51 FR 24476).

An important distinction between periodic submissions and the 15-day Alert report is that the 15-day designation separates out those reports that, because of their potentially serious implications for patient safety, are to receive intensive, direct evaluation by a health care professional in FDA. In contrast, periodic reports are handled in a more automated way. Here, the summary of each periodic report is reviewed by a health care professional, and the reports themselves are entered into the computer file where they can be retrieved when there is a suspicion of a problem with either the drug or the type of reaction identified in the report.

Thus, reports of already labeled reactions are stored for future reference. Such storage is appropriate because labeled reactions are already known and described in the product's label, and the agency routinely reviews the computer file for each drug as an added precaution.

Conversely, the reports that receive the most attention, the 15-day Alert reports, are intended for reports of serious, unlabeled reactions. When a serious, unlabeled reaction is reviewed by FDA staff, the computer file is checked to see if other similar reactions, described in 15-day or periodic reports, have been received. Because of the high significance of 15-day Alert reports, it is crucial that they not be mixed with less important, more routine reports. If significant reports are diluted with a mass of relatively routine and nonsensitive reports, or incomplete and poorly documented reports, true signals that may justify FDA action (such as product labeling revisions) may be lost, or at a minimum unduly delayed, thereby leading to less patient protection.

The intent of the proposed modifications is to facilitate the identification of truly important signals and, thus, make the drug surveillance system more effective in helping FDA take prompt and appropriate action on marketed drug products in order to improve public health protection. As described below, FDA's experience over the past year has been that large volumes of either duplicative or nonserious reports have been reported as 15-day Alert reports. Indeed, during 1986, between 25 percent and 40 percent of the approximately 40,000 reports submitted by manufacturers were 15-day reports. This influx of nonserious, duplicative, or incomplete reports seriously hinders FDA's ability to detect signals of serious reactions in a systematic and effective manner. The proposed changes are described below.

### I. Revision of the Definition of "Serious" Adverse Experiences

As noted above, the current regulations require the marketer of a new drug product to report to FDA any adverse drug experience that is both serious and unexpected no later than 15 days after learning of the experience. A "serious" adverse experience is defined as "an adverse drug experience that is life-threatening, is permanently disabling, requires in-patient hospitalization, or requires prescription drug therapy." In addition, an adverse drug experience with one of the following outcomes is always considered serious: death, congenital anomaly, cancer, or overdose." Thus, an adverse drug experience is "serious" if it results in any of the outcomes listed in the definition.

The agency is proposing to delete "requires prescription drug therapy" from the definition of "serious" adverse drug experience. The agency has found that the "requires prescription drug therapy" element of the definition has resulted in the submission of large numbers of 15-day reports that either are too preliminary to be informative or are not sufficiently severe to warrant consideration as a 15-day report. In addition, because almost all important and severe reactions requiring prescription drug therapy also satisfy other criteria of seriousness (in that, for example, they result in hospitalization or death), the most significant reactions will continue to be reported to FDA as 15-day reports even in the absence of the prescription drug therapy criterion. In the very few cases where this is not so, instances of the same reaction with other patients that do meet other criteria for "serious" (because, for example, the other patients were hospitalized) can be anticipated. Moreover, reactions that do not satisfy any of the criteria of "serious" will still be reported to FDA in periodic reports (quarterly during the first 3 years of marketing a new drug), and become part of the agency's more comprehensive data base. The only difference, therefore, is the reporting time and not whether the adverse reaction is reported.

For purposes of postmarketing surveillance, the limited informational value of "prescription drug therapy" reports is illustrated by the findings of an agency-conducted study of 237 consecutive applicant-submitted reports of adverse experiences classified as "serious" solely because the experiences resulted in prescription drug therapy. The agency found that, of these 237 reports, only 2 conveyed a signal about a drug product that was arguably serious and that was not also conveyed contemporaneously either by other 15-day Alert reports or by other means (e.g., through reports in the medical literature). Moreover, because both of these reports were for products approved within the previous 3 years, the signals would have been received by the agency relatively soon thereafter in quarterly reports. Reports under the heading of requiring treatment with a prescription drug submitted as "serious" 15-day Alert reports included such reactions as hiccups (treated with an antibiotic) and joint pain (treated with an antihypertensive).

A second agency study disclosed similar results. In the second study, the agency looked at 141 consecutive applicant-submitted reports of reactions classified as serious only by the criterion of requiring prescription drug therapy. Of these 141 reports, only 1 represented a potentially important signal that was not conveyed by other reports based on criteria other than "requiring prescription drug therapy." Once again, this one signal would still have been received through the periodic report if a 15-day report had not been required. Copies of these two FDA studies have been placed on file in the docket for this proposed rule in the agency's Dockets Management Branch.

In conclusion, the change proposed in the definition of "serious" is designed to make the adverse drug reaction system more likely to detect important signals rapidly. In this way, this change is designed to make the system a more effective public health tool because the system would be more sensitive to early warning signals. With this revision, the definition of "serious" would read as follows: " 'Serious' means an adverse drug experience that is fatal or life-threatening, is permanently disabling, requires inpatient hospitalization, or is a congenital anomaly, cancer, or overdose."

### II. Obligations of a Sponsor Conducting a Clinical Study

Currently, the holder of an approved marketing application for a drug product who sponsors a postmarketing clinical study of that drug under an investigational new drug application (IND) is subject to the adverse drug reaction reporting requirements of both the IND regulations (Part 312) and the new drug regulations (Part 314). Under the IND requirements, the sponsor must report to its IND file "any findings associated with use of a drug that may suggest significant hazards, contraindications, side-effects, and precautions pertinent to the safety of the

drug"; "alarming" findings must be reported immediately. (See 21 CFR 312.1(a)(6).) (Although "associated with use of a drug" is not defined under current IND regulations, the IND Rewrite proposed rule stated the agency's understanding of the term, defining it to mean "there is a reasonable possibility that the event may have been caused by the drug.") In addition, the current regulations require periodic reports on the progress of the study. (See 21 CFR 312.1(a)(5).) Progress reports summarize what the sponsor has learned about the safety and effectiveness of the investigational drug and also convey much data about the experiences of individual subjects with the drug.

The holder of an approved application that sponsors a clinical study of its approved drug product is also subject to the adverse drug experience reporting requirements of Part 314. Under the current new drug application (NDA) requirements, the holder of the approved application must report to FDA any serious and unexpected adverse experience or any increased frequency of a serious and expected experience no later than 15 days after determining that a report is required. The applicant must review all potential sources of information about adverse drug experiences, including reports from individual medical practitioners, reports from the scientific literature, as well as reports from clinical studies. If an applicant receives information from one of these sources that meets the regulatory definition of a serious and unexpected adverse drug experience, the applicant must notify FDA about the experience *whether or not the applicant believes there is a reasonable possibility that the drug caused the experience.* (Emphasis added.) This nondiscretionary reporting obligation is sensible with respect to reports by physicians in a spontaneous reporting context, where the reporter presumably exercises discretion in deciding whether to report, withholding reports of events that seem obviously not to be caused by the drug; anything that meets the reporter's standard for a plausible relationship to the drug ought to be transmitted to the agency. This approach is not sensible, however, in a clinical trial context. Clinical trials are conducted in an environment characterized by intense monitoring of individual subjects with attention to all adverse events, whether or not such events seem plausibly drug-related. In clinical studies, the initial reports of adverse events do not necessarily reflect any judgment about causal relationships. In that setting, if the sponsor, in its capacity as holder of an approved application, is not allowed to screen out those reports that the sponsor believes should not be attributed to the drug, the sponsor (as applicant) must transmit to its approved application file many reports of little value to FDA's postmarketing surveillance responsibilities. The need to review and process such reports dilutes FDA's efforts to identify the more significant adverse experiences associated with use of approved products, thereby decreasing the protection afforded to the public.

For these reasons, FDA now proposes to modify reporting requirements for adverse drug experiences arising in clinical trials using marketed drugs. Specifically, the agency proposes to revise the adverse drug experience reporting requirements in Part 314 to exempt an applicant from the obligation to report an adverse drug experience obtained from a postmarketing clinical study of the drug to its approved NDA file unless the experience represents both a reportable finding within the meaning of § 312.1(a)(6) and a finding that must be reported under § 314.80. Thus, under this proposal, the only time an adverse experience will be reported both to the IND file and to the NDA file is when that experience is both a "serious" and "unexpected" adverse experience within the meaning of § 312.80 and a reportable find under the provisions of § 312.1(a)(6).

### III. Other Changes

In the **Federal Register** of July 3, 1986 (51 FR 24476), FDA adopted a rule requiring adverse drug experience reporting for marketed prescription drugs not the subject of approved applications (21 CFR 310.305). Those rules were patterned after the adverse drug experience reporting provisions adopted previously. To ensure consistency between these two sets of rules, the agency is proposing to revise § 310.305 to adopt changes identical to those proposed in this document for § 314.80.

Finally, the agency is proposing to revise § 314.80(c)(2)(iii), (e) to eliminate periodic reporting requirements for adverse drug experience information obtained from postmarketing epidemiological/surveillance studies (except for information regarding 15-day Alert reports.) Routine information derived from such studies has proven to be of little help to the agency's postmarketing surveillance program. This proposed revision does not affect the requirement that applicants submit post-marketing studies pertinent to safety, including epidemiological studies, in their annual reports under 21 CFR 314.81(b)(2)(vi).

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

FDA has carefully analyzed the regulatory impact of the proposed rule in accordance with Executive Order 12291 and the Regulatory Flexibility Act (Pub. L. 96–354). The proposed rule would make minor modifications to the rules governing the reporting to FDA of adverse drug experiences associated with use of marketed drug products. Therefore, the agency concludes that the proposed rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the proposed rule, if adopted, will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act.

Interested persons may, on or before March 2, 1987, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

### List of Subjects

*21 CFR Part 310*

Administrative practice and procedure, Drugs, Reporting and recordkeeping requirements.

*21 CFR Part 314*

Administrative practice and procedure, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Parts 310 and 314 be amended as follows:

## PART 310—NEW DRUGS

1. The authority citation for 21 CFR Part 310 is revised to read as follows:

**Authority:** Secs. 501, 502, 503, 505, 701, 705, 52 Stat. 1049–1053 as amended, 1055–1056 as amended, 67 Stat. 477 as amended (21 U.S.C. 351, 352, 353, 355, 371, 374, 375) (5 U.S.C. 553); 21 CFR 5.10, 5.11.

2. Section 310.305 is amended by revising paragraph (b)(4) and

redesignating existing paragraph (c)(1) as paragraph (c)(1)(i) and adding new paragraph (c)(1)(ii) to read as follows:

**§ 310.305 Records and reports concerning adverse drug experiences on marketed prescription drugs for human use without approved new drug applications.**

* * * * *

(b) * * *

(4) "Serious" means an adverse drug experience that is fatal or life-threatening, is permanently disabling, requires inpatient hospitalization, or is a congenital anomaly, cancer, or overdose.

* * * * *

(c) *Reporting requirements—15-day "Alert reports."* (1)(i) * * *

(ii) A person identified in paragraph (c)(1)(i) of this section is not required to submit a 15-day "Alert report" for an adverse drug experience obtained from a postmarketing clinical study (whether or not conducted under an investigational new drug application) unless the applicant concludes that there is a reasonable possibility that the drug caused the adverse experience.

* * * * *

## PART 314—APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG OR AN ANTIBIOTIC DRUG

3. The authority citation for 21 CFR Part 314 continues to read ad follows:

**Authority:** Secs. 501, 502, 503, 505, 506, 507, 701, 52 Stat. 1049–1053 as amended, 1055–1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 351, 352, 353, 355, 356, 357, 371); 21 CFR 5.10, 5.11.

4. Section 314.80 is amended in paragraph (a) by revising the definition of "Serious," in the introductory text of paragraph (c) by revising "20857" to read "20852," in paragraphs (c)(1), (c)(2)(ii)(*b*), and (f)(1) by revising "(Drug Experience Report)" to read "(Adverse Reaction Report)," in paragraphs (d)(2), (f)(3) and (f)(4) by revising "Drug and Biological Product Experience" to read "Epidemiology and Surveillance," and by revising paragraphs (c)(2)(iii) and (e) to read as follows:

**§ 314.80 Postmarketing reporting of adverse drug experiences.**

(a) * * *

"Serious" means an adverse drug experience that is fatal or life-threatening, is permanently disabling, requires inpatient hospitalization, or is a congenital anomaly, cancer, or overdose.

* * * * *

(c) * * *

(2) * * *

(iii) Periodic reporting, except for information regarding 15-day Alert reports, does not apply to adverse drug experience information obtained from postmarketing studies (whether or not conducted under an investigational new drug application), from reports in the scientific literature, and from foreign marketing experience.

* * * * *

(e) *Postmarketing studies.* (1) An applicant is not required to submit a 15-day Alert report under paragraph (c) of this section for an adverse drug experience obtained from a postmarketing clinical study (whether or not conducted under an investigational new drug application) unless the experience is also reportable under § 312.1(a)(6) of this chapter.

(2) The applicant shall separate and clearly mark reports of adverse drug experiences that occur during a postmarketing study as being distinct from those experiences that are being reported spontaneously to the applicant.

* * * * *

Dated: December 10, 1986.

**Frank E. Young,**

*Commissioner of Food and Drugs.*

[FR Doc. 86–29161 Filed 12–29–86; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 51

**[LR–34–82]**

## Definition of Property for Purposes of the Windfall Profit Tax; Public Hearing on Proposed Regulations

**AGENCY:** Internal Revenue Service, Treasury.

**ACTION:** Notice of public hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing on proposed regulations relating to the windfall profit tax on domestic crude oil imposed by Title 1 of the Crude Oil Windfall Profit Tax Act of 1980. The proposed regulations clarify the meaning of the term "property" for purposes of the windfall profit tax.

**DATES:** The public hearing will be held on Wednesday, February 25, 1987, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Tuesday, February 10, 1987.

**ADDRESS:** The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, ATTN: CC:LR:T (LR–34–82), Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** B. Faye Easley of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, telephone 202–566–3935 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under section 4996 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Thursday, September 25, 1986 (51 FR 34095). The proposed regulations relating to the definition of "property" for purposes of the windfall profit tax that were published in the **Federal Register** on November 10, 1982 (47 FR 50924) were withdrawn.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later than Tuesday, February 10, 1987 and outline of oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be make after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

**Donald E. Osteen,**

*Director, Legislation and Regulations Division.*

[FR Doc. 86–29194 Filed 12–29–86; 8:45 am]

BILLING CODE 4830–01–M

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[A-9-FRL-3135-6]**

## Approval and Promulgation of Implementation Plans; California State Ozone Plan Revision

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to disapprove a South Coast Air Quality Management District (AQMD) volatile organic compound (VOC) control regulation submitted by the State of California for inclusion into the State Implementation Plan (SIP). This rule, Rule 1115, was submitted by the State on July 10, 1984 and controls emissions from new automobile surface coating operations. This rule is not approvable because it is a relaxation from existing SIP requirements and the relaxation has not been justified by technical data demonstrating the need for the relaxation; further, the revised rule allows emissions in excess of those which would be allowed through the use of reasonably available control technology (RACT).

**DATES:** Comments must be submitted before January 29, 1987, for consideration by EPA.

**ADDRESSES:** Comments should be addressed to: Regional Administrator, Attn: Air Management Division, State Implementation Plan Section (A-2-3), Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105.

A copy of the submitted regulation and EPA's evaluation are available at the above address for public inspection during normal business hours. A copy of the submitted regulation is also available for review at the following locations:

California Air Resources Board, 1102 "Q" Street, P.O. Box 2815, Sacramento, CA 95812

South Coast Air Quality Management District, 9150 Flair Drive, El Monte, CA 91731.

**FOR FURTHER INFORMATION CONTACT:** Dennis Beauregard, State Implementation Plan Section (A-2-3), Air Management Division, Environmental Protection Agency, Region 9, 215 Fremont Street, San Francisco, CA 94105, (415) 974-7639 (FTS) 454-7639.

**SUPPLEMENTARY INFORMATION:**

### Background

On July 6, 1982, EPA approved for inclusion in the California SIP South Coast AQMD Rule 1115, as submitted by the State on January 28, 1981 (see FR 29231). That rule, applicable to new automobile coating facilities in the South Coast, limits the transfer efficiency and VOC content for each coating line in use in a facility. The Rule was approved as at least satisfying minimum Clean Air Act (CAA) requirements for regulations which reflect reasonably available control technology (RACT).

On July 10, 1984, the State submitted an amended version of Rule 1115. EPA has reviewed this revised regulation for consistency with CAA requirements, the Code of Federal Regulations (CFR), and EPA policy. EPA has found the submitted regulation to be deficient with respect to the above requirements and is proposing to disapprove the regulation in this notice. The revised regulation and EPA's evaluation are described below.

The submitted regulation, Rule 1115, was amended to revise transfer efficiencies and VOC content limits, clarify definitions and to establish VOC content limits for the new basecoat/clearcoat (BC/CC) topcoat system.

The EPA-approved version of Rule 1115 correlates specific transfer efficiencies with a corresponding VOC content for a given coating. The submitted amendment to Rule 1115 no longer makes that correlation but rather is now structured to associate an application *method* with a VOC content limit for a given coating for the purposes of equivalency calculations only. This has the effect of removing any requirement to achieve specific transfer efficiencies from the rule entirely. In addition, for each method, there are two possible transfer efficiencies, depending upon whether the user purges the paint gun with or without collection of the purged paint (if purged material is collected in closed containers, fewer VOC's are emitted to the atmosphere). Collection of the purged material for reuse is considered by the amended rule to result in an increase in transfer efficiency of 9-13%. Numerically, transfer efficiencies have been revised as follows: for electrophoretic applied primer, no change; for primer surfacer and spray primer, revised from 65% T.E. to 30% (without collection of purged material) or 39% (with collection) T.E.; for topcoat (non PC/CC), no change; for final repair primer and final reoair topcoat, revise from 65% T.E. to 40% or 50% T.E. Existing VOC content limits are retained with the exception of topcoat and final repair (primer, surfacer and topcoat) coatings. For topcoats, the VOC content limit was relaxed from 275 g/l to 380 g/l (3.2 lbs./gal.). For the final repair coat, the limit was relaxed from 590 g/l to 780 g/l (6.5 lbs./gal.).

New limits were established for the BC/CC topcoat system. These were set at 590 g/l (4.9 lbs./gal.) for the basecoat and 405 g/l (3.4 lbs./gal.) for the clearcoat. The VOC content of the final repair coat for the BC/CC is limited to 4.9 lbs./gal.

The rule also includes limits for primer surfacer, spray primer and topcoat for use with the BC/CC system different than those above. In this case, the primer surfacer and spray primer have limits of 3.8 lbs./gal. at 62%, 75% or 95% transfer efficiency (depending on voltage and purge practices) while the topcoat limit is 4.9 lbs./gal. at 62% or 75% transfer efficiency.

### EPA Evaluation

EPA has evaluated this rule revision and finds that it is not consistent with the Clean Air Act, 40 CFR Part 51 or EPA policy. Section 172 of the Clean Air Act requires states to adopt regulations for nonattainment areas which reflect reasonably available control technology (RACT) at a minimum in order to attain and maintain the National Ambient Air Quality Standards (NAAQS). The revised rule allows emissions from automobile surface coating operations in excess of those which would result from the application of RACT. EPA is therefore proposing to disapprove the revision because it fails to satisfy the requirements of section 172 of the Clean Air Act.

The revised rule also fails to satisfy the requirements of 40 CFR 51.10, which requires that SIPs provide for attainment of the NAAQS as expeditiously as practicable. The amended rule fails to provide for expeditious attainment, because it allows for emissions in excess of those which would result from the application of RACT, thus failing to obtain emission reductions that could contribute to the attainment of the National Ambient Air Quality Standard (NAAQS) for ozone.

EPA has developed and implemented a policy for determining whether emission limits and schedules contained in SIP revisions are appropriate and expeditious. The policy has stated that arbitrary variations from the

recommended limits (relaxations) are inappropriate, except under a case-by-case review with certain criteria in mind. Specifically, a demonstration of the inappropriateness of the emission limit must be made, the proposed level of control must be the maximum reasonably attainable by the affected sources(s), reasonable further progress must be maintained, and the revision must not jeopardize attainment (see policy memorandum, Richard G. Rhoads, Director, CPPD to Regional Offices, October 6, 1978). No such demonstration has been made in this case. EPA therefore could not consider approval of this revision which relaxes existing SIP control requirements particularly in an area such as the South Coast which cannot attain the NAAQS by December 31, 1987.

None of the above statutory or policy requirements have been met in this submittal of Rule 1115, and EPA is therefore, proposing to disapprove amended Rule 1115.

Copies of EPA's detailed evaluations including the policy memoranda are available at the Region 9 address above.

### EPA Proposed Action

EPA proposes to disapprove South Coast Rule 1115 since it is inconsistent with the Clean Air Act, 40 CFR Part 51 and EPA policy.

### Regulatory Process

EPA is not imposing any additional requirements on small entities through its action in this notice. Consequently, EPA believes this action will not have a significant economic impact on a substantial number of small entities. Therefore, under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

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

### List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Hydrocarbons, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Dated: June 4, 1986.

John Wise,

*Deputy Regional Administrator.*

[FR Doc. 86–29156 Filed 12–29–86; 8:45 am]

BILLING CODE 6560–50–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; Six Month Extension; Reopening of Comment Period on Proposed Endangered Status for Bruneau Hot Spring Snail (Family Hydrobiidae)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of six-month extension and reopening of comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service gives notice that it is extending by six months the period of consideration and is reopening the comment period on the proposal to add this species to the list of endangered wildlife. This species is thought to occur only in two small hot springs and their immediate outflows in Owyhee County, Idaho. The major threat to this species is the drastic and continuing reduction in spring flows. New information that questions the range, population status, and impact of present threats to the species has been received since the previous comment period; primarily from the Idaho Department of Water Resources. There is substantial disagreement regarding the sufficiency or accuracy of the available data. The Service believes that to ensure the accuracy of any final decision concerning the appropriateness of listing, these concerns and any other new information must be considered. In order to do this, we extend the period of consideration by six months and reopen the comment period on this proposed rule. The Service's goal is to base its final decision on the most sufficient and accurate scientific information available.

**DATE:** The comment period on the proposal is reopened until February 6, 1987.

**ADDRESSES:** Written comments and materials should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232. Comments and materials received will be available for public inspection during normal business hours, by appointment, at the Regional Endangered Species Division at the above Regional Office address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jay Gore, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705 (503/334–1806 or FTS 554–1806).

**SUPPLEMENTARY INFORMATION:**

### Background

The first collections of this species were made in 1952 and 1953. Dr. Dwight W. Taylor of Tiburon, California, has studied the anatomy of the species and determined that it represents a previously unknown genus and species of the snail family Hydrobiidae. The adults of this species reach only about 5 millimeters in length of the shell. The species is thought to occur in only two small thermal springs or seep areas and their immediate outflows. The snails have been found in these habitats on rocks, gravel, mud, and algal film. The springs and proximal outflows, which constitute the most important habitat, are on land administered by the Bureau of Land Management (BLM). Downstream habitat is on private land.

Section 4(b)(5)(E) of the Endangered Species Act of 1973, as amended, requires that a public hearing be held, if requested within 45 days of the publication of a proposed rule. The Service held a public hearing on December 10, 1985 in Boise, Idaho. Based on statements given that not all interested parties could reach this location, another hearing was held on January 15, 1986 in Bruneau, Idaho.

The comment period on the proposal originally closed on October 21, 1985. In order to accommodate the initial hearing, the public comment period was reopened until December 31, 1985. To accommodate the second hearing, the Service reopened the public comment period until February 1, 1986. At the time of the hearing and subsequently, the Idaho Department of Water Resources and others questioned the Service's analysis of available scientific information. In particular, they contend that surveys of available habitat have been incomplete and that the analysis of human induced impacts was erroneous. There is, therefore, substantial disagreement regarding the sufficiency or accuracy of the available data relevant to determining whether the species should be listed as endangered. In order to solicit additional data and adequately respond to the concerns raised and any others, the Service extends by six months the period of consideration, pursuant to the Endangered Species Act of 1973, section 4(b)(6) (A)(i)(III) and (B)(i), 16 U.S.C. 1533(b)(6) (A)(i)(III) and (B)(i), and reopens the comment period. Written comments may now be submitted for this proposal until February 6, 1987 to

the Service office in the Addresses section.

## Author

The primary author of this notice is Mr. Jim A. Bottorff, U.S. Fish and Wildlife Service, 500 NE Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

**Authority:** The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

## List of Subjects in 50 CFR Part 17

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

Dated: December 23, 1986.

**David F. Riley,**

*Acting Regional Director.*

[FR Doc. 86–29236 Filed 12–28–86; 10:53 am]

BILLING CODE 4310–551–M

# Notices

Federal Register
Vol. 51, No. 249
Tuesday, December 30, 1986

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### Proposed Determinations Regarding Support Prices for Pulled Wool and Mohair for the 1987 Marketing Year

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Notice of proposed determinations.

**SUMMARY:** This notice sets forth certain proposed determinations concerning the price support levels for pulled wool and mohair for the 1987 marketing year. These determinations are required to be made pursuant to the National Wool Act of 1954, as amended.

**EFFECTIVE DATE:** Comments must be received on or before January 29, 1987, in order to be assured of consideration.

**ADDRESS:** Dr. Howard C. Williams, Director, Commodity Analysis Division, USDA–ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

**FOR FURTHER INFORMATION CONTACT:** Janise A. Zygmont, Agricultural Economist, Commodity Analysis Division, USDA–ASCS, Room 3758, South Building, P.O. Box 2415, Washington, DC 20013 or call (202) 475–4645. A Preliminary Regulatory Impact Analysis has been prepared and is available on request from the above-named individual.

**SUPPLEMENTARY INFORMATION:** This notice has been reviewed under USDA procedures implementing Executive Order 12291 and Departmental Regulation No. 1512–1 and has been designated as "not major." It has been determined that these proposed determinations will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this notice since there is no requirement that the Commodity Credit Corporation (CCC) publish a notice of proposed rulemaking in accordance with 5 U.S.C. 553 or any other provision of law with respect to the subject matter of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

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

The title and number of the Federal assistance program to which this notice applies are: National Wool Act Payments, 10.059, as found in the Catalog of Federal Domestic Assistance.

Section 703(a) of the National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall support the prices of wool and mohair to producers by means of loans, purchases, payments or other operations. It has been determined that the prices of wool and mohair will be supported for the 1986 to 1990 marketing years by means of payments to producers.

Section 703(b) of the Wool Act provides that the level of support for shorn wool for each of the marketing years 1982 through 1990 shall be 77.5 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of: (1) The average parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to (2) the average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent. Based on current reported parity indices the calculation for the 1987 shorn wool support price (grease basis) is as follows:

| | |
|---|---|
| (1) Average parity index, calendar years 1983–1985 | 1118.7 |
| (2) Average parity index, calendar years 1958–1960 | 297.3 |
| (3) Ratio of 1118.7 to 297.3 | 3.7629 |
| (4) 3.7629×62 cents per pound (1965 support price) | $2.3330 |
| (5) 77.5%×$2.3330 | $1.8081 |
| (6) $1.8081 rounded to nearest full cent | $1.81 |

Section 703(c) of the Wool Act provides that the support prices for pulled wool and for mohair shall be established at such levels, in relationship to the support price for shorn wool, as the Secretary of Agriculture determines will maintain normal marketing practices for pulled wool, and as the Secretary determines is necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. Section 703(c) further provides that the support price for mohair must be within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported.

The Wool Act provides that the Secretary shall establish and announce, to the extent practicable, support price levels for wool and mohair sufficiently in advance of each marketing year, as will permit producers to plan their production for such marketing year. Accordingly, the following method for calculating the support prices for pulled wool and mohair for the 1987 marketing year are being proposed.

**Proposed Determinations**

*A. Support Price—Pulled Wool*

The support price for pulled wool for the 1987 marketing year cannot be determined until the 1987 average market price for shorn wool is calculated, which should occur by April 1988. It is proposed that the method for calculating the support price for pulled wool shall be as follows. Once the average market price for shorn wool is known, the support price for pulled wool will be determined by subtracting the 1987 average market price for shorn wool from the 1987 support price of shorn wool and multiplying that number by 5 pounds (the amount of wool pulled from the pelt of an average 100-pound

unshorn lamb). The result is then multiplied by 80 percent which is a quality adjustment factor which recognizes that unshorn lamb pelts contain a shorter staple and a lower quality wool than wool shorn from other sheep.

*B. Support Price—Mohair*

It is proposed that the support price for mohair for the 1987 marketing year shall be determined based on the October 1986 parity prices for mohair and shorn wool. The following percentages are being considered in the final computation of the mohair support price:

(1) 85 percent of the percent of parity at which shorn wool is supported.

(2) A percentage equal to the percent of parity at which shorn wool is supported

(3) 115 percent of the percent of parity at which shorn wool is supported.

Interested persons are encouraged to comment on the proposed method of calculation for payments on pulled wool and the proposed levels of price support for mohair.

Consideration will be given to any data, views and recommendations which are submitted with respect to the above items.

**Authority:** Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 702–708, 68 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

Signed at Washington, DC on December 22, 1986.

**Milton J. Hertz,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 86–29140 Filed 12–29–86; 8:45 am]

BILLING CODE 3410–05–M

## Packers and Stockyards Administration

### Certification of Central Filing System

The Statewide central filing system of Louisiana is hereby certified, pursuant to section 1324 of the Food Security Act of 1985, on the basis of information submitted by Bob Odom, Commissioner of Agriculture, for farm products produced in that State as follows:

| | |
|---|---|
| Cabbage | Milo |
| Cantalopes | Mushrooms |
| Cauliflower | Oats |
| Corn | Onions |
| Cotton | Oranges |
| Cucumbers | Peaches |
| Cushaw | Peanuts |
| Flowers, Shrubs and Ornamentals | Peas |
| Garlic | Pecans |
| Grapes | Peppers |
| Grass | Rice |
| Hay | Rye Grass Seed |
| Soybeans | Sorghum Grain |
| Squash | Cattle |
| Strawberries | Chickens |
| Sugarcane | Crawfish |
| Sunflower Seed | Goats |
| Sweet Potatoes | Hogs |
| Sweet Sorghum | Honeybees |
| Tomatoes | Horses |
| Watermelons | Mink |
| Wheat | Oysters |
| Eggs | Quail |
| Honey | Prawns |
| Milo | Sheep |
| Alligators | Shrimp |
| Catfish | Turkeys |

This is issued pursuant to authority delegated by the Secretary of Agriculture.

**Authority:** Sec. 1324(c)(2), Pub. L. 99–198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: December 23, 1986.

**B.H. (Bill) Jones,**

*Administrator, Packers and Stockyards Administration.*

[FR Doc. 86–29187 Filed 12–29–86; 8:45 am]

BILLING CODE 3410–KD–M

## ARMS CONTROL AND DISARMAMENT AGENCY

### General Advisory Committee on Arms Control and Disarmament; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arms Control and Disarmament.

Date: January 15, 1987.

Time: 9:15 AM.

Place: State Department Building, Washington, DC.

Type of meeting: Closed.

Contact person: William B. Staples, Executive Secretary, U.S. Arms Control and Disarmament Agency, Room 5933, Washington, DC 20451, (202) 647–8478.

Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda

Will present the following discussions and presentations:

*January 15*

Receive briefings on and discuss arms control related issues relative to U.S./Soviet Space defense programs.

Reason for closing: The GAC members will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to close meeting: The closing of this meeting is in accordance with a determination by the Director of the U.S. Arms Control and Disarmament Agency dated December 22, 1986, made pursuant to the provisions of Section 10(d) of the Federal Advisory Committee Act as amended.

**William J. Montgomery,**

*Committee Management Officer.*

[FR Doc. 86–29237 Filed 12–30–86; 8:45 am]

BILLING CODE 6820–32–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–588–019]

### Cyanuric Acid and its Chlorinated Derivatives From Japan; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** In response to requests by the respondents, the Department of Commerce has conducted an administrative review of the antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan. The review covers two manufacturers of this merchandise exported to the United States and the period April 1, 1984 through March 31, 1985. The review indicates the existence of no dumping margins for these firms during the period.

Interested parties are invited to comment on these preliminary results.

**EFFECTIVE DATE:** December 30, 1986.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Kelleher or Linnea Bucher, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2923/5255.

**SUPPLEMENTARY INFORMATION:**

Background

On December 19, 1986 the Department of Commerce ("the Department") published in the **Federal Register** (51 FR 45495) the final results of its last administrative review of the

antidumping duty orders on cyanuric acid and its chlorinated derivatives from Japan. We began the current review of the orders under our old regulations. After the promulgation of our new regulations, the respondents requested in accordance with section § 353.53a(a) of the Commerce Regulations that we complete the administrative review. We published a notice of initiation of the antidumping duty administrative review on January 21, 1986 (51 FR 2747). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

**Scope of the Review**

Imports covered by the review are shipments of cyanuric acid (also known as isocyanuric acid) and its chlorinated derivatives (dichloro isocyanurates, *i.e.*, sodium dichloro isocyanurate, potassium dichloro isocyanurate, and sodium dichloro isocyanurate dihydrate, and trichloro isocyanuric acid) used in the swimming pool trade. We categorize the merchandise as cyanuric acid, dichloro isocyanurates and trichloro isocyanuric acid, which we determine are separate classes or kinds of merchandise. These products are sold in three basic consistencies: Powder, granular, and tablet. The merchandise is currently classifiable under item number 425.1050 of the Tariff Schedules of the United States Annotated.

The review covers two manufacturers of Japanese cyanuric acid and its chlorinated derivatives exported to the United States, Nissan Chemical Industries, Ltd. and Shikoku Chemicals Corporation, and the period April 1, 1984 through March 31, 1985.

**United States Price**

In calculating United States price the Department used purchase price, as defined in section 772 of the Tariff Act, because sales were made to unrelated Japanese trading firms for export to the United States and the manufacturers knew the destination of the merchandise at the time of the sale. Purchase price was based on the packed, f.o.b. price to the unrelated trading firms in Japan. We made adjustments, where applicable, for Japanese inland freight, insurance, and brokerage and handling. No other adjustments were claimed or allowed.

**Foreign Market Value**

In calculating foreign market value the Department used home market price, as defined in section 773 of the Tariff Act, since sufficient quantities of such or similar merchandise were sold in the home market to provide a basis for comparison. Home market price was based on the packed, delivered price to unrelated purchasers in the home market. We made adjustments, where applicable, for inland freight, insurance, rebates, competitive discounts, credit expenses, advertising and promotion, and differences in packing. We denied a claim for after-sale price revisions. No other adjustments were claimed or allowed.

**Preliminary Results of the Review**

As a result of our comparison of United States price to foreign market value, we preliminarily determine that the following margins exist for the period April 1, 1984 through March 31, 1985:

| Manufacturer | Margin (percent) |
|---|---|
| Nissan Chemical Industries, Ltd.: | |
| Dichloro isocyanurates | 0 |
| Trichloro isocyanuric acid | 0 |
| Shikoku Chemicals Corporation: | |
| Cyanuric acid | 0 |
| Dichloro isocyanurates | 0 |
| Trichloro isocyanuric acid | 0 |

Interested parties may submit written comments on these preliminary results within 21 days of the date of publication of this notice and may request disclosure and/or a hearing within 5 days of the date of publication. Any hearing, if requested, will be held 21 days after the date of publication or the first workday thereafter. Any request for an administrative protective order must be made no later than 5 days after the date of publication. The Department will publish the final results of the administrative review including the results of its analysis of any such comments or hearing.

Further, as provided for by section 751(a)(1) of the Tariff Act, since there were no margins for any of the products reviewed the Department shall not require a cash deposit of estimated antidumping duties for Nissan Chemical Industries, Ltd. or Shikoku Chemicals Corporation.

For any future shipments from a new manufacturer/exporter not covered in this or the prior administrative review, whose first shipments occurred after March 31, 1985 and who is unrelated to any reviewed firm, no cash deposit shall be required. These deposit requirements are effective for all shipments of Japanese cyanuric acid and its chlorinated derivatives (except cyanuric acid produced by Nissan Chemical Industries, Ltd.) entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 353.53a of the Commerce Regulations (19 CFR 353.53(a)).

Dated: December 22, 1986.

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

[FR Doc. 86-29184 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DS-M

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[A-351-607]

## Preliminary Determination of Sales at Less Than Fair Value; Disposable Paint Filters and Strainers From Brazil

**AGENCY:** International Trade Administration, Import Administration, Commerce.

**ACTION:** Notice.

**SUMMARY:** We have preliminarily determined that disposable paint filters and strainers (paint filters and strainers) from Brazil are being, or are likely to be, sold in the United States at less than fair value. We have also preliminarily determined that critical circumstances do not exist in this investigation. We have notified the U.S. International Trade Commission (ITC) of our determination, and we have directed the U.S. Customs Service to suspend the liquidation of all entries of paint filters and strainers from Brazil that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the estimated dumping margin as described in the "Suspension of Liquidation" section of this notice.

If this investigation proceeds normally, we will make our final determination by March 9, 1987.

**EFFECTIVE DATE:** December 30, 1986.

**FOR FURTHER INFORMATION CONTACT:** Steven Lim or Charles Wilson, Office of Investigations, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-5332 or 377-5288.

**Preliminary Determination**

We have preliminarily determined that paint filters and strainers from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(b)). We made fair value comparisons on virtually all of the sales of paint filters and strainers to the United States during the period of

investigation, February 1 through July 31, 1986. Comparisons were based on United States price and foreign market value, based on third country sales provided by respondent. The weighted-average margins are shown in the "Suspension of Liquidation" section of this notice.

**Case History**

On July 15, 1986, we received a petition filed in proper form by the Louis M. Gerson Co., Inc. on behalf of the domestic industry producing paint filters and strainers. In compliance with the filing requirements of § 353.36 of the Commerce Regulations (19 CFR 353.36), the petition alleged that imports of paint filters and strainers from Brazil are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that these imports are materially injuring, or threaten material injury to, a United States industry. After reviewing the petition, we determined that the petition contained sufficient grounds upon which to initiate an antidumping duty investigation. We notified the ITC of our action and initiated such an investigation on August 4, 1986 (51 FR 28737, August 11, 1986). On August 29, 1986, the ITC determined that there is a reasonable indication that imports of paint filters and strainers from Brazil are materially injuring a U.S. industry (51 FR 32257, September 10, 1986).

On August 28, 1986, we presented antidumping duty questionnaires to Cia Industrial Celulose e Papel Guiba (CELUPA). Respondent was requested to answer the questionnaire in 30 days. On September 16, 1986, respondent requested an extension of the due date for the questionnaire response. On September 22, 1986, we granted the respondent a two-week extension. We received a response on October 14, 1986. In a letter dated November 12, 1986, the Department requested supplemental information. Supplemental responses were submitted by the respondent on November 25 and 26, 1986.

*Scope of Investigation*

The products covered by this investigation are disposable paint filters and strainers of paper, containing cotton gauze, provided for in item 256.9080 of the *Tariff Schedules of the United States Annotated* (TSUSA), disposable paint filters and strainers of cotton gauze, containing paper, provided for in item 386.5300 of the TSUSA, and disposable paint filters and strainers of man-made fibers, provided for in item 389.6270 of the TSUSA.

*Fair Value Comparison*

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price with the foreign market value for the company under investigation using data provided in the response. The period of investigation is from February 1, 1986 through July 31, 1986.

*United States Price*

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent the United States price since the merchandise was sold to unrelated U.S. purchasers prior to importation. We calculated the purchase price based on the packed, C&F price to unrelated purchasers in the United States. We made deductions for port charges, foreign inland freight and ocean freight.

*Foreign Market Value*

In accordance with section 773(a) of the Act, we have preliminarily determined that CELUPA had no sales of paint filter and strainers in Brazil during the period of investigation. The petitioner alleged that sales to third countries were at prices below the cost of producing the merchandise. We examined production costs which included all appropriate costs for materials, fabrication and general expenses. We found sufficient sales in Switzerland above the cost of production to allow us to use Swiss prices in accordance with section 773(a)(1)(B) for foreign market value.

We calculated third country price on the basis of the packed, C&F prices to unrelated customers in Switzerland. We made deductions for port charges, foreign inland freight and ocean freight. We made a circumstances-of-sale adjustment for differences in credit expenses pursuant to § 353.15 of the Commerce Regulations. Since CELUPA did not receive payment on some shipments, we used the offered credit terms to calculate these credit expenses. We also made an adjustment for differences in U.S. and Swiss commissions in accordance with § 353.15 of the Commerce Regulations. We have disallowed an adjustment for differences in physical characteristics of the merchandise because we were unable to reconcile various data submitted by respondent.

Pursuant to § 353.56 of Commerce's Regulations, we made currency conversions at the rates certified by the Federal Reserve Bank.

*Preliminary Negative Determination of Critical Circumstances*

Petitioner has alleged that critical circumstances exist with respect to imports of paint filters and strainers from Brazil. For purposes of section 733(e)(1) of the Act, critical circumstances exist if we find that:

(A) (i) there is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation; or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value; and

(B) there have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Pursuant to section 733(e)(1)(B), we generally consider the following data in order to determine whether massive imports have taken place: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of recent import statistics, we find that there is no reasonable basis to believe that imports of the subject merchandise from Brazil have been massive over a relatively short period. We examined the import statistics from Brazil for periods of four months prior to and after the filing of the petition. Accordingly, we do not have to consider whether section 733(e)(1)(A) of the Act applies in this case. Therefore, we preliminarily determine that critical circumstances do not exist with respect to imports of paint filters and strainers from Brazil.

*Verification*

We will verify all information used in making our final determination in accordance with section 776(a) of the Act. We will use standard verification procedures, including examination of relevant sales and financial records of the company under investigation.

*Suspension of Liquidation*

In accordance with section 733(d) of the Act, we are directing the United States Customs Service to suspend liquidation of all entries of paint filters and strainers from Brazil which are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register. The U.S. Customs Service shall require a cash deposit or the posting of a bond on all entries equal to the estimated weighted-average amounts by which the foreign market value of the

merchandise subject to this investigation exceeded the United States price as shown in the table below. This suspension of liquidation will remain in effect until further notice.

| Weighted-average | |
|---|---|
| Manufacturer/seller/exporters | Margin percentage |
| CELUPA | 3.43 |
| All others | 3.43 |

*ITC Notification*

In accordance with section 733(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a United States industry, before the later of 120 days after our preliminary affirmative determination or 45 days after our final determination.

*Public Comment*

In accordance with § 353.47 of the Commerce Regulations, if requested, we will hold a public hearing to afford interested parties an opportunity to comment on this preliminary determination at 10:00 a.m. on February 6, 1987, at the U.S. Department of Commerce, Room 1412, 14th Street and Constitution Avenue, NW., Washington, DC. 20230. Individuals who wish to participate in the hearing must submit a request to the Deputy Assistant Secretary for Import Administration, Room B-099, at the above address within 10 days of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) the reason for attending, and (4) a list of the issues to be discussed. In addition, prehearing briefs in at least 10 copies must be submitted to the Deputy Assistant Secretary by January 23, 1987. Oral presentations will be limited to issues raised in the briefs. All written views should be filed in accordance with 19 CFR 353.46, within 30 days of publication of this notice, at the above address in at least 10 copies.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f).

**Gilbert B. Kaplan,**

*Deputy Assistant Secretary for Import Administration.*

December 22, 1986.

[FR Doc. 86-29185 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DS-M

## National Oceanic and Atmospheric Administration

### Receipt of Application for a General Permit to Incidentally Take Marine Mammals

Notice is hereby given that the following application has been received to take marine mammals incidental to the pursuit of commercial fishing operations within the U.S. exclusive economic zone during 1987 as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the regulations thereunder.

Northeast Fisheries Center, National Marine Fisheries Service/GRYF, People's Republic of Poland have applied for a Category 1: "Towed or Dragged Gear" general permit to take up to 15 small cetaceans in the North Atlantic Ocean.

The Northeast Fisheries Center, holds a scientific research permit to retain for biological studies, marine mammals taken by nations fishing in U.S. waters. The Center also conducts a fisheries research program with GRYF of Poland which provides for the commercial use of fish taken aboard Polish vessels.

In 1986, four cetaceans were taken in the research fishery.

The application is available for review in the Office of the Assistant Administrator for Fisheries, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Room 805, Washington, DC.

Dated: December 22, 1986.

**Richard B. Roe,**

*Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 86-29125 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-22-M

## Patent and Trademark Office

### Disposition of British Abridgements 1855-1972

The U.S. Patent and Trademark Office (PTO) is offering to any interested party one set of classified British Abridgements, 1855-1972. These documents are stored at a warehouse in the Springfield, Virginia area. There are five skids of documents with approximately 20 boxes per skid. The Manager of the PTO Scientific Library must be contacted within two weeks of publication of this notice. This set is being offered on a first come, first served basis. After verification by the Manager of this transaction, the interested party must arrange for the removal of these documents from storage at his/her own expense within 30 days. Inquiries should be directed to: Commissioner of Patents and Trademarks, Washington, DC 20231, Attention: Manager, Scientific Library [9703-557-2955].

Dated: December 19, 1986.

**Donald J. Quigg,**

*Assistant Secretary and Commissioner of Patents and Trademarks.*

[FR Doc. 86-29130 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-16-M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Solicitation of Public Comment on Bilateral Negotiations During 1987

December 22, 1986.

The U.S. Government anticipates holding negotiations during 1987 concerning expiring bilateral agreements covering certain cotton, wool and man-made fiber textiles and apparel from Bangladesh (January 31, 1988), China (December 31, 1987), Costa Rica (December 31, 1987), Egypt (December 31, 1986), Hungary (December 31, 1987) Mexico (December 31, 1987), Romania (December 31, 1987) and Uruguay (June 30, 1987). The dates noted in parenthesis are the expiration dates of the agreements.)

The purpose of this notice is to invite any party wishing to comment or provide data or information regarding these agreements, or comment on domestic production of availability of textiles and apparel affected by these agreements, to submit such comments or information in ten copies to Mr. William H. Houston III, Chairman, Committee for the Implementation of Textile Agreements, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Because the exact timing of the negotiations is not yet established, comments should be submitted promptly. Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW.,

Washington, DC. Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

William H. Houston III,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 86-29178 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

## Establishment of Import Limits for Certain Cotton and Wool Textile Products Produced or Manufactured in the People's Republic of China

December 22, 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 December 29, 1986. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota re-openings, please call (202) 377-3715. For information on categories on which consultations have been requested call (202) 377-3740.

### Background

On October 22, 1986, a notice was published in the **Federal Register** (51 FR 37470), which established import restraint limits for cotton and man-made in Categories 330/630 and 435, produced or manufactured in China and exported to the United States during the ninety-day period which began on September 29, 1986 and extends through December 27, 1986. The notice also stated that the Government of the People's Republic of China is obligated under the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983, as amended, if no mutually satisfactory solution is reached on levels for these categories during consultations, to limit its imports during the twelve-month period immediately following the ninety-day consultation period to 2,754,697 dozen (Category 330/630) and 8,550 dozen (Category 435).

No solution has been reached in consultations on mutually satisfactory limits for these categories. The United States Government has decided, therefore, to control imports of cotton, wool and man-made fiber textile products in Categories 330/630 and 435, exported during the twelve-month period beginning on December 28, 1986 and extending through December 27, 1987, at the levels described above. The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

In the event the limits established for the ninety-day period have been exceeded, such excess amounts, if allowed to enter, will be charged to the levels established for the designated twelve-month period.

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), 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 Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 22, 1986.

Commissioner of Customs,
Department of the Treasury,
*Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated August 19, 1983 as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 29, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in Categories 330/630 and 435, produced or manufactured in the People's Republic of China and exported during the twelve-month period which begins on December 28, 1986 and extends through December 27, 1987, in excess of the following levels of restraint:

| | 12-mo. restraint levels [1] (doz) |
|---|---|
| Category: | |
| 330/630 | 2,754,697 |
| 435 | 8,550 |

[1] The levels have not been adjusted to account for any imports exported after December 27, 1986.

Textile products in Categories 330/630 and 435 which are in excess of the ninety-day levels previously established shall be subject to this directive.

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 17, 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), and in Statistical Headnote 5, Schedule 3 of the TARIFF Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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. 86-29179 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

## Adjustment of Import Restraint Limits for Certain Man-Made Fiber Textile Products From Singapore

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 December 23, 1986. For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6736. For

information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 31 and June 5, 1986, between the Governments of the United States and Singapore provides, among other things, for percentage increases in certain categories during and agreement year for swing, provided corresponding reductions in equivalent square yards are made in other specific limits or sublimits during the same year to account for the application of swing. Pursuant to the terms of the agreement, the import restraint limit established for Category 604, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, is being increased from 1,498,000 dozen to 1,519,400 dozen. The limit for Category 631 is being reduced from 300,000 dozen pairs to 275,049 dozen pairs to account for swing applied to Category 604.

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), 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 Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 22, 1986.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: On June 12, 1986, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in certain specified categories, produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986, in excess of designated restraint limits. The Chairman further advised you that the restraint limits are subject to adjustment.[1]

Effective on December 23, 1986 the directive of June 12, 1986 is hereby amended to include adjusted restraint limits for the following categories:

| Category | Adjusted 12-month restraint limit [1] |
|---|---|
| 604 | 1,519,400 pounds. |
| 631 | 275,049 dozen pair. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1985.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 86–29177 Filed 12–23–86; 3:59 pm]

BILLING CODE 3510-DR-M

## Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China; Effective on January 1, 1987

December 23, 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 January 1, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China establishes specific limits for Categories 313, 314, 315, 317, 320–P (only T.S.U.S. items 320.—through 322.—and 326.—through 328.—with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98), 331, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 345, 347/348, 350, 351, 352, 359–C (only T.S.U.S.A. numbers 381.0822, 381.6510, 384.0928 and 384.5222), 359–V (only T.S.U.S.A. 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), 361, 363, 369–L (only T.S.U.S.A. numbers 706.3210, 706.3650, and 706.4111), 410, 434, 436, 438, 443, 444, 445/446, 447, 448, 605–T (only T.S.U.S.A. number 310.9500), 613–C&R, 631, 634, 635, 636, 639, 640, 641, 645/646, 647, 648, 649, 651, 652 and 669–P (only T.S.U.S.A. number 385.5300); and the bilateral agreement of September 8 and 9, 1986 establishes a specific limit for Category 670–L, produced or manufactured in China and exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987. Categories 339, 345, 347/348, 636 and 639 have been adjusted for carryforward used in 1986 and Categories 313, 314, 315, 339, 341, 342, 636, 641, 645/646 and 648 are subject to phased entry procedures.

The agreement also provides a consultation mechanism for categories of textile products which are not subject to specific ceilings and for which levels may be established during the year. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreements, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the designated categories, produced or manufactured in the People's Republic of China and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987 in excess of the indicated restraint limits.

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

A description of the cotton, wool and man-made fiber textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 F.R. 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), and in Statistical Headnote 5, Schedule 3 of the Tariff

[1] The agreement of May 31 and June 5, 1986 concerning cotton, wool and man-made fiber textile products from Singapore provides, in part, that specific limits may be increased by not more than seven percent during an agreement year, provided that an equal quantity in square yards equivalent is deducted from another specific limit.

Schedules of the United States Annotated (1987).

**William H. Houston III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Commitee for the Implementation of Textile Agreements**

December 23, 1986

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilaterial Cotton, Wool and Man-Made Fiber Textile Agreement of August 19, 1983, as amended, between the Governments of the United States and the People's Republic of China; pursuant to the bilateral agreement of September 8 and 9, 1986; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the following restraint limits:

| Category | 12-mo restraint limit |
|---|---|
| 313 | 53,395,280 square yards. |
| 314 | 16,882,632 square yards. |
| 315 | 171,400,000 square yards. |
| 317 | 16,872,960 square yards of which not more than 3,374,592 square yards shall be in T.S.U.S. items 320.—through 331.—with statistical suffixes 50, 87 and 93. |
| 320-P [1] | 14,904,448 square yards. |
| 331 | 3,952,323 dozen pairs. |
| 333 | 63,206 dozen. |
| 334 | 234,327 dozen. |
| 335 | 314,737 dozen. |
| 336 | 125,664 dozen. |
| 337 | 1,008,141 dozen. |
| 338 | 881,263 dozen of which not more than 631,138 dozen shall be in T.S.U.S.A. numbers 381.0240 and 381.4130. |
| 339 | 978,035 dozen. |
| 340 | 677,090 dozen. |
| 341 | 514,087 dozen. |
| 342 | 195,684 dozen. |
| 345 | 87,290 dozen. |
| 347/348 | 1,908,806 dozen. |
| 350 | 108,180 dozen. |
| 351 | 352,497 dozen. |
| 352 | 1,369,399 dozen. |
| 359-C [2] | 781,397 pounds. |
| 359-V [3] | 1,446,154 pounds. |
| 361 | 3,106,553 numbers. |
| 363 | 22,298,844 numbers. |
| 369-L [4] | 4,079,250 pounds. |
| 410 | 2,162,612 square yards of which not more than 1,734,170 square yards shall be TSUSA numbers 335.5500, 336.1505, .1540, .5000, .6210, .6270, .6275, .6410, .6470, .6475, 337.5030, .5055, .5090, .5500, 339.0500, 363.1500, 363.7000 and not more than 1,734,170 square shall be in TSUSA numbers 336.1000, .1510, .2000, .2500, .3000, .3500, .4000, .5500, .6205, .6260, .6265, .6405, .6460, .6465, 377.5080. |
| 434 | 11,935 dozen. |
| 436 | 13,159 dozen. |
| 438 | 22,442 dozen. |
| 443 | 10,146 dozen. |
| 444 | 15,455 dozen. |
| 445/446 | 265,380 dozen. |
| 447 | 72,025 dozen. |
| 448 | 19,251 dozen. |
| 605-T [5] | 468,000 pounds. |
| 613-C&R [6] | 25,679,084 square yards. |
| 631 | 806,140 dozen pairs. |
| 634 | 447,383 dozen. |
| 635 | 465,318 dozen. |
| 636 | 354,864 dozen. |
| 639 | 957,776 dozen. |
| 640 | 1,204,294 dozen. |
| 641 | 1,011,928 dozen. |
| 645/646 | 676,431 dozen. |
| 647 | 878,511 dozen. |
| 648 | 1,130,631 dozen. |
| 649 | 652,421 dozen. |
| 651 | 543,400 dozen of which not more than 97,185 dozen shall be in T.S.U.S.A. numbers 384.222 and 384.8632. |
| 652 | 1,872,000 dozen. |
| 669-P [7] | 2,798,888 pounds. |
| 670-L [8] | 24,024,000 pounds. |

[1] In Category 320, only T.S.U.S. items 320.—, 321.—, 322.—, 326.—, 327.— and 328.—, with statistical suffixes 21, 22, 24, 31, 38, 49, 57, 74, 80 and 98.

[2] In Category 359, only T.S.U.S.A. numbers 381.0822, 381.6510, 384.0928 and 384.5222.

[3] In Category 359, only T.S.U.S.A. numbers 381.0258, 381.0554, 381.3949, 381.5800, 381.5920, 384.0451, 384.0648, 384.0650, 381.0651, 384.3449, 384.3450, 384.4300, 384.4421 and 384.4422.

[4] In Category 369, only T.S.U.S.A. numbers 706.3210, 706.3650, and 706.4111.

[5] In Category 605, only T.S.U.S.A. number 310.9500.

[6] In Category 613, only T.S.U.S.A. numbers 338.5039, .5042, .5043, .5047, .5048, .5053, 5054, .5058, .5059, .5044, .5050, .5055, 5060, .5063, .5064, .5067, .5068, .5071, .5078, .5074, .5083, .5086, .5091, .5094, .5097.

[7] In Category 669, only T.S.U.S.A. number 385.5300.

[8] In Category 670-L, only T.S.U.S.A. numbers 706.3415, 706.4130 and 706.4135.

In carrying out this directive, entries of textile products in the foregoing categories, with the exception of Category 410, produced or manufactured in China, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the twelve-month period beginning on January 1, 1986 and extending through December 31, 1986. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter with the exceptions noted below.

Merchandise exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986 in Categories 313, 314, 315, 339, 341, 342, 636, 641, 645/646 and 648, shall be permitted entry into the United States for consumption, or withdrawal from warehouse for consumption, in each of the 30-day periods in the following amounts during the indicated periods in 1987:

| Category and period | Amount to be entered |
|---|---|
| 313: | |
| January 2-31 | 8,009,292 square yards. |
| February 1-March 2 | 8,009,292 square yards. |
| March 3-April 1 | 8,009,292 square yards. |
| April 2-May 1 | 8,009,292 square yards. |
| May 2-31 | 8,009,292 square yards. |
| 314: | |
| January 2-31 | 3,376,526 square yards. |
| February 1-March 2 | 3,376,526 square yards. |
| March 3-April 1 | 3,376,526 square yards. |
| April 2-May 1 | 3,376,526 square yards. |
| May 2-31 | 3,376,526 square yards. |
| 315: | |
| January 2-31 | 17,140,000 square yards. |
| February 1-March 2 | 17,140,000 square yards. |
| March 3-April 1 | 17,140,000 square yards. |
| (Later staged entry amounts to be determined at a later date | |
| 339: | |
| January 2-31 | 205,536 dozen. |
| February 1-March 2 | 205,536 dozen. |
| March 3-April 1 | 205,536 dozen. |
| April 2-May 1 | 205,536 dozen. |
| May 2-31 | 205,536 dozen. |
| 341: | |
| January 2-31 | 102,817 dozen. |
| February 1-March 2 | 102,817 dozen. |
| March 3-April 1 | 102,817 dozen. |
| April 2-May 1 | 102,817 dozen. |
| May 2-31 | 102,817 dozen. |
| 342: | |
| January 2-31 | 39,137 dozen. |
| February 1-March 2 | 39,137 dozen. |
| March 3-April 1 | 39,137 dozen. |
| April 2-May 1 | 39,137 dozen. |
| May 2-31 | 39,137 dozen. |
| 636: | |
| January 2-31 | 74,486 dozen. |
| February 1-March 2 | 74,486 dozen. |
| March 3-April 1 | 74,486 dozen. |
| April 2-May 1 | 74,486 dozen. |
| May 2-31 | 74,486 dozen. |
| 641: | |
| January 2-31 | 202,386 dozen. |
| February 1-March 2 | 202,386 dozen. |
| March 3-April 1 | 202,386 dozen. |
| April 2-May 1 | 202,386 dozen. |
| May 2-31 | 202,386 dozen. |
| 645/646: | |
| January 2-31 | 135,286 dozen. |
| February 1-March 2 | 135,286 dozen. |
| March 3-April 1 | 135,286 dozen. |
| April 2-May 1 | 135,286 dozen. |
| May 2-31 | 135,286 dozen. |
| 648: | |
| January 2-31 | 226,126 dozen. |
| February 1-March 2 | 226,126 dozen. |
| March 3-April 1 | 226,126 dozen. |
| April 2-May 1 | 226,126 dozen. |
| May 2-31 | 226,126 dozen. |

Merchandise entered in 1987 in the foregoing categories, exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986, plus goods exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987, shall not together exceed the 1987 limits established for such goods in this directive.

The restraint limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of August 19, 1983, between the Governments of the United States and the People's Republic of China, which provide, in part, that: (1) With the exception of Category 315, certain specific limits may be exceeded by not more than 5 or 7 percent of its square yard equivalent total, provided that the amount of the increase is compensated for by an equivalent square yard decrease in one or more other specific limits in that agreement year; (2) subject to consultations, specific limits may be increased for carryover and carryforward up to 10 percent of the applicable category limit in any agreement year according to the terms specified in the agreement; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement will be made to you by letter.

A description of the cotton, wool and man-made fiber 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), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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. 86-29208 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

## Announcement of Import Restraint Limits for Certain Cotton Textile Products Produced or Manufactured in the Dominican Republic

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 December 30, 1986. For further information contact Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the Quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes, and quota re-openings, please call (202) 377-3715.

### Background

On May 28, 1986 a notice was published in the **Federal Register** (51 FR 19248) which establishes specific limits for Categories 340 and 644, among others, produced or manufactured in the Dominican Republic and exported during the period which began on June 1, 1986 and extends through May 31, 1987. The current agreement of December 30, 1983 between the Governments of the United States and the Dominican Republic will remain in effect. However, as a result of consultations held June 30 and July 1, 1986, the Governments of the United States and the Dominican Republic agreed on a new bilateral agreement concerning trade in cotton and man-made fiber textile products in Categories 340 and 644, produced or manufactured in the Dominican Republic and exported during the period which began on December 1, 1986 and extends through May 31, 1988.

The new agreement establishes a designated consultation level for cotton textile products in Category 340, produced or manufactured in the Dominican Republic and exported during the six-month period which began on December 1, 1986 and extends through May 31, 1987 at a level of 95,000 dozen. In the directive that follows this notice, the CITA Chairman directs the Commissioner of Customs to prohibit entry for consumption, or withdrawal from warehouse for consumption, of cotton textile products in Category 340 in excess of the designated limit.

A description of the cotton, wool and man-made fiber 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), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 23, 1986.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel the directive issued to you on May 22, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning cotton and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the period which began on June 1, 1986 and extends through May 31, 1987.

Effective on December 30, 1986, the restraint period established for Category 340 in the directive of May 22, 1986 is hereby amended to be for a six-month period which began on June 1, 1986 and extended through November 30, 1986.

In addition, effective on December 30, 1986, you are directed to prohibit entry into the United States for consumption or withdrawal from warehouse for consumption, of cotton textile products in Category 340, produced or manufactured in the Dominican Republic and exported during the six-month period which began on December 1, 1986 and extends through May 31, 1987, in excess of 95,000 dozen.

In carrying out this directive, entries of cotton textile products in Category 340, produced or manufactured in the Dominican Republic, which have been exported to the United States on and after June 1, 1986 and extending through November 30, 1986, shall, to the extent of any unfilled balances, be charged against the level of restraint established for such goods during the period beginning on June 1, 1986 and extending through November 30, 1986. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this letter for the six-month period which began on December 1, 1986.

A description of the cotton, wool and man-made fiber 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), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption

to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

William H. Houston III,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 86-29207 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

## Establishment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blends and Other Vegetable Fiber Textile Products From the Republic of Korea Effective on January 1, 1987

December 23, 1986.

The Chairman of the Committee for the Implementation of Textile Agreement (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, as issued the directive published below to the Commissioner of Customs to be effective on January 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** Eve Anderson, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-8041. For information on embargoes and quota re-openings, please call (202) 377-3715.

### Background

The Bilateral Textile Agreement of November 21 and December 4, 1986, between the Governments of the United States and the Republic of Korea establishes restraint limits for Categories 300-320, 360-363, 369-0, 400-429, 464-469, 600-627 and 665-669 and 670-0, as a group (Group I), and within the group individual categories 300/301, 310/318, 313, 314, 315, 317, 319, 320, 410, 604, parts of 605, 611, 612, 613, 614 and parts of 669; categories 330-354, 359, 431-448, 459, 630-654 and 659, as a group (Group II), and within the group individual categories 331, 333/334, 335, 336, 337/637, 338/339, 340, 341, 342, 345, 347/348, 350, 351, 352, 353/354/653/654, 359-H, 363, 433/434/ 435, 436, 438, 440, 442, 443, 444, 445/446, 447, 448, 459-W, 631, 632, 633/634/635, 636, 638/639, parts of 640, 641, 642, 643, 644, 645/646, 647/648, 649, 650, and parts of 659; Categories 831-844 and 847-859, as a group, (Group III) and within the group individual categories 835, 836 and 840; Categories 845 and 846 as a group, (Group IV); and Categories 369-L and 670-L/870, as a group, (Group VI), and within the group individual categories 369-L, 670-L/870, produced or manufactured in Korea and exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987. Accordingly, the letter which follows this notice from the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption of cotton, wool, man-made fiber, silk blends and other vegetable fiber textile products in the foregoing categories that have been exported during the aforementioned agreement period in excess of the designated amounts.

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 550709), 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), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the action taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**William H. Houston III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 23, 1986.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement on November 21 and December 4, 1986, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 or March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blends and other vegetable fiber textile products in the following categories, produced or manufactured in the Republic of Korea and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the indicated restraint limits:

| Category | 12-mo restraint limit |
|---|---|
| Group I | |
| 300-320, 360-363, 369-0 [1], 400-429, 464-469, 600-627, 665-669 and 670-0 [2]. | 422,177,651 square yards equivalent. |
| Group II | |
| 330-354, 359, 431-448, 459 630-654 and 659. | 681,482,398 square yards equivalent. |
| Group III | |
| 831-844 and 847-859. | 21,543,022 square yards equivalent. |
| Group VI | |
| 369-L [3] 670-L/870-L [4]. | 62,621,550 square yards equivalent. |
| 300/301 | 5,273,987 pounds. |
| 310/318 | 3,913,578 square yards. |
| 313 | 51,643,256 square yards. |
| 314 | 2,759,532 square yards. |
| 315 | 23,576,580 square yards. |
| 317 | 16,995,156 square yards. |
| 319 | 8,272,201 square yards. |
| 320 | 25,206,239 square yards. |
| 331 | 498,386 dozen pairs. |
| 333/334 | 69,834 dozen. |
| 335 | 71,308 dozen. |
| 336 | 44,153 dozen. |
| 337/637 | 66,625 dozen of which not more than 43,306 dozen shall be in Category 337 and not more than 43,306 dozen shall be in Category 637. |
| 338/339 | 735,936 dozen. |
| 340 | 249,127 dozen. |
| 341 | 185,000 dozen. |
| 342 | 74,594 dozen. |
| 345 | 67,369 dozen. |
| 347/348 | 322,942 dozen. |
| 350 | 12,841 dozen. |
| 351 | 112,896 dozen. |
| 352 | 137,284 dozen. |
| 353/354/653/654 | 226,243 dozen. |
| 359-H [5] | 4,360,094, pounds. |
| 363 | 1,699,741 numbers. |
| 369-L | 512,500 pounds. |
| 410 | 4,613,204 square yards. |
| 433/434 | 17,198 dozen of which not more than 13,130 dozen shall be in Category 433 and not more than 6,734 dozen shall be in Category 434. |
| 435 | 31,287 dozen. |
| 436 | 13,244 dozen. |
| 438 | 62,808 dozen. |
| 440 | 212,318 dozen. |
| 442 | 44,754 dozen. |
| 443 | 26,838 dozen. |
| 444 | 4,064 dozen. |

| Category | 12-mo restraint limit |
|---|---|
| 445/446 | 51,944 dozen. |
| 447 | 83,036 dozen. |
| 448 | 31,488 dozen. |
| 459-W [6] | 187,790 dozen. |
| 604 | 602,680 dozen. |
| 605-C [7] | 2,676,451 dozen. |
| 605-O [8] | 735,438 pounds. |
| 611 | 2,363,906 square yards. |
| 612 | 97,232,393 square yards. |
| 613 | 23,474,946 square yards. |
| 614-O [9] | 12,384,243 square yards. |
| 614-W [10] | 9,214,919 square yards. |
| 631 | 231,801 dozen pairs. |
| 632 | 1,759,797 dozen pairs. |
| 633/634/635 | 1,424,909 dozen of which not more than 179,988 dozen shall be in Category 633, not more than 829,137 dozen shall be Category 634 and not more than 629,520 dozen shall be in Category 635. |
| 636 | 220,762 dozen. |
| 638/639 | 5,578,444 dozen. |
| 640-D [11] | 3,790,961 dozen. |
| 640-O [12] | 2,548,970 dozen. |
| 641 | 981,078 dozen. |
| 642 | 80,242 dozen. |
| 643 | 61,055 dozen. |
| 644 | 88,305 dozen. |
| 645/646 | 3,365,629 dozen. |
| 647/648 | 1,176,425 dozen. |
| 649 | 513,270 dozen. |
| 650 | 18,790 dozen. |
| 659-C [13] | 448,944 pounds. |
| 659-H [14] | 2,474,530 pounds. |
| 659-S [15] | 304,681 pounds. |
| 669-C [16] | 2,007,338 pounds. |
| 669-F [17] | 697,605 pounds. |
| 669-P [18] | 3,863,346 pounds. |
| 669-T [19] | 5,324,616 pounds. |
| 670-L/870 [20] | 32,160,000 pounds of which not more than 26,650,000 pounds shall be in Category 670-L and not more than 6,030,000 pounds shall be in 870-L. |
| 835 | 27,135 dozen. |
| 836 | 74,740 dozen. |
| 840 | 115,575 dozen. |
| 845 | 2,310,433 dozen. |
| 846 | 852,994 dozen. |

[1] In Category 369, all T.S.U.S.A.'s except those listed in footnote #3.

[2] In Category 670, all T.S.U.S.A. numbers except those listed in footnote #4.

[3] In Category 369, only T.S.U.S.A. numbers 706.3210, 706.3650, and 106.4111.

[4] In Category 670, only T.S.U.S.A. numbers 706.3415, 706.4130 and 706.4135.

[5] In Category 359, only T.S.U.S.A. numbers 702.0600 and 702.1200.

[6] In Category 459 only T.S.U.S.A. numbers 702.7500 and 702.8000.

[7] In Category 605, only T.S.U.S.A. numbers 316.5500 and 316.5800.

[8] In Category 605, only T.S.U.S.A. numbers except 316.5500 and 316.5800.

[9] In Category 614, only T.S.U.S.A. numbers except those in footnote 10.

[10] In Category 614, only T.S.U.S.A. numbers 338.1000, 338.1505, 338.1508, 338.1511, 338.1525, 338.1531, 338.1552, 338.1554, 338.1556, 338.1558, 338.1562, 338.1564, 338.1568 and 338.1572.

[11] In Category 640, only T.S.U.S.A. numbers 381.3132, 381.3134, 381.9535 381.9540, 381.9968, 381.8666, 381.6972 and 381.3558.

[12] In Category 640, only T.S.U.S.A. numbers except those in footnote 11.

[13] In Category 659, only T.S.U.S.A. numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607, and 384.9310.

[14] In Category 659, only T.S.U.S.A. numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703,1620, 703.1630, 703,1640, and 703.1650.

[15] In Category 659, only T.S.U.S.A. numbers 381.2340, 381.3170, 381.9100, 381.9570, 384.1920, 384.2339, 384,8300, 384.8400, and 384.9353.

[16] In Category 669, only T.S.U.S.A. numbers 348.0065, 348.0075, 348.0565 and 348.0575.

[17] In Category 669, only T.S.U.S.A. numbers 355.4520 and 355.4530.

[18] In Category 669, only T.S.U.S.A. number 385.5300.

[19] In Category 669, only T.S.U.S.A. numbers 386.1105 and 389.6210.

[20] See footnote 4.

In carrying out this directive, entries of textile products in categories 300–320, 360–363, 369–O, 400–429, 464–469, 600–627, 665–669 and 670–O, as a group (Group I); 330–354, 359, 431–448, 459, 630–654 and 659, as a group (Group II); 831–844 and 847–859, as a group (Group III); except September 1–December 31, 1986 for Categories 369–L, 670–L/870, as a group (Group VI) and individual categories 835, 836, 840, 845 and 846 and all other categories which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall, to the extent of any unfilled balances be charged against the restraint limits established for such goods during that twelve-month period. In the event the levels established for these categories have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The 1987 levels are subject to adjustment according to the provisions of the bilateral Textile Agreement of November 21 and December 4, 1986, as amended, which provide, in part, that: (1) During any agreement year percentages, provided a corresponding reduction in square yards equivalent is made in one or more other specific limits and (2) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement. Any adjustment under the foregoing provisions will be made to you by letter.

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 51575), May 3, 1983 (48 FR 19924), December 14, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. (a) (1).

Sincerely,

William H. Houston,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 86-29206 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

## Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Macau; Effective on January 1, 1987

December 23, 1986.

The Chairman of the Committee for 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 January 1, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

### Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 29, 1983 and January 9, 1984 between the Governments of the United States and Macau establishes an aggregate limit and within the aggregate, a group limit for Categories 300–354, 359–369, and 600–654, 659–669 and a group limit for 400–448, and 459–469.

Within those overall limits are individual limits for Categories 331, 333/334/335, 336, 338, 339, 340, 341, 342, 345, 347/348, 350, 351, 359, 442, 445/446, 631, 633/634/635, 636, 638/639, 640, 641, 645/646, 647/648, 652 and 659, for the agreement year which begins on January 1, 1987 and extends through December 31, 1987.

In the letter published below the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the

bilateral agreement, to prohibit entry into the United States for consumption of cotton, wool and man-made fiber textile products in the foregoing categories, produced or manufactured in Macau and exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987 in excess of the designated limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement but are designed to assist only in the implementation of certain of its provisions.

**William H. Houston III,**

*Chairman, Committee for the Implementation of Textiles Agreements.*

**Committee for the Implementation of Textile Agreements**

December 23, 1986

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; as pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 28, 1983 and January 9, 1984, between the Governments of the United States and Macau; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, prodcued or manufactured in Macau and exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987, in excess of the indicated restraint limits:

| Category | 12-mo. restraint limit |
|---|---|
| 300-354, 359-369, 600-654, 659-669, 400-488, 459-469, as a group. | 69,486,728 square yards equivalent. |
| 300-354, 359-369, 600-654, 659-669, as a group. | 67,193,784 square yards equivalent. |
| 400-448, 459-469, as a group. | 1,609,262 square yards equivalent. |
| 331 | 200,000 dozen pairs. |
| 333/334/335 [1] | 134,755 dozen of which not more than 69,838 dozen shall be in Category 333/335. [2] |
| 336 | 17,500 dozen. |
| 338 | 175,417 dozen. |
| 339 | 746,360 dozen. |
| 340 | 168,149 dozen. |
| 341 | 108,453 dozen. |
| 342 | 39,326 dozen. |
| 345 | 19,022 dozen. |
| 347/348 | 400,500 dozen. |
| 350 | 15,000 dozen. |
| 351 | 13,462 dozen. |
| 359 | 152,174 pounds. |
| 442 | 5,556 dozen. |
| 445/446 | 72,813 dozen. |
| 631 | 200,000 dozen pairs. |
| 633/634/635 [3] | 284,312 dozen. |
| 636 | 15,453 dozen. |
| 638/639 [4] | 14,410,988 square yards equivalent. |
| 640 | 60,906 dozen. |
| 641 | 100,810 dozen. |
| 645/646 | 151,666 dozen. |
| 647/648 | 305,958 dozen. |
| 652 | 149,583 dozen. |
| 659 | 203,724 pounds. |

[1] The conversion factor is 41.0 dozen.
[2] The conversion factor is 41.0 dozen.
[3] The conversion factor is 41.3 dozen.
[4] The conversion factor is 16.0 dozen square yards.

In carrying out this directive entries of textile products in the foregoing categories, except Categories 636, 659 and 652, produced or manufactured in Macau, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter. Textile products in the expected categories, which have been exported before January 1, 1987, shall be subject to this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of December 29, 1983 and January 9, 1984, which provide, in part, that: (1) Within the aggregate and applicable group limits, specific limits may be exceeded by designated percentages; (2) these same limits may be increased for carryover and carryforward and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement, referred to above, will be made to you by letter.

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).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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. 533 (a)(1).

Sincerely,

William H. Houston III,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 86-29211 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

## Announcement of Import Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Thailand; Effective January 1, 1987

December 23, 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 January 1, 1987. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, please call (202) 377-3715.

### Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27 and August 8, 1983, as amended and extended, establishes, among other things, restraint limits for cotton, and man-made fiber textile products in Categories 300-320, 600-627, 360-369, 665-669, 400 and 464-469, as a group (Group I), and within the group individual categories 300, 301pt. (only TSUSA numbers 300.6025, 300.6027, and 300.6028), 301pt. (only TSUSA numbers 302.—26 and 302.—28), 313, 314, 315, 317, 319, 320, 604, 604-A (only TSUSA number 310.5049), 605-T (only TSUSA

number 310.9500), 611, 613 and 669–P (only TSUSA number 385.5300); cotton and man-made fiber apparel categories 330–359, 630–659, as a group (Group II) and within the group individual categories 331, 334/335, 336, 337, 338/339, 340, 341, 347/348, 631, 634/635, 638, 639, 640, 641, 645/646, 647/648, 651; wool fabric and apparel categories 410–459, as a group (Group III), and within the group individual categories 434, 438, 442, and 445/446 during the agreement year beginning on January 1, 1987. In the letter published below the Chairman, Committee for the Implementation of Textile Agreements, directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the foregoing categories, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 1987, in excess of the designated restraint limits. The January 1, 1987 through December 31, 1987 limit for Categories 330–359, and 630–659, as a group, has been reduced by 9,050,000 square yards equivalent according to the amendment of November 25, 1985.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 23, 1986.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of July 27, and August 8, 1983, as amended and extended on November 25 and 27, 1985, between the Governments of the United States and Thailand; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Thailand and exported during 1987, in excess of the indicated restraint limits:

| Category | 12-mo restraint limit |
|---|---|
| Group II | |
| 330–359, 630–659. | 84,357,994 square yards equivalent. |
| 331 | 553,903 dozen pairs. |
| 334/335 | 72,544 dozen. |
| 336 | 64,200 dozen. |
| 337 | 69,550 dozen. |
| 338/339 | 795,783 dozen. |
| 340 | 138,580 dozen. |
| 341 | 146,311 dozen. |
| 347/348 | 247,530 dozen. |
| 631 | 229,982 dozen pairs. |
| 634/645 | 506,613 dozen. |
| 638 | 164,712 dozen. |
| 639 | 1,502,617 dozen. |
| 640 | 294,250 dozen. |
| 641 | 218,783 dozen. |
| 645/646 | 99,738 dozen. |
| 647/648 | 564,898 dozen. |
| 651 | 33,704 dozen. |
| 669–P [1] | 2,332,000 pounds. |
| 300 | 5,300,000 pounds. |
| 301 [2] | 5,300,000 pounds. |
| 301 [3] | 1,060,000 pounds. |
| 313 | 14,644,733 square yards. |
| 314 | 10,731,054 square yards. |
| 315 | 21,462,108 square yards. |
| 317 | 7,322,366 square yards. |
| 319 | 7,574,862 square yards. |
| 320 | 12,498,522 square yards. |
| 604 | 883,734 pounds of which not more than 513,202 pounds shall in T.S.U.S.A. number 310.0549. |
| 605–T [4] | 581,896 pounds. |
| 611 | 4,179,429 square yards. |
| 613 | 17,359,058 square yards. |
| Group III | |
| 410–459 | 3,030,000 square yards. |
| 434 | 11,500 dozen. |
| 438 | 15,150 dozen. |
| 442 | 13,635 dozen. |
| 445/446 | 15,603 dozen. |

[1] In Category 669, only T.S.U.S.A. number 385.5300.
[2] In Category 301, only T.S.U.S.A. numbers 300.6026 and 300.6028.
[3] In Category 301, only T.S.U.S.A. numbers 302.—26 and 302.—28.
[4] In Category 605, only T.S.U.S.A. number 310.9500.

In carrying out this directive cotton, wool and man-made fiber textile products in the foregoing categories, produced or manufactured in Thailand and exported to the United States on and after December 1, 1985 and extending through December 31, 1986, shall, to the extent of any unfilled balances, be charged against the restraint limits established for goods during that thirteen-month period.

The 1987 levels are subject to adjustment according to the terms of the bilateral agreement of July 27, and August 8, 1983, as amended and extended between the Governments of the United States and Thailand, which provide, in part, that: (1) under certain specified conditions and non-apparel specific limit or sublimit may be exceeded by not more than 7 percent, provided that the amount of the increase is compensated for by an equal square yard equivalent decrease in another specific limit in the same group; (2) specific levels of restraint may be increased for carryover and carryforward up to 11 percent of the applicable category limit; and (3) administrative arrangements of adjustments may be made to resolve problems arising in the implementation of the agreement.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386) and in Statistical Headnote 5, Schedule 3 of the TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 86–29205 Filed 12–29–86; 8:45 am]
BILLING CODE 3510-DR-M

## Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia; Effective on January 1, 1987

December 22, 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 January 1, 1987. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce,

(202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

**Background**

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement between the Governments of the United States and Malaysia, effected by exchange of notes dated July 1 and 11, 1985, as amended, establishes specific limits for cotton, wool and man-made fiber textile products in Categories 331, 333/334/335, 336, 337/637, 338/339, 340, 341, 342/642/842, 345, 347/348, 351/651, 369–S (only TSUSA number 366.2840), 438 pt. (women's knit shirts and blouses in TSUSA numbers 384.1307, 384.1309, 384.2711, 384.5434, 384.5910, 384.6310, 384.7724 and 384.9640), 445/446, 604, 605–T (only TSUSA number 310.9500), 613, 631, 634, 635, 636, 638/639, 640, 641, 645/646, 647/648, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987. The agreement also establishes restraint limits for cotton fabrics in Categories 310 through 320, as a group, with sublimits for Categories 310/318, 311, 312, 313, 314, 315, 316, 317, 319 and 320.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of cotton, wool and man-made fiber textile products in the foregoing categories in excess of the designated twelve-month restraint limits.

A description of textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on July 29, 1986 (51 FR 27068) and 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), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**William H. Houston III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 22, 1986.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated July 1 and 11, 1985, as amended, between the Governments of the United States and Malaysia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, your are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made and vegetable fiber textile products in the following categories, produced or manufactured in Malaysia and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the following restraint limits:

| Category | 12-mo restraint limit |
|---|---|
| 310–320 | 47,700,000 square yards. |
| 310–318 | 2,120,000 square yards. |
| 311 | 19,080,000 square yards. |
| 312 | 19,080,000 square yards. |
| 313 | 19,080,000 square yards. |
| 314 | 19,080,000 square yards. |
| 315 | 19,080,000 square yards. |
| 316 | 19,080,000 square yards. |
| 317–S [1] | 2,120,000 square yards. |
| 317–O [2] | 19,080,000 square yards. |
| 319 | 19,080,000 square yards. |
| 320 | 19,080,000 square yards. |
| 331 | 696,744 dozen pairs. |
| 333/334/335 | 112,617 dozen of which not more than 56,309 dozen shall be in Category 333, not more than 50,678 dozen shall be in Category 334 and not more than 56,309 dozen shall be in Category 335. |
| 336 | 73,034 dozen. |
| 337/637 | 201,400 dozen. |
| 338/339 | 573,036 dozen of which not more than 224,048 dozen shall be in Category 339. |
| 340 | 391,195 dozen. |
| 341 | 285,394 dozen. |
| 342/642/842 | 215,000 dozen. |
| 345 | 83,427 dozen. |
| 347/348 | 234,664 dozen of which not more than 122,700 dozen shall be in Category 348. |
| 351/651 | 135,000 dozen. |
| 369–S [3] | 955,060 pounds. |
| 438 pt. [4] | 11,221 dozen. |
| 445/446 | 26,523 dozen. |
| 604 | 1,534,673 pounds. |
| 605–T [5] | 295,000 dozen. |
| 613 | 18,020,000 square yards. |
| 631 | 393,260 dozen pairs. |
| 634 | 252,810 dozen. |
| 635 | 168,540 dozen. |
| 636 | 143,100 dozen. |
| 638/639 | 249,735 dozen. |
| 640 | 292,136 dozen. |
| 641 | 640,452 dozen. |
| 645/646 | 191,012 dozen. |
| 647/648 | 898,880 dozen of which not more than 584,272 dozen shall be knit in TSUSA numbers 381.2350, .2370, .2375, .2859, .6679, .8531, .8730, .8815, .8835, .8840, .9234, 384.1926, .1927, .1929, .1950, .2010, .2015, .2017, .2030, .2040, .2050, .2267, .2722, .5482, .7756, .8241, .8242, .8244, .8245, .8247, .8256, .8258, .8262, 8263, .8265, .8682. |

[1] In Category 317, only TSUSA items 320.—through 331.—with statistical suffixes 50, 87 and 93.

[2] In Category 317, only TSUSA items 320.—through 331.—with statistical suffixes 51, 52, 83, 85, 89, 91 and 95.

[3] In Category 369, only TSUSA number 366.2840.

[4] In Category 438, only TSUSA numbers 384.1307, 384.1309, 384.2711, 384.5434, 384.5910, 384.6310, 384.7724 and 384.9640.

[5] In Category 605, only TSUSA number 310.9500.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Malaysia, which have been exported to the United States on or after the control periods beginning on January 1, 1986, May 1, 1986, September 1, 1986 and October 1, 1986 and extending through December 31, 1986, shall to the extent of any unfilled balances, be charged against the limits established for such goods during those control periods. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of July 1 and 11, 1985, as amended, between the Governments of the United States and Malaysia which provide, in part, that: (1) Specific limits or sublimits may be exceeded by not more than 5 percent, provided a corresponding reduction in equivalent square yards is made in one or more other specific limits during the same agreement year; (2) specific limits may be adjusted for carryover and carryforward up to 11 percent of the applicable category limits; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement referred to above will be made to you by letter.

A description of textile categories in terms of T.S.U.S.A. numbers was published in the Federal Register on July 29, 1986 (51 FR 27068) and 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), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions falls 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. 86-29180 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

## Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines; Effective on January 1, 1987

December 22, 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 January 1, 1987. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6735. For information on embargoes and quota re-openings, please call (202) 377-3715.

### Background

The Governments of the United States and the Republic of the Philippines have agreed to extend their expiring Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of November 24, 1987, as amended, for three months, beginning on January 1, 1987, and extending through March 31, 1987. The agreement, as amended and extended, includes an aggregate limit for Categories 300-354, 359-369, 400-448, 459-469, 600-654 and 659-669 and within the aggregate, specific limits for 330, 331, 333/334, 335-NT, 335-T, 336-NT, 336-T, 337-NT, 337-T, 338/339, 340, 341-NT, 341-T, 342-NT, 345, 347, 348-NT, 348-T, 351, 352-NT, 431, 433, 435, 443, 445/446, 447, 459, 604, 631-W (only TSUSA numbers 704.3215, 704.8525 and 704.9000), 631-O (all TSUSA numbers except 704.3215, 704.8525 and 704.9000), 633, 634, 635-NT, 635-T, 636-NT, 638/639, 640, 641-NT, 641-T, 642-NT, 643, 645/646-NT, 646-T, 647, 648-NT, 648-T, 649, 650, 651, 652-NT, 659-NT, 659-T and 666, produced or manufactured in the Philippines and exported during the aforementioned three-month period. This agreement also includes designation consultation levels for categories 369, 369-S, 605, 605-T and 669, among others. In the letter published below, the CITA Chairman directs the Commissioner of Customs to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption, of textile products in the aggregate and individual limits which are in excess of those limits.

A description of the cotton, wool and man-made fiber textile categories in terms of TSUSA 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), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

William H. Houston III,

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 22, 1986.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of November 24, 1982, as amended and extended, between the Governments of the United States and the Philippines; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, and man-made fiber textile products in the following categories, produced or manufactured in the Philippines and exported during the period beginning on January 1, 1987 and extending through March 31, 1987, in excess of the following restraint limits:

| Category | 12-mo restraint limit |
|---|---|
| 300-354, 359-369, 400-448, 459-469, 600-654 and 659-669, as a group. | 94,077,181 square yards equivalent. |
| 330 | 335,887 dozen. |
| 331 | 174,645 dozen pairs. |
| 333/334 | 22,804 dozen. |
| 335-NT | 10,395 dozen. |
| 335-T | 10,963 dozen. |
| 336-NT | 8,234 dozen. |
| 336-T | 112,055 dozen. |
| 337-NT | 12,678 dozen. |
| 337-T | 102,603 dozen. |
| 338/339 | 228,964 dozen. |
| 340 | 72,437 dozen. |
| 341-NT | 27,018 dozen. |
| 341-T | 21,053 dozen. |
| 342-NT | 16,179 dozen. |
| 345 | 9,165 dozen. |
| 347 | 75,398 dozen. |
| 348-NT | 65,935 dozen. |
| 348-T | 61,300 dozen. |
| 351 | 19,993 dozen. |
| 352-NT | 29,340 dozen. |
| 363 | 940,837 numbers |
| 369 | 375,153 pounds of which not more than 212,500 pounds shall be in TSUSA number 366.2840. |
| 431 | 37,875 dozen. |
| 433 | 856 dozen. |
| 435 | 571 dozen. |
| 443 | 577 dozen. |
| 445/446 | 4,623 dozen. |
| 447 | 1,713 dozen. |
| 459 | 30,821 pounds. |
| 604 | 555,412 pounds. |
| 605 | 263,057 pounds of which not more than 87,500 pounds shall be in TSUSA number 310.9500. |
| 631-W [1] | 106,090 dozen pairs. |
| 631-O [2] | 506,261 dozen pairs. |
| 633 | 5,556 dozen. |
| 634 | 57,340 dozen. |
| 635-NT | 65,769 dozen. |
| 635-T | 10,559 dozen. |
| 636-NT | 12,715 dozen. |
| 638/639 | 235,321 dozen. |
| 640 | 29,428 dozen. |
| 641-NT | 52,143 dozen. |
| 641-T | 21,654 dozen. |
| 642-NT | 16,512 dozen. |
| 643 | 13,397 dozen. |
| 645/646-NT | 26,646 dozen. |
| 646-T | 71,075 dozen. |
| 647 | 27,167 dozen. |

| Category | 12-mo restraint limit |
|---|---|
| 648–NT | 16,988 dozen. |
| 648–T | 52,160 dozen. |
| 649 | 1,065,341 dozen. |
| 650 | 5,763 dozen. |
| 651 | 29,390 dozen. |
| 652–NT | 171,576 dozen. |
| 659–NT | 410,419 pounds. |
| 659–T | 1,047,742 dozen. |
| 666 | 54,315 pounds. |
| 669 | 187,500 pounds. |

[1] In Category 631, only TSUSA nunmbers 704.3215, 704.8525, and 704.9000.
[2] In Category 631, all TSUSA numbers except those in Footnote 1.

In carrying out his directive entries of textile products in the foregoing categories, except Category 351, produced or manufactured in the Philippines, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that twelve-month period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

A description of the cotton, wool, and man-made fiber 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), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedule of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should contstrue entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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. 533 (a)(1).

Sincerely,

William H. Houston III,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 86–29181 Filed 12–29–86; 8:45 am]

BILLING CODE 3510–DR–M

## Announcement of Import Limits for Certain Cotton Textile Products From the Socialist Republic of Romania Effective on January 1, 1987

December 23, 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 January 1, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377–3715.

### Background

The Bilateral Cotton Textile Agreement of January 28 and March 31, 1983 between the Governments of the United States and the Socialist Republic of Romania establishes a group limit for cotton textile products in Categories 330–333, 335–359 (Group II), individual limits within the group for Categories 335, 340 and 347/348 and designated consultation levels for cotton textile products in Categories 313, 314, 315, 320, 333, 334, 334pt. (all TSUSA numbers except 381.0211, 381.3905)) 338, 338 pt. (not T-shirts and sweats), 339, 352, 359, 361 and 369, produced or manufactured in Romania and exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987. In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs, in accordance with the terms of the bilateral agreement, to prohibit entry into the United States for consumption, or withdrawal from warehouse for consumption of textile products in the foregoing categories exported during the twelve-month period which begins on January 1, 1987 and extends through December 31, 1987, in excess of the designated limits.

A description of the cotton, wool and man-made fiber 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), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**William H. Houston III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 23, 1986.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton Textile Agreement of January 28 and March 31, 1983, between the Governments of the United States and the Socialist Republic of Romania; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987, in excess of the following restraint limits:

| Category | 12-month restratint limit |
|---|---|
| 330–333, 335–359, as a group. | 30,404,937 square yards equivalent. |
| 313 | 2,000,000 square yards equivalent. |
| 314 | 1,500,000 square yards equivalent. |
| 315 | 1,500,000 square yards equivalent. |
| 320 | 2,000,000 square yards equivalent. |
| 333 | 66,298 dozen. |
| 334 | 257,153 dozen. |
| 334 pt.[1] | 36,320 dozen. |
| 335 | 73,536 dozen. |
| 338 | 256,000 dozen of which not more than 97,222 dozen shall be in T.S.U.S.A. numbers other than 381.0230, 381.0240, 381.3516, 381.4120, 381.4130, 381.4337, 381.6610, 381.8506, 381.9924 and 381.0425. |
| 339 | 138,889 dozen. |
| 340 | 168,832 dozen. |
| 347/348 | 301,279 dozen. |
| 352 | 181,818 dozen. |
| 359 | 652,174 dozen. |
| 361 | 483,871 dozen. |
| 369 | 652,174 dozen. |

[1] In Category 334, all T.S.U.S.A. numbers except 381.0211, 381.3905.

In carrying out this directive, entries of textile products in the foregoing categories,

except for Categories 313, 314, 315, 320, 334 and 369, produced or manufactured in Romania, which have been exported to the United States on and after January 1, 1986 and extending through December 31, 1986, shall to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during that period. In the event the levels of restraint established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of January 28 and March 31, 1983 between the Governments of the United States and Romania, which provide in part, that: (1) Specific limits or specific sublimits may be exceeded by not more than seven percent for swing in any agreement period; (2) these same levels may be adjusted for carryover and carryforward up to 11 percent of the applicable category limit or sublimit; and (3) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under the provisions of the bilateral agreement, referred to above, will be made to you by letter.

A description of the cotton, wool and man-made fiber 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), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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. 86-29209 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

## Deduction in Charges for Imports of Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

December 22, 1986.

On June 16, 1986, a notice was published in the **Federal Register** (51 FR 21788) which established individual and group limits for certain cotton, wool and man-made fiber textile products, including Categories 337, 341, 348, 604, 637 and 641, produced or manufactured in Singapore and exported during the twelve-month period which began on January 1, 1986 and extends through December 31, 1986.

According to the provisions of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of May 31 and June 5, 1986 between the Governments of the United States and the Republic of Singapore, and as a result of discussions between the Governments of the United States and Singapore, CITA has determined that the disputed amounts of possible 1985 overshipments charged to the 1986 limits for Categories 337, 340, 341, 348, 604, 637 and 641 should be deducted.

Consequently, effective on December 10, 1986, the Chairman of the Committee for the Implementation of Textile Agreements directed the Commissioner of Customs to deduct the following 1985 imports charged to the 1986 limits for Categories 337, 340, 341, 348, 604, 637 and 641. However, the charges for Categories 340, 348 and 641 will be deducted pending the results of the data investigation to be completed in 1987.

| Category | Amount deducted |
|---|---|
| 337 | 16,884 dozen. |
| 340 | 22,538 dozen. |
| 341 | 3,468 dozen. |
| 348 | 2,447 dozen. |
| 604 | 11,294 dozen. |
| 637 | 7,426 dozen. |
| 641 | 10,293 dozen. |

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).

For further information contact Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 535-6736. For information on embargoes and quota re-openings, please call (202) 377-3715.

**William H. Houston III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 86-29182 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

## Import Restraint Limits for Certain Textiles and Textile Products of Silk Blends and Vegetable Fibers (Other Than Cotton) Produced or Manufactured in Taiwan

December 23, 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 December 30, 1986. For further information contact Kathy Davis, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-8791. For information on embargoes and quota reopenings, please call (202) 377-3715.

### Background

On October 14 and 22, 1986, the American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA) exchanged letters further amending and extending the bilateral agreement of November 18, 1982, as previously amended, concerning textiles and textile products of cotton, wool and man-made fibers to include textiles and textile products of silk blends and vegetable fibers, other than cotton, produced or manufactured in Taiwan and exported during the period beginning on January 1, 1986 and extending through December 31, 1988.

The new agreement establishes, among other things, a prorated group limit for apparel of silk blends and vegetable fibers (other than cotton) in Categories 831, 832, 833, 834, 835, 836, 838, 840, 842, 843, 844, 846, 847, 850, 851, 852, 858 and 859, and prorated individual limits for Categories 845 and 870, produced or manufactured in Taiwan and exported during the period which began on August 1, 1986 and extends through December 31, 1986.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on July 29, 1986 (51 FR 27068).

This letter and the action taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**William H. Houston III,**

*Chairman, Committee for the Implementation of Textiles Agreements.*

**Committee for the Implementation of Textile Agreement**

December 23, 1986.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the bilateral agreement of November 18, 1982, as amended and further extended, concerning textiles and textile products of cotton, wool, man-made fibers, silk blends and vegetable fibers (other than cotton), produced or manufactured in Taiwan; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 30, 1986, entry into the United States for consumption and withdrawal from warehouse for consumption of textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the prorated period which began on August 1, 1986 and estends through December 31, 1986:

| Category | 5-month limit [1] |
|---|---|
| 831, 832, 833, 834, 835, 836, 838, 840, 842, 843, 844, 846, 847, 850, 851, 852, 858 and 859 as a group (III). | 3,688,935 square yards equivalent. |
| 845 | 353,196 dozen. |
| 870 | 2,140,825 pounds. |

[1] The limits have not been adjusted to account for any imports exported after July 31, 1986.

In carrying out this directive, entries of textile products in the foregoing categories, produced or manufactured in Taiwan and exported before August 1, 1986 shall not be subject to this directive. Missing charges for the group and category limits will be provided by separate letter.

Textile products in the foregoing categories which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1418(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The limits are subject to adjustment in the future pursuant to the provisions of the agreement of November 18, 1982, as amended and extended, which provide, in part, that: (1) The group limit may be exceeded by designated percentages and (2) administrative arrangements or adjustments may be made to resolve problems arising in the implementation of the agreement. Any appropriate adjustments under these provisions of the bilateral agreement will be made to you by letter.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on July 29, 1986 (51 FR 27068.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonweatlh of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

William H. Houston III,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 86-29210 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

## Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia Effective on January 1, 1987

December 23, 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 January 1, 1987. For further information contact Kathryn Cabral, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, please call (202) 377-3715.

### Background

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia establishes, among other things, specific limits for man-made fiber textile products in Categories 604-A, 645/646 and 666, produced or manufactured in Yugoslavia and exported during the fourteen-month period which began on November 1, 1986 and extends through December 31, 1987. The agreement also establishes specific limits for cotton, wool and man-made fiber textile products in Categories 340/640, 341/641, 433, 434, 435, 442, 443/643, 444 and 447/448, produced or manufactured in Yugoslavia and exported during the twelve-month period beginning on January 1, 1987 and extending through December 31, 1987. The letter from the Chairman of the Committee for the Implementation of Textile Agreements published below directs the Commissioner of Customs to prohibit entry for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the foregoing categories in excess of the designated limits.

A description of the cotton, wool and man-made fiber 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), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

**William H. Houston III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

December 23, 1986.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Mr. Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978 between the Governments of the United States and the Socialist Federal Republic of Yugoslavia, as amended and extended; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1987, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made textile products in the following categories, produced or manufactured in Yugoslavia and exported during the periods beginning on November 1, 1986 and January 1, 1987 and extending

through December 31, 1987, in excess of the following limits:

| Category | 12-month restraint limit, January 1, 1987-December 31, 1987 |
|---|---|
| 340/640 | 360,400 dozen. |
| 341/641 | 235,000 dozen. |
| 433 | 7,821 dozen. |
| 434 | 8,671 dozen. |
| 435 | 38,254 dozen. |
| 442 | 10,750 dozen. |
| 443/643 | 22,629 dozen of which not more than 8,500 dozen shall be in Category 443. |
| 444 | 7,521 dozen. |
| 447/448 | 47,945 dozen of which not more than 28,563 shall be in Category 447 and not more than 28,563 shall be in Category 448. |

| Category | 14-month restraint limit, November 1, 1986-December 31, 1987 |
|---|---|
| 604-A [1] | 700,000 pounds. |
| 645/646 | 128,333 dozen. |
| 666 | 2,216,667 pounds. |

[1] In Category 604, only TSUSA numbers 310.5049 and 310.6042.

In carrying out this directive entries of textile products in the foregoing categories, except Categories 341, 442, 604-A, 641, 645, 646, and 666, produced or manufactured in Yugoslavia, which have been exported to the United States during the twelve-month period which began on January 1, 1986 and extended through December 3, 1986, shall, to the extent of any unfilled balances, be charged against the restraint limits established for such goods during that twelve-month period. In the event the restraint limits established for that period have been exhausted by previous entries, such goods shall be subject to the limits set forth in this letter.

The limits set forth above are subject to adjustment in the future according to the provisions of the bilateral agreement of October 26 and 27, 1978, as amended and extended, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia which provide, in part, that: (1) Carryforward and carryover may not exceed 11 percent and swing may not exceed 6 percent for cotton and man-made fiber and 5 percent for wool; (2) special shift up to 10 percent may be available in Categories 340/640 and 341/641.

A description of the cotton, wool and man-made fiber 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 (FR 49 13397), June 28, 1984 (FR 49 26622), July 16, 1984 (FR 49 28754), November 9, 1984 (FR 49 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1986).

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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. 86-29212 Filed 12-29-86; 8:45 am]

BILLING CODE 3510-DR-M

## COMMODITY FUTURES TRADING COMMISSION

### Chicago Mercantile Exchange: Proposed Amendments Relating to the Standard and Poor's 500, the Standard and Poor's 100 and the Standard Poor's OTC Stock Price Index Futures Contracts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of proposed contract market rule changes.

**SUMMARY:** The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted a proposal which would amend the terms and conditions of its Standard and Poor's 500, Standard and Poor's 100, and Standard and Poor's OTC Stock Price Index futures contracts. Each of these contracts is settled in cash on the basis of a final settlement price that is defined in the contracts in terms of the value of the appropriate underlying Standard and Poor's Stock Price Index. The amendments being proposed by the CME would change the final settlement price for each of the contracts from the closing quotation of the index underlying each contract as of the third Friday of the delivery month to a special quotation of the index based on the opening pirce of the component stocks in the index as of the third Friday. In addition, the amendments would change the last day of trading for each of the Standard and Poor's Stock Price Index futures contracts from the third Friday to the preceding business day. The Exchange has proposed to implement the amendments, upon Commission approval, for existing as well as newly listed contracts. The Commodity Futures Trading Commission ("Commission") has determined that the proposed amendments and manner of implementation are of major economic significance and that, accordingly, publication of the proposed amendments is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

**DATE:** Comments should be received on or before January 29, 1987.

**ADDRESS:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CME Standard and Poor's Stock Price Index futures contracts.

**FOR FURTHER INFORMATION CONTACT:** Ronald Hobson, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7303.

**SUPPLEMENTARY INFORMATION:** The current terms and conditions of the Standard and Poor's 500, Standard and Poor's 100 and Standard and Poor's OTC Stock Price Index contracts specify that futures trading shall terminate on the third Friday of the contract, or delivery, month and that the final settlement price shall be the closing quotation of the Standard and Poor's 500, the Standard and Poor's 100 or the Standard and Poor's OTC Stock Price Index, respectively, on the last day of trading.

The CME proposes to settle these stock index futures contracts on a value of the underlying indices that is based on the opening rather than the closing prices of their component stocks. In particular, the final settlement value of the indices would be calculated using the opening prices on the morning of the third Friday of the contract month rather than the closing prices for that day. All trading in the expiring futures would cease at the normal close of trading on the preceding business day. Because trading in the CME option on the Standard and Poor's 500 futures contract terminates at the same time as the underlying futures, that option contract also would be affected by these amendments. The Exchange is basing its proposed amendments primarily on the view of the New York Stock Exchange (NYSE) that its capacity to provide liquid markets at expirations under current procedures is strained and that this strain would be relieved by a switch to expirations using opening prices. In this regard, the Exchange noted that opening procedures on the NYSE enable NYSE specialists to handle large order imbalances better and that the proposed stock index futures settlement procedures therefore will likely diminish

stock price volatility at the time of futures expirations.

The Exchange has proposed that these amendments be made effective upon Commission approval for existing as well as for newly listed contracts. In doing so, the Exchange has noted the potential impact of this plan of implementation on existing positions in the subject futures contracts, existing positions in the option on the Standard and Poor's 500 future, and existing intermarket spread positions involving other deriative products. The Exchange has judged the impact on existing positions in the subject futures contracts and existing spread positions not to be significant. With respect to the value of existing positions in the option on the Standard and Poor's 500 future, the Exchange has noted that it believes the implementation plan would have a negligible effect if sufficiently in advance of a particular expiration.

In accordance with section 5a(12) of the Commodity Exchange Act, 7 U.S.C. 7a(12) (1982), the Commission has determined that the proposal submitted by the CME concerning the final settlement prices and last trading days for its Standard and Poor's Stock Price Index contracts, as well as the proposed plan of implementation, are of major economic significance and that the receipt of public comment on the proposal will assist the Commission in its review. The amendments being proposed by the CME are printed below, using bracketing to indicate deletions and italics to indicate additions:

* * * * *

*Standard and Poor's 500*

4002. Futures Call

G. Termination of Trading

[Futures trading shall terminate on the third Friday of the contract month. If the closing quotation for the Standard and Poor's 500 Stock Price Index is not published on that day, or that day is not an Exchange business day, futures trading shall terminate on the first preceding business day for which a closing quotation of the Index is published].

*Futures trading shall terminate on the business day immediately preceding the day of determination of the Final Settlement Price.*

4003. DELIVERY

A. Final Settlement Price

[The final settlement price shall be the closing quotation of the Standard and Poor's 500 Stock Price Index on the last day of trading].

*The Final Settlement Price shall be determined on the third Friday of the contract month or, if the Standard and Poor's 500 Stock Price Index is not published for that day, on the first preceding day for which the Index is published.*

*The Final Settlement Price shall be a special quotation of the Standard and Poor's 500 Stock Price Index based on the opening prices of the component stocks in the index.*

*Standard & Poor's 100*

4202. FUTURES CALL

G. Termination of Trading

[Futures trading shall terminate on the third Friday of the contract month. If the closing quotation for the Standard and Poor's 100 Stock Price Index is not published on that day, or that day is not an Exchange business day, futures trading shall terminate on the first preceding business day for which a closing quotation of the Index is published].

*Futures trading shall terminate on the business day immediately preceding the day of determination of the Final Settlement Price.*

4203. DELIVERY

A. Final Settlement Price

[The final settlement price shall be the closing quotation of the Standard and Poor's 100 Stock Price Index on the last day of trading].

*The Final Settlement Price shall be determined on the third Friday of the contract month or, if the Standard and Poor's 100 Stock Price Index is not published for that day, on the first preceding day for which the Index is published.*

*The Final Settlement Price shall be a special quotation of the Standard and Poor's 100 Stock Price Index based on the opening prices of the component stocks in the index.*

* * * * *

*Standard & Poor's OTC 250*

4302. FUTURES CALL

G. Termination of Trading

[Futures trading shall terminate on the third Friday of the contract month. If the closing quotation for the Standard and Poor's OTC Industrial Price Stock is not published on that day, or that day is not an Exchange business day, futures trading shall terminate on the first preceding business day for which a closing quotation of the Index is published].

*Futures trading shall terminate on the business day immediately preceding the day of determination of the Final Settlement Price.*

4303. FINAL SETTLEMENT

A. Final Settlement Price

[The Final Settlement Price shall be the closing quotation of the Standard and Poor's OTC Industrial Stock Price Index on the last day of trading].

*The Final Settlement Price shall be determined on the third Friday of the contract month or, if the Standard and Poor's OTC Industrial Stock Price Index is not published for that day, on the first preceding day for which the Index is published.*

*The Final Settlement Price shall be a special quotation of the Standard and Poor's OTC Industrial Stock Price Index based on the opening prices of the component stocks in the index.*

* * * * *

The Commission is seeking comment not only on the amendments themselves but also on the CME's plan of implementation.

In this regard the Commission is requesting comment from interested parties concerning the impact of implementation on existing positions in the subject futures contracts, the option on the Standard & Poor's futures contract and spread position between the subject contracts and other derivative markets. Where appropriate, the Commission requests that commentors differentiate between the impact on existing contracts which have varying lengths of time until expiration. The Commission notes that the Exchange has publicly stated that it proposes to make these changes effective for the March expiration and, therefore, requests commentors to address the relative effects on existing positions if the changes are made for either the March or June expirations.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFT Part 145 (1984)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, DC 20581, by January 29, 1987.

Issued in Washington, DC, on December 23, 1986.

Jean A. Webb,

*Secretary.*

[FR Doc. 86-29234 Filed 12-29-86; 8:45 am]

BILLING CODE 6351-01-M

## CONSUMER PRODUCT SAFETY COMMISSION

### Notification of Proposed Collection of Information; Children's Sleepwear Flammability Standards

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for approval of a proposed collection of information in the form of an enforcement program for the children's sleepwear flammability standards, with a requested expiration date of September 30, 1987.

The purpose of this program is to determine the level of compliance within the children's sleepware industry with the requirements of the Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (16 CFR Part 1615) and the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (16 CFR Part 1616).

The standards were issued to reduce unreasonable risks of burn injuries and deaths from fires associated with children's sleepwear. The standards are applicable to children's pajamas, nightgowns, robes, and other items of children's apparel intended to be worn primarily for sleeping or activities related to sleeping, and the fabrics used or intended for use in those garments.

*Additional Details About the Request for Approval of a Collection of Information.*

*Agency Address:* Consumer Product Safety Commission, Washington, DC 20207.

*Title of Information Collection:* FY 1987 Children's Sleepware Enforcement Program.

*Type of Request:* Approval of new plan.

*Frequency of Collection:* One time.

*General Description of Respondents:* Firms which manufacture children's sleepwear garments in sizes 0 through 14.

*Estimated Number of Respondents:* 50.

*Total Estimated Number of Hours for All Respondents:* 400.

*Comments:* Comments on this request for approval of a collection of information should be addressed to Marina Gatti, Desk Officer, Officer of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone (202) 395-7340. Copies of the request for approval of a collection of information are available from Francine Shacter, Office of Program Management and Budget, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492-6529.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: December 22, 1986.

Sadye E. Dunn,

*Secretary, Consumer Product Safety Commission.*

[FR Doc. 86-29099 Filed 12-29-86; 8:45 am]

BILLING CODE 6355-01-M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: Tues. & Wed., 13-14 January 1987.

Times of meeting: 0730-1700 hours each day.

Place: Armament Research Development & Engineering Center, Building 1, Room 460, Dover, New Jersey 07801.

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 personnel, touring Benet Laboratories, and conducting discussions with tenant activities (PM's and AMCCOM elements). The panel will meet in executive session to discuss their observations and begin preparations for the draft report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

*Administrative Officer, Army Science Board.*

[FR Doc. 86-29303 Filed 12-29-86; 8:45 am]

BILLING CODE 3710-08-M

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Date of meeting: 14 January 1987.

Times of meeting: 0830-1700 hours.

Place: Pentagon, Washington, DC.

Agenda

The Army Science Board's Functional Subgroup on Research and New Initiatives will meet to discuss: Army Long Range Planning Guidance: Army Technology Demonstration Plan; and the Technology Forecasts of AMC, MRDC, COE, DCSPER, USAF and DARPA. 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, proprietary information, and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 695-7046.

Sally A. Warner,

*Administrative Officer, Army Science Board.*

[FR Doc. 86-29302 Filed 12-29-86; 8:45 am]

BILLING CODE 3710-08-M

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 14-15 January 1987.

Times of meeting: 0900-1100 hours, 14 January, CIA; 1200-1700 hours, 14 January, Pentagon; 0830-1230 hours, 15 January, Pentagon.

Place: CIA Headquarters & Pentagon, Washington, DC.

Agenda

The Army Science Board's Ad Hoc Subgroup for the Chemical/Biological Warfare Intelligence will meet to discuss HUMINT collection procedures

and discussion that touch on that subject. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039 or 695–7046.

Sally A. Warner,

*Administrative Officer, Army Science Board.*

[FR Doc. 86–29301 Filed 12–29–86; 8:45 am]

BILLING CODE 3710–08–M

## Department of the Navy

### Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting of Weapons Effectiveness Task Force

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Weapon Effectiveness Task Force will meet January 20–21, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's ability to maximize weapon effectiveness through both hardware design and tactical employment, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lt. Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: December 18, 1986.

Harold L. Stoller,

*Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.*

[FR Doc. 86–29123 Filed 12–29–86; 8:45 am]

BILLING CODE 3810–AE–M

### Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting of Industrial Base and National Security Task Force

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Industrial Base and National Security Task Force will meet January 27–28, 1987, from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to review the Navy's policies in several broad areas, including mobilization readiness, production surge capacities, weapon system acquisition strategies, potential resource vulnerabilities, and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Lieutenant Paul G. Butler, Executive Secretary of the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Dated: December 23, 1986.

Harold L. Stoller,

*Commander, JAGC, U.S. Naval Reserve, Federal Register Liaison Officer.*

[FR Doc. 86–29124 Filed 12–29–86; 8:45 am]

BILLING CODE 3810–AE–M

## DEPARTMENT OF EDUCATION

### National Graduate Fellows Program Board; Meeting

**AGENCY:** National Graduate Fellows Program Board.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule of a forthcoming meeting of the National Graduate Fellows Program Board. Notice of this meeting is required under section 931 of the Federal Advisory Committee Act (Pub. L. 92–463, section 10(a)(2)). This document is also intended to notify the general public of their opportunity to attend.

**DATES:** January 8, 9, 1987.

**ADDRESS:** Georgetown Marbury Hotel, 3000 M Street, NW., Washington, DC 20007.

**FOR FURTHER INFORMATION CONTACT:** Louise R. White, Office of Higher Education Programs, Room 3082, 400 Maryland Avenue, SW., Washington, DC 20202, (202–245–9758).

**SUPPLEMENTARY INFORMATION:** The National Graduate Fellows Program is established under HEA, Title IX, Part C, section 931 (20 U.S.C. 1134h–k) and advises the Secretary on the conduct of the program.

This meeting of the National Graduate Fellows Program Board is open to the public.

*The agenda:* The Board will examine the competition for fellowships for the coming year and discuss priorities. Selection of reviewers will also be discussed along with the changes in the reauthorized Higher Education Act which, among other things, will rename the program the Jacob K. Javits Graduate Fellowship Program.

Records are kept on the Board proceedings and are available for public inspection at the Office of Higher Education Programs, from 8:00 a.m. to 4:00 p.m., ROB–3, 7th & D Streets, SW., Room 3082, Washington, DC 20202.

Dewey L. Newman,

*Acting Assistant Secretary for Postsecondary Education.*

[FR Doc. 86–29333 Filed 12–29–86; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

### Columbia Gas Transmission Corporation, Complainant, vs. Transcontinental Gas Pipeline Corporation, Respondent; Complaint

December 22, 1986.

Take notice that on November 26, 1986, Columbia Gas Transmission Corporation, 1700 MacCorkle Ave., SE., Charleston, West Va. 25314, filed "An Answer in Support of Petition of Philadelphia Electric Corporation and Petition, Complaint and Request for Declaratory Order of Columbia Gas Transmission Corporation" pursuant to Rules 206, 207, 212, and 217 of the Commisison's Rules of Practice and Procedure. Briefly, Columbia requests the same relief requested by Philadelphia Electric Corporation (PECO) in Docket No. CP87–37–000 with respect to Columbia's exercise of its own right to convert firm sales

entitlements from Transco to firn transportation. Columbia has fur requested that its petition, which was filed in the same docket as PECO's complaint, be consolidated with PECO's.

Columbia states that it is a firm sales customer of Transco and that it received a letter from Transco dated July 28, 1986 in which Transco announced that it would initiate new section 311 transportation services absent a Commission waiver. Columbia states that it notified Transco, by letter dated August 22, 1986, of its election to convert 15 percent of its firm sales entitlements to transportation under three service agreements between Transco and Columbia.[1] Columbia further states that by letter dated November 14, 1986, Transco responded by refusing Columbia's request. By letter dated November 17, 1986, Columbia requested that Transco receive its volumes of transportation gas at certain Transco-Columbia interconnections and redeliver the gas at specified delivery points.

Columbia argues that Transco, in commencing new section 311 service without a Commission waiver, opened itself up to the conditions in section 284.10 including contract reduction/conversion requests. Columbia requests that the Commission:

(1) Find that the conversion option exercised by Columbia in its August 22, 1986 letter was in conformity with § 284.10 and that it is effective as of October 21, 1986, or, at the latest, January 1, 1987;

(2) Order Transco to provide the firm transportation that Columbia has requested in its November 17, 1986 letter and order Transco to acknowledge and implement a 15 percent conversion in Columbia's entitlements, under the service agreements effective October 21, 1986;

(3) Consolidate Columbia's petition with PECO's petition in this docket; and

(4) Order such other relief as may be appropriate.

Any person desiring to be heard or to make any protest with reference to said complaint or motion to consolidate should on or before December 30, 1986, file with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). Pursuant to Rule 213, Transco is ordered to submit its answer no later than December 30, 1986. 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 a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-29126 Filed 12-28-86; 8:45 am]

BILLING CODE 6717-01-M

[1] Specifically, Columbia's August 22, 1986 letter to Transco (Exhibit A to Columbia's complaint) requested to convert 15 percent of its contract demand under three service agreements: (1) The Service Agreement dated October 30, 1957 between Transco and Atlantic Seaboard Corp., (2) the Service Agreement dated October 15, 1959 between Transco and Atlantic Seaboard; and (3) the Service Agreement dated September 17, 1962 between Transco and Manufacturer's Light and Heat Company.

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**[Docket No. QF87-173-000]**

## Environmental Recovery of America, Inc.; Application for Commission Certification of Qualifying Status of a Cogeneration Facility

December 22, 1986.

On December 22, 1986, Environmental Recovery of America, Inc. (Applicant) of Suite 10B, 157 East 72nd Street, New York, New York 10022, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Raritan, New Jersey. The facility will consist of two combustion turbine generators and two heat recovery steam generators (HRSG's). Steam recovered from the HRSG's will be used for pharmaceutical processes. The primary energy source will be natural gas with No. 2 diesel fuel as back-up. The net electric power production capacity of the facility will be 10 MW. Installation of the facility will begin in January 1988.

Any person desiring to be heard or objecting to the granting of qualifying status should file a petition 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 petitions or protests must be filed within 30 days after the date of publication of this notice and must be served on the applicant. 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 petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

**Kenneth F. Plumb,**

*Secretary.*

[FR Doc. 86-29127 Filed 12-29-86; 8:45 am]

BILLING CODE 6717-01-M

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**[Docket Nos. ER87-168-000 et al.]**

## Electric Rate and Corporate Regulation Filings; Montaup Electric Co. et al.

December 23, 1986.

Take notice that the following filings have been made with the Commission:

### 1. Montaup Electric Co.

[Docket No. ER87-168-000]

Take notice that on December 15, 1986, Montaup Electric Company ("Montaup") filed an agreement between itself and the Massachusetts Municipal Wholesale Electric Company ("MMWFC") for the sale of capacity and energy from Canal Unit No. 2.

This agreement is for a nine-year period beginning Novemher 1, 1986. MMWEC's entitlement percentage changes every 6 months as follows:

From November 1, 1986 through Apri1 30, 1987, and all other November through April winter periods, MMWEC's share will be 8.562% (30 MW).

From May 1, 1987 through October 31, 1987, and all other May through October summer periods, MMWEC's share will be 5.137% (30 MW).

The capacity charge rate will be $4.78 per kw/month. Attachment A describes this rate, which was accepted in Docket No. ER87-36-000, Supplement 2, Rate Schedule FERC No. 60, Town of Braintree.

Montaup requests waiver of the 60-day notice requirement in order to place this rate schedule in effect on November 1, 1986. Negotiations took longer than expected due to uncertainty concerning the final entitlement percentages and term of the agreement. This agreement is mutually beneficial to both Montaup and MMWEC. Failure to grant waiver of the 60-day notice requirement would increase MMWEC's energy cost and lower Montaup's demand revenue. If the waiver is granted, there would be no

effect upon purchasers under other rate schedules.

Copies of the filing were served on MMWEC and the Massachusetts Department of Public Utilities.

*Comment date:* January 2, 1987, in accordance with Standard Paragraph E at the end of this document.

**2. Central Hudson Gas & Electric Corp.**

[Docket No. ER87-165-000]

Take notice that Central Hudson Gas & Electric Corporation (Central Hudson), on December 15, 1986, tendered for filing as a rate schedule an executed agreement dated August 28, 1986 between Central Hudson and the New York Power Authority. The proposed rate schedule provides for Electric Transmission Service and Standby Electric Service for generation associated with NYPA's Ashokan Hydro Electric Generating Plant.

The rate schedule provides for a monthly transmission charge of $1.48 per kilowatt and a standby charge of $7.61 per kilowatt per month during the summer and winter peak periods. Central Hudson states that a copy of its filing was served on NYPA.

*Comment date:* January 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

**3. Consolidated Edison Co. of New York, Inc.**

[Docket No. ER87-164-000]

Take Notice that on December 15, 1986 Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing Supplement No. 12 to its Electric Rate Schedule FERC No. 42, for transmission, distribution and delivery service to the Power Authority of the State of New York ("PASNY"). PASNY uses Con Edison's services under Schedule No. 42 to deliver electricity to PASNY's governmental retail customers in Con Edison's service area. Con Edison's charges to PASNY are based on the maximum level of demand reached by the governmental customers each month, except that charges to PASNY customers with on-site generating equipment purchasing back-up electricity from PASNY are based on a contracted-for level of demand. Supplement No. 12 will allow PASNY, in cases where a governmental customer installs on-site generating equipment qualifying under the Commission's cogeneration and small power production rules (18 CFR Part 292), to elect to be billed under either of the above rate forms, *i.e.*, either on the basis of the maximum monthly demand or on a contracted-for level of demand.

The New York Public Service Commission ("NYPSC") approved this tariff revision on October 22, 1986, and PASNY has agreed to these revisions. Con Edison is requesting permission to put these revisions into effect on the date authorized by the NYPSC, *i.e.*, as of Octoher 27, 1986. The effect of these revisions, if any, will be a reduction in the revenues that Con Edison would otherwise have realized under the rate schedule.

Copies of the filing have been served upon PASNY and the NYPSC.

*Comment date:* January 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

**4. Public Service Co. of Indiana, Inc.**

[Docket No. ER87-169 000]

Take notice that Public Service Company of Indiana, Inc. (PSI), on December 16, 1986, tendered for filing proposed changes in its FERC Electric Tariff, Original Volume No. 1 (7th Revision); FERC Electric Tariff, Original Volume 2 (5th Revision) and Electric Rate Schedules FERC Nos. 234 and 236. Such changes in rates are the result of an uncontested rate increase negotiated between PSI and the following parties:

(1) Cities and Towns (meaning the municipal utilities who are direct customers of PSI).

(2) City of Logansport, Indiana.

(3) Henry and Jackson County Rural Electric Membership Corporations.

(4) Indiana Municipal Power Agency.

The proposed changes would increase revenues by $5.9 million based upon the twelve-month period ending March, 1984.

As part of the negotiations between the parties, PSI has requested the following:

(1) Waiver of the notice requirements under § 35.3 of the Commission's Regulations under the Federal Power Act and an effective date of February 1, 1987, without suspension.

(2) Waiver of the requirements under § 35.13 of the Commission's Regulations under the Federal Power Act not specifically addressed or complied with in the filing.

Certificates of Concurrence were filed on behalf of the parties.

Copies of the filing were served upon the Public Service Commission of Indiana, the City of Logansport, Indiana, Henry and Jackson County Rural Electric Membership Corporations, the Indiana Municipal Power Agency, and the Indiana municipalities of Advance, Bainbridge, Brooklyn, Coatesville, Dublin, Dunreith, Edinburg, Hagerstown, Knightstown, Ladoga, Lewisville, Montezuma, New Ross, Pittsboro, Rockville, South Whitley, Spiceland, Straughn, Thorntown, Veedersburg, Waynetown and Williamsport.

*Comment date:* January 2, 1987, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragaph**

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. 86-29128 Filed 12-29-86; 8:45 am]

BILLING CODE 6717-01-M

## ENVIRONMENTAL PROTECTION AGENCY

**[FIFRA Docket Nos. 562 et al.; FRL-3131-4]**

## Pesticide Products Containing Diazinon

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

**ACTION:** Notice of objections and request for hearing.

Notice is hereby given, pursuant to Section 164.8 of the Rules of Practice, 40 CFR 164.8, promulgated under the Federal Insecticide Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 *et seq.* that objections and requests for a hearing were filed by certain registrants and users of pesticide products containing Diazinon in connection with the Administrator's notice of intent to cancel registrations and deny applications of pesticide products containing Diazinon. The Administrator's notice of intent was published on October 1, 1986, 51 Fed. Reg. 35034. An amendment to the notice of intent was published on December 16, 1986, 51 FR 45039. These proceedings have been consolidated for hearing by order of the Chief Administrative Law Judge dated November 17, 1986.

For information concerning the issues involved and other details of these proceedings, interested persons are referred to the dockets of these proceedings on file with the Hearing Clerk, Environmental Protection Agency, (Mail Code A–110); Room 3708, Waterside Mall, 401 M Street SW., Washington, DC 20460. (202–382–4865).

**Frank W. Vanderheyden,**

*Administrative Law Judge.*

Dated: December 18, 1986 at Washington, DC.

[FR Doc. 86–29158 Filed 12–29–86; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL HOME LOAN BANK BOARD

### FirstSouth, F.A., Pine Bluff, AR; Appointment of Receiver

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners Loan Act of 1933, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole receiver for FirstSouth, F.A., Pine Bluff, Arkansas on December 4 , 1986.

Dated: December 22, 1986.

**Nadine Y. Washington,**

*Acting Secretary.*

[FR Doc. 86–29097 Filed 12–29–86; 8:45 am]

BILLING CODE 6720–01–M

## FEDERAL RESERVE SYSTEM

### Ray M. Bain et al.; Acquisition of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on 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 January 14, 1987.

A. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Ray M. Bain*, George Sides, Monty Boozer, Stanley Schaeffer, Robert Jones, Joe Josselet and Jimmy Ross, all of Dimmitt, Texas; S. L. Garrison, Hereford, Texas; Ray Joe Riley, Hart, Texas; and James A. Clark, Albuquerque, New Mexico; to acquire 100 percent of the voting shares of Plains Bancorp, Inc., Dimmitt, Texas, and thereby indirectly acquire First State Bank, Dimmitt, Texas.

Board of Governors of the Federal Reserve System, December 22, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86–29113 Filed 12–29–86; 8:45 am]

BILLING CODE 6210–01–M

### Madison Agency, 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 January 16, 1987.

A. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Madison Agency, Inc., Madison*, Minnesota; to engage *de novo* in the activity of acting as investment or financial advisor to the extent of providing portfolio investment advice to any other person pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 22, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86–29114 Filed 12–29–86; 8:45 am]

BILLING CODE 6210–01–M

### Mercantile Bancshares, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. 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.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 15, 1987.

A. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mercantile Bancshares, Inc.*, Jonesboro, Arkansas; to acquire Mercantile Corporation, Jonesboro, Arkansas, and thereby engage in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 22, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86-29115 Filed 12-29-86; 8:45 am]

BILLING CODE 6210-01-M

## Turner Bancshares, 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 January 13, 1987.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Turner Bancshares, Inc.*, Kansas City, Kansas; to merge with Kaw Valley Bancshares Inc., Kansas City, Kansas, and thereby indirectly acquire Kaw Valley State Bank and Trust, Kansas City, Kansas.

B. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Catahoula Holding Company*, Kenner, Louisiana; to acquire 80 percent of the voting shares of Jena Holding Company, Jena, Louisiana, and thereby indirectly acquire LaSalle State Bank, Jena, Louisiana. Comments on this application must be received by January 15, 1987.

Board of Governors of the Federal Reserve System, December 22, 1986.

**James McAfee**

*Associate Secretary of the Board.*

[FR Doc. 86-29116 Filed 12-29-86; 8:45 am]

BILLING CODE 6210-01-M

## Security Pacific Corp.; Proposal To Engage in Brokerage and Clearing Activities

Security Pacific Corporation, Los Angeles, California ("Security Pacific"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), for permission to engage in brokerage and clearance activities through two *de novo*, wholly owned, indirect subsidiaries, Security Pacific Options Trading Corp. ("SPOT") and Security Pacific Options Services Corp. ("SPOSC"), respectively. SPOT and SPOSC will provide brokerage and clearance services, respectively, to participants in the Security Pacific Over-the-Counter Options Trading System (the "OTC System"). The OTC System is designed to facilitate the trading of put and call options on Treasury Securities ("Options") through the furnishing of brokerage, clearance and margin services. The above activities will be provided nationwide through offices located in New York. The Options will be issued by General Electric Credit Corporation's wholly owned subsidiary, General Electric Credit Corporation Option Corporation, and will be guaranteed by General Electric Credit Corporation. Security Pacific contends that these activities are permissible under § 225.25(b) (3), (15) and (16) of Regulation Y (12 CFR 225.25(b)(3), (15) and (16)) and, in any event, are so closely related to banking or managing or controlling banks as to be a proper incident thereto within the meaning of section 4(c)(8) of the Bank Holding Company Act and thus permissible for bank holding companies.

Comments are requested on whether the proposed activities are "so closely related to banking or managing or controlling banks," and whether the proposal as a whole 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 these questions should comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Any comments or request for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than January 15, 1987.

Board of Governors of the Federal Reserve System, December 24, 1986.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 86-29335 Filed 12-29-86; 8:45 am]

BILLING CODE 6210-01-M

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Alcohol, Drug Abuse, and Mental Health Administration

### Advisory Council Meeting

Summary: This notice sets forth the schedule and proposed agenda of the meeting of the National Advisory Council on Alcohol Abuse and Alcoholism. This committee meeting will be open for discussion of administrative announcements and program developments. The committee will be performing initial review of applications for Federal assistance. Therefore, portions of the meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 210(d). Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Date and Time: January 29-30: 10:30 a.m.

Place: National Institutes of Health, Wilson Hall, Building 1, 9000 Rockville Pike, Bethesda, Maryland.

Status of Meeting: Open—January 29: 10:30 a.m.-5:00; Closed—Otherwise.

Contact: James Vaughan, Room 16C-20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-4375.

Purpose: The Council advises the Secretary, Department of Health and Human Services, regarding policy direction and program issues of national significance in the area of alcohol abuse and alcoholism. Reviews all grant applications submitted, evaluates these applications in terms of scientific merit and adherence to Department policies, and makes recommendations to the Secretary with respect to approval and amount of award.

Substantive information may be obtained from the contact person listed above. Summaries of meetings and rosters of committee members may be obtained from Ms. Diana Widner, Committee Management Officer, Room 16C–20, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–4375.

Estelle O. Brown,

*Committee Management Assistant, Alcohol Drug Abuse, and Mental Health Administration.*

[FR Doc. 86–29132 Filed 12–29–86; 8:45 am]

BILLING CODE 4160–20–M

## Food and Drug Administration

**[Docket No. 86F–0484]**

## Ciba-Geigy Corp.; Filing of Food Additive Petition

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that Ciba-Geigy Corp. has filed a petition proposing that the food additive regulations be amended to extend existing uses and to provide for additional uses of tetrakis [methylene (3,5-di-*tert*-butyl-4-hydroxy-hydrocinnamate)] methane as an antioxidant and/or stabilizer for polymers.

**FOR FURTHER INFORMATION CONTACT:** Mary Lipien, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–472–5690.

**SUPPLEMENTARY INFORMATION:** Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3966) has been filed by Ciba-Geigy Corp., Three Skyline Drive, Hawthorne, NY 10532, proposing that § 178.2010 *Antioxidant and/or stabilizers for polymers* (21 CFR 178.2010) be amended to extend existing uses and to provide for additional uses of tetrakis [methylene (3,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)] methane as an antioxidant and/or stabilizer for polymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 18, 1986.

**Sanford A. Miller,**

*Director, Center for Food Safety and Applied Nutrition.*

[FR Doc. 86–29121 Filed 12–29–86; 8:45 am]

BILLING CODE 4160–01–M

## Office of Human Development Services

## Privacy Act of 1974; Elimination of Two Systems of Records and Revisions in Two Systems of Records

**AGENCY:** Office of Human Development Service, HHS.

**ACTION:** Notification of Elimination of two systems of records and revisions in two systems of records.

**SUMMARY:** In accordance with the requirements of the Privacy Act, 5 U.S.C. 552a, the Office of Human Development Services (OHDS) is publishing this notice to eliminate two systems of records because they no longer are needed. Also, the notice will revise the routine use section in the two remaining HDS systems of records and the safeguards section in one of the remaining systems.

The first elimination is a system of records that was maintained by the Administration on Aging, OHDS entitled "Longitudinal Evaluation of the National Nutrition Program for the Elderly." The second elimination is a system of records maintained by the Administration on Developmental Disabilities (ADD), OHDS, entitled "Developmental Disabilities Complaints and Correspondence Files."

The paragraphs in the routine use sections concerning litigation have been revised, in accordance with OMB guidance, in the two remaining OHDS systems of records entitled, "HDS Distribution Publications Mailing List" and "Records Maintained on Individuals for Program Evaluation Purposes Under Contract." Information has been added to the section on safeguards in the system of records for the "HDS Distribution Mailing List."

**DATES:** The deletions are effective on December 30, 1986.

OHDS invites interested persons to submit comments on the revisions to the routine use sections on or before January 29, 1987.

OHDS will adopt the revised routine use without further notice 60 days after the date of publication unless comments are received which would result in a contrary determination.

**ADDRESS:** Please address comments to the HDS Privacy Act Coordinator at the address listed below. The comments received will be available for public inspection from 9 a.m. to 5 p.m., Monday through Friday, at that address.

**FOR FURTHER INFORMATION CONTACT:** Willie Etheridge, OHDS Privacy Act Coordinator, Room 334–F, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, D.C. 20201, Telephone: (202) 245–2892.

**SUPPLEMENTARY INFORMATION:** Effective with this publication, we are eliminating two systems of records. The first system of records is 09–80–0022, Longitudinal Evaluation of the National Nutrition Program for the Elderly, HHS/OHDS/AoA, which was published last in the **Federal Register** on October 13, 1982 (47 FR 45404). This system contained data derived from program reviews and data identifying individual variable characteristics. The program review data included performance variables, level of participation, structural and organizational variables, operational problems, and project and site history. Data on individuals included information about nutritional status, health status, isolation, life satisfication, longevity and institutionalization. The study was completed in May 1983, and proper record close-out procedures were followed.

The second system of records that we are eliminating is 09–80–0002, Developmental Disabilities Complaints and Correspondence Files HHS/OHDS/ADD, which was published in the **Federal Register** on October 13, 1982 (47 FR 45402). The Administration on Developmental Disabilities (ADD) published a notice of this system in anticipation of keeping records containing the names and addresses of individuals submitting correspondence, responses and exchanges of materials associated with investigations of complaints. No such records were ever collected using personal identifiers and, upon review, ADD has decided not to maintain or use such a system that would contain personal identifiers.

We are revising the routine use section in the remaining two OHDS systems of records: 09–80–0020, HDS Publication Distribution Mailing List, HHS/OHDS/OPA, and 09–80–0100, Records Maintained on Individuals for Program Evaluation Purposes Under Contract, HHS/OHDS, which were published last in the **Federal Register** on May 31, 1983 (48 FR 24209) and March 20, 1984 (49 FR 10369), respectively. The purpose of the revision is two-fold, first to be consistent with guidance issued on May 24, 1985, by the Office of Management and Budget on disclosure of Privacy Act records during litigation and second, to provide more information on safeguarding the HDS mailing list records.

The litigation routine use in the past has been limited to the Department of Justice for the purpose of defending the Federal Government (where HHS is affected), the Department and employees of the Department in litigation action. The revision broadens the routine use to permit disclosures of records to a court or other tribunal, or to another party before such tribunal. The purpose of the litigation routine use remains the same, and the Department still must determine that such disclosures are compatible with the purpose for which the records were collected.

As a result of a review of the notices on HDS systems of records, the following technical changes have been made: (1) More descriptive information has been added to the paragraph on "Safeguards" in the routine use section of the notice on HDS' mailing list; and (2) the name of the office in which the system manager is located, as set forth in the "System Manager" section of the notice on records for program evaluation under contract, has been changed to reflect an organizational change in OHDS.

Dated: December 16, 1986.

**Jean K. Elder,**

*Acting Assistant Secretary for Human Development Services*

In accordance with the above:

A. The routine use section and safeguards section of system of records 09–80–0020, HDS Publications Distribution Mailing List, HHS/OHDS/OPA is revised as follows:

**09–80–0020**

**SYSTEM NAME:**

HDS Publications Distribution Mailing List, HHS/OHDS/OPA.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

1. Disclosure may be made to a Congressional office from the record of an individual in response to a verified inquiry from the Congressional office made at the written request of that individual.

2. Disclosure may be made to the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

Is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

* * * * *

**SAFEGUARDS:**

1. *Authorized Users:* Only authorized personnel within the Department may access the HDS mailing list.

2. *Physical Safeguards:* Computer tapes are stored in locked files in secured areas. Computer terminals are in secured areas.

3. *Procedural Safeguards:* Employees who maintain the tapes in this system are instructed to grant regular access only to authorized users. Data stored in computers are accessed through the use of passwords/keywords known only to authorized personnel. These passwords/keywords are changed frequently.

4. *Implementation Guidelines:* Part 6, "Automated Information System Security" of the HHS Information Resources Management Manual.

* * * * *

B. The system of records notice 09–80–0100, Records Maintained on Individuals for Program Evaluation Purposes Under Contract, HHS/OHDS, is amended by revising paragraphs three and four in the routine use section and revising the section on system management to reflect an organizational change as follows:

**09–80–0100**

**SYSTEM NAME:**

Records Maintained on Individuals for Program Evaluation Purposes Under Contract, HHS/OHDS.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

**DISCLOSURE MAY BE MADE TO:**

* * * * *

3. A Congressional office from the record of an individual in response to a verified inquiry from the Congressional office made at the written request of that individual.

4. The Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components,

is a party to litigation or has an interest in such litigation, and HHS determine that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

* * * * *

**SYSTEM MANAGER AND ADDRESS:**

Director, Office of Policy, Planning and Legislation, OHDS, Hubert H. Humphrey Building, Room 306–E, 200 Independence Avenue, SW, Washington, D.C. 20201, Telephone: (202) 245–7027.

* * * * *

[FR Doc. 86–29174 Filed 12–29–86; 8:45 am]

BILLING CODE 4130–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Administration

[Docket No. N-86-1663]

### Submission of Proposed Information Collections to OMB

**AGENCY:** Office of Administration, HUD.

**ACTION:** Notices.

**SUMMARY:** The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

**ACTION:** Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** David S. Cristy, Reports Management Officer Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names the telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

### Notice of Submission of Proposed Information Collection to OMB

PROPOSAL: Notice of Termination, Suspension or Reinstatement of Assistance Payment Contract.
OFFICE: Housing.
FORM NUMBER: HUD-93114.
FREQUENCY OF SUBMISSION: On Occasion.
AFFECTED PUBLIC: Individuals or Households, Businesses or Other For-Profit, and Federal Agencies or Employees.
ESTIMATED BURDEN HOURS: 19,240.
STATUS: Reinstatement.
CONTACT: Fred W. Pfaender, HUD, (202) 755-6672. Robert Fishman, OMB, (202) 395-6880.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 15, 1986.

PROPOSAL: Supplemental Application and Processing Form—Housing for the Elderly or Handicapped.
OFFICE: Housing.
FORM NUMBER: HUD 92013-E.
FREQUENCY OF SUBMISSION: On Occasion.
AFFECTED PUBLIC: Businesses or Other For-Profit and Non-Profit Institutions.
ESTIMATED BURDEN HOURS: 300.
STATUS: Extension.
CONTACT: Edward M. Winiarski, HUD, (202) 755-5743. Robert Fishman, OMB (202) 395-6880.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: December 5 1986.

PROPOSAL: Preliminary Site Report by Indian Housing Authority.
OFFICE: Public and Indian Housing.
FORM NUMBER: HUD 3188.
FREQUENCY OF SUBMISSION: On Occasion.
AFFECTED PUBLIC: State or Local Governments and Non-Profit Institutions.
ESTIMATED BURDEN HOURS: 2,560.
STATUS: Extension.
CONTACT: Patricia S. Arnaudo, HUD, (202) 755-1015. Robert Fishman, OMB, (202) 395-6880.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Dated: November 21, 1986.

PROPOSAL: Emergency Shelter Grants Program.
OFFICE: Community Planning and Development.
FORM NUMBER: SF-424 and Narrative.
FREQUENCY OF SUBMISSION: Annually and On Occasion.
AFFECTED PUBLIC: State of Local Governments and Non-Profit Institutions.
ESTIMATED BURDEN HOURS: 6,480.
STATUS: New.
CONTACT: James R. Broughman, HUD, (202) 755-5977; Robert Fishman, OMB, (202) 395-6880.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 15, 1986.

PROPOSAL: Tenant Data Summary.
OFFICE: Public and Indian Housing.
FORM NUMBER: HUD-50058.
FREQUENCY OF SUBMISSION: On Occasion.
AFFECTED PUBLIC: State of Local Governments and Non-Profit Institutions.
ESTIMATED BURDEN HOURS: 2,421,000.
STATUS: Extension.
CONTACT: Joyce Ann Bassett, HUD, (202) 426-0744; Robert Fishman, OMB, (202) 395-6880.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 5, 1986.

PROPOSAL: Request for Final Endorsement of Credit Instrument.
OFFICE: Housing.
FORM NUMBER: HUD-92023.
FREQUENCY OF SUBMISSION: On Occasion.
AFFECTED PUBLIC: Businesses or Other For-Profit and Non-Profit Institutions.
ESTIMATED BURDEN HOURS: 465.
STATUS: Extension.
CONTACT: Kerry J. Mulholland, HUD, (202) 426-0283; Robert Fishman, OMB, (202) 395-6880.

**Authority:** Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 15, 1986.

PROPOSAL: Comprehensive Improvement Assistance Program (CIAP) Survey Instrument: Physical Needs Assessment, 24 CFR 868.18.
OFFICE: Public and Indian Housing.
FORM NUMBER: HUD-52827.

FREQUENCY OF SUBMISSION: On Occasion.

AFFECTED PUBLIC: State of Local Governments and Non-Profit Institutions.

ESTIMATED BURDEN HOURS: 9,600.

STATUS: Extension.

CONTACT: Pris P. Buckler, HUD, (202) 755–6640; Robert Fishman, OMB, (202) 395–6880.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 11, 1986.

**John T. Murphy,**

*Director, Information Policy and Management Division.*

[FR Doc. 86–29152 Filed 12–29–86; 8:45 am]

BILLING CODE 4210–01–M

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

**[Docket No. N–86–1653; FR–2307]**

### Section 8 Housing Vouchers—Notice of Funding Availability for a Limited Number of Section 8 Opt Outs

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

**ACTION:** Notice of funding availability.

**SUMMARY:** This Notice announces availability of fiscal year 1987 funding authority under the Department's Housing Voucher Program for two limited purposes. This limited notice is required because of specific time constraints facing families in certain section 8 "opt out" projects. For these reasons, the Department announces that limited fiscal year 1987 housing voucher funding will be available for the following purposes: (1) For families in section 8 New Construction or Substantial Rehabilitation projects where the owner has sole discretion to "opt-out" of an additional term of assistance under the section 8 Housing Assistance Payments Program and does so; and (2) For families in section 8 Loan Management Set-Aside projects (Part 886, Subpart A ) where the owner and HUD do not agree to renew the contract of assistance for an additional term.

**EFFECTIVE DATE:** December 29, 1986.

**FOR FURTHER INFORMATION CONTACT:** Gerald J. Benoit, Director, Housing Voucher Division, Office of Elderly and Assisted Housing, Room 6122, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410 telephone (202) 755–6477. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

#### Background

In 1983, Congress authorized a Housing Voucher Program under section 8(o) of the United States Housing Act of 1937 (the 1937 Act) (see section 207 of the Housing and Urban-Rural Recovery Act of 1983, Pub. L. 98–181 (the 1983 Act)). Since this authorization, HUD has published four Notices of Funding Availability (NOFA). (See the **Federal Register** issues of July 12, 1984, 49 FR 28458; February 28, 1985, 50 FR 8196; May 8, 1985, 50 FR 19475; and March 31, 1986, 51 FR 10932.)

The Department expects to publish its generally applicable requirements for its fiscal year 1987 housing voucher funding authority within the next two months. However, the Department is aware of specific project types which may require housing voucher funding before we are able to issue this fiscal year's NOFA. Accordingly, we announce the availability of housing voucher funding for the specific purposes described below.

#### This Notice of Funding Availability

Two previously authorized uses of housing voucher funding include providing assistance to families living in "opt-out" projects in both section 8 New Construction or Substantial Rehabilation projects where the owner has sole discretion to "opt-out" of an additional term of assistance under the section 8 Housing Assistance Payments Program and does so, and section 8 Loan Management Set-Aside projects (Part 886, Subpart A) where the owner and HUD do not agree to renew the Section 8 housing assistance payments contract for an additional term.

A limited number of housing vouchers (less than 500) are needed to provide continuing assistance to families living in projects in which the owner's housing assistance contracts are not being renewed (for either reason stated in the preceding paragraph). The Department continues to support this use of housing voucher funding authority, and Congress provided funding for a limited number of "opt-out" units in HUD's fiscal year 1987 appropriations. (See section 101(g), Pub. L. 99–500 (approved October 18, 1986), making appropriations as provided for in H.R. 5313, 99th Cong., 2d Sess. (1986) (as passed by the House of Representatives and by the Senate), to the extent and in the manner provided for in H.R. Rep. No. 977, 99th Cong., 2d Sess. (1986).)

The Department intends to make available housing voucher funding for approximately 500 housing vouchers for this purpose before the publication of the FY 1987 NOFA for all components of the Housing Voucher Program.

#### Housing Voucher Program Requirements

A Public Housing Agency administering housing vouchers, including the "opt-out" housing vouchers authorized in this Notice, must use the applicable program requirements published in the **Federal Register** by HUD. These requirements were last published on March 31, 1986 (51 FR 10936–10948). Housing voucher funding also will be subject to any revised program requirements in the FY 1987 NOFA, when it is published.

#### Other Matters

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary since the Housing Voucher Program is part of the section 8 Existing Housing Program, which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

Authority: Section 8(o) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: December 18, 1986.

**Thomas T. Demery,**

*Assistant Secretary for Housing–Federal Housing Commissioner.*

[FR Doc. 86–29151 Filed 12–29–86; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[93470–1221]**

### Division of Law Enforcement; Endangered Species Convention; Foreign Law Notification, Singapore

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of Information No. 12.

Subject: Singapore-Wildlife Importations.

This is a Schedule III notice.

Source of foreign law information: United States through the Department of State and the Government of Singapore.

Action by the Fish and Wildlife Service: On September 25, 1986, the U.S. Fish and Wildlife Service published Notice of Information No. 9 advising the public that it would refuse to clear all wildlife and wildlife products imported into the United States declaring Singapore as the country of origin or which were exported or re-exported from Singapore. The Fish and Wildlife Service advised the Government of Singapore that resumption of trade in

wildlife would be dependent upon certain actions on the part of the Singapore Government. First, Singapore must comply with the provisions of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); although accession to CITES by Singapore was not a condition of the resumption of trade. Secondly, Singapore must identify the country of origin of wildlife and wildlife products re-exported to the United States. Finally, Singapore must provide assistance to the Fish and Wildlife Service in investigations involving questions concerning the legality of wildlife or wildlife products exported or re-exported from Singapore.

In response to Notice of Information No. 9, the Government of Singapore has taken a number of positive steps to demonstrate a good faith effort to meet the requirements for the resumption of trade in wildlife and wildlife products. Singapore has enacted legislation to prohibit the trade in rhinoceros products, an Appendix I CITES species that is particularly vulnerable to illegal trade. Further, Singapore has assured the United States that it will provide acceptable documentation for all wildlife and wildlife products exported or re-exported from the country, and will assist the Fish and Wildlife Service in conducting investigations into known or suspected illegal wildlife trade. Finally, on November 30, 1986, Singapore notified the CITES Secretariat of its accession to the Convention, which will become effective on March 1, 1987.

Based upon these positive actions on the part of the government of Singapore and upon the belief that it will continue to fulfill its responsibilities as a responsible trading country in wildlife and wildlife products, the Fish and Wildlife Service rescinds Notice of Information No. 9 effective January 1, 1987. Subsequent to 12:01 a.m. local U.S. time on that date, importations of wildlife and wildlife products that declare Singapore as the country of origin or which are exported or re-exported from Singapore will be subject to same inspection and clearance procedures required for other such importations. Such wildlife and wildlife products must be accompanied by documentation that meets all requirements of both CITES and more restrictive U.S. laws and regulations, where applicable. However, the public is placed on notice that the mere presentation of an export or re-export document issued by Singapore will not result in pro-forma clearance of the accompanying shipment. Any export or re-export document accompanying a wildlife shipment from Singapore must fully comply with all provisions of CITES and more restrictive U.S. laws and regulations, including indicating the country of origin of the wildlife. In addition, any wildlife or wildlife product that has been exported or re-exported from Singapore must have been lawfully taken, possessed and exported from the country of origin. Any wildlife or wildlife product that fails to meet all provisions of CITES or more restrictive U.S. laws and regulations may be subject to refusal of clearance, detention or seizure, as appropriate under U.S. law and Fish and Wildlife Service policy. Further, the importer may be subject to applicable civil or criminal penalties and such wildlife may subsequently be subject to forfeiture.

Effective date: January 1, 1987.

Expiration date: Not Applicable.

**FOR FURTHER INFORMATION CONTACT:** Thomas L. Striegler, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 28006, Washington, DC 20005, Telephone: 202–343–9242.

Dated: December 18, 1986.

**Frank Dunkle,**

*Director.*

[FR Doc. 86–29160 Filed 12–29–86; 8:45 am]

BILLING CODE 4310–55–M

## Arctic National Wildlife Refuge, Alaska; Draft Resource Assessment and Legislative Environmental Impact Statement; Public Hearing

**AGENCY:** Fish and Wildlife Service.

**ACTION:** Notice of Public Hearing Revision.

**SUMMARY:** This notice announces a change in the time of the public hearing that will be held in Washington, DC, on the draft Arctic National Wildlife Refuge (NWR), Alaska, Coastal Plain Resource Assessment and Legislative Environmental Impact Statement (LEIS) (16 U.S.C. 3142).

**DATE:** January 9, 1987—10:00 a.m. to 5:00 p.m.

**ADDRESS:** Washington, DC—Main Interior Building Auditorium, 18th and C Streets, NW.

**FOR FURTHER INFORMATION CONTACT:** Nancy Marx, U.S. Fish and Wildlife Service, Division of Refuges, 18th and C Streets, NW., Room 2343, Washington, DC 20240, (202) 343–3922.

**SUPPLEMENTARY INFORMATION:** A notice of availability of the draft Arctic NWR report/LEIS was published in the **Federal Register** on November 24, 1986. The December 15, 1986, **Federal Register** contained a notice of public hearings to be held in Anchorage and Kaktovik, Alaska, and Washington, DC, on the draft report/LEIS. The dates, times and locations of the Alaska hearings remain unchanged.

The starting time of the January 9, 1987, Washington, DC, hearing has been changed from 1:30 p.m. to 10:00 a.m. in order to accommodate an anticipated large number of persons wishing to present comments. The hearing will end promptly at 5:00 p.m.

Persons wishing to present oral comments should sign up at the desk located at the auditorium entrance beginning at 9:00 a.m. on the date of the hearing. Time allotted to each speaker may be limited to allow all interested parties the opportunity to speak. Speakers should therefore summarize their oral comments and provide a full written copy of their comments for the record.

Dated: December 23, 1986.

**Ronald E. Lambertson,**

*Acting Director.*

[FR Doc. 86–29213 Filed 12–29–86; 3:46 pm]

BILLING CODE 4310–55–M

## Bureau of Land Management

**[NM–010–07–4322–02]**

## District Grazing Advisory Board Meeting; Albuquerque, NM.

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

**ACTION:** Notice of Albuquerque District Grazing Advisory Board Meeting.

**SUMMARY:** The Bureau of Land Management's Albuquerque District Grazing Advisory Board will meet on Friday, January 23, 1987, at 10:00 a.m., in the BLM Albuquerque District Office Building located at 435 Montano N.E., in Albuquerque, New Mexico.

The Board's agenda will include:

1. A discussion of the new Board's objectives and scope.
2. A description of the Albuquerque District's range improvement program and allotment management plan effort.
3. Development of the Board's recommendations for 1987 range improvement projects.
4. Election of officers.

Time will be provided for public comments during the appropriate agenda items. The Albuquerque District Grazing Advisory Board was chartered by the Secretary of the Interior on May

14, 1986. This will be the first meeting of the Board. Minutes of the meeting will be available for public inspection within 30 days following the meeting in the Albuquerque District Office located at 435 Montano NE., Albuquerque, New Mexico 87107. For more information contact Alan Hoffmeister, Public Affairs Officer, (505) 761–4504.

**Michael F. Reitz,**

*Associate District Manager.*

[FR Doc. 86–29136 Filed 12–29–86; 8:45 am]

BILLING CODE 4310-FB-M

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[WY-940-07-4520-12]

## Filing of Plats of Survey; Wyoming

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

**ACTION:** Filing of Plats of Survey.

**SUMMARY:** The plats of survey of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., December 16, 1986.

**Sixth Principal Meridian**

T. 55 N., R. 93 W.

The plat showing a subdivision of original lot 1, Sec. 27, T. 55 N., R. 93 W., Sixth Principal Meridian, Wyoming, was accepted November 24, 1986.

This supplemental plat was prepared to meet certain administrative needs of this Bureau.

T. 53 N., R. 70 W.

The plat representing the dependent resurvey of the Thirteenth Standard Parallel North, through R. 70 W., the north boundry and the subdivisional lines, T. 53 N., R. 70 W., Sixth Principal Meridian, Wyoming, Group No. 464, was accepted November 24, 1986.

This survey was executed to meet certain administrative needs of this Bureau.

T. 42 N., R. 71 W.

The plat representing the dependent resurvey of the west boundary and the subdivisional lines, T. 42 N., R. 71 W., Sixth Principal Meridian, Wyoming, Group No. 433, was accepted November 24, 1986.

T. 43 N., R. 71W.

The plat representing the dependent resurvey of the south, west and north boundaries and the subdivisional lines, T. 43 N., R. 71 W., Sixth Principal Meridian, Wyoming, Group No. 433, was accepted November 24, 1986.

T. 32 N., R. 118 W.

The plat representing the dependent resurvey of a portion of the Eighth Standard Parallel North, through R. 118 W., portions of the west boundary and subdivisional lines, and the subdivision of certain sections, T. 32 N., R. 118 W., Sixth Principal Meridian, Wyoming, Group No. 430, was accepted November 24, 1986.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service.

**ADDRESS:** All inquiries concerning these lands should be sent to the Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 2515 Warren Avenue, Cheyenne, Wyoming 82003.

Dated: December 18, 1986.

**Dennis D. Bland,**

*Acting Chief Cadastral Surveyor for Wyoming.*

[FR Doc. 86–29135 Filed 12–29–86; 8:45 am]

BILLING CODE 4310-22-M

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## National Park Service

### Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7:30 p.m., CST, on February 16, 1987, at the Jefferson Parish East Bank Council Chamber, 3330 North Causeway Boulevard, Metairie, Louisiana.

The Delta Region Preservation Commission was established pursuant to Pub. L. 92–265, section 907(a) to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park, and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historic, and cultural resources of the Region.

The matter to be discussed at this meeting includes:

—Projected Development Schedules for the Park

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact James Isenogle, Superintendent, Jean Lafitte National Historical Park, U.S. Customs House, 423 Canal Street, Room 206, New Orleans, Louisiana 70130, telephone 504/589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park.

Dated: December 16, 1986.

**Keith E. Miller,**

*Acting Regional Director, Southwest Region.*

[FR Doc. 86–29203 Filed 12–2–86; 8:45 am]

BILLING CODE 4310-70-M

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### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 20, 1986. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register, criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by January 14, 1987.

**Carol D. Shull,**

*Chief of Registration, National Register.*

**ALABAMA**

**Dallas County**

Plantersville, *Antique Store (Plantersville MRA)*, Off AL 22

Plantersville, *Christian Church and Parsonage (Plantersville MRA)*, Off AL 22

Plantersville, *Doctor's Office (Plantersville MRA)*, jct. of First Ave. N of Oak St. and First Ave.

Plantersville, *Driskell-Martin House (Plantersville MRA)*, NW jct. of Cherry St. and First Ave.

Plantersville, *Todd House (Plantersville MRA)*, S side of Oak St. W of First Ave.

**ARIZONA**

**Cochise County**

*Council Rocks Archaeological District*

**CALIFORNIA**

**Orange County**

Huntington Beach, *Helme-Worth Store and House*, 513–519 Walnut St. and 128 Sixth St.

**Yolo County**

Woodland, *Yolo County Courthouse*, 725 Court St.

GEORGIA

**Rabun County**

*USDA—Forest Service Site No. GAO5S17*

UTAH

**Weber County**

Ogden, *Dalton, John L. and Elizabeth, House,* 2622 Madison Ave.

[FR Doc. 86-29308 Filed 12-29-86; 8:45 am]

BILLING CODE 4310-70-M

## INTERSTATE COMMERCE COMMISSION

**[Docket No. AB-55 (Sub-No. 186X)]**

### CSX Transportation, Inc.; Exemption for Abandonment in Chattanooga, TN

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Exemption.

**SUMMARY:** The Interstate Commerce Commission exempts CSX Transportation, Inc., from the requirements of 49 U.S.C. 10903, *et seq.*, to abandon a 0.64-mile line of railroad in Chattanooga, TN, subject to standard employee protective conditions.

**DATES:** This exemption will be effective on January 28, 1987. Petitions to stay must be filed by January 8, 1987, and petitions for reconsideration must be filed by January 20, 1987.

**ADDRESSES:** Send pleadings referring to Docket No. AB-55 (Sub-No. 186X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; (2) Petitioner's representative: Charles M. Rosenberger, 500 Walter Street, Jacksonville, FL 32202.

**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. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area), or toll-free (800) 424-5403.

Decided: December 18, 1986.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Sterrett, Andre, and Lamboley.

Noreta R. McGee,

*Secretary.*

[FR Doc. 86-29041 Filed 12-29-86; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF JUSTICE

### Office of Juvenile Justice and Delinquency Prevention

### National Studies of the Incidence of Missing Children

**AGENCY:** Office of Juvenile Justice and Delinquency Prevention (OJJDP), Justice.

**ACTION:** Notice of issuance of solicitation for applications from public or private not-for-profit research organizations to conduct a national study of the incidence of missing children. One cooperative agreement will be awarded competitively to conduct this study.

**SUMMARY:** Pursuant to the Missing Children's Assistance Act, Title IV, section 404(b)(3) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, The Office of Juvenile Justice and Delinquency Prevention (OJJDP), is sponsoring a comprehensive national study of the incidence of missing children as mandated by this section. The study is being undertaken for the purpose of developing valid, reliable estimates of the number of children missing—either voluntarily or involuntarily—in a given year. Results from this study are intended to improve our understanding of both the extent and nature of the problem and particularly the context and consequences of missing.

OJJDP will select the eligible public agency or private nonprofit applicant which presents the most cost effective and reasoned approach; and which best demonstrates the organizational capability, knowledge of and experience in the field of survey research dealing with rare and sensitive issues. The project period is for 24 months, during which the principal study will be conducted and a final report issued and analyses of data and preparation of additional reports will be completed. In addition, through collaboration and cooperation with other OJJDP research efforts in the area of missing children, this effort will contribute to the development of a strategy for meeting the legislative mandate to conduct periodic studies of the incidence of missing children.

Up to $1 million is anticipated to be awarded in Fiscal Year 1987 for the initial 12-month budget period.

**DATE:** The deadline for receipt of applications is February 27, 1987.

**FOR FURTHER INFORMATION CONTACT:** Barabara Allen-Hagen, Social Science Analyst, at 202/724-5929, National Institute for Juvenile Justice and Delinquency Prevention, 633 Indiana Ave., NW., Washington, DC 20531.

**SUPPLEMENTARY INFORMATION:**

**National Incidence Studies of Missing Children: Outline of Solicitation**



**National Studies of the Incidence of Missing Children**

*I. Introduction and Background*

The problem of missing children has increasingly become a focus of national concern. While no one is certain of the exact magnitude of the problem, even the most conservative estimates would place the number of children missing each year from their homes—either voluntarily or involuntarily—in the hundreds of thousands. While most of the children eventually return home, many may become victims of physical or sexual abuse and, in some cases, even homicide. Although we understand some of the parameters of the problem, there is much that we need to know to formulate Federal, a state and local policy. For this reason, the Congress of the United States mandated the Office of Juvenile Justice and Delinquency Prevention to:

Periodically conduct national incidence studies to determine for a given year the actual number of children reported missing each year, the number of children who are victims of abduction by strangers, the number of children who are victims of parental kidnappings and the number of children who are recovered each year. (Section 404(b)(3) Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Act of 1974, as amended.)

To respond to this mandate and the need for more accurate information on both the extent and nature of the missing children phenomenon, the Office of Juvenile Justice and Delinquency Prevention is inviting applications from non-profit organizations to demonstrate their capability to conduct such a survey.

*II. Study Goals and Objectives*

A principal goal of this study is to develop valid, reliable national estimates of the numbers and types of missing children. Our current knowledge about the extent and nature of the problem of missing children, which is based in part on existing statistics, is inadequate. Some of the frequently cited statistics have no scientific basis and others were derived from studies that differed substantially in terms of: definition of the incident and the study population; the study design and sampling methods; units of analysis, methods for producing national estimates from the sample data, etc. The numbers based on these efforts have contributed more to a debate about the absolute numbers and added little to our understanding of the nature of the problem. In contrast, this study is intended to provide both reliable national estimates as well as useful information on the characteristics of these events to guide the development of effective prevention strategies and the development of effective responses by parents, the justice system and policy makers to the problem of missing children.

In order to effectively target national, state and local resources to respond to this problem, it is necessary to improve our knowledge of the context and consequences of the missing child experience. Therefore, while the study must be designed to develop reliable national estimates of the incidence of missing children in each major category, an important aspect of the study is to establish profiles of missing children and descriptions of significant aspects of the incidents themselves.

The results of the national incidence study should have immediate utility in terms of responding to the mandate of the Missing Children's Assistance Act and to congressional inquiries. It should also provide guidance in terms of future plans for fulfilling the Act's requirement for periodic studies of the incidence of missing children.

*III. Research Design Issues*

Methodological Pilot Studies

In August 1985, the Office convened a panel of researchers from different fields who had studied other issues having similarly complex definitional and methodological problems. The purpose of this meeting was to gain insights from their experience that would benefit the design of the national incidence study of missing children. Based on the advice of this panel the Office has undertaken a number of pilot tests to answer selected methodological questions regarding the feasibility of various approaches to the national study.

(1) The first pilot study involved using Random-Digit—

Dialing as a means of selecting two samples of approximately 500 households containing children. To test the reliability of the survey questionnaire and procedure, each of the two samples contained a number of seeded telephone numbers of actual cases which had been recorded by ISEARCH, the State of Illinois Missing Children's Clearinghouse. One of the principal goals of this study was to determine the level of cooperation of respondents and whether the instrument, the procedures and methods elicited correct responses with adequate detail on critical aspects of the incident. A copy of the refined questionnaire used in the second RDD sample is available upon request.

(2) The second pilot study was designed to test the feasibility of using Network or Multiplicity Sampling techniques for both estimation purposes as well as for locating rare or difficult to find populations for study. This method has been used in epidemiology studies of the prevalance of cancer, diabetes and heroin addiction and has also been used to efficiently study minority Vietnam Veterans. The Network Sampling technique is also being tested for use in criminal victimization surveys. This method allows respondents to report an incident which may have occured to someone in their extended family, neighborhood or their workplace. One of the purposes of this test is to determine which "networks" produce reasonably productive and reliable responses for the purposes of producing national estimates. As in the RDD pilot study, questions were asked regarding the possibility of conducting interviews with children who had been missing and returned. Again, for purposes of testing the validity of this approach, the pilot included a seeded sample of telephone numbers of households that had reported a missing child.

(3) The third approach being explored is referred to as Capture-Recapture, a technique which has been used in studies of illegal immigration, drug abuse, and more recently in estimating the homeless populations. Its application to studying missing children is in developing a methodology for estimating the number of runaway/homeless youth living away from home whose status may not be reported by other survey methods. In exploring the utility of this approach, the researcher will attempt to identify those places and agencies with which these youth are likely to make contact, such as community-based youth services, shelters for runaways and other welfare service contact points. These places would serve as "capture" points for enumeration which would be sampled several times over the course of data collection. In addition to determining the logistical feasibility of collecting data from these agencies, another critical aspect of this pilot effort is to determine the extent to which the assumptions about characteristics and flow of juveniles into and out of a missing status can be incorporated into the mathematical model used for estimation purposes.

Unresolved Issues

The results of these pilot studies will be presented to a review panel in early 1987, at which time issues that have been resolved will be incorporated into the overall design of the national study. While the pilot studies will answer questions related to the general reliability of telephone surveys, there are a number of issues that the pilot studies did not definitively address. In order to be selected to conduct the national study, the successful applicant must demonstrate a sufficient understanding of the nature of this research problem and offer creative, responsible solutions to the following issues related to the design of the national study:

Definitional Issues. Constructing operational definitions for the study is one of the most critical aspect of the study as they significantly affect the validity and reliability of the national estimates. At a minimum the definitions of the categories of missing children must address the statutory definition of a "missing child" (Section 403 (1))[1], and be responsive the requriements of the national incidence study (Section 404(b)(3)). Applicants must discuss their approach to constructing meaningful definitions for purposes of this study. Applicants must also operationally define the term "incidence" in the context of this study, keeping in mind the statutory requirements to provide estimates for a given year.[2]

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[1] Statutory Definition of "missing child" (Section 403(1)): Any individual less than 18 years of age whose whereabouts are unknown to such individual's legal custodian if:

(A) the circumstances surrounding such individual's disappearance indicate that such individual may possibly have been removed by another from the control of such individual's legal custodian without such custodian's consent; or,

(B) the circumstances of the case strongly indicate that such individual is likely to be abused or sexually exploited.

[2] Because of the interest in obtaining preliminary information by the Summer of 1987, OJJDP will

Continued

Sample Selection. Assume, for purposes of developing the application, that an RDD sample will be chosen as the most cost-effective means of obtaining a national probability sample to obtain national estimates on the incidence of missing children. Applicants must discuss the potential bias this method presents for selected portions of the population, and indicate what, if any, measures should be taken to compensate for potential bias in the national estimates.

Related to sample selection is the choice of respondent to interview. Applicants should propose principal target population(s) (e.g., general public, parents/guardians, children, etc.) appropriate for meeting specific study objectives. Applicants should present their rationale for selecting a particular population and discuss the implications of that choice on developing national estimates and for addressing specific study objectives.

Sample Size and Required Precision of Estimates. As mentioned above, one of the major goals of the study is to develop reliable national estimates of the number and types of missing children. Beyond knowing that children abducted by strangers are the rarest of missing children cases, there are no reliable estimates of the true incidence of these cases for any time period. This gap in information was not filled by the pilot studies, nor was it an intended outcome of those studies. Therefore, in order to estimate the required sample size for achieving reliable national estimates, an "educated guess" of the true incidence of these cases is needed. Applicants must propose sample sizes necessary to achieve various levels of confidence for different margins of error (allowing as necessary for different assumptions about adjustments needed for design effects). This will require the applicant to formulate a number of options based on hypothetical rates and recommend a defensible approach(s) given the goals of the study, the nature of the phenomenon and the limited resources available to carry out the study.

Questionnaire Content. Applicants must indicate how their approach to the design and execution of the study maximizes the opportunity to collect important information on the context and consequences of the incident. Applicants must outline the major research questions that the survey methods and instrument will attempt to answer and indicate specifically how definitional issues will be addressed in the construction of the survey instrument(s).

In summary, applicants must demonstrate their understanding of the potential threats to the validity of the national estimates and specify measures that will minimize the impact of these sources of error on the study results.

*IV. Dollar Amount and Duration*

One cooperative agreement will be awarded. The project period for this effort will be 24 months. Section VI., below, outlines the major activities and tasks to be completed during the project period with major milestones and completion dates specified. Up to $1 million has been allocated for one project award this fiscal year. Applicants must propose a cost-effective budget that specifically relates the costs to the tasks to be undertaken in the first (12-month) phase of the project. In addition, applicants must outline projected costs for proposed activities for the subsequent (12-month) budget period. Duration and funding for the second phase will be based on the satisfactory performance of the grantee and the best interests of the government in pursuing the activities outline in section VI.

*V. Eligibility Requirements*

Applications are invited from public agencies and private not-for-profit organizations only. For-profit organizations are not eligible for funding under Title IV Missing Children's Assistance Act (Section 406(a)) and therefore will not be considered for receipt of the cooperative agreement as an applicant or as a co-applicant with another eligible organization. Participation by profit-making organizations is permissible only as contractors providing goods or services required by eligible applicants.

Eligible organizations may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the applicant and any co-applicants are designated as such. Together co-applicants must meet the eligibility requirements specified in A. and B.

The applicant must have experience in the following areas in order to be eligible for consideration:

A. Prior experience in the design and implementation of large national surveys requiring direct interviewing of individuals on topics of potentially sensitive nature.

B. Demonstrated knowledge of the issues associated with missing children, runaways, homeless youth and victimization of children in general.

The applicant must have the management and financial capability to effectively implement a project of this size and scope. Applicants who fail to demonstrate that they have the capability to manage this program will be ineligible for funding consideration.

*VI. Major Responsibilities of the Successful Applicant*

The organization selected to conduct this research project will be responsible for all aspects of the project, whether carried out directly or contracted to other organizations or individuals, and, for the development of all products on time.

The successful applicant will have specific responsibility for developing a research design, appropriate methodology and instrumentation that are responsive to the goals and objectives of the study as outlined in this solicitation. This will include making the necessary provisions to incorporate the findings and recommendations of the review panel that evaluates the results of the pilot studies. A project advisory board will be appointed with the concurrence of OJJDP and will meet at least twice during the course of the project to review plans, instruments and products.

In addition to submitting all financial and progress reports required by this agency, the grantee will be responsible for preparing the following products:

1. A comprehensive research design which incorporates the recommendations of the design panel within 45 days of award.

2. An advance report on the findings of the national survey within twelve months of award.

3. A comprehensive final report on the entire study within 18 months of the award date which is suitable for nationwide dissemination.

4. In addition to the reports specified in 1–3 above, up to three special issues papers on topics to be identified in the application and developed subject to the approval of OJJDP. At least two of these reports shall be developed in the first 18 months of the project. One of these reports should focus on developing future strategies to respond to the legislative mandate to conduct periodic studies of the incidence of missing children.

5. Preparation of public use data tapes with all potential identifiers stripped, and with complete documentation to be submitted to the National Criminal Justice Data Archive at the University of Michigan within 18 months of award.

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consider using annual periods other than the calendar year.

Since this project will be awarded as a cooperative agreement, rather than a grant or contract, OJJDP will work collaboratively with the recipient and will collaborate with the recipient in making major decisions throughout the course of the project including the final research design and methodology, definitions of terminology, advisory board members, subjects of topical reports, etc. Any and all noncompetitive contracts in excess of $10,000 (with the exception of clerical support services) proposed by the sucessful applicant are subject to prior agency approval based on an adequate sole source justification. In addition, it is expected that the grantee will work cooperatively with other research grantees in areas of mutual interest.

*VII. Application Requirements*

All applicants must submit a completed Standard Form 424, Application for Federal Assistance (SF 424), including a program narrative, a detailed budget, and a budget narrative. All applications must include the following information outlined in Section VII of the solicitation in Part IV, Program Narrative of the application.

In submitting collaborative applications between two or more organizations, the relationships among the parties must be set forth in the application. As a general rule, organizations which describe their working relationship in the development of products and the delivery of services as primarily cooperative or collaborative in nature will be considered as co-applicants. Those organizations which are primarily procuring services or products from another organization would not be considered as co-applicants. In the event of a co-applicant submission, one co-applicant must be designed as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicants. Under this arrangement each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicants.

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of the eligibility criteria established in Section V. of this solicitation. Applicants must concisely describe how their organizational experience and capabilities will enable them to achieve the goals and objectives of this study.

In addition to the assurances provided in Part V, Assurances (SF–424), applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this agreement are disbursed and accounted for properly.

B. Understanding a Study Goals and Objectives

Applicants must discuss their understanding of goals and objectives of the study and the nature of the phenomenon under investigation. The applicants should outline the specific study objectives that will be addressed and described the related data analysis plans. Applicants should also discuss the projects that will be developed and their potential contribution to our knowledge about the extent and nature of the problem.

C. Reponse to Research Design Issues

This section of the application will be the principal means for the applicant to demonstrate their understanding of the challenges this project poses and their ability to design a study that meets acceptable standards or research. Applicants must describe how they would address the unresolved issues raised in section III. Research Design Issues.

D. Implementation Plan

Applicants shall describe how they will allocate the available resources to implement the strategy presented in their application. Applicants must develop an implementation plan which addresses the activities and functions described in section VI. Major Responsibilities of Successful Applicant. At a minimum the plan must include:

a. An organizational chart depicting the roles and describing the responsibilities of key organizational components;

b. A list of key personnel responsible for managing and implementing the study. Applications must present position descriptions and qualifications for key personnel.

c. A concise discussion of the coordination, data collection and management and quality control issues related to the program design and how their proposal would address these issues.

d. A detailed time-task plan for the 24-month project period, clearly identifying major milestones. This must include designation of organizational responsibility and a schedule for the completion of the products identified in Section IV.B. The application must also outline the anticipated activities and milestones for the remaining 12-month budget period.

E. Budget

Applicants shall provide a detailed budget for the first 12 months of the project with a detailed justification for all costs, including the bases for computation of these costs and an estimated budget for the activities proposed to be performed during the final 12-month budget period. Applications submitted by co-applicants and/or those containing contract(s) must include detailed budgets for each organization's expenses. Applicants should highlight innovative, cost-effective measures of their proposal. In addition, applicants must submit a projected budget for the extended period.

When proposing different sample sizes, it is important to differentiate fixed and variable costs for different sample sizes given different lengths of questionnaires.

*VIII. Procedures and Criteria for Selection*

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. Applications will be reviewed in terms of their responsiveness to the specifications in the solicitation; their organizational capability to achieve the goals and objectives of the study; their attention to substantive issues in the design; their implementation plan; the cost-effectiveness of the proposed budget.

A. Organizational Capability (20 Points)

The extent and quality of organizational and staff experience in the design and implementation of national surveys of comparable content and scope. Special consideration will be given to experience in research associated with the study of missing children, runaways, homeless youth and child victimization in general.

The presence and extent of adequate fiscal controls and accounting procedures to ensure that the applicant can effectively implement a project of this size and scope, and to ensure the proper disbursal and accounting of federal funds.

B. Understanding of the Problem (10 Points)

Proposals will be evaluated in terms of their understanding of both the

substantive issues and the goals and objectives of the study.

C. Response to Research Design Issues (35 Points)

Responsiveness of the proposal to issues related to the research design. The clarity, comprehensiveness, and appropriateness of their preliminary research design and sampling plan for accomplishing the objectives of this study. Special consideration will be given for an applicant's responsiveness to the unresolved research design issues raised in section III.

D. Implementation Plan (20 Points)

Appropriateness of allocation of resources to accomplish the goals and objectives of the study within the initial 12-month project period. Particular attention will be paid to the clarity and reasonableness of the time-task plan which identifies organizational, and individuals' roles and responsibilities for the completion of significant tasks and development of products.

E. Budget (15 Points)

Applicants must include a 12-month budget with a detailed narrative justifying the costs as specified in section VII.E. Applications will be rated based on the cost-competitiveness, completeness, reasonableness and appropriateness of the budget in relation to the tasks to be accomplished.

Applications will be evaluated by a peer review panel. The application which receives the highest total score on the above criteria will be recomnmended for funding to the Administrator, OJJDP, provided that required changes in the application can be successfully negotiated. The final decision will be made by the OJJDP Administrator.

*IX. Deadline for Submission of Applications*

Deadline for submission is February 27, 1987. One signed original and five copies of the application must be mailed or delivered to the Research & Program Development Division, Office of Juvenile Justice and Delinquency Prevention (OJJDP), Room 782,633 Indiana Avenue, NW, Washington, DC 20531, by 5:30 p.m. on that day. Those applications mailed to the above address must be postmarked *before* February 27, 1987. The necessary forms for applications may be obtained by writing to OJJDP. Questions regarding the solicitation may be directed to Barbara Allen-Hagen, 202/724–5929, or at the above address.

*X. Civil Rights Compliance*

A. All recipients of OJJDP assistance, including any contractors, must comply with the non-discrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974 as amended; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973 as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Non-Discrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G.

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (CRC) of the Office of Justice Programs.

C. Applicants shall maintain such record and submit to the OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other persons(a) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under any grant award.

Approved:

**Verne L. Speirs,**

*Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.*

Dated: December 22, 1986.

**John J. Wilson,**

*Certifying Officail*

[FR Doc. 86–29204 Filed 12–29–86; 8:45 am]

BILLING CODE 4410–18–M

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## Drug Enforcement Administration

## Quotas for Controlled Substances in Schedules I and II

**AGENCY:** Drug Enforcement Administration, Justice.

**ACTION:** Notice of established 1987 aggregate production quotas.

**SUMMARY:** This notice establishes 1987 aggregate production quotas for controlled substances in Schedules I and II of the Controlled Substances Act.

**DATE:** This order is effective upon publication.

**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:** Section 306 of the Controlled Substances Act (21 U.S. Code 826) requires that the Attorney General establish aggregate production quotas for all controlled substances listed in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration (DEA) by § 0.100 of Title 28 of the Code of Federal Regulations.

On Wednesday, September 24, 1986, a notice of the proposed 1987 aggregate production quotas for certain controlled substances in Schedules I and II was published in the **Federal Register** (51 FR 33936). All interestd parties were invited to comment on or object to those proposed aggregate production quotas on or before October 24, 1986.

As to methylphenidate, Ciba-Geigy, through counsel, has filed objections and comments to the proposed aggregate production quota for 1987. MD Pharmaceutical, through counsel, also filed objections and comments and requested a hearing on the proposed aggregate production quota. Issues relative to the 1986 aggregate production quota and individual manufacturing quotas for methylphenidate are currently in litigation before an Administrative Law Judge. *In the Matter of Methylphenidate Quotas—1986,* Docket No: 86–52. It would be premature for DEA to grant MD Pharmaceutical's request for a hearing until the conclusion of the proceedings concerning the 1986 methylphenidate quotas. Similarly, it would be premature to respond to the objections and comments raised by Ciba-Geigy until the conclusion of the 1986 methylphenidate quota proceedings. In order to ensure that these firms manufacturing methylphenidate may remain in production during the pendency of the hearings concerning the 1986 quotas, a final initial aggregate production quota will be established for this interim period. No other comments were received.

Pursuant to sections 3(c)(3) and 3(e)(2)(b) of Executive Order 12291, the Director of the Office of Management and Budget has been consulted with respect to these proceedings.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact prodominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S. Code 826) and delegated to the Administrator of the Drug Enforcement Administration by § 0.100 of Title 28 of the Code of Federal Regulations, the Administrator of the Drug Enforcement Administration hereby orders that the 1987 aggregate production quotas for Schedules I and II controlled substances, expressed as grams of anhydrous acid or base, be established as follows:

*Basic Class and Established 1987 Quotas*

| | |
|---|---|
| Schedule I: | |
| Alfentanil | 10,000 |
| 2,5-Dimethoxyamphetamine | 10,500,000 |
| Lysergic Acid Diethylamide | 18 |
| 3-4-Methylenedioxyamphetamine | 5 |
| 3,4-Methylenedioxymethamphetamine | 5 |
| Tetrahydrocannabinols | 30,000 |
| Schedule II: | |
| Amobarbital | 887,000 |
| Amphetamine | 325,000 |
| Cocaine | 800,000 |
| Codeine (for sale) | 58,001,000 |
| Codeine (for conversion) | 4,064,000 |
| Desoxyephedrine | 1,360,000 |
| 1,300,000 grams for the production of levodesoxyephedrine for use a noncontrolled, nonprescription product and 60,000 grams for the production of methamphetamine. | |
| Dextropropoxyphene | 69,637,000 |
| Dihydrocodeine | 823,000 |
| Dihydrocodeine (for conversion) | 129,000 |
| Diphenoxylate | 584,000 |
| Ecgonine (for conversion) | 650,000 |
| Fentanyl | 5,800 |
| Hydrocodone | 1,859,000 |
| Hydromorphone | 196,000 |
| Levorphanol | 22,500 |
| Meperidine | 11,282,000 |
| Methadone | 1,510,000 |
| Methadone Intermediate (4-Cyano-2-dimethyl-amino-4,4-diphenylbutane) | 1,888,000 |
| Methamphetamine (for conversion) | 1,938,000 |
| Methylphenidate | 1,566,000 |
| Mixed Alkaloids of Opium | 10,500 |
| Morphine (for sale) | 2,078,000 |
| Morphine (for conversion) | 62,557,000 |
| Opium (tinctures, extracts, etc. expressed in terms of USP powdered opium) | 1,506,000 |
| Oxycodone (for sale) | 2,333,000 |
| Oxycodone (for conversion) | 256,000 |
| Oxymorphone | 2,500 |
| Pentobarbital | 12,000,000 |
| Phencyclidine | 47 |
| Phenmetrazine | 100,000 |
| Phenylacetone (for conversion) | 755,000 |
| 1-Piperidinocyclohexanecarbonitrile (for conversion) | 54 |
| Secobarbital | 1,963,000 |
| Sufentanil | 300 |
| Thebaine | 6,954,000 |

DEA will review the above established quotas early in 1987 to take into consideration actual 1986 sales and actual December 31, 1986 inventories as well as other information which might be available to DEA. At that time, DEA will again consider those comments received in response to the proposal of September 24, 1986.

Dated: December 9, 1986.

**John C. Lawn,**

*Administrator, Drug Enforcement Administration.*

[FR Doc. 86-29098 Filed 12-29-86; 8:45 am]

BILLING CODE 4410-09-M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards Subcommittee on Metal Components; Meeting

The ACRS Subcommittee on Metal Components will hold a meeting on January 15 and 16, 1987, Room 1046, 1717 H Street, NW, Washington, DC

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

*Thursday, January 15, 1987—8:30 A.M. until the conclusion of business*

*Friday, January 16, 1987—8:30 A.M. until the conclusion of business*

The Subcommittee will: (1) Hear a status report of the Whipjet program (application of broad scope GDC-4 criteria) as applied to lead plant Beaver Valley Unit 2; (2) review public comments on NUREG-0313, Revision 2 (long range fix for BWR-IGSCC problems), and (3) review other related matters i.e., Surry feedwater pipe failure and its licensing implications.

Oral statement may be presented by members of the public with 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 questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff members as far in advance as 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 discussion 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 cancelled 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, Mr. Elpidio Igne (telephone 202/634-1414) between 8:15 A.M. and 5:00 P.M. Persons planning to attend this meeting are urged to contact 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: December 23, 1986.

**Morton W. Libarkin,**

*Assistant, Executive Director for Project Review.*

[FR Doc. 86-29191 Filed 12-29-86; 8:45 am]

BILLING CODE 7590-01-M

### Bi-Weekly Notice; Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

#### I. Background

Pursuant to Public Law (Pub. L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the

Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This bi-weekly notice includes all amendments issued, or proposed to be issued, since the date of publication of the last bi-weekly notice which was published on December 17, 1986 (51 FR 45191), through December 18, 1986.

## NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless is receives a request for a hearing.

Comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

By January 30, 1987, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitoner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fiteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonble specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisifies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazard consideration, the Commission may issue the amendment and make it immmediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, DC., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the peitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Branch Chief*): Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this notice **Federal Register.** A copy of the petition should also be sent to the Executive Legal Director, U.S.Nuclear Regulatory Commission, Washington,

DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i) through (v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room 1717 H Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

**Arizona Public Service Co. et al., Docket Nos. STN 50–528 and STN 50–529, Palo Verde Nuclear Generating Station (PVNGS), Units Nos. 1 and 2, Maricopa County, AZ**

*Date of amendment request:* July 14, 1986, as supplemented December 2, 1986.

*Description of amendment request:* The proposed amendment would modify the Technical Specifications (Appendix A to Facility Operating Licenses No. NPF–41 for PVNGS Unit 1 and NPF–51 for PVNGS Unit 2) to delete Technical Specifications ¾.3.3.3.7, ¾.7.11, ¾.7.12, B ¾.3.3.7, B ¾. 7.11 and B ¾.7.12. These Technical Specifications deal with the fire protection program. The fire protection program is covered by operating license conditions (NPF–41, Paragraph 2.C.7 and NPF–51, Paragraph 2.C.6) and is described in the Final Safety Analysis Report. The license conditions ensure that the fire protection program will be maintained as it is currently constituted. Approval of the amendment request would enable the licensees to make minor changes to the fire protection program without requiring a formal Technical Specifications change.

The proposed amendment would add Technical Specification 6.9.3 on each unit to require reporting in accordance with 10 CFR 50.73 of violations of the requirement of the fire protection program described in the Final Safety Analysis Report which would have adversely affected the ability to achieve and maintain safe shutdown in the event of a fire.

The proposed amendments would revise Unit 1 operating license (NPF–41) condition 2.C.(7) to requir the licensees to implement and maintain in effect all provisions of the approved fire protection program as described in the Final Safety Analysis Report, and to allow the licensees to make changes to the approved fire protection program without prior approval of the NRC only if those changes would not adversely affect the ability to achieve and maintain safe shutdown in the event of a fire.

NRC Generic Letter 86–10, dated April 24, 1986, provided guidance to licensees to request a revised fire protection license condition and to request removal of the Fire Protection Technical Specifications. The licensees' proposed amendment is in response to that Generic Letter.

*Basis for proposed no significant hazards consideration determination.* The Commission has provided standards for determining whether a significant hazards consideration exists in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated, because no changes to safety systems or setpoints are proposed. The proposed changes relocate the fire protection program from the Technical Specifications to the FSAR. This change will not affect the functioning of the fire protection program, which will be maintained pursuant to the facilities' operating licenses. No change will be made to the program that conflicts with the requirements of the licenses.

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated, because these changes do not affect the operation or function of any safety-related equipment. The fire protection program requirements will continue to be maintained. No new modes of operation are being introduced. The fire protection program will still have adequate controls under the provisions of the license conditions. Eliminating the specific fire protection requirements of the Technical Specifications will not introduce the possibility for a new or different kind of type of accident.

The proposed changes do not involve a significant reduction in a margin of safety because the program is to remain unchanged. For any future changes to the program, the requirements of the license conditions and the FSAR will be upheld.

Based on the above considerations, the Commission proposes to determine that the proposed changes do not involve a significant hazards consideration.

*Local Public Document Room location:* Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

*Attorney for licensees:* Mr. Arthour C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

*NRC Project Director:* George W. Knighton.

**Commonwealth Edison Co., Docket No. 50–373, La Salle County Station, Unit 1, La Salle County, IL**

*Date of amendment request:* December 15, 1986.

*Description of amendment request:* This proposed amendment, if approved, would revise the La Salle Unit 1 Operating License No. NPF–11 by modifying, for only 1 Cycle (Cycle 2), Technical Specifications 3/4.1.3.2, 3/4.1.3.3, 3/4.1.3.4, and 3/4.1.3.6. The licensee is requesting the approval to allow operation with the Control Rod Drive (CRD) 10–47 withdrawn for the remainder of this cycle.

On November 22, 1986, while performing the surveillance test required of CRDs on Unit 1, CRD 10–47 became uncoupled (loss of position 48 indication and receipt of the overtravel alarm). Rod 10–47 was inserted to position 44 to recouple. Upon withdrawal, the drive failed to reach position 48 (full out). Subsequent trouble shooting revealed the following:

a. The blade was following the drive (verified by neutron monitoring),

b. The drive could not be moved to position 48 or overtravel, but only to position between 47 and 48 (the overtravel alarm was never received again following the initial uncoupling event, position 46 position lights up, but neither position 48 or the rod fully withdrawn indicators light up), and

c. Coupling verification cannot be performed by the normal method (with the drive at position 48, demanding a single notch withdrawal and verifying that the drive does not go into the overtravel position). CRD 10–47 has been fully inserted (along with its three symmetric drives). This complies with Technical Specification 3.1.3.6.

The licensee is requesting modification because the present neutronic configuration in the core will be affecting its refueling process in the future if these CRD are held in the core

for the rest of this cycle. The licensee has looked into correcting this problem, but the only solution is to remove the reactor head and remove the CRD from above, which is a very time consuming process. In addition, the licensee is proposing the following contingency actions to minimize the impact of this perturbation:

(1) CRD 10–47 will be fully inserted and disarmed when less than or equal to 20 percent power. This negates any rod drop accident concerns which have a major impact at low power.

(2) During the withdrawal of CRD 10–47 to its present core assignment position (46), neutron instrumentation (local power range monitor and traversing incore probe) will be monitored to verify that the control blade is following the drive. If the neutron instrumentation response does not verify that the rod is following the drive, CRD 10–47 will be inserted into the core.

(3) CRD 10–47 will be exercised weekly.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the staff agrees, that the requested amendment per 10 CFR 50.92 does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because the probability or consequence of a Control Rod Drop Accident is not increased since CRD 10–47 will be inserted when the unit is at less than or equal to 20 percent power, which is when the impact of a Control Rod Drop Accident is most severe; and neutron instrumentation response will be verified when the CRD (10–47) is withdraw at greater than 20 percent power. Should instrumentation response not occur during the withdrawal of CRD 10–47, the rod will be inserted. Degradation of scram performance is not expected; however, scram times of CRD 10–47 will be monitored and conservatively measured for surveillance purposes.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because all possible combinations of accidents involving potentially uncoupled rods have been analyzed and the analysis provided the basis for the Control Rod Drop Accident. That event is discussed in item 1 above.

3. Involve a significant reduction in the margin of safety because the Bank Position Withdrawal Sequence rules allow for the rod to be inserted to position 00 and still be in an analyzed condition. Verification of instrumentation response ensures rod following when the drive is withdrawn. Degradation of scram performance is not expected; however, scram times of CRD 10–47 will be monitored and will be conservatively measured for surveillance purposes.

Accordingly, the Commission proposes to determine that the requested change to the La Salle Unit 1 involves no significant hazards considerations.

*Local Public Document Room location:* Public Library of Illinois Valley Community College, Rural Route No. 1, Ogelsby, Illinois 61348.

*Attorney for the Licensee:* Isham, Lincoln and Burke, Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036.

*NRC Project Director:* Elinor Adensam.

**Commonwealth Edison Co., Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, IL**

*Date of application for amendments:* October 10, 1986.

*Description of amendments request:* These amendments would correct an error in the existing Technical Specifications involving the calculated value for K(z) at the twelve foot level shown on Figure 3.2–9.

The following tracks the acceptance and use of a 1.42 "Fq x P" value for Zion fuel at the 12' level for the Small Break Loss-of-Coolant Accident (SBLOCA) line of the Hot Channel Factor Operating envelope, and supports the correction of the recent error discovered in Zion Technical Specification K(z) curve, Figure 3.2–9.

The SBLOCA was reanalyzed for Zion Unit 1 Cycle 2 to accommodate an increase in the LOCA K(z) envelope third line segment from (12', 0.44) to (12', 0.63) for a maximum Fq at rated power of 2.25 (Reference (1)). The K(z) values are normalized Fq(z) values for the "Heat Flux Hot Channel Factor Normalized Operating Envelope". In order to calculate K(z) at the 12' level, you would take the Fq(12') and divide by the maximum Fq. As the K(z) value, not the actual Fq value, was reported for the 12' level in the Zion Unit 1 Cycle 2 RSE, as 12' Fq would be back calculated as such:

@12':

$K(z) = Fq(z)/\max Fq$

$0.63 = Fq(12')/2.25$

$Fq(12') = 1.4175$

The Reference (1) RSE was submitted to the NRC and, as part of their review, CECo was requested to provide additional SBLOCA information. The additional information requested by the NRC was provided in Reference (2). Reference (3), in part, provided NRC approval for a Zion Unit 1 Cycle 2 revised K(z) third line segment. In none of the first 3 references was the actual 12' level Fq value of 1.42 reported, only the K(z) value.

Technical Specifications require normalized Fq values for the K(z) curve but the SBLOCA analysis is performed using the un-normalized Fq value. The 1975 SBLOCA analysis has an actual Fq of 1.42 (Reference (4)) but it is standard practice to report a K(z) value that is normalized to the max Fq and then rounded down to two decimal places. As such, the value for the 12' K(z) is 0.6311+ but was reported as 0.63. It was because CECo had conservatively calculated the 12' Fq as 1.4175 (see above) that Westinghouse issued the Reference (4) letter (attached), and it was that reference for which an internal file search showed that the SBLOCA 12' operating envelope endpoint first appeared as a 1.42 Fq, not the rounded 0.63 K(z) or its back calculated Fq equivalent.

Thus, the current, correct value of K(z) at the 12' level is simply obtained by:

$$\frac{1.412}{2.32} = 0.612$$

**References**

(1) Reload Safety Evaluation for Zion Nuclear Power Plant Unit 1, Cycle 2 dated November 1975.

(2) CECo Response to NRC Request for Additional Information, G. L. Pliml to R. A. Purple dated April 19, 1976.

(3) NRC/SER dated May 12, 1976 Supporting Amendment Nos. 20/17 to Facility Operating Licenses DPR–39 and 48.

(4) Westinghouse Letter 82CW*–G–080, J. M. Corkle to H. E. Bliss dated May 21, 1982; Subject—"K(z) LOCA Envelope for Zion".

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a

significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility or a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following discussion regarding the above three criteria:

*Criterion 1*

This change involves correcting an error in the upper core line segment of the Normalized Hot Channel Factor (K[z]) curve. This conservative reduction has the effect of restricting the allowable power densities in the upper 1.2 feet of the core to ensure that the core is operating within the bounds of Zion's safety analyses. This restriction ensures that all postulated Loss of Coolant Accidents (LOCA) will produce results that are bounded by the current LOCA analyses.

In addition, the correction of this error has no effect on probability of a primary system pipe rupture, which is the accident of interest. There is no relationship between the allowable power density in the upper 1.2 feet of Zion's reactor core and the integrity of the reactor coolant system.

Thus, this proposed amendment has no effect on the probability or consequences of any previously evaluated accident.

*Criterion 2*

The reduction in the allowable power densities in the upper 1.2 feet of Zion's reactor cores have no effect on any of Zion's systems. In addition, this power produced in this region is transmitted directly to the surrounding coolant. Thus, a slight reduction in the local heat transfer to the reactor coolant will not produce any effects or perturbations that might induce the failure or malfunction of another component.

The integrity of the upper segment of Zion's core is postulated to be threatened by the occurrence of DNB following LOCAs and such events as uncontrolled rod withdrawal, and excessive load increase. The pre-existing protective features for this class of events will not be altered by this proposed change. Based upon the lack of system and component interaction discussed above the specific accident sequences contained in the Zion Safety Assessment will not be affected by the reduction in the allowable power densities in the upper 1.2 feet of Zion's core.

This proposed change is more conservative than the current, erroneous Technical Specification. Thus, the exclusion of a small segment of operating flexibility cannot have any effect on plant operation.

Based upon the above discussion, this proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

*Criterion 3*

This proposed change is more conservative than the current Technical Specifications. It will require the maintenance of lower power densities in the upper core regions than is currently allowed. However, this change will also correct an error in the Technical Specifications, making it consistent with the assumptions contained in Zion's safety analyses.

Thus, the margin of safety will be increased to a level consistent with Zion's LOCA analyses as a result of this change.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. This proposed change corrects an error in the current Figure 3.2–9. Thus, example (i) is applicable in this instance. Example (i) states:

(i) A purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specification involve no significant hazards consideration.

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

*Attorney to licensee:* P. Steptoe, Esq., Isham, Lincoln and Beale, Counselors at Law, Three First National Plaza, 51st Floor, Chicago, Illinois 60602.

*NRC Project Director:* Steven A. Varga.

**Connecticut Yankee Atomic Power Co., Docket No. 50–213, Haddam Neck Plant, Middlesex County, CT.**

*Date of amendment request:* November 24, 1986.

*Description of amendment request:* The proposed amendment would change the expiration date for the Haddam Neck Plant Operating License, DPR–61, from May 26, 2004 to June 29, 2007, forty years from its June 30, 1967 issuance.

*Basis for proposed no significant hazards consideration determination:* The currently licensed term for the Haddam Neck Plant is 40 years commencing with issuance of the construction permit (May 26, 1964). Accounting for the time that was required for plant construction, this represents an effective operating license term of 37 years for the Haddam Neck Plant. The Connecticut Yankee Atomic Power Company (the licensee) application requests a 40-year operating license term for the Haddam Neck Plant.

The licensee's request for extension of the operating license is based primarily on the fact that a 40-year service life was considered during the design and construction of the plant. Although this does not mean that some components will not wear out during the plant lifetime, design features were incorporated which maximize the inspectability of structures, systems and equipment. Surveillance and maintenance practices, which are implemented in accordance with the ASME code and the facility technical specifications, provide assurance that any unexpected degradation in plant equipment will be identified and corrected.

The original design of the reactor pressure vessel (RPV) and associated internals considered the effects of thirty (30) years of operation at full power with a plant capacity factor of 90% (27 Effective Full Power Years (EFPY)). Analyses, however, have demonstrated that the RPV is qualified for at least forty (40) years of operation at full power with a plant capacity factor of 80% (32 EFPY). First, CYAPCO evaluated expected cumulative neutron fluences over a forty-year service life and concluded that this will not be a limiting consideration. CYAPCO submitted informatioin to the NRC to demonstrate that the Haddam Neck RPV complies with the final rule governing assessment of pressurized thermal shock for at least a 40-year period of operation and confirms that the RPV complies with 10 CFR Part 50, Appendix G, relative to the shift in nil-ductility reference temperature for 32 EFPY. In addition, the Haddam Neck RPV surveillance progrram set forth in Section 4.10 of the technical specifications monitors the radiation-induced changes in the mechanical and impact properties of pressure vessel materials in accordance with 10 CFR Part 50, Appendix H. This program provides a means of monitoring the cumulative effects of power operation.

The licensee has performed aging analyses for all safety-related electrical equipment in accordance with 10 CFR 50.49, "Environmental qualification of electrical equipment important to safety for nuclear power plants," identifying qualified lifetimes for this equipment. These lifetimes will be incorporated into plant equipment maintenance and replacement practices to ensure that all safety-related electrical equipment remains qualified and available to perform its safety function regardless of the overall age of the plant.

Based upon the above, the licensee concluded that extension of the operating license for the Haddam Neck Plant to allow a 40-year service life is consistent with the safety analysis in that all issues associated with plant aging have already been addressed. Since the proposed amendment involves no changes in the technical specifications or safety analyses, the licensee conclude that the proposed amendment would not: (i) Involve any significant increase in the probability or consequences of an accident previously evaluated; or (ii) create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) involve any reduction in the margin of safety.

The staff has reviewed the licensee's determination and concur with its conclusions. Therefore, based on the above, the Commission proposes to determine that the proposed amendment, which would provide a 40 year operating life for the Haddam Neck Plant, involves no significant hazards considerations.

*Local Public Document Room location:* Russell Library, 123, Broad Street, Middletown, Connecticut 06457.

*Attorney for licensee:* Gerald Garfield, Esquire, Day, Berry, and Howard, Counselors at Law, City Place, Hartford, Connecticut 01603–3499.

*NRC Project Director:* Christopher I. Grimes.

**Consumers Power Co., Docket No. 50–255, Palisades Plant, Van Buren County, MI**

*Date of amendment request:* December 19, 1985.

*Description of amendment request:* The proposed changes to the Technical Specifications would delete out of date footnotes and incorrect references to a motor control center.

*Basis for proposed no significant hazards determination:* The staff has evaluated the proposed amendment and determined that it involves no significant hazards consideration. In accordance with the criteria set forth in 10 CFR 50.92(c), the proposed amendment does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendment merely deletes out of date footnotes that are no longer applicable and deletes references to an incorrect motor control center. Specifically with regard to the latter, the proposed amendment recognizes references to an incorrect motor control center (MCC–9), and further recognizes that the inclusion of the correct motor control center (merely a location descriptor), would be unnecessary. The proposed changes have no impact on plant design or operations; hence, the probability or consequences of previously evaluated accidents are unrelated.

(2) Create the possibility of a new different kind of accident previously evaluated because the proposed amendment does not introduce any new equipment or modes of operation at the Palisades Plant that could create the possibility of a new or different kind of accident from that which was previously evaluated.

(3) Involve a significant reduction in the margin of safety, because these changes are considered to be administrative. There are no changes being made to hardware or in the manner that plant systems are being operated as a result of this license amendment. Therefore, the margin of safety is not being compromised or changed.

Furthermore, the proposed amendment fits example (i) of the types of amendments that are considered not likely to involve significant hazards considerations published in the **Federal Register** on March 6, 1986 (51 7751), in that it is considered to be a purely administrative change to the Technical Specifications, i.e., a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature.

Based on the preceding assessment, the staff proposes to determine that this proposed amendment involves no significant hazards consideration.

*Local Public Document Room location:* Van Zoeren Library, Hope College, Holland, Michigan 49423.

*Attorney for licensee:* Judd L. Bacon, Esquire, Consumer Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

*NRC Project Director:* Ashok C. Thadani.

**Consumers Power Co., Docket No. 50–255, Palisades Plant, Van Buren County, MI**

*Date of amendment request:* September 29, 1986.

*Description of amendment request:* This amendment request supersedes in its entirety the request dated January 11, 1985 which superseded a request dated December 20, 1982. The December 20, 1982 request was noticed in the **Federal Register** on October 26, 1983 (48 FR 49582). Due to the multiple number of superseding submittals and the length of time that has passed since the initial notice, the staff has chosen to re-notice the request. The proposed changes involve the Technical Specifications for Administrative Controls. The requested changes would clarify existing requirements, bring closer agreement to the terminology of the NRC Standard Technical Specifications, incorporate overtime work limitations stated in NRC Generic Letter 82–12, change the titles of some of the staffing positions, and modify the minimum shift crew according to the requirements of 10 CFR 50.54(m).

*Basis for proposed no significant hazards determination:* The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. In accordance with the criteria set forth in 10 CFR 50.92(c), the proposed amendment does not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed amendment merely involves changes in nonemclature and format for closer consistency with the NRC Standard Technical Specifications and current organizational reporting relationships and titles within the plant and corporate relationships. The proposed change also incorporate current regulatory requirements related to staff working hours (NUREG–0737, Item I.A.1.3.) and shift manning (10 CFR 50.54(m)). The deletion of requirements related to Environmental Qualification and Primary System Surveillance Evaluation and Review that have become obsolete by NRC regulations as well as other redundant specifications has also been proposed. The proposed changes have not impact on plant design or operation; hence, the probability or consequences of previously evaluated accidents are unaltered.

(2) Create the possibility of a new or different kind of accident previously evaluated because the proposed amendment does not introduce any new equipment or modes of operation at the

Palisades Plant that could create the possibility of a new different kind of accident from that which was previously evaluated.

(3) Involve a significant reduction in the margin of safety, because these changes are considered to be administrative. There are no changes being made to hardware or in the manner that plant systems are being operated as a result of this license amendment. Therefore, the margin of safety is not being operated as a result of this license amendment. Therefore, the margin of safety is not being compromised or changed.

Furthermore, the proposed amendment fits example: (i) Of the types of amendments that are considered not likely to involve significant hazards considerations published in the **Federal Register** on March 6, 1986 (51 FR 7751), in that it represents a purely administrative change to technical specifications, i.e., a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature.

Based on the preceding discussion, the staff proposes to determine that this proposed amendment involves no significant hazards consideration.

*Local Public Document Room location* Van Zoeren Library, Hope College, Holland, Michigan 49423.

*Attorney for licensee:* Judd L. Bacon, Esquire, Consumer Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

*NRC Project Director* Ashok C. Thadani.

**Detroit Edison Co., Docket No. 50–341, Fermi–2, Monroe County, MI**

*Dates of amendment request* February 4, 1986, and June 7, 1986.

*Description of amendment request.* This proposed amendment, if approved, would revise the Fermi–2 Operating License No. NPF–43 Plant Technical Specification Table 3.6.3.–1 entitled, "Primary Containment Isolation Valves," to delete isolation valve numbers T50–406A and T50–406B from the Primary Containment Monitoring Systems (PCMS).

The PCMS is used to continuously monitor hydrogen and oxygen concentration in the containment drywell during a LOCA and during a post-LOCA event. Valves Nos. T50–406A and T50–406B remote-manual isolation valves used in that system. At the time of Fermi-2 licensing, the PCMS was not environmentally qualified to meet the requirements of IEEE 323–1974, IEEE 344–1975 and NUREG–0588; and the operating license was granted to the licensee based on its commitment to environmentally qualify the PCMS post-licensing. The PCMS has been upgraded accordingly, but, as a result of the modifications made to meet environmental qualification requirements, the valves in question are no longer required for containment isolation. At present, the PCMS sample line in which these two valves are installed has been sealed closed by weld-capping. The Technical Specification change proposed would enable both valves to be removed from the PCMS and the sample line permanently weld-capped.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The license has determined that the change proposed to Technical Specification Table 3.6.3–1: (1) does not involve a significant increase in the probability or consequences of an accident previously evaluated, because elimination of the containment isolation valves would not increase the probability or consequences of an accident evaluated in the FSAR. Instead, elimination of these valves would be expected to reduce the probability of releases of radioactivity due to the elimination of active containment isolation components which could fail. Radioactive release through containment leakage would also be expected to decrease due to the elimination of a potential leak path; (2) does not create the possibility of a new or different kind of accident from any previously evaluated because the containment isolation function that the two valves being deleted served will be provided by other isolation valves in the PCMS upstream of the deleted valves; and (3) does not involve a significant reduction in safety margin for the reasons stated in (1) and (2), in that permanent capping of the line will provide an equivalent of safety to that provided by the isolation valve if not an increased margin of safety.

The Commission agrees with the licensee's determinations and proposes to determine that the requested change does not involve a significant hazards consideration.

*Local Public Document Room location* Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

*Attorney for the Licensee* John Flynn, Esq., 2000 Second Avenue, Detroit, Michigan 48226.

*NRC Project Director* Elinor Adensam.

**Florida Power and Light Co., Docket Nos. 50–250 and 50–251, Turkey Point Plant Unit 3 and 4, Dade County, FL**

*Date of amendments request* August 25, 1986 and supplemented on November 14, 1986.

*Description of amendments request:* The proposed amendment modifies the technical specification Limiting Condition for Operation (LCO) for the control room ventilation system to allow implementation of modifications required to satisfy NUREG–0737, control room habitability concerns. NUREG–0737 NRC Task Action Plan Item III.D.3.4, Control Room Habitability, requred that licenses assure that control room operators will be adequately protected against the effects of accidental releases to toxic and radioactive gases, and that the nuclear power plant can be safety operated or shut down under design basis accident conditions (Criterion 19—Control Room, of Appendix A, General Design Criteria for Nuclear Power Plants, to 10 CFR Part 50).

Florida Power and Light (FPL), in letters dated July 9, 1981, June 9 and July 22, 1982, August 8 and November 3, 1983, and April 17, 1985, provided responses to the NUREG–0737 control room habitability concerns, and proposed modifications to meet the criteria identified in NUREG–0737, Item III.D.3.4. The NRC, in safety evaluations dated November 25, 1983, and May 8, 1985, concluded that the control room ventilation system modifications proposed by FPL were acceptable.

Modification of the control room ventilation system to implement control room habitability requirements will require that the system be out of service for period of up to 45 days. The current technical specifications specify that the control room ventilation system can be inoperable (during power operation) for a period of 3½ days. A one time additional 45 day LCO in conjunction with the current 3½ day LCO is necessary to permit implementation of the required modifications without forcing a dual unit outage.

*Basis for proposed no significant hazards consideration determination:*

The proposed changes to the Turkey Point Technical Specifications are:
*Pages 3.4–6, 3.4–7*

The technical specification for the control room ventilation system (T.S. 3.4.7) is revised to permit the system to be inoperable for up to 45 days to implement the NUREG–0737, Item III.D.3.4., Control Room Habitability modifications.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Operation of Turkey Point Units 3 and 4 in accordance with the proposed amendment would *not*:

(1) Involve a significant increase in the probability or consequence of an accident previously evaluated. During the period the control room ventilation system will be inoperable, normal operation of the system (i.e. temperature/humidity control and maintenance of a positive pressure in the control room) will be minimally impacted by implementation of the modifications. Portions of the control room ventilation system duct work will be temporarily sealed while the emergency recirculation portion of the system is being modified. Failure of equipment associated with normal operation of the system would not be more likely during the modification period.

As stated, the modifiction will primarily be confined to the emergency recirculation portion of the system, whose function is to ensure that the control room will remain habitable during and following design basis accident conditions. Under the current design, post-accident control room habitability is ensured by automatic actuation of the control room HVAC system to the emergency recirculation mode of operation in response to a containment ventilation isolation signal. Approximately 250 cfm of outside air makeup is obtained to provide a positive control room pressure, thereby minimizing the amount of unfiltered in-leakage and ensuring an acceptable control room environment. A temporary filtration system consisting of a high efficiency particulate air (HEPA) and charcoal filter, unit, together with an air supply fan and interconnecting duct assembly, will be installed to ensure a commensurate degree of protection during the 45 days period required to implement the modifications. This temporary system provides an alternate means of maintaining control room habitability under accident conditions.

Therefore, operation of the facility in accordance with proposed change does not affect the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. As noted above, the modification is primarily confined to the emergency recirculation portion of the system whose function is to ensure that the control room will remain habitable during and following design basis accident conditions. The temporary system ensures a commensurate degree of protection for the time required to implement the modifications. The loss of the temporary system would result in the same consequences as considered for loss of the emergency recirculation portion of the original system. Therefore, operation of the facility in accordance with the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety. Design requirements for the temporary filtration system, including system sizing, air flow requirements, and filter unit efficiency, will be sufficient to ensure that radiation exposure to control room personnel under accident conditions will be consistent with the requirements for the existing recirculation system and General Design Criterion 19 (GDC–19) of Appendix A to 10 CFR Part 50. The temporary system will operate continuously during the modification period, be powered from existing safety-related busses, require no manual operator actions, operators will be trained and temporary procedures will be in place.

The temporary system will be periodically tested and operability maintained in accordance with the current Technical Specification requirements. Both the design and operation of the temporary system will ensure a commensurate degree of protection for the required time, thus maintaining the margin of safety. Therefore, operation of the facility in accordance with the proposed changes does not involve a reduction in margin of safety.

Based on the above discussion, operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated, or create the possibility of a new or different kind of accident from any accident previously evaluated, or involve a significant reduction in a margin of safety. Therefore, the staff proposes to determine that the proposed amendments do not involve a significant hazards consideration.

*Local Public Document Room location:* Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199.

*Attorney for licensee:* Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036.

*NRC Project Director:* Lester S. Rubenstein.

**GPU Nuclear Corp., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, PA**

*Date of amendment request.* November 3, 1986.

*Description of amendment request.* The proposed amendment revises the TMI–1 Technical Specifications (TSs) to support the core reload for Cycle 6 operation. The core design changes for Cycle 6 include an increase in cycle lifetime to 425 effective full power days (EFPDs) with the incorporation of burnable poison rod assemblies (BPRAs) to aid in reactivity control and the use of gray axial power shaping rods (APSRs). The fresh fuel in hydraulically and geometrically similar to the irradiated fuel remaining from previous cycles. The fresh fuel has a slightly higher initial fuel enrichment than previous fuel. The proposed TS revisions account for changes in power peaking and control rod worths for Cycle 6. A Cycle 6 specific analysis was conducted to generate TS Limiting Conditions for Operation. Additionally, revised reactor protection system instrumentation errors specific to TMI–1 instruments and based on updated Babcock & Wilcox (B&W) error combination methods were used to establish Cycle 6 setpoint limits.

*Basis for proposed no significant hazards consideration determination.* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if it meets three standards as described in 10 CFR 50.92. The Commission's staff has reviewed the licensee's analysis concerning no significant hazards considerations and

finds their analysis satisfactory. Each standard is discussed in turn.

Standard 1

The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. The licensee reviewed the TMI–1 Final Safety Analysis Report (FSAR) Chapter 14 accidents that depend upon core reactivity parameter changes to determine the effects of the Cycle 6 reload. The licensee used standard analytical techniques and codes previously approved by the Commission for their analysis. Except for accidents affected by core isotopic inventory, the licensee's analysis concludes that reload dependent events are bounded by the original Chapter 14 FSAR analyses. Accidents affected by core isotopic inventory changes include loss of electric power, steam generator tube failure, fuel handling accident, maximum hypothetical accident, loss of coolant accident (LOCA), waste gas tank rupture, and control rod ejection. These transients and accident analyses are still bound by thermal and reactivity assumptions in the original safety analysis but show increases in radiological considerations. Specifically, the projected thyroid dose for FSAR Chapter 14 accidents affected by isotopic inventory changes increase by a maximum of 17% for Cycle 6 compared to the original licensing basis. This 17% increase does not represent a change due solely to the Cycle 6 reload but is the result of fuel management changes over the last two cycles. The increases were predicted to occur due to the fuel management changes which commenced for Cycle 4. The limit of 10 CFR Part 100 for projected thyroid dose in a maximum of 300 REM. For six of the seven accidents of concern, the FSAR Chapter 14 analysis predicts a thyroid dose of less than 11 REM. A 17% increase in these cases remains well within the limits of 10 CFR Part 100 and is not significant. For the remaining accident, a LOCA, the analysis results are not affected by reload specific changes since a generic type analysis is conducted. Therefore, the amendment would not involve a significant increase in the probability or consequences of accidents previously evaluated.

Standard 2

The proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. Cycle 6 is designed as a standard B&W in-out-in low leakage core. The controlling reactivity dependent parameters are bounded by FSAR Chapter 14 accident analyses. Cycle 6 fresh fuel assemblies are hydraulically and geometrically similar to previously irradiated fuel assemblies. Therefore, operation in accordance with the proposed amendment for Cycle 6 would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3

The proposed amendment would not involve a significant reduction in a margin of safety. Cycle 6 characteristics are conservative with respect to previous accident analyses. As discussed in Standard 1, there is a project increase in thyroid exposure for accidents affected by isotopic inventory changes, but this increase in thyroid exposure is not significant as the final result is still well within 10 CFR Part 100 limits. Safety criteria, as described in the TS basis, are preserved by the revised limits. Therefore, Cycle 6 operation would not involve a significant reduction in a margin of safety.

Accordingly, based on the above discussions, the Commission proposes to determine that the proposed amendment does not involve significant hazards considerations.

*Local Public Document Room location.* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

*Attorney for licensee.* Ernest L. Blake, Jr., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Project Director.* John F. Stolz.

**Kansas Gas and Electric Co., Kansas City Power and Light Co., Kansas Electric Power Cooperative, Inc., Docket No. 50–482, Wolf Creek Generating Station, Coffey County, KS**

*Date of amendment request:* November 7, 1986.

*Description of amendment request:* The purpose of the license amendment request to incorporate technical specification LCO and surveillance requirements for the steam generator Atmospheric Relief Valves (ARVs) into the Wolf Creek Operating license is to assure the availability of mitigating equipment assumed in the Steam Generator Tube Rupture (SGTR) analysis. The technical specification requirements constitute additional limitations on facility operations and satisfy, in part, the specific requirements of License Condition 2.C (11) of the operating license. No requirements on ARV operability have been included in the existing Wolf Creek Technical Specifications because the ARVs have not been required in the mitigation of postulated accidents and transients.

*Basis for proposed no significant hazards consideration determination:* In accordance with the requirements of 10 CFR 50.92, the licensee has submitted the following no significant hazards determination:

The proposed Technical Specifications for steam generator Atmospheric Relief Valves (ARV's) incorporate new requirements into the Wolf Creek Operating License. These requirements constitute additional limitations on facility operations to assure operability of the ARV's and to impose operating restrictions if less than the required number of ARV's is available.

The proposed specifications do not involve a significant hazards consideration because operation of Wolf Creek Generating Station (WCGS) in accordance with the proposed requirements would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The ARV's are not relied upon for mitigation of accidents or transients, other than the Steam Generator Tube Rupture (SGTR) event, previously evaluated in the WCGS Final Safety Analysis Report (FSAR). The Limiting Conditions for Operation (LCO) do not alter the manner in which ARV operation was considered in previous accident and transient analyses. Surveillance testing of ARV's, which involves stroke testing, is performed (in accordance with existing surveillance test program procedures) with the block valves closed. Thus, a plant transient is precluded. To assure that the ARV's are available for mitigation of a postulated SGTR event, the proposed specifications establish surveillance requirements and restrictions on ARV operability consistent with the assumptions used in the SGTR event analysis submitted to the NRC in accordance with WCGS License Condition 2.c(11). Therefore, the proposed Technical Specification requirements would neither increase the probability of an accident nor increase the consequences of accidents previously evaluated.

2. Create the possiblity of a new or different kind of accident from any previously evaluated. Establishing new LCO and surveillance requirements for the existing WCGS ARV's does not result in the possibility of new or different types of accidents.

3. Involve a significant reduction in a margin of safety. The proposed Technical Specifications assure that the margin of safety established in the current SGTR analysis is maintained. As discussed in items 1 and 2 above, the proposed LCO and surveillance requirements do not alter the margins to safety established in previous accident and transient analysis or in established surveillance test programs.

Based on the above analysis the licensee has concluded that the

proposed revisions to the Wolf Creek Generating Station Technical Specifications involve no significant hazards consideration. The NRC staff has reviewed the licensee's significant hazards consideration determination and agrees with the licensee's analysis. Additionally, the NRC has established guidance concerning the determination of whether a significant hazards consideration exists by providing certain examples (51 FR 7751) of amendments not likely to involve a significant hazards consideration. The proposed ARV Technical Specifications conform to NRC example (ii) "A change that constitutes an additional limitation, restriction or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement."

The staff has, therefore, made a proposed determination that the licensee's request does not involve a significant hazards consideration.

*Local Public Document Room location:* Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas, 66801 and Washburn University School of Law Library, Topeka, Kansas.

*Attorney for licensee.* Jay Silberg. Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, DC 20036.

*NRC Project Director:* B.J. Youngblood.

**Maine Yankee Atomic Power Co., Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, ME**

*Date of amendment request:* February 3, 1986 and December 8, 1986.

*Description of amendment request:* The proposed amendment would:

1. Add administrative controls to limit overtime of staff personnel so that the Commission's policy concerning staff overtime limits at nuclear plants is implemented.

2. Allow for the use of the dual role of Senior Reactor Operator and a Shift Technical Advisor by including provisions that would allow two options of the Commission Policy Statement on Engineering Expertise on shift.

*Basis for propsed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes conform to: (1) The additional requirements on limiting overtime on staff and (2) the option of using a combined Senior Reactor Operator/Shift Technical Advisor in lieu of a Shift Technical Advisor assigned to an operating shift. These changes are consistent with the Commission's policy statements contained in USNRC Policy Statement on Nuclear Plant Staff Working Hours (*47 FR 7352; February 18, 1982*) and in *USNRC Policy Statement on Engineering Expertise on Shift* (*50 FR 43621; October 28, 1985*).

Thus the proposed amendments do not involve any increase in the probability or consequences of an accident previously evaluated. In addition, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated and they do not involve any reduction in a margin of safety. Based on the above, the staff proposes to determine that the proposed amendment would involve no significant hazards considerations.

*Local Public Document Room location:* Wiscasset Public Library, High Street, Wiscasset, Maine.

*Attorney for licensee:* J.A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

*NRC Project Director:* Ashok C. Thadani.

**Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine**

*Date of amendment request:* November 25, 1986 and December 8, 1986.

*Description of amendment request:* This proposed amendment would change the maximum nominal enrichment of the fuel allowed to be used in the reactor core for operating Cycle 10 and beyond. Maine Yankee is currently in Cycle 9 operation. In the proposed amendment, the fuel enrichment specification would change from a maximum nominal weight percent of 3.30 U-235 to 3.50 weight percent U-235.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazard exists as stated in 10 CFR 50.92(2). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of a facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from an accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The proposed change in enrichment would not increase the consequences of accidents previously analyzed. The adequacy of a given core design must be demonstrated for each core prior to core reloading. The fuel enrichment is only one factor that must be considered in this determination. The fuel enrichment itself does not directly impact the results of the plant safety analysis. Factors such as the number and placement of fresh fuel assemblies, the exposure distribution and placement of the fuel assemblies remaining from previous cycles, the number and placement of burnable poison rods, and the core operational strategy have a more significant impact.

The facility's fuel and storage areas have been analyzed for enrichments of 3.5 weight percent U-235. The results of these analyses indicate that handling and storage of 3.5 weight percent enriched fuel does not involve an unreviewed safety question. The result of these analyses are within the acceptance criterion defined in Technical Specification 1.1, "Fuel Storage" of $K_{eff}$ less than or equal to 0.095.

Maine Yankee's application to increase the capacity of the spent fuel pool, which was approved in 1984 when the NRC issued Amendment 75 to Maine Yankee's Operating Licensing, assumed several conservative assumptions in the criticality calculations. These included:

- Fresh fuel of 3.5 weight percent U-235.
- No soluble boron in the pool water.
- No axial or radial neutron leakage from the racks.
- 68°F water in the pool (the lowest anticipated temperature of the pool).
- A value of boron loading in the BORAL plates such that there is a 95% probability that the boron concentration will, with 95% confidence, be greater than that value.
- Worst case values of mechanical parameters including center-to-center spacing, BORAL plate thickness, etc.

The effective multiplication factor ($K_{eff}$) was less than 0.95 for the redesigned spent fuel storage racks when loaded with standard fuel assemblies having a fuel enrichment of 3.5 weight percent.

New fuel is stored dry in racks that have a center-to-center spacing of 20 inches (FSAR, Chapter 5). This dimension provides a considerable margin of subcriticality even if the new fuel storage area were filled with demineralized water.

The new fuel storage area was analyzed for a fuel enrichment of 3.5 weight percent. Conditions of varying moderator density, ranging from dry to flooded conditions, were considered. The results of this analysis indicate that the acceptance criteria for $K_{eff}$ as identified in the Standard Review Plan (NUREG–0800, Section 9.1.1) are satisfied.

An evaluation has also been performed to determine the effect of higher fuel enrichment on the fuel handling accident. The evaluation has resulted in the determination that an increase in fuel enrichment will not by itself affect the mixture of fission product nuclides. Although a higher enrichment fuel cycle may result in fuel burnup consisting of a slightly different mixture of nuclides, the effect is insignificant because the isotopic mixture of an irradiated assembly is relatively insensitive to the fuel assembly's initial enrichment and the doses from postulated accidents are not significantly affected and continue to be acceptable.

Operation of Maine Yankee with 3.5 weight percent enriched fuel will not create any new or different kinds of accidents from those previously evaluated.

Fuel handling and storage of fuel with enrichment of 3.5 weight percent U–235 does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The evaluation performed for each reload core assures that the core design meets appropriate safety limits, including a consideration of a significant reduction in the margin of safety. The results of preliminary evaluations performed for Cycle 10, the first reload core introducing 3.5 weight percent U–235 fuel, show that all applicable acceptance criteria will be met.

The margin to criticality for fuel assemblies of 3.5 weight percent in the Maine Yankee fuel pool storage racks is not reduced and meets the NRC acceptance criterion of 0.95 for $K_{eff}$ even with the many conservative assumptions used in the calculation of $K_{eff}$ assuming 3.5 weight percent fresh fuel. Similar conclusions have been reached for the new fuel storage area.

Based on the above, the staff proposes to determine that the proposed amendment would involve no significant hazards considerations.

*Local Public Document Room location:* Wiscasset Public Library, High Street, Wiscasset, Maine.

*Attorney for licensee:* J. A. Ritscher, Esq., Ropes and Gray, 225 Franklin Street, Boston, Massachusetts 02210.

*NRC Project Director:* Ashok C. Thadani.

**Mississippi Power & Light Co., Middle South Energy, Inc., South MS Electric Power Association, Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, MS**

*Date of amendment request:* October 7, 1986 as revised December 5, 1986.

*Description of amendment request:* The amendment would change the Technical Specifications (TSs) in two areas: (1) Change TS 3/4.1.4.2, "Rod Pattern Control System," and associated Bases 3/4.1.4 to specify conditions for which the rod pattern controller function of the rod pattern control system (RPCS) may be bypassed for the purpose of properly positioning out-of-sequence control rods; and, (2) change TS 3/4.4.5, "Specific Activity," associated Bases 3/4.4.5, Table 4.11.2.1.2–1, "Radioactive Gaseous Waste Sampling and Analysis Program," and TS 6.9, "Reporting Requirements," to eliminate an action statement which requires reactor shutdown if reactor coolant radioactive iodine transients (iodine spikes) occur over a cumulative operating time greater than 800 hours in a 12-month interval and to change requirements for reporting specific activities that exceed the radioiodine activity limit from special reports to the annual report required by TS 6.9.1.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided an analysis of significant hazards considerations in its October 7, 1986, request for a license amendment, as revised December 5, 1986. The licensee has concluded with appropriate bases, that the proposed amendment satisfies the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations. The NRC staff has made a preliminary review of the licensee's submittal. A summary of staff's review follows.

Change (1) allows bypassing of the rod pattern controller function in the rod pattern control system (RPCS) for operable control rods as well as inoperable control rods. The purpose of the rod pattern controller function is to control the rod withdrawal and insertion sequences so that any control rod could not be worth enough to result in exceeding the fuel damage limit in the event of a control rod drop accident. The Final Safety Analysis Report (FSAR) analysis of a worst case control rod drop accident in which eight control rods are bypassed resulted in a peak fuel enthalpy less than the fuel damage limit. The previous Technical Specifications allowed up to eight inoperable control rods to be bypassed under certain conditions. Change (1) would allow up to eight operable control rods to be bypassed under specified conditions. The change does not involve a significant increase in the probability of an accident previously evaluated because it does not involve equipment or systems that move control rods. The change does not involve a significant increase in the consequences of an accident previously evaluated because the conditions under which operable control rods may be bypassed will keep control rod worths within the bounds of those considered in the worst case control rod drop accident analyzed in the FSAR. For the same reasons the change does not create the possibility of a new or different kind of accident from any accident previously evaluated nor does it involve a significant reduction of a margin of safety.

Change (2) eliminates an action statement which requires reactor shutdown if radioactive iodine in the coolant exceeds specified limits. This change was suggested by the NRC staff in Generic Letter No. 85–19, "Reporting Requirements on Primary Coolant Iodine Spikes". The limits on specific activity in the reactor coolant were imposed to assure that the offsite radiological doses resulting from a main steam line break outside containment would be within the guideline values of 10 CFR Part 100. This limits of radioactive iodine in the reactor coolant for steady state operations and for transients (iodine spikes) would not be changed. The elimination of the action statement which restricted cumulative operation during iodine spiking to less than 800 hours per year would increase the probability that a steam line break accident could occur during an iodine spike. However, as reported in Generic

Letter 85–19, quality of nuclear fuel and fuel management has been greatly improved in recent years, such that coolant iodine activity is maintained well below the specified limits. The increased probability of a steam line break accident during an iodine spike is not significant because of the decreased coolant iodine activity for present reactors using improved fuels and fuel management. Accordingly, the deletion of the action statement does not involve a significant increase in the probability or consequences of an accident previously evaluated. The deletion of the action statement would not create the possibility of a new or different kind of accident from any accident previously evaluated because plant equipment or procedures are not changed. Because the specific activity limits in the specification are not changed, deletion of the aciton statement would not involve a significant reduction in a margin of safety.

Change (2) also changes the requirements for reporting iodine activities that exceed the limits of the Technical Specifications. Requirements for reporting to the NRC the results of analyses of the samples of reactor coolant would be changed from the presently required special reports within 30 days and 92 days to the annual report required by TS 6.9.1. The information to be included in the annual report is similar to that previously required but has been changed to more clearly designate the results from the specific activity analysis. Prompt reporting of significant coolant iodine activities is required under 10 CFR 50.72(B)(1)(ii) which specifies that serious degradation of principal safety barriers including fuel cladding, be reported to the NRC within one hour. Because the present Commission's rules require prompt reporting of serious degradation of the fuel and the content of reports of specific activities exceeding Technical Specification limits is essentially the same, the change in reporting requirements in change (2) would not (a) involve a significant increase in the probability or conseqences of an accident previously evaluated; or (b) create the possibility of a new or different kind of accident from any accident previously evaluated; or (c) involve a significant reduction in a margin of safety.

Accordingly, for the reasons cited above, the Commission proposed to determine that these two changes do not involve significant hazards considerations.

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

*Attorney for licensee:* Nicholas S. Reynolds, Exquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036.

*NRC Project Director:* Walter R. Butler.

**Northeast Nuclear Energy Co., et al., Docket No. 50–336 Millstone Nuclear Power Station, Unit No. 2, New London County, CT**

*Date of amendment request*: October 29, 1986.

*Description of amendment request:* By application for license amendment dated October 29, 1986, Northeast Nuclear Energy Company, et al. (the licensee), requested changes to the technical Specifications (TS) for Millstone Unit 2 related to primary system iodine spiking: (1) The requirement in TS 3.4.8., "Specific Activity", that operation, outside predetermined primary coolant activity limits, not exceed 10 percent of the unit's total yearly operating time would be deleted; and (2) the current "special report" requirement in TS 6.9.2i associated with primary coolant activity would be replaced by an annual report requirement in TS 6.9.1.4.

*Basis for proposed no significant hazards consideration determination:* On September 27, 1985, the NRC issued Generic Letter (GL) 85–19, "Reporting Requirements on Primary Coolant Iodine Spikes." The purpose of GL 85–19 was to propose that licensees be relieved of certain unnecessary requirements associated with primary system activity, as follows:

As part of our continuing program to delete unnecessary reporting requirements, we have reviewed the reporting requirements related to primary coolant specific activity levels, specifically primary coolant iodine spikes. We have determined that the reporting requirements for iodine spiking can be reduced from a short-term report (Special Report or Licensee Event Report) to an item which is to be included in the Annual Report. The information to be included in the Annual Report is similar to that previously required in the Licensee Event Report but has been changed to more clearly designate the results to be included from the specific activity analysis and to delete the information regarding fuel burnup by core region.

In our effort to eliminate unnecessary Technical Specification requirements, we have also determined that the existing requirements to shut down a plant if coolant iodine activity limits are exceeded for 800 hours in a 12-month period can be eliminated. The quality of nuclear fuel has been greatly improved over the past decade with the result that normal coolant iodine activity (i.e. in the absence of iodine spiking) is well below the limit. Appropriate actions would be initiated long before accumulating 800 hours above the iodine activity limit. In addition, 10 CFR 50.72(b)(1)(iii) requires the NRC to be immediately notified of fuel cladding failures that exceed expected values or that are caused by unexpected factors. Therefore, this Technical Specification limit is no longer considered necessary on the basis that proper fuel management by licensees and existing reporting requirements should preclude ever approaching the limit.

Licensees are expected to continue to monitor iodine activity in the primary coolant and take responsible actions to maintain it at a reasonably low level (i.e., accumulated time with high iodine activity should not approach 800 hours).

The licensee's application dated October 29, 1986 was submitted in response to GL 85–19.

The proposed changes to the TS do not involve a significant increase in the probability or consequences of an accident previously evaluated. As indicated in GL 85–19, the improved quality of fuel and the existence of adequate reporting requirements precludes the operation of the facility with primary system activity that is excessive. Excessive primary system activity would be of concern in the event of an accident involving release of reactor coolant. Finally, the proposed changes to the TS do not involve the creation of a new or different type of accident or a reduction in a safety margin since no changes in plant equipment, operating modes or safety analyses are involved. Based upon the above, the Commission proposes to determine that the proposed changes to TS 3.4.8, 6.9.2 and 6.9.1.4 involve no significant hazards considerations.

*Local Public Document Room location:* Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

*Attorney for licensee.* Gerald Garfield, Esq., Day, Berry and Howard, One Constitution Plaza, Hartford, Connecticut 06103.

*NRC Project Director:* Ashok C. Thadani.

**Northeast Nuclear Energy Co., et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, CT**

*Date of amendment request:* November 20, 1986.

*Description of amendment request:* The proposed amendment adds new requirements to the technical specifications for a Halon 1301 Fire Suppression System inside the cable vault room. It necessitates changes to technical specification sections 3.12.C.3

and 3.12.C.4 Table 3.12.2 to add the cable vault to the list of areas having Halon 1301 fire suppression systems and to increase the total number of cable vault fire detection instruments available from 15 to 28 and the minimum number required from 12 to 24.

*Basis for proposed no significant hazards consideration determination:* The purpose of the Halon 1301 Fire Suppression System is to limit and control fires in the cable vault before damage to redundant control cables can occur. This will be accomplished through the use of cross-zoned early-warning smoke detection instruments and the quick release of the Halon 1301 fire suppressant agent into the cable vault.

NNECO has reviewed the proposed changes to the technical specifications pursuant to 10 CFR 50.59 and 10 CFR 50.92 and has determined that they do not constitute an unreviewed safety question and do not involve a significant hazards consideration. The proposed changes to the technical specifications reflect the installation of a new Halon 1301 Fire Suppression System that will enhance the fire suppression capabilities in the cable vault while maintaining the limiting conditions for operation and surveillance requirements already existing for other Halon 1301 systems. The changes involve no significant hazards because they do not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. These proposed changes reflect the installation of a new system and maintain limiting conditions for operation and surveillance requirements which are already proven acceptable for operation of similar Halon 1301 systems.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The proposed new system interfaces only with non-vital power. Installation of this new system enhances the fire suppression capabilities in the cable vault.

(3) Involve a significant reduction in a margin of safety. The proposed changes involve the limiting conditions for operation and surveillance requirements for a new suppression system similar to those already existing for other Halon 1301 systems. Hence, the margin of safety is increased.

The Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (51 FR 7750, March 6, 1986) of license changes involving no significant hazards consideration. The staff has reviewed the proposed change and concludes that it falls within the envelope of example (ii) in that the change would constitute an additional limitation, restriction or control not included in the current technical specifications. As described above, the addition of a new Halon 1301 Fire Suppression System in an area where one did not exist before constitutes a control not presently included in the technical specifications.

Based on the information provided by the licensee, the staff proposes to determine that the license amendment request involves no significant hazards consideration.

*Local Public Document Room location:* Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

*Attorney for licensee:* Gerald Garfield, Esquire, Day, Berry, & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499.

*NRC Project Director:* Christopher I. Grimes.

**Pennsylvania Power and Light Co., Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Unit 1 and 2, Luzerne County, PA**

*Date of amendment request:* October 17, 1986.

*Description of amendment request:* The proposed amendments would revise the Susquehanna Steam Electric Station (SSES) Unit 1 and Unit 2 License Condition 2.D of Licenses NPF–14 and NPF–22 to include change X to SSES Physical Security Plan. Specifically the following two changes are proposed:

a. Eight-year updates of security clearances would be discontinued.

b. The Condensate Transfer and Storage Systems would be deleted from the list of vital equipment.

*Basis for proposed no significant hazards consideration determination:* The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request and made the following determination.

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

a. Initial security clearance investigations followed by continual behavior observation are adequate to determine the reliability and trustworthiness of employees; and

b. Changes involving the vital equipment list are administrative in nature since the equipment being removed from the list is not vital and serves no safety-related function. There are no design or procedural changes involved.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because:

a. The Commission's regulations do not require that security clearances be updated. Removing this requirement from the PP&L employees places them on the same footing as the contractor personnel. There is no reason to believe that the PP&L employees are any less reliable or trustworthy than the contractor personnel; and

b. There are no design or procedural changes involved with the changes to the vital equipment list.

3. The proposed changes do not involve a significant reduction in margin of safety because: a. Continual behavior observation has been demonstrated to be far more effective than security clearance updates in identifying significant changes in employee circumstances related to reliability and trustworthiness; and

b. The Condensate Transfer and Storage System has no safety-related function. Its interface with safety-related systems is not expected to adversely affect the performance of the safety functions of those systems.

Based on the above consideration, the Commission proposes to determine that the proposed changes do not involve significant hazards consideration.

*Local Public Document Room location:* Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

*Attorney for licensee:* Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, DC 20036.

*NRC Project Director.* Elinor G. Adensam

**Public Service Co. of CO, Docket No. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, CO**

*Date of amendment request:* This proposed amendment to the Fort St. Vrain Technical Specifications (TS) implements Phase II of the licensee's Inservice Inspection Program (ISI). These changes are based on an earlier

submittal, dated November 27, 1985, and comments made by the NRC in a letter dated May 30, 1986. Many of the proposed changes involve testing of pumps and valves. The detailed surveillance procedures which implement these inspections will follow the guidance of the ADME Code, Section XI, Division 1 or 2, as appropriate.

The first phase of the ISI Program was implemented by Amendment No. 33 to Facility Operating License DPR–34, dated March 8, 1983.

*Basis for proposed no significant hazards consideration determination:* The proposed changes to the Technical Specification Surveillance Requirements generally expand the scope of inservice examination and testing that is currently performed at the Fort St. Vrain Nuclear Generating Station. These changes provide greater assurance of plant safety and reliability.

Individual surveillance requirements have been evaluated in detail by the licensee. The results of these reviews revealed that existing surveillance requirements generally were adequate in light of plant operating experience, importance to safety, unique design features and limitations, as well as ASME Code development for future reactor designs. Minor modifications to surveillance intervals were made to reflect operating experience, and to provide operating flexibility. Additional tests were included to assure the operability and accuracy of instrumentation which can be used for monitoring the structural integrity of major plant equipment. Additional component testing was recommended, as a result of detailed reviews of plant systems, either when components important to safe plant shutdown and cooling were not in the scope of the current Technical Specifications, or when the testing method could be improved to provide additional assurance of component reliability.

The proposed changes to the Technical Specifications reflect additional surveillances as required by inservice inspection and testing requirements.

The changes follow example (ii) of those provided by the Commission in 51 FR 7751 as examples of amendments that are not considered likely to involve significant hazards considerations. Therefore, it is the staff's initial determination that the proposed amendment does not involve any significant hazards considerations.

*Local Public Document Room location.* Greeley Public Library, City Complex Building, Greeley, Colorado.

*Attorney for licensee:* Bryant O'Donnell, Public Service Company of Colorado, P.O. Box 840, Denver, Colorado 80201–0840.

*NRC Project Director:* Herbert N. Berkow.

**Notice of Issuance of Amendment to Facility Operating License**

During the period since publication of the last bi-weekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments, satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Licensing.

**Arizona Public Service Co., et al. Docket Nos. STN 50–528 and STN 50–529, Palo Verde Nuclear Generating Station, Units 1 and 2, Maricopa County, AZ**

*Date of applications for amendments:* October 16, 1986 (three applications), as supplemented November 26 and December 5, 1986.

*Brief description of amendments:* The amendments revised the licenses to authorize additional time to complete sale and leaseback transactions previously authorized by the Commission for Arizona Public Service Company, El Paso Electric Company, and Public Service Company of New Mexico.

*Date of issuance:* December 11, 1986.

*Effective date:* December 11, 1986.

*Amendment Nos:* 11 and 6.

*Facility Operating License Nos.: NPF–41 and NPF–51:* Amendments revised the licenses.

*Dated of initial notice in the* **Federal Register:** November 5, 1986 (51 FR 40275). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 11, 1986.

No significant hazards consideration comments were received: No

*Local Public Document Room location:* Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

**Arkansas Power & Light Co., Docket No. 50–368, Arkansas Nuclear One, Unit 2, Pope County, AR**

*Date of application of amendment:* April 25, 1986.

*Brief description of amendment:* The amendment revised the Technical Specifications pertaining to the Refueling Water Tank maximum solution temperature, the periodic verification of moderator temperature coefficient and the minimum shutdown margin for operating Modes 1 through 4.

*Date of issuance:* December 11, 1986.

*Effective date:* December 11, 1986.

*Amendment* No.: 81.

*Facility operating license no. NPF–6:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register.** September 24, 1986 (51 FR 33942 and 33943).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room Location:* Tomlinson Library, Arkansas

Tech University, Russellville, Arkansas 72801.

**Carolina Power & Light Co., Docket No. 50–324, Brunswick Steam Electric Plant, Unit 2, Brunswick County, NC**

*Date of application for amendment:* August 22, 1986.

*Brief description of amendment:* The amendment revises the main steam line high radiation scram and isolation setpoints, on a one time, short-term basis, to facilitate test injections of hydrogen into the reactor coolant. The test is scheduled to be performed in late November or mid-December, 1986. The test is expected to be completed within about one week of its start.

*Date of issuance:* December 10, 1986.

*Effective date:* December 10, 1986.

*Amendment No.:* 131.

*Facility Operating License No. DPR–62:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** September 24, 1986 (51 FR 33944) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

**Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Units 1 and 2, Ogle County, IL**

*Date of application for amendments:* August 13, 1986 and August 27, 1986.

*Description of amendments:* The amendment approves changes to the Technical Specifications that: (1) Replaces "86% of total volume" with "50%" for the water level in the ultimate heat sink cooling tower basin; (2) permits a crosstie between Units 1 and 2 Class IE 125–vdc buses; and (3) deletes two pages that are no longer effective.

*Date of issuance:* December 12, 1986.

*Effective date:* December 12, 1986.

*Amendment No.:* 5.

*Facility Operating License Nos. DPR–37 and DPR–60:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 8, 1986 (50 FR 36084).

The Commission's related evaluation of the amendments is contained in a Safety Evauation dated December 12, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

**Commonwealth Edison Co., Docket Nos. 50–295 and 50–304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Benton County, IL**

*Date of application for amendments:* September 19, 1986.

*Brief description of amendments:* These amendments will allow one battery charger assigned to a 125 V.D.C. bus of a unit in either cold shutdown or refueling to be used to fulfill the battery charger operability requirement of a D.C. bus of an operating unit. These amendments represent granting in part and denying in part of the licensee's request. This one time change will be in effect until the replacement effort is completed or until January 31, 1987, whichever comes first. The Notice of Denial will be issued later.

*Date of issuance:* December 8, 1986.

*Effective date:* December 8, 1986.

*Amendment Nos.:* 99 and 89.

*Facility Operating License Nos. DPR–39 and DPR–48:* Amendments revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 22, 1986 (51 FR 37507):

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 8, 1986.

No significatnt hazards consideration comments received: No.

*Local Public Document Room location:* Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

**Duke Power Co., Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, NC**

*Date of application for amendments:* December 13, 1985.

*Brief description of amendments:* The amendments: (1) Revise the reporting requirements related to primary coolant iodine spikes, (2) delete the existing Technical Specifications (TS) requirements to shut down the facility if coolant iodine activity limits are exceeded for 800 hours in a 12-month period, and (3) clarify the sampling technique to allow analysis of a non-degassed reactor coolant system (RCS) sample for determination of total specific activity. The changes in items (1) and (2) are in accordance with NRC Generic Letter No. 85–19 dated September 17, 1985.

*Date of issuance:* December 8, 1986.

*Effective date:* December 8, 1986.

*Amendment Nos.:* 66 and 47.

*Facility Operating License Nos. NPF–9 and NPF–17:* Amendments revised the Technical Specifications.

*Date of initial notice in the* **Federal Register:** August 27, 1986 (51 FR 30571).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 8, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

**Duke Power Co., Dockets Nos. 50–269, 50–270 and 50–287, Oconee Nuclear Station, Units Nos. 1, 2 and 3, Oconee County, SC**

*Date of application for amendments:* August 27, 1986, as supplemented on September 29, 1986.

*Brief description of amendments:* These amendments revised the Station's common Technical Specifications to add operability requirements of monitors and surveillance items required by the addition of the radwaste facility at the Oconee Nuclear Station. The amendments also deleted certain outdated footnotes with the gaseous process and effluent monitoring instrumentation.

*Date of issuance:* December 17, 1986.

*Effective date:* December 17, 1986.

*Amendment Nos.:* 152, 152 and 149.

*Facility Operating License Nos. DPR–38, DPR–47 and DPR–55:* Amendments revised the Technical Specifications.

*Date of initial notice in the* **Federal Register:** October 8, 1986 (51 FR 36089) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Oconee County Library, 501 West Southbroad Street, Walhalla, South Carolina 29691.

**GPU Nuclear Corp., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, PA**

*Date of application for amendment:* August 25, 1986, as revised on October 1, 1986.

*Brief description of amendment:* This amendment added Technical Specification (TS) requirements for operation and testing of the newly installed Fuel Handling Building (FHB) Engineered Safety Features (ESF) Air Treatment System. Consequently, similar requirements previously in place for the Auxiliary and FHB Air Treatment System were changed and/or

deleted to reflect their revised accident mitigation role. The FHB ESF Air Treatment System was designed and installed to protect against fuel handling accidents. As such, the Auxiliary and FHB Air Treatment System will no longer be credited for mitigating this type of accident. TS Design Features were changed to include a new FHB release point. Additionally, gaseous effluent instrumentation, sample, and analysis TS requirements were added to incorporate the FHB ESF Air Treatment System. Administrative and editorial changes to improve clarity and incorporate newer standards were also incorporated. It should be noted, this amendment only partially approved the GPU Nuclear TS change request. The request to delete one particular Auxiliary and FHB Air Treatment System requirement was denied and noticed in **Federal Register** accordingly.

*Date of issuance:* December 12, 1986.

*Effective date:* December 12, 1986 and shall be implemented within 60 days or prior to fuel movement.

*Amendment No.:* 122.

*Facility Operating License No. DPR–50:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 22, 1986 (51 FR 37511). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 12, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

**GPU Nuclear Corp., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, PA**

*Date of application for amendment:* February 1, 1985, as revised September 30, 1985.

*Brief description of amendment:* This amendment provides clarification to existing Technical Specifications to ensure that the regulating control rod power silicon controlled rectifier (SCR) electronic trips are trip tested monthly and prior to startup. The amendment also provides conditions for operability for control rod drive trip breakers and diverse trip devices, and the regulating control rod power SCR electronic trips.

*Date of issuance:* December 16, 1986.

*Effective date:* December 16, 1986.

*Amendment No.:* 123.

*Facility Operating License No. DPR–50:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** November 6, 1985 (50 FR 46213). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

**Indiana and Michigan Electric Co., Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, MI**

*Date of application for amendments:* January 27, 1986.

*Brief description of amendments:* The Technical Specification changes add provisions for independent testing of the undervoltage and shunt trip attachments and make one editorial change to delete statements that are no longer used.

*Date of Issuance:* December 10, 1986.

*Effective date:* December 10, 1986.

*Amendment Nos.:* 99 and 86.

*Facility Operating License Nos. DPR–58 and DPR–74:* Amendments revised the Techical Specifications.

*Date of initial notice in* **Federal Register:** March 12, 1986 (51 FR 8595) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

**Long Island Lighting Co., Docket No. 50–322, Shoreham Nuclear Power Station, Suffolk County, NY**

*Date of application for amendment:* January 20, 1986.

*Brief description of amendment:* This amendment eliminates the Technical Specification requirement for performing a monthly sampling and an analysis for dissolved and entrained gases if no waste batch of liquid effluents is released during the month. It also corrects an error in the basis for the location of the control milk sample in the radiological environmental monitoring program.

*Date of Issuance:* December 9, 1986.

*Effective date:* December 9, 1986.

*Amendment No.:* 4.

*Facility Operating License No. NPR–36:* This amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register** March 26, 1986 (51 FR 10463) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 23212.

**Maine Yankee Atomic Power Co., Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, ME**

*Date of application for amendment:* January 29, 1986, as supplemented July 29, 1986 and August 28, 1986.

*Brief description of amendment:* The amendment deleted the definition of containment intergrity in the Definitions Section of the TS since the definition appears in the actual TS concerning containment integrity; clarifies sections of the TS by restating TS where appropriate; corrects typographical errors; and deletes certain requirements which are included in other portions of the TS.

*Date of Issuance:* December 11, 1986.

*Effective date:* December 11, 1986.

*Amendment No.:* 91.

*Facility Operating License No. DPR–36:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 22, 1986 (51 FR 37502 at 37516).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Wiscasset Public Library, High West, Wiscasset, Maine.

**Mississippi Power & Light Co., Middle South Energy, Inc., South Mississippi Electric Power Assoc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, MS**

*Date of application for amendment:* September 12, 1986 as supplemented November 7, 1986.

*Brief description of amendment:* Changes License Condition 2.C(25)(b) by adding maintenance and surveillance requirements for the Transamerica Delaval, Inc. emergency diesel generators.

*Date of Issuance:* December 9, 1986.

*Effective date:* December 9, 1996.

*Amendment No.:* 26.

*Facility Operating License No NPF–29:* This amendment revised the Operating License.

*Date of initial notice in* **Federal Register:** October 8, 1986 (51 FR 36097) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

**Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, NE**

*Date of amendment request:* September 17, 1986.

*Brief description of amendment:* The amendment changes the technical Specifications to incorporate the Cycle 11 reload operating limitations.

*Date of issuance:* December 9, 1986.

*Effective date:* December 9, 1986.

*Amendment No.:* 106.

*Facility Operating License No. DPR–62:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 8, 1986 (51 FR 36099). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305.

**Public Service Co. of Colorado, Docket No. 50–267, Fort St. Vrain Nuclear Generating Station, Platteville, CO**

*Date of application for amendment:* May 22, 1986.

*Brief description of amendment:* The proposed change to the Technical Specifications incorporates a new requirement which will allow the performance of Xenon Stability testing. The purpose of the testing is to show that power perturbations will be dampened.

*Date of issuance:* December 15, 1986.

*Effective date:* December 15, 1986.

*Amendment No.:* 49.

*Facility Operating License No. DPR–34:* Amendment revised the Technical Specifications.

*Date of initial notice in* **Federal Register:** July 3, 1985 (50 FR 27508). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Greeley Public Library, City Comlex Building, Greeley, Colorado.

**Southern California Edison Co., et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, CA**

*Date of application for amendment:* June 13, and August 28, 1986, as supplemented by letter dated November 4, 1986.

*Brief description of amendments:* The amendments revise the Technical Specifications concerning: (1) The fuel handling area vent gaseous airborne radiation monitor and (2) the minimum capacity of the refueling machine and the corresponding overload cutoff limit.

*Date of issuance:* December 12, 1986.

*Effective date:* December 12, 1986, to be implemented within 30 days of issuance.

*Amendment Nos.:* 56 and 45.

*Facility Operating License Nos. NPF–10 and NPF–15:* Amendments revise the Technical Specifications.

*Date of initial notice in* **Federal Register:** October 8, 1986 (51 FR 36104 and 51 FR 36105).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 12, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* General Library, University of California at Irvine, Irvine, California 92713.

**Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, WA**

*Date of amendment request:* August 18, 1986.

*Brief description of amendment:* This amendment revised Section 3.4.3.8. (Turbine Overspeed Protection System) of the WNP–2 Technical Specifications by changing the turbine valve test interval from weekly to monthly.

*Date of Issuance:* December 11, 1986.

*Effective date:* December 11, 1986.

*Amendment No.:* 34.

*Facility Operating License No. NPF–21:* Amendment revises the Technical Specifications.

*Date of initial notice in the* **Federal Register:** September 24, 1986 (51 FR 33960).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 11, 1986.

No significant hazards consideration comments received: No.

*Local Public Document Room location:* Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

**Washington Public Power Supply System, Docket No. 50–397, WNP–2, Richland, WA**

*Date of amendment request:* January 31, 1986.

*Brief description of amendment:* This amendment revises Section 3.4.6.1 (Pressure/Temperature Limits) of the WNP–2 Technical Specifications by shifting the relationships in the pressure/temperature curves, Figures 3.4.5.1–1 and 3.4.6.1–2, 30°F higher at 20% of the preservice hydrostatic test pressure. This change is in compliance with the requirements of paragraph IV.A.2 of Appendix G to 10 CFR Part 50.

*Date of issuance:* December 17, 1986.

*Effective date:* December 17, 1986.

*Amendment No.:* 35.

*Facility Operating License No. NPF–21:* Amendment revises the license.

*Date of initial notice in the* **Federal Register:** August 27, 1986 (51 FR 30583).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1986.

No Significant Hazards Consideration comments received: No.

*Local Public Document Room location:* Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Bethesda, Maryland this December 22, 1986.

For the Nuclear Regulatory Commission.

**Robert M. Bernero,**

*Director, Division of BWR Licensing.*

[FR Doc. 86–29168 Filed 12–29–86; 8:45 am]

BILLING CODE 7590–01–M

## PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

### Northwest Conservation and Electric Power Plan; Model Conservation Standards; Extended Comment Period on New Construction at Federal Facilities and on Surcharge Recommendation for Space Heat Conversion Standards

**AGENCY:** Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

**ACTION:** Notice of extended opportunity to comment regarding model conservation standards for new construction at federal agency facilities and regarding a surcharge recommendation for space heating conversion standards.

**SUMMARY:** On April 27, 1983, the Pacific Northwest Electric Power and

Conservation Planning Council (Council) adopted a Northwest Conservation and Electric Power Plan (Plan) including model conservation standards (MCS) (48 FR 24493, June 1, 1983). On December 4, 1985, the Council adopted amendments to the MCS (51 FR 7364, March 3, 1986) which were later incorporated in the 1986 plan amendments (51 FR 16239, May 1, 1986). On November 20, 1986, the Council published proposed amendments to the MCS for new residential and commercial construction and announced a heating, comment and consultation schedule (51 FR 42031). The Council is now extending the comment period on two issues involved in the current MCS amendment process: (1) MCS for new construction at federal facilities and (2) whether there should be a surcharge recommendation for space heating conversion standards.

**DATES AND ADDRESSES:** Written comments regarding proposed amendments involving MCS for new construction at federal agency facilities and whether there should be a surcharge recommendation for space heating conversion standards should be received in the Council's central office no later than 5:00 p.m. Friday, February 13, 1987. The period for oral public comment and consultation sessions will continue through 5:00 p.m. Friday, February 13, 1987.

The Council will also accept oral comment at its February 11–12, 1987 meeting. The Council expects to take final action on this portion of the proposed MCS-related amendments at its March 11–12, 1987 meeting.

### Guidelines for Submitting Written Comments

1. All written comments must be sent to the Council's central office, Attn: Dulcy Mahar, Director of Public Information and Involvement, 850 S.W. Broadway, Suite 1100, Portland, Oregon 97205 and must be received by 5:00 Friday, February 13, 1987. Comments received after that date will not be considered.

2. Comments should be clearly marked "Comments on Model Conservation Standards for Federal Agency Customers" and "Comments on Subcharge Recommendation for Conversion Standards."

3. Written comments should be specific and concise.

4. If appropriate, submit a "marked up" copy of the proposed MCS (or appropriate sections) indicating suggestions and/or revisions. Suggested deletions should be lined out and placed in parentheses. Suggested new language should be underlined.

5. Please type (double-space) comments, if possible. Use only one side of the paper.

6. Provide ten (10) copies of all comments and supporting materials if at all possible.

### Additional Consultations

Individuals or groups wishing to discuss these portions of the proposed MCS rule, in addition to commenting at the February 11–12, 1987 Council meeting and submitting written comments, may contact the central or state offices of the Council listed below. To the extent that schedules allow, consultations will be held upon request until the end of the comment period at 5:00 p.m. Friday, February 13, 1987.

Central Office, Attn: Ruth Curtis, 850 S.W. Broadway, Suite 1100, Portland, Oregon 97205 (503) 222–5161, 1–800–222–3355 (regional toll-free), 1–800–452–2324 (Oregon toll-free)

Idaho Council Office, Attn: Beth Heinrich, Statehouse Mail; Towers Building, 450 West State, Boise, Idaho 83720 (208) 334–2956

Montana Council Office, Attn: Terri Wilner, Capitol Station, Helena, Montana 59620 (406) 444–3952

Oregon Council Office, Attn: Judi Hertz, 505C State Office Building, 1400 S.W. Fifth Avenue, Portland, Oregon 97201 (503) 229–5171

Western Washington Council Office, Attn: Tess Nosbush, Olympic Tower Building, Suite 700, 217 Pine Street, Seattle, Washington, 98101 (206) 464–6519

Eastern Washington Council Office, Attn: Carol McAllister, Eastern Washington University, Anderson Hall #34, North 9th and Elm Street, P.O. Box B, Cheney, Washington 99004 (509) 359–7352.

**FOR FURTHER INFORMATION CONTACT:** Dulcy Mahar, Director of Public Information and Involvement, at the address and telephone numbers listed above for the Council's central office in Portland, Oregon.

**SUPPLEMENTARY INFORMATION:** On November 13, 1986, the Council decided to initiate an amendment process to consider amending the current model conservation standards for new residential and commercial construction and to re-examine the surcharge recommendation. On November 14, 1986, interested parties were notified by letter concerning this amendment process, and notice of this process was published in the **Federal Register** (51 FR 42031, November 20, 1986). Public hearings on the proposed amendments were held in the four northwest states. Written comments postmarked by December 22, 1986 were accepted, and oral public comment and consultation sessions will continue through January 9, 1987.

Independent of this amendment process, the Council received three petitions to enter rulemaking to add to or amend the MCS. CASE (Citizens for an Adequate Supply of Energy) filed two petitions: One asking for model conservation standards for Bonneville's direct service industry (DSI) customers, and the other asking for model conservation standards for Bonneville's federal agency customers. The Natural Resources Defense Council (NRDC) and Northwest Conservation Act Coalition (NCAC) petitioned the Council to revise the model conservation standards for new commercial buildings, to adopt model conservation standards for residential weatherization programs, and to restore the surcharge recommendation for space heating conversation standards.

The Council took action on these petitions at its December 11, 1986 meeting. It deferred action on CASE's petition for MCS for the DSIs and on NRDC/NCAC's petition for MCS for residential weatherization. It granted the request of NRDC/NCAC to update the commercial MCS new buildings, with the understanding that this will be a single integrated process on a schedule to be developed later. The Council also acknowledged that the current MCS amendment process addresses exemptions from the lighting budgets of the commercial MSC.

At its December 11, 1986 meeting, the Council also clarified that the current MCS amendment process addresses the issue of whether conversion standards should include a surcharge recommendation. However, in order that this issue, also raised in NRDC/NCAC's petition, could receive more attention, the Council extended the deadline for submitting written comments and holding consultations on the issue of surcharge for space heating conversion standards.

Similarly, the Council clarified that the current MCS amendment process on new construction encompasses the issue of MCS for new residential and commercial buildings at federal agency facilities. However, in order to assure a full airing of this issue raised in CASE's petition, the Council extended the deadline for submitting written comments and holding consultations on the issue of MCS for federal agency customers. Further, the Council committed to assess the conservation potential of existing buildings and other electricty uses at federal agency facilities as part of the next major Power Plan revision.

Although the issues of whether there should be a conversion surcharge and MCS for new construction at federal agency facilities are addressed in the current MCS amendment process, the Council invites additional comment on these two issues so that they receive the airing sought by the petitioners. *The Council emphasizes that this extended comment period is limited to these two issues.* The written comment period for the remaining issues in the current MCS amendment process closed with comments postmarked by December 22, 1986, although consultations will continue through January 9, 1987.

*Proposed Amendments*

The portion of the proposed rule in the current MCS amendment process which addresses conversion standards is as follows:

*The Model Conservation Standard for Buildings Converting to Electric Space Conditioning*

The Council's Model Conservation Standard for residential and commercial buildings converting to electric space conditioning is that state or local governments or utilities should take actions through codes, alternative programs or a combination thereof to achieve electric power savings from buildings which convert to electric space conditioning. These savings should be comparable to those savings that would be achieved if each building coverting to electric space conditioning were upgraded to include all regionally cost-effective electricity conservation measures. Although the conversion standard is highly recommended, the Council is not recommending, at this time, that a surcharge be imposed for failure to act accordingly.

In the extended comment period on MCS for federal agency facilities, the Council will consider the addition of an action plan item which would be as follows:

*Proposed Federal Agencies MCS*

Bonneville should work with federal agencies within the region toward the goal of achieving the Council's MCS in all new buildings built by federal agencies in the region and in all buildings being converted to electric heat by federal agencies in the region. In undertaking this task, Bonneville should recognize existing authorities of federal agencies and should familiarize itself with the recently proposed standard for new federal residential buidings published by the U.S. Department of Energy (August 20, 1986 **Federal Register**) and with the proposed standard for federal commercial buildings which USDOE is scheduled to publish at a later date.

**Edward Sheets,**

*Executive Director.*

[FR Doc. 86-29129 Filed 12-29-86; 8:45 am]

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## POSTAL RATE COMMISSION

**[Docket No. C84-1; Docket No. C87-2]**

### ANPA Complaint Relating to Detached Address Labels Used With Certain Third-Class Mail

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice and order.

**SUMMARY:** Notice is hereby given that Commission Order No. 733 makes certain determinations with respect to a complaint filed by the American Newspaper Publishers Association regarding detached address labels used in connection with the delivery of certain third-class mail. These determinations have the effect (1) of creating a new, separate docket (No. C87-2) to consider matters raised in ANPA's December 15, 1986 filing; (2) of superseding and terminating Docket No. C84-1; and (3) of setting new deadlines for certain filings by various parties.

**DATES:** The Postal Service's answer to the Docket No. C87-2 complaint is due January 14, 1987. ANPA's statement of intention to provide evidence is due January 28, 1987. Statements from other parties who believe issues in Docket No. C87-2 require an evidentiary hearing are also due January 28, 1987.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, Assistant General Counsel, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268-0001; telephone (202) 789-6820.

**SUPPLEMENTARY INFORMATION:** Having considered comments filed by various parties in connection with recent motion practice related to the detached label complaint of the American Newspaper Publishers Association (ANPA), the Commission issues Order No. 733 (Order Giving Notice of Complaint Superseding Docket. No. C84-1). The Order, which appears with this notice, relates a brief procedural history of Docket No. C84-1, Complaint of ANPA Respecting Use of Detached Address Labels with Third-Class Bulk Regular Rate Flats, notes ANPA's recent amendment of its complaint, and finds that the amended complaint supercedes the original detached label complaint. It also finds that certain changed circumstances warrant evaluation of the issues now presented by ANPA in a new, separate docket. Accordingly, the Order terminates Docket No. C84-1, creates new Docket No. C87-2 and sets deadlines for various filings by ANPA, the Postal Service and other parties. As noted in the Order, the general subject matter of the two complaint dockets is the same, but the relief sought by ANPA and the supporting rationale in superseding Docket No. C87-2 differ from Docket No. C84-1.

This notice serves to direct other persons or parties whose interests might be affected by the Commission's determinations to Order No. 733 and to other related documents on file at the Commission.

[Docket Nos. C84-1 and Docket No. C87-2; Order No. 733]

### ANPA Complaint (Use of Detached Address Labels); Order Giving Notice of Complaint Superseding Docket No. C84-1

Issued: December 19, 1986.

Before Commissioners: Janet D. Steiger, Chairman; Bonnie Guiton, Vice Chairman; John W. Crutcher; Henry R. Folsom; Patti Birge Tyson.

Docket No. C84-1 was initiated when the American Newspaper Publishers Association (ANPA) filed a Complaint Respecting Use of Detached Address Labels With Third-Class Bulk Regular Rate Flats on October 4, 1983. Order No. 559, issued April 9, 1984, suspended proceedings on this complaint to allow parties to pursue settlement negotiations. The case has been largely dormant since that time. On October 8, 1986, the Postal Service filed a motion to dismiss Docket C84-1 for lack of prosecution. ANPA filed an opposition to the Postal Service motion.

On December 15, 1986 ANPA filed a motion to amend its revised complaint. ANPA states the purpose of its amended complaint is to narrow the focus of the proceeding thereby conserving the resources of the Commission, the Postal Service and intervening parties. We find that the complaint filed by ANPA on December 15, supersedes the complaint filed in October 1983. The general subject matter of the two complaints is the same, the use of detached mailing labels with third-class bulk rate regular flat mail, even though the relief sought is different, as are parts of the legal rationale mentioned in the accompanying motion.

When Docket No. C84-1 was suspended, several motions were pending which turn, at least in part, on matters which would be changed to some extent by the amendment ANPA has presented. Additionally, since the initial complaint was filed, an omnibus rate case has been decided and several changes have been made to Postal Service regulations which control detached label mailing practices.

To address the issues raised by ANPA in the context of the existing record in Docket C84-1 would be unnecessarily confusing. We find that clarity and

understanding would be aided if any evaluation of the issues now presented by ANPA is conducted in a separate, new docket. Therefore we will establish a new complaint docket to consider the complaint filed by ANPA on December 15, 1986.

It is well within our authority to manage our docket efficiently to establish a new case limited to the issues ANPA now wishes to present. *City of San Antonio* v. *C.A.B.* 374 F.2d 326 (1967). Since we had yet to exercise our discretion on whether C84–1 warranted hearings pursuant to 39 U.S.C. 3662, no party is disadvantaged by the establishment of a successor, more focused, docket.

Postal Service should provide its answer pursuant to rule 84 on or before January 14, 1987. The document filed with this complaint, titled Motion for Leave to Amend Complaint, will be made a part of this new docket and treated as a further statement of the reasons for filing the new complaint. In providing an answer to the December 15 complaint, Postal Service need not answer statements presented in this additional explanatory filing.

ANPA has requested the Commission to hold proceedings in conformity with 39 U.S.C. 3624, which provides that the Commission shall not issue a recommended decision without providing the opportunity for a hearing on the record. ANPA has not indicated whether it wishes to make an evidentiary presentation in support of its complaint, or whether it believes that the question it raises can be resolved without evidentiary hearings. The scope of matters in controversy will not be fully known until after Postal Service provides its answer; however, ANPA is directed to file a statement indicating whether it desires an evidentiary hearing, the nature of the evidence it would present at such a hearing, and the date when such evidence can be filed with the Commission. This material will be due January 28, 1987, two weeks after Postal Service is to file its answer.

Because this new complaint supersedes an existing docket, all those who have participated in Docket C84–1 will have intervenor status in new Docket C87–2. Thus no new notices of intervention are required from parties who have intervened in C84–1. Any party other than ANPA which believes that resolution requires evidentiary hearings should file a statement to that effect by January 28, 1987, describing the factual issues which require evidentiary presentations.

It is ordered:

1. The American Newspaper Publishers Association Amended Complaint Respecting Use of Detached Address Cards with Third Class Bulk Regular Rate Flats shall be docketed as C87–2.

2. Docket C87–2 shall supersede Docket C84–1.

3. Docket C84–1 is terminated. Pending motions in that docket are denied as moot, without prejudice to presenting substantive arguments contained therein in other dockets.

4. Postal Service answer to the complaint in Docket C87–2 is due January 14, 1987.

5. ANPA will provide a statement of its intention to provide evidence on January 28, 1987.

6. Parties which believe that factual issues requiring an evidentiary hearing are present in this case shall file a statement to that effect by January 28, 1987.

By the Commission.

**Cyril J. Pittack,**

*Acting Secretary.*

[FR Doc. 86–29201 Filed 12–29–86; 8:45 am]

BILLING CODE 7715–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, NW., Washington, DC 20549

**Extension**

*Rules 8b–1 Through 8b–32 [17 CFR 270.8b–1 Through 8b–32]*

File No. 270–135

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for extension of OMB approval Rules 8b–1 through 8b–32, a family of rules under Section 8b which provides standard instructions for filing registration statements under the Investment Company Act of 1940.

Comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503.

Dated: December 17, 1986.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86–29197 Filed 12–29–86; 8:45 am]

BILLING CODE 8010–01–M

### Self-Regulatory Organizations; Applications of Boston Stock Exchange, Inc., for Unlisted Trading Privileges and of Opportunity for Hearing

December 19, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder, for unlisted trading privileges in the following stocks:

Aristech Chemical Corporation
Common Stock, $1.00 Par Value (File No. 7–9463)

Affiliated Publications, Inc.
Common Stock, $.01 Par Value (File No. 7–9464)

Franklin Resources, Inc.
Common Stock, $.01 Par Value (File No. 7–9465)

Cateret Savings Bank
Common Stock, $.01 Par Value (File No. 7–9466)

Gelco Corporation
Depository Receipts (File No. 7–9467)

Intermedics, Inc.
Common Stock, Par Value $0.10 (File No. 7–9467)

MEI Diversified, Inc.
Common Stock, Par Value $0.05 (File No. 7–9468)

Reebok International, Ltd
Common Stock, $.01 Par Value (File No. 7–9479)

Turner Broadcasting Systems
Common Stock, $.125 Par Value (File No. 7–9470)

UNUM Corporation
Common Stock, $.10 Par Value (File No. 7–9471)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 13, 1987, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds,

based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary*

[FR Doc. 86-29198 Filed 12-29-86; 8:45 am]

BILLING CODE 8010-01-M

## Self-Regulatory Organizations; Applications of Philadelphia Stock Exchange, Inc. for Unlisted Trading Privileges and of Opportunity for Hearing

December 19, 1986.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchanqe Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Boston Celtics Limited Partnership
Units of Limited Partnership Interests (File No. 7-9460)
Medtronic, Inc.
Common Stock, $0.10 Par Value (File No. 7-9461)
NCNB Corporation
Common Stock, $.250 Par Value (File No. 7-9462)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 13, 1986, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86-29199 Filed 12-29-86; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15484; 812-6516]

## Rightime Fund, Inc.; Application For Exemption

**AGENCY:** Securities and Exchange Commission ("SEC").

**DATE:** December 17, 1986.

**ACTION:** Notice of Application for Exemption under the Investment Company Act of 1940 ("1940").

**APPLICANT:** The Rightime Fund, Inc.

**RELEVANT 1940 ACT SECTIONS:** Exemption requested under section 6(c) from section 19(b) and Rule 19b-1.

**SUMMARY OF APPLICATION:** Applicant seeks an order to allow monthly distributions of long-term capital gains realized by its series, The Rightime Government Securities Fund ("Series") from options on Government Securities (hereinafter defined) and Futures Contracts (hereinafter defined).

**FILING DATE:** The application was filed on October 28, 1986, and amended on December 16, 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 no later than 5:30 p.m., on January 12, 1987. Request a hearing in writing giving the nature of your interest, the reasons for the request, and the issues contested. Serve Applicant with the request, either personally or by mail, and also send it to Secretary, SEC, along with proof or service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary, SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, The Benson East Office Plaza, Jenkintown, PA 19046.

**FOR FURTHER INFORMATION CONTACT:** Staff Attorney Meryl Dewey (202) 272-3038 or Special Counsel H. R. Hallock, Jr. (202) 272-303 (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 is registered as a diversified, open-end, management investment company authorized to offer shares in series.

2. The Series' investment objective is to provide its shareholders with a high current return which it pursues by (i) investing in debt obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities or instruments secured by such securities and by investing in and earning premiums from transactions involving related options, futures and options on futures; (ii) writing covered call options and secured put options; (iii) purchasing put options; and (iv) entering into closing purchase and sale transactions with respect to certain of such options (all of the foregoing collectively, "Government Securities"). The Series may enter into contracts for the purchase or sale of future delivery of fixed income securities ("Futures Contracts"). The Series also intends to purchase and write options to buy or sell Futures Contracts. Further, the Series is authorized to lend certain Government Securities and enter into repurchase agreements with the sellers of such securities.

3. The Series will pay dividends from net investment income monthly. Distributions of net short-term capital gains from options transactions and net short-term capital gains from other sources will be made monthly. Distributions of any net long-term capital gains realized on sales of investments will be distributed annually.

4. Under the 1984 amendments to section 1256 of the Internal Revenue Code, 60% of the gain or loss with respect to option premiums on Government Securities and Futures Contracts is now treated as long-term, rather than short-term, capital gain or loss. Section 1256 was amended to eliminate certain tax abuses relating to the realization of short-term capital losses from options transactions and there is no evidence that Congress intended to limit the frequency with which registered investment companies may distribute capital gains from options transactions.

5. Under the Tax Reform Act of 1986 ("Current Tax Law"), while long-term capital gains are still distinguished from short-term capital gains, all such gains will eventually be taxed at the rates applicable to regular income. However, long-term capital gains may still be used to offset long-term capital losses. Thus, unless the requested order is granted, investors who receive gains to which section 1256 is applicable will be placed in the worst possible position—gains will be received only once a year, but the characterization of such gains as long-term will no longer yield as great a benefit to them. To the extent that the Current Tax Law continues to make any

distinction between short- long-term capital gains, Applicant wishes to distribute these gains monthly to shareholders since investors have come to expect more frequent distributions of such gains.

6. Applicant could elect out of section 1256 with respect to certain options but such election would deprive shareholders of the benefits of being taxed at the lower rates applicable to long-term capital gains on the relevant portion of the Series' distributions. Specifically, the Current Tax Law provides for a transition period in 1987 during which the maximum tax on long-term capital gains will be 28% instead of the 38.5% top rate which will otherwise be applicable to short-term capital gains. Additionally, if Applicant made this election, the Current Tax Law would deprive the Series of the benefit of offsetting long-term capital losses against long-term capital gains. Thus, it is not in the best interest of shareholders to elect out of section 1256.

7. None of the purposes of section 19(b) and Rule 19b–1 which, with certain exemptions, prohibit distributions of long-term capital gains more than once every twelve months, will be served by a strict application of these provisions to 60% of the capital gains generated by certain options transactions as: (1) Characterizations of these gains as long-term capital gains would not make investors likely to confuse them with dividends out of net interest income since investors have always received quarterly distributions of these gains, which were considered to be short-term capital gains until section 1256 was amended; and (ii) distributions of capital gains from distributions out of net investment income will be clearly distinguished in the notice to shareholders accompanying the distribution.

8. Section 18(b) and Rule 19b–1 were also intended to prevent churning of portfolios in contravention of a stated goal of long-term capital appreciation. The revised treatment of 60% of certain capital gains is not expected to affect the investment decisions or distribution practices of the Series, which has as its investment objective high current return, not long-term capital appreciation.

9. Monthly distribution of long-term capital gains from options transactions will not increase administrative expenses because Applicant proposes to make monthly distributions of short-term capital gains on behalf of the Series.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 86–29149 Filed 12–29–86; 8:45 am]

BILLING CODE 8010–01–M

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**[File No. 1–7098]**

## Issuer Delisting; Application of Saunders Systems, Inc. (Now Ryder Truck Rental, Inc.) ($1.20 Convertible Exchangeable Preference Stock), To Withdraw From Listing and Registration

December 19, 1986

Saunders Systems, Inc. ("Company") (now Ryder Truck Rental, Inc.), has filed an application with the Securities and Exchange Commission pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the American Stock Exchange, Inc. ("Amex")

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

Pursuant to an Agreement and Plan of Merger dated as of June 26, 1986 among Ryder System, Inc. (the parent company of Ryder Truck Rental, Inc. ("RTR")), RYDERCORP (a sister subsidiary of RTR) and Saunders System, Inc. ("Saunders"), RYDERSCORP was merged on September 30, 1986 into Saunders and each share of the two classes of the common stock of Saunders, par value $1.00 per share, was converted into the right to receive $12.50 in cash. Accordingly, Saunders became a wholly-owned subsidiary of Ryder System, Inc. and a sister subsidiary of RTR. The Common stock of Saunders ceased to be traded or listed on the exchange and is no longer registered under Section 12 except that it became convertible only into $15.15 in cash per share rather than being convertible into Saunders common stock, as it had been previously.

On October 31, 1986, Saunders was merged into RTR, and all shares of the Preference Stock survived the merger, although they were now converted by operation of law into equivalent shares of $1.20 Convertible Exchangeable Preference Stock, $1.00 Par Value, of RTR. At such time, there were less than 204,000 shares of Preference Stock outstanding in the hands of less than 125 holders. Many of the shares of Preference Stock had been converted into Saunders common stock prior to the first merger of RYDERCORP into Saunders, and more had been converted into $15.15 in cash prior to the second merger of Saunders into RTR. The transfer agent for the preference Stock continues to receive requests from holders of the Preference Stock to convert their shares into cash. It is reasonable to expect that requests for conversion will continue. The Preference Stock is redeemable on March 31, 1987 at the price of $10.96 per share, and the holders have been advised that redemption is intended to take place.

Notwithstanding the change in circumstances described above, Saunders would have continued to be, and RTR now is, subject to the reporting requirements under the Act by virtue of the registration of the Preference Stock under the Act and its listing on the Exchange. The financial statements of RTR have not previously been made public, and it would be a great burden to management to have to make them public, and to make public reports on behalf of RTR, because management already has the same reporting burdens for Ryder Systems, Inc. In view of that consideration, the small number of holders and shares of Preference Stock outstanding, the very limited trading market for the Preference Stock, the effective lack of appreciation potential inherent in the Preference Stock and the reasonable expectation that all shares of Preference Stock will be converted into cash prior to redemption on March 31, 1987, management believes that the expense of preparing and filing periodic reports under the Exchange Act for RTR, including the cost of preparing audited financial statements of RTR, is disproportionate to any benefit to the holders of the Preference Stock. In addition, management believes that preparation of periodic reports for RTR exerts burdens and demands which are unnecessary under the circumstances.

Any interested person may, on or before January 13, 1987, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

[FR Doc. 86-29200 Filed 12-29-86; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF TRANSPORTATION

### Aviation Proceeding; Agreements Filed During the Week Ending December 19, 1986

The following agreements were filed with the Department of Transportion under the provisions of 49 U.S.C. 408, 409, 412, and 414. Answers may be filed within 21 days of date of filing.

*Docket No. 44562 R-1 & R-2*

*Parties:* Members of International Air Transport Association.

*Dated Filed:* December 16, 1986.

*Subject:* Special Mtg: Passenger Agency Conference.

*Proposed Effective Date:* Janaury 1, 1987.

*Docket No. 44563*

*Parties:* Members of International Air Transport Association.

*Dated Filed:* December 16, 1986.

*Subject:* Amend Dalian-Tokyuo GCRs and SCRs.

*Proposed Effective Date:* April 1, 1987.

*Docket No. 44564 R-1—R-16*

*Parties:* Members of International Air Transport Association.

*Dated Filed:* December 16, 1986.

*Subject:* 1987-88 Worldwide Passenger Fare Resos.

*Proposed Effective Date:* April 1, 1987.

Phyllis T. Kaylor,

*Chief, Documentary Services Division.*

[FR Doc. 86-29146 Filed 12-29-86; 8:45 am]

BILLING CODE 4910-62-M

### Applications for Certificates of Public Convenience and Necessity, and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended, December 19, 1986

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

**Docket No. 44576**

*Date Filed:* December 19, 1986.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* January 16, 1987.

*Description:* Application of Anglo Airlines Limited, pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to engage in the charter foreign air transportation of property between points in the United States, on the one hand, and points in the United Kingdom and points outside the United Kingdom on the other.

**Docket No. 44577**

*Date Filed:* December 19, 1986.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* January 16, 1987.

*Description:* Application of Soundair Corporation pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to operate a class 9-2, International, Regular Specific Point, commercial air service, using fixed wing aircraft, to transport persons, goods and mail, between Toronto, Ontario, Canada, and Cleveland, Ohio.

**Docket No. 44578**

*Date Filed:* December 19, 1987.

*Due Date for Answers, Conforming Applications, or Motions to Modify Scope:* January 16, 1987.

*Description:* Application of Soundair Corporation pursuant to section 402 of the Act and Subpart Q of the Regulations, requests a foreign air carrier permit to operate a class 9-2, International, Regular Specific Point, commercial air service to transport persons, goods and mail, using fixed wing aircraft between Toronto, Ontario, Canada, and Indianapolis, Indiana.

Phyllis T. Kaylor,

*Chief, Documentary Services Division.*

[FR Doc. 86-29147 Filed 12-29-86; 8:45 am]

BILLING CODE 4910-62-M

## Office of the Secretary

### Privacy Act of 1974; Employee Counseling Services Program Records DOT/ALL-5

The Department of Transportation herewith publishes a notice relating to the proposed implementation of a system of records to cover all records maintained by the Department pertaining to Employee Counseling Services Programs for civilian employees. The records will include case files of current and former employees who have been counseled or otherwise treated regarding alcohol or drug abuse or for personal or emotional health problems.

Any person or agency may submit written comments on the proposed new system to the Privacy Act Officer (M-34), Room 7109, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Comments must be received within 30 days to be considered.

If no comments are received, the proposed changes will become effective 60 days from the date of issuance. If comments are received, the comments will be considered and where adopted, the document will be republished with the changes.

Issued in Washington, D.C., December 18, 1986.

Jon H. Seymour,

*Assistant Secretary for Administration.*

### Narrative Statement for the Department of Transportation, Office of the Secretary, Office of Personnel Establishment of Employee Counseling Services Program Records System

The Office of the Secretary proposes to establish the Employee Counseling Services Program Records System, DOT/ALL-5 on a Department-wide basis to cover all records maintained by the Department of Transportation's (DOT) Operating Administrations pertaining to Employee Counseling Services Programs for civilian employees.

The purpose of the system and the authorities under which it is maintained are described under the appropriate headings in the attached copy of the system notice prepared for publication in the **Federal Register.**

Access to these records is subject to strict guidelines governing their disclosure (42 U.S.C. 4541 et seq, 21 U.S.C. 1101 et seq, and 42 CFR Part 2) and participation in the programs is limited to employees of the Department. As a result, the probable or potential effects of this proposal on the privacy of the general public is minimal.

A description of the steps taken by the Department to safeguard these records is given under the appropriate heading of the attached **Federal Register** system of records notice.

The purpose of this report is to comply with Office of Management and Budget Circular, A-130, Appendix 1, 50 FR 52730 (1985).

DOT/ALL-5

SYSTEM NAME:

Employee Counseling Services Program Records.

SYSTEM LOCATION:

Records are maintained in the office of the Employee Counseling Service which provides counseling to the employee.

Note.—In order to meet the statutory requirement that agencies provide appropriate prevention, treatment, and rehabilitation programs and services for employees with alcohol or drug problems, and to better accommodate establishment of a health service program to promote employees' physical and mental fitness, it may be necessary for the Department of Transportation (DOT) to negotiate for use of the counseling staff of another Federal, State, or local government, or private sector agency or institution. This system also covers records on DOT employees that are maintained by another Federal, State, or local government, or private sector agency or institution under such a negotiated agreement.

SECURITY CLASSIFICATION

None.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former DOT employees who have been counseled or otherwise treated regarding alcohol or drug abuse or for personal or emotional health problems.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include documentation of visits to employee counselors (Federal, State, or local government, or private) and the diagnosis, recommended treatment, results of treatment, and other notes or records of discussions held with the employee made by the counselor. Additionally, records in this system may include documentation of treatment by a private therapist or a therapist at a Federal, State, local government, or private institution.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 3301 and 7901, 21 U.S.C. 1101, 42 U.S.C. 4541 and 5461, and 44 U.S.C. 3101.

PURPOSE:

These records are used to document the nature of the individual's problem and progress made and to record an individual's participation in and the results of community or private sector treatment or rehabilitation programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose information to medical personnel to the extent necessary to meet a genuine medical emergency.

b. To disclose information if authorized by an appropriate court order granted after application showing good cause.

c. To disclose information to the Department of Justice or other appropriate Fedeal agencies in defending claims against the United States, when the claim is based upon an individual's mental or physical condition and is alleged to have arisen because of activities of DOT in connection with the individual.

d. To disclose information to qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report or otherwise disclose patient identities in any manner (when such records are provided to qualified researchers employed by DOT, all patient identifying information shall be removed)

Note.—DOT's general routine uses (49 FR 15345) do not apply to this system of records. Disclosure of these records beyond officials of DOT having a bona fide need for them, or to the person to whom they pertain, is rarely made as disclosures of information pertaining to an individual with a history of alcohol or drug abuse must be limited in compliance with the restriction of the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 CFR Part 2. Records pertaining to the physical and mental fitness of employees are, as a matter of DOT policy, afforded the same degree of confidentiality and are generally not disclosed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders.

RETREIEVABILITY:

These records are retrieved by the name or social security number of the individual on whom they are maintained or by a unique case file identifier.

SAFEGUARDS:

These records are maintained in locked file cabinets with access strictly limited to employees directly involved in the DOT's Employee Counseling Services Program.

RETENTION AND DISPOSAL:

Records are maintained for three to six years after the employee's last contact with DOT's Employee Counseling Services Program.

SYSTEM MANAGER AND ADDRESS:

Director of Personnel, Office of the Secretary, Department of Transportation, Room 9101, 400 7th Street, SW., Washington, D.C. 20590.

NOTIFICATION PROCEDURE:

DOT employees wishing to inquire whether this system of records contains information about them should contact the DOT Employee Counseling Services Program coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of Birth.

RECORD ACCESS PROCEDURES:

DOT employees wishing to request access to records pertaining to them should contact the DOT Employee Counseling Services Program coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of Birth.

An individual must also follow DOT's regulations regarding maintenance of and access to records pertaining to individuals (49 CFR Part 10).

CONTESTING RECORDS PROCEDURES:

DOT employees wishing to request amendment to these records should contact the DOT Employee Counseling Services Program coordinator who arranged for counseling or treatment. Individuals must furnish the following information for their records to be located and identified:

a. Name.

b. Date of Birth.

An individual must also follow DOT's regulations regarding maintenance of and access to records pertaining to individuals (49 CFR Part 10).

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies, the supervisor of the individual if the individual was referred by the supervisor, the Employee Counseling Service Program staff member who records the counseling session, and

therapists or institutions providing treatment.

[FR Doc. 86-29145 Filed 12-29-86; 8:45 am]
BILLING CODE 4910-62-M

## Federal Aviation Administration

### Palm Beach International Airport, West Palm Beach, FL; FAA Approval of Noise Compatibility Program

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Palm Beach County under the provisions of Title I of the Aviation Safety and Noise Abatement Act (ASNA) of 1979 (Pub. L. 96-193) and 14 CFR Part 150. These findings are made in recognition of the description of federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On May 15, 1986, the FAA determined that the noise exposure maps submitted by Palm Beach County under Part 150 were in compliance with applicable requirements. On November 12, 1986, the Administrator approved the Palm Beach International Airport (PBI) noise compatibility program. Twenty-four of the 26 actions of the program were approved.

**EFFECTIVE DATE:** The effective date of the FAA's approval of the PBI noise compatibility program is November 12, 1986.

**FOR FURTHER INFORMATION CONTACT:** Pablo G. Auffant, Community Planner, Orlando Airports District Office, 4100 Tradecenter Street, Orlando, Florida 32812, telephone (305) 648-6583. Documents reflecting this FAA action may be obtained from the same individual.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA has given its overall approval to the noise compatibility program for PBI effective November 12, 1986.

Under Section 104(a) the Aviation Safety and Noise Abatement Act (ASNA) of 1979, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, Government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with FAR Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measure should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Aviation Safety and Noise Abatement Act of 1979, and is limited to the following determinations:

The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government.

Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the Navigable Airspace and Air Traffic Control Systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA under the Airport and Airway Improvement Act of 1982. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Orlando, Florida.

Palm Beach County submitted to the FAA on December 13, 1985, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from 1983 through 1985. The PBI noise exposure maps were determined by FAA to be in compliance with applicable requirements on May 16, 1986. Notice of this determination was published in the **Federal Register** on June 9, 1986.

The PBI study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to (or beyond) the year 1990. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 104(b) of the Act. The FAA began its review of the program on May 16, 1986, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained 26 proposed actions for noise mitigation. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective November 12, 1986.

Approval was granted for 24 of the 26 program actions.

These determinations are set forth in detail in the Record of Approval endorsed by the Administrator on November 12, 1986. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of Palm Beach County.

Issued in East Point, Georgia, December 5, 1986.

**Thomas M. Ackerman,**

*Program Specialist, Planning and Development Branch, Airports Division, Southern Region.*

[FR Doc. 86-29166 Filed 12-29-86; 8:45 am]
BILLING CODE 4910-13-M

**Federal Highway Administration**

## Uniform Relocation and Real Property Acquisition for Federal and Federally-Assisted Programs; Fixed Payment for Moving Expenses—Residential Moves

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice.

**SUMMARY:** The purpose of this Notice is to publish changes in the moving expense schedule for displaced persons in the States of Connecticut and Delaware.

**EFFECTIVE DATE:** January 1, 1987.

**FOR FURTHER INFORMATION CONTACT:** John Wineberg, Relocation Division, Office of Right-of-Way (202–366–2039); or Reid Alsop, Office of the Chief Counsel (202–366–1371), Federal Highway Administration, 400 Seventh Street, SW., Washington DC, 20590. Office hours, Monday—Friday are from 7:45 a.m. to 4:15 p.m., ET.

**SUPPLEMENTARY INFORMATION:** Section 202(b) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646, 84 Stat. 1894, provides that a displaced individual or family may elect to be paid for moving expenses on the basis of a moving expense schedule. To ensure statewide uniformity among all agencies operating under the Act, the common rule, governing agency implementation of the Act, promulgated by each Federal agency on February 27, 1986 at 51 FR 6999, provides that moving expense schedules approved by the Federal Highway Administration (FHWA) shall be used.

The purpose of this Notice is to revise the schedules that were published on January 14, 1986, (51 FR 1591) and March 14, 1986, (51 FR 8937), to reflect changes in the moving expense schedules that have been made by the following States:

Table I—Personalty—Connecticut and Delaware.

Table II—Mobile Homes—Delaware.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(42 U.S.C. 4622(b); 49 CFR 25.302(a); 49 CFR 1.48(cc)).

Issued on December 19, 1986.

**Robert E. Farris,**

*Deputy Federal Highway Administrator, Federal Highway Administration.*

### TABLE I.—PERSONALTY

[Payment for moving and related expenses]

| State | Occupant provides furniture | | | | | | | | | Occupant does not provide furniture | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number of rooms of furniture— | | | | | | | | | | |
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | First room | Each additional room |
| Alabama | 100 | 150 | 200 | 250 | 300 | | | | | (1) | (1) |
| Alaska | 200 | 250 | 300 | | | | | | | 100 | 50 |
| Arizona | 50 | 100 | 150 | 200 | 250 | 300 | | | | 25 | 15 |
| Arkansas | 100 | 160 | 200 | 240 | 280 | 300 | | | | 50 | 30 |
| California | 100 | 200 | 300 | | | | | | | 50 | 50 |
| Colorado | 120 | 180 | 240 | 300 | | | | | | 30 | 20 |
| Connecticut | 150 | 200 | 250 | 300 | | | | | | 15 | 15 |
| Delaware | 100 | 150 | 200 | 250 | 300 | | | | | 40 | 20 |
| District of Columbia | 100 | 135 | 170 | 210 | 250 | 290 | 300 | | | 35 | 15 |
| Florida | 100 | 150 | 200 | 250 | 300 | | | | | 50 | 50 |
| Georgia | 140 | 180 | 220 | 260 | 300 | | | | | 50 | 10 |
| Guam | 48 | 85 | 120 | 168 | 205 | 240 | 300 | | | 10 | 10 |
| Hawaii | 65 | 100 | 135 | 175 | 215 | 255 | 295 | 300 | | 45 | 30 |
| Idaho | 60 | 100 | 140 | 180 | 220 | 260 | 300 | | | 20 | 10 |
| Illinois | 50 | 100 | 150 | 200 | 250 | 300 | | | | 25 | 15 |
| Indiana | 60 | 120 | 180 | 240 | 300 | | | | | 35 | 15 |
| Iowa | 75 | 140 | 195 | 240 | 275 | 300 | | | | 30 | 12 |
| Kansas | 60 | 120 | 180 | 240 | 300 | | | | | 30 | 10 |
| Kentucky | 65 | 130 | 195 | 260 | 300 | | | | | 35 | 25 |
| Louisiana | 100 | 140 | 180 | 220 | 260 | 300 | | | | 40 | 15 |
| Maine | 50 | 100 | 150 | 200 | 250 | 300 | | | | 25 | 15 |
| Maryland | 100 | 150 | 200 | 250 | 300 | | | | | 20 | 10 |
| Massachusetts | 90 | 150 | 200 | 250 | 300 | | | | | 25 | 15 |
| Michigan | 65 | 130 | 180 | 240 | 300 | | | | | 50 | 10 |
| Minnesota | 75 | 150 | 200 | 250 | 300 | | | | | 30 | 15 |
| Mississippi | 100 | 150 | 200 | 250 | 300 | | | | | 50 | 25 |
| Missouri | 50 | 100 | 150 | 200 | 250 | 300 | | | | 25 | 10 |
| Montana | 100 | 150 | 200 | 250 | 300 | | | | | 50 | 25 |
| Nebraska | 75 | 150 | 225 | 300 | | | | | | 25 | 25 |
| Nevada | 150 | 200 | 250 | 300 | | | | | | 50 | 50 |
| New Hampshire | 100 | 200 | 300 | | | | | | | 25 | 15 |
| New Jersey | 120 | 180 | 240 | 300 | | | | | | 25 | 15 |
| New Mexico | 158 | 235 | 300 | | | | | | | (2) | (2) |
| New York | 120 | 170 | 215 | 260 | 300 | | | | | 50 | 25 |
| North Carolina | 70 | 110 | 160 | 210 | 260 | 300 | | | | 40 | 30 |
| North Dakota | 75 | 125 | 150 | 200 | 250 | 275 | 300 | | | 30 | 15 |
| Ohio | 100 | 150 | 200 | 250 | 300 | | | | | 50 | 25 |
| Oklahoma | 100 | 150 | 200 | 250 | 300 | | | | | 40 | 15 |
| Oregon | 150 | 225 | 300 | | | | | | | 75 | 30 |

TABLE I.—PERSONALTY—Continued

[Payment for moving and related expenses]

| State | Occupant provides furniture | | | | | | | | | Occupant does not provide furniture | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | Number of rooms of furniture— | | | | | | | | | | |
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | First room | Each additional room |
| Pennsylvania | 140 | 220 | 300 | | | | | | | 50 | 50 |
| Puerto Rico | 75 | 120 | 165 | 210 | 255 | 300 | | | | 25 | 25 |
| Rhode Island | 70 | 140 | 210 | 250 | 275 | 300 | | | | 25 | 10 |
| South Carolina | 150 | 250 | 300 | | | | | | | 40 | 30 |
| South Dakota | 100 | 150 | 200 | 250 | 300 | | | | | 50 | 15 |
| Tennessee | 75 | 100 | 150 | 200 | 250 | 300 | | | | 25 | 15 |
| Texas | 95 | 140 | 190 | 245 | 300 | | | | | 50 | 25 |
| Utah | 75 | 100 | 130 | 155 | 180 | 210 | 240 | 270 | 300 | 25 | 15 |
| Vermont | 100 | 150 | 200 | 250 | 300 | | | | | 25 | 15 |
| Virginia | 60 | 120 | 180 | 240 | 300 | | | | | 40 | 10 |
| Virgin Islands | 105 | 150 | 195 | 240 | 275 | 300 | | | | 35 | 35 |
| Washington | 100 | 150 | 200 | 250 | 300 | | | | | 25 | 25 |
| West Virginia | 100 | 150 | 200 | 250 | 300 | | | | | 40 | 20 |
| Wisconsin | 80 | 150 | 210 | 260 | 300 | | | | | 50 | 30 |
| Wyoming | 60 | 120 | 180 | 240 | 260 | 300 | | | | 40 | 20 |

[1] Furnished units including sleeping rooms. Occupant does not provide furniture.

| First room | 2 rooms | 3 rooms | 4 rooms | 5 rooms | 6 rooms | Each additional room |
|---|---|---|---|---|---|---|
| $35 | $55 | $80 | $100 | $125 | $145 | $20 |

[2] Furnished units including sleeping rooms. Occupant does not provide furniture.

| First room | 2 rooms | 3 rooms | 4 rooms | 5 rooms | 6 rooms | 7 rooms | 8 rooms |
|---|---|---|---|---|---|---|---|
| $68 | $129 | $160 | $193 | $224 | $256 | $288 | $300 |

TABLE II.—MOBILE HOMES

| State | Miles | | Area—Square Feet | | Width—Feet | | Allowance dollars |
|---|---|---|---|---|---|---|---|
| | More than | But not more than | More than | But not more than | More than | But not more than | |
| Alabama | | | 0 | 200 | | | 165 |
| | | | 200 | 400 | | | 225 |
| | | | 400 | 600 | | | 285 |
| | | | 600 | | | | 300 |
| Alaska | | | | | | | 300 |
| Arizona | | | 0 | 300 | | | 150 |
| | | | 300 | 400 | | | 200 |
| | | | 400 | 500 | | | 250 |
| | | | 500 | | | | 300 |
| Arkansas | | | | | 0 | 10.0 | 200 |
| | | | | | 12.0 | | 300 |
| California | | | | | | | (1) |
| Colorado | | | | | | | (2) |
| Connecticut [3] | | | | | 0 | 8.5 | 100 |
| | | | | | 8.5 | 10.5 | 150 |
| | | | | | 10.5 | 12.5 | 200 |
| | | | | | 12.5 | | 250 |
| Delaware | | | 0 | 300 | | | 150 |
| | | | 301 | 450 | | | 200 |
| | | | 451 | 500 | | | 250 |
| | | | 551 | | | | 300 |
| Florida | | | | | | | 300 |

TABLE II.—MOBILE HOMES—Continued

| State | Miles | | Area—Square Feet | | Width—Feet | | Allowance dollars |
|---|---|---|---|---|---|---|---|
| | More than | But not more than | More than | But not more than | More than | But not more than | |
| Georgia | | | | | | | 300 |
| Guam | | | 0 | 300 | | | 130 |
| | | | 300 | 400 | | | 180 |
| | | | 400 | 500 | | | 210 |
| | | | 500 | 600 | | | 240 |
| | | | 600 | 700 | | | 270 |
| | | | 700 | | | | 300 |
| Hawaii | | | 0 | 300 | | | 130 |
| | | | 300 | 400 | | | 180 |
| | | | 400 | 500 | | | 210 |
| | | | 500 | 600 | | | 240 |
| | | | 600 | 700 | | | 270 |
| | | | 700 | | | | 300 |
| Idaho | | | 0 | 200 | | | 100 |
| | | | 200 | 400 | | | 150 |
| | | | 400 | 600 | | | 200 |
| | | | 600 | 800 | | | 250 |
| | | | 800 | | | | 300 |
| Illinois | 0 | 24 | | | 0 | 8.5 | 100 |
| | | | | | 8.5 | 10.5 | 150 |
| | | | | | 10.5 | 12.5 | 200 |
| | | | | | 12.5 | | 250 |
| | 24 | 50 | | | 0 | 8.5 | 150 |
| | | | | | 8.5 | 10.5 | 200 |
| | | | | | 10.5 | 12.5 | 250 |
| | | | | | 12.5 | | 300 |
| Indiana | | | | | 0 | 12.0 | 175 |
| Iowa | 0 | 25 | | | 0 | 8.0 | 130 |
| | | | | | 8.0 | 10.0 | 150 |
| | | | | | 10.0 | 12.0 | 180 |
| | | | | | 12.0 | | 230 |
| | | | | | 0 | 8.0 | 140 |
| | 25 | 50 | | | 8.0 | 10.0 | 170 |
| | | | | | 10.0 | 12.0 | 200 |
| | | | | | 12.0 | | 300 |
| Kansas | | | 0 | 200 | | | 80 |
| | | | 200 | 400 | | | 160 |
| | | | 400 | 600 | | | 240 |
| | | | 600 | | | | 300 |
| Kentucky [4] | | | | | 0 | 8.0 | 285 |
| | | | | | 8.0 | | 300 |
| Louisiana | | | | | 0 | 10.0 | 200 |
| | | | | | 10.0 | 12.0 | 250 |
| | | | | | 12.0 | 14.0 | 300 |
| Maine | | | | | 0 | 8.0 | 150 |
| | | | | | 8.0 | 10.0 | 200 |
| | | | | | 10.0 | 12.0 | 250 |
| | | | | | 12.0 | | 300 |
| Maryland | | | 0 | 200 | | | 110 |
| | | | 200 | 400 | | | 140 |
| | | | 400 | 600 | | | 165 |
| | | | 600 | 800 | | | 195 |
| | | | 800 | 1,000 | | | 220 |
| | | | 1,000 | 1,200 | | | 250 |
| | | | 1,200 | | | | 300 |
| Massachusetts | | | 0 | 200 | | | 80 |
| | | | 200 | 400 | | | 140 |
| | | | 400 | 600 | | | 200 |
| | | | 600 | | | | 300 |
| Michigan | | | | | 0 | 8.0 | 145 |
| | | | | | 8.0 | 10.0 | 230 |
| | | | | | 10.0 | 12.0 | 280 |
| | | | | | 12.0 | | 300 |
| Minnesota [4] | | | | | 0 | 8.0 | 200 |
| Mississippi | | | 0 | 300 | | | 200 |
| | | | 300 | 400 | | | 250 |
| | | | 400 | | | | 300 |
| Missouri | | | 0 | 200 | | | 100 |

TABLE II.—MOBILE HOMES—Continued

| State | Miles | | Area—Square Feet | | Width—Feet | | Allowance dollars |
|---|---|---|---|---|---|---|---|
| | More than | But not more than | More than | But not more than | More than | But not more than | |
| | | | 200 | 400 | | | 150 |
| | | | 400 | 600 | | | 200 |
| | | | 600 | 800 | | | 250 |
| | | | 800 | | | | 300 |
| Montana [4] | | | | | 0 | 10.0 | 150 |
| | | | | | 10.0 | 12.0 | 200 |
| | | | | | 12.0 | 14.0 | 225 |
| | | | | | 14.0 | | 275 |
| Nebraska | | | | | | | 300 |
| Nevada | | | | | 0 | 8.0 | 200 |
| | | | | | 8.0 | | 300 |
| New Hampshire | | | | | | | 300 |
| New Jersey | | | 0 | 200 | | | 100 |
| | | | 200 | 400 | | | 150 |
| | | | 400 | 600 | | | 200 |
| | | | 600 | 800 | | | 250 |
| | | | 800 | | | | 300 |
| New Mexico [4, 5] | 0 | 20 | | | 0 | 8.5 | 206 |
| | | | | | 8.5 | 10.5 | 279 |
| | | | | | 10.5 | 12.5 | 288 |
| | | | | | 12.5 | | 300 |
| | 20 | 50 | | | 0 | 8.5 | 243 |
| | | | | | 8.5 | 10.5 | 288 |
| | | | | | 10.5 | | 300 |
| New York | | | 0 | 300 | | | 200 |
| | | | 300 | 500 | | | 250 |
| | | | 500 | | | | 300 |
| North Carolina [4, 6] | | | | | 0 | 12.0 | 200 |
| | | | | | 12.0 | | 300 |
| North Dakota | | | 0 | 200 | | | 125 |
| | | | 200 | 400 | | | 175 |
| | | | 400 | 600 | | | 225 |
| | | | 600 | 800 | | | 275 |
| | | | 800 | | | | 300 |
| Ohio | | | | | | | 300 |
| Oklahoma | | | | | 0 | 10.0 | 250 |
| | | | | | 10.0 | | 300 |
| Oregon | | | 0 | 200 | | | 150 |
| | | | 200 | 600 | | | 300 |
| | | | 600 | | | | 300 |
| Pennsylvania | | | | | | | 300 |
| Rhode Island | | | | | 0 | 8.0 | 225 |
| | | | | | 8.0 | 10.0 | 250 |
| | | | | | 10.0 | 12.0 | 275 |
| | | | | | 12.0 | | 300 |
| South Carolina [4] | | | | | 0 | 10.0 | 175 |
| | | | | | 10.0 | 12.0 | 200 |
| | | | | | 12.0 | 14.0 | 250 |
| | | | | | 14.0 | | 300 |
| South Dakota | | | | | | | 300 |
| Tennessee [4] | | | | | 0 | 10.0 | 100 |
| | | | | | 10.0 | | 150 |
| Texas | | | | | 0 | 8.5 | 175 |
| | | | | | 8.5 | 10.5 | 235 |
| | | | | | 10.5 | | 300 |
| Utah [4] | 0 | 10 | | | 0 | 8.0 | 140 |
| | | | | | 8.0 | 10.0 | 145 |
| | | | | | 10.0 | 12.0 | 165 |
| | | | | | 12.0 | | 200 |
| | 10 | 25 | | | 0 | 8.0 | 145 |
| | | | | | 8.0 | 10.0 | 155 |
| | | | | | 10.0 | 12.0 | 175 |
| | | | | | 12.0 | | 225 |
| | 25 | 50 | | | 0 | 8.0 | 150 |
| | | | | | 8.0 | 10.0 | 160 |
| | | | | | 10.0 | 12.0 | 190 |
| | | | | | 12.0 | | 250 |
| Vermont | | | | | | | 300 |

TABLE II.—MOBILE HOMES—Continued

| State | Miles | | Area—Square Feet | | Width—Feet | | Allowance dollars |
|---|---|---|---|---|---|---|---|
| | More than | But not more than | More than | But not more than | More than | But not more than | |
| Virginia | | | 0 | 200 | | | 150 |
| | | | 200 | 400 | | | 200 |
| | | | 400 | 600 | | | 250 |
| | | | 600 | 800 | | | 300 |
| Washington | | | | | | | 300 |
| West Virginia | | | 0 | 300 | | | 150 |
| | | | 300 | 450 | | | 200 |
| | | | 450 | 550 | | | 250 |
| | | | 550 | | | | 300 |
| Wisconsin | | | | | 0 | 8.0 | 150 |
| | | | | | 8.0 | 10.0 | 200 |
| | | | | | 10.0 | 12.0 | 250 |
| | | | | | 12.0 | | 300 |
| Wyoming [4] | | | | | 0 | 8.5 | 135 |
| | | | | | 8.5 | 10.5 | 165 |
| | | | | | 10.5 | 12.5 | 210 |
| | | | | | 12.5 | | 300 |

[1] Width to 8'
Length 40' $200.
Over 40' $300.
Width over 8' $300.
[2] Under 8' x 40' —Unskirted $150.
Over 8' x 40' —$300.
[3] Plus $50 for expandable trailer.
[4] $300 for double trailer.
[5] Escort fee included.
[6] Personalty only. Width: Under 10 feet—$60, 10 feet—$70, 12 feet and over—$100, Doubles—$175.

[FR Doc 29148 Filed 12-29-86; 8:45 am]
BILLING CODE 4910-22-M

## National Highway Traffic Safety Administration

### National Driver Register Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I), notice is hereby given of a meeting of the National Driver Register Advisory Committee to be held on January 20 and 21, 1987, in Washington DC. The meeting will be held at the DOT Headquarters Building from 9:00 a.m. to 4:30 p.m. on January 20, and from 8:30 a.m. to 10:00 a.m. on January 21, in room 6200. Issues to be discussed are: NDR status, State Pilot Test issues, the Commercial Driver License Information System, the accessibility of NDR information to trucking companies and the coordination and use of the NDR by other Federal Agencies, and a report on American Association of Motor Vehicle Administrators 5-year plan.

The meeting is open to the interested public, but may be limited in attendance to the space available. Members of the public may present a written statement to the Committee at any time. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Additional information is available from the NHTSA Executive Secretariat, Room 5221, 400 Seventh Street, SW., Washington, DC 20590, telephone 202-366-2870.

Issued in Washington, DC on December 22, 1986.

**Sharon R. Goldstein,**

*Acting Director, Executive Secretariat.*

[FR Doc. 86-29144 Filed 12-29-86; 8:45 am]
BILLING CODE 4910-59-M

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

**[Supplement to Department Circular—Public Debt Series—No. 39-86]**

### Treasury Notes of Series AH-1988; Interest Rate

Washington, December 18, 1986.

The Secretary announced on December 17, 1986, that the interest rate on the notes designated Series AH-1988, described in Department Circular—Public Debt Series—No. 39-86 dated December 11, 1986, will be 6-¼ percent. Interest on the notes will be payable at the rate of 6-¼ percent per annum.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 86-29175 Filed 12-29-86; 8:45 am]
BILLING CODE 4810-40-M

**[Supplement to Department Circular—Public Debt Series—No. 40-86]**

### Treasury Notes of Series R-1990; Interest Rate

Washington, December 19, 1986.

The Secretary announced on December 18, 1986, that the interest rate on the notes designated Series R-1990, described in Department Circular—Public Debt Series—No. 40-86 dated December 11, 1986, will be 6-⅝ percent. Interest on the notes will be payable at the rate of 6-⅝ percent per annum.

**Gerald Murphy,**

*Fiscal Assistant Secretary.*

[FR Doc. 86-29176 Filed 12-29-86; 8:45 am]
BILLING CODE 4810-40-M

## United States Mint

### Privacy Act of 1974—Routine Uses

**AGENCY:** United States Mint, Treasury.

**ACTION:** Notice of routine uses for Treasury/Mint 00.003 Cash Receivable Accounting Information System, and Treasury/Mint 00.006 Employee and Former-Employee Travel and Training Accounting Information System.

**SUMMARY:** Pursuant to the requirements of the Privacy Act of 1974, the Director of the United States Mint gives notice of the new routine uses for Treasury/Mint 00.003 and Treasury/Mint 00.006 record systems. The purpose of these routine uses is (1) to take advantage of certain debt collection procedures, techniques, and services authorized by the Debt Collection Act of 1982, Pub. L. 97–365; and (2) to allow for a computer match with the Department of Defense to identify current DoD active and reserve military, civilian, or retired military personnel currently receiving compensation from DoD who have defaulted on obligations owed to Treasury and who do not have a current repayment plan in effect; and to seek the attachment of salary or benefit payments in order to discharge the debt in accordance with the Debt Collection Act of 1982 upon certification by Treasury that due process requirements and other provisions of law or administrative regulations have been met. A computer match will also be performed with the Office of Personnel Management and the U.S. Postal Service, with the Department of the Treasury accomplishing the match, for the reasons set forth above.

**DATES:** Comments must be received no later than 30 days after the publication of this notice.

The proposed new routine uses shall take effect without further notice January 29, 1987, unless comments received on or before that date. The notice of disclosure under 5 U.S.C. 552a (b) (12) is effective December 30, 1986.

**ADDRESS:** Comments may be sent to: Chief, Administrative Programs Division, United States Mint, 633 Third Street, N.W., Room 639, Washington, D.C. 20220, (202) 376–0540.

**FOR FURTHER INFORMATION CONTACT:** Myles Schulberg, Chief, Administrative Programs Division, 633 Third Street, N.W., Washington, D.C. 20220, (202) 376–0540.

**SUPPLEMENTARY INFORMATION:** Part 1: Routine Uses for Debt Collection Purposes.

The first use is the routine disclosure of debtor records to debt collector operations. 31 U.S.C. 3718 authorizes the head of an agency to enter into contracts for collection services to recover indebtedness owed the United States Government. Such contracts will necessitate the disclosure of data in a debtor's file. The contractor shall be subject to the Privacy Act of 1974 to the extent specified in 5 U.S.C. 552a (m). Debtor information will consist of the following: The individual's name, address, taxpayer identification number, and other information necessary to establish the identity of the individual; the amount, status, and history of the claim; and the agency or program under which the claim arose. By contract, the debt collection agency selected will be responsible for complying with the Privacy Act. In addition, collection agencies and their employees may be subject to criminal penalties provided for in the Privacy Act and are considered for this purpose, employees of the agency. The U.S. Mint intends to avail itself of such services whenever necessary to collect its debts. Appropriate protective clauses will be incorporated into all contracts.

The second use is the disclosure of debtor information to consumer reporting agencies for commercial credit reports. These reports will be used internally by the U.S. Mint in assessing a debtor's ability to repay a debt or they may be released to a debt collection agency or to the Department of Justice. Claims referred to the Department of Justice for litigation must be accompanied by current credit data. (4 CFR 105.2) Such reports must support a reasonable prospect of effecting enforced collection. In most cases, a commercial credit report is the only means of obtaining the needed information.

The Debt Collection Act constitutes the necessary authority to meet the Privacy Act's "compatibility" requirement for the above-described routine uses. That is, it provides a statutory basis for the agency to consider such disclosures as compatible with the purpose for which the data was originally collected.

The third use entails the disclosure of certain debtor information to consumer reporting agencies. The purpose of the disclosure is to make available delinquency and default data to private sector extenders of credit. Congress in 31 U.S.C. 3711 (f)(1) authorized use of this service as a tool to encourage repayment of an overdue debt. To guard against indiscriminate disclosures in this area, Congress placed stringent limitations on the procedures to be observed when releasing debtor information. Hence, before disclosing debtor information, the U.S. Mint will comply with the due process requirements established in 31 U.S.C. 3711 (f)(1) and only that information related to the identity of the debtor and the history of the claim will be released. Debtor information will consist of the following: The individual's name, address, taxpayer identification number, and other information necessary to establish the identity of the individual, the amount, status, and history of the claim, and the agency or program under which the claim arose.

Although disclosure of debtor information to consumer reporting agencies falls under the (b)(12) exemption of the Privacy Act (5 U.S.C. 552a (b)(12)), and not the (b)(3) exemption for routine uses (5 U.S.C. 552a (b)(3)), the intended use by the U.S. Mint of such data is being published at the end of the routine use sections for Treasury/Mint 00.003, Treasury/Mint 00.006. This is being done in accordance with OMB's Guidelines on the Relationship of the Debt Collection Act of 1982 to the Privacy Act of 1974. (48 FR 15556, April 11, 1983.) The primary concern is editorial consistency.

**Part II: Routine Use to Permit Computer Matching.**

The U.S. Mint will participate in an offset project authorized under the Deficit Reduction Act of 1984 which provides that IRS would offset tax refunds owed to a taxpayer against any delinquent debt owed by the taxpayer to federal departments and agencies. However, before this tax refund offset program is implemented, the Department of the Treasury must first verify that the delinquent debtor is not a current or former federal employee with either salary or retirement benefits that could be used to reduce the debt. In order to determine whether persons involved are current or former employees, it will be necessary to match this file with that of the Department of Defense, Office of Personnel Management, and the U.S. Postal Service. The Department of the Treasury is hereby publishing a routine use to allow for disclosure of this information to these agencies.

The Department of Defense will publish a matching notice concerning this effort as required by Office of Management and Budget (OMB) guidelines. The Treasury Department will publish a matching notice as required by OMB guidelines to conduct the computer matching with OPM and the U.S. Postal Service. Prior to making any such disclosures, Departmental system managers will assure adherence to the requirements contained in the OMB guidelines for conducting computer matching programs.

**TREASURY/MINT 00.003**

**SYSTEM NAME:**

Cash Receivable Accounting Information System—Treasury/Mint.

**SYSTEM LOCATION:**

Washington, D.C., United States Mint, Judiciary Square Building, 633 Third Street, N.W.; Philadelphia, PA, United States Mint, Independence Mall, Denver, CO, United States Mint, 320 West Colfax Avenue; San Francisco, CA, United States Assay Office, 155 Hermann Street; West Point, N.Y., United States Bullion Depository; Fort Knox, KY, United States Bullion Depository.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees and former employees of the United States Mint and members of the general public who have: (a) Served on jury duty when employed by the United States Mint. (b) Paid for lost government property belonging to the Mint. (c) Purchased numismatic items from Mint sales outlets.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

(1) Cash received from Mint employees who have served on jury duty or received witness fees. (2) Cash received from Mint employees and general public for lost government property, assay sample work and cash sales of over-the-counter numismatic items.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 5537 (Fees for jury service); 31 U.S.C. 5132 (Sale of numismatic items).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.**

Routine disclosure of information contained in this system of records may be made to the U.S. Department of Justice in connection with actual or potential criminal or civil litigation, and in connection with requests for legal advice. Disclosure may be made during a judicial or administrative proceeding. Routine disclosure of information may be made to furnish another federal agency information to effect interagency salary or other administrative offset; to furnish a consumer reporting agency information to obtain commercial credit reports; to furnish a debt collection agency information for debt collection services; to furnish a consumer reporting agency with delinquency and default data which will be made available to private sector extenders of credit. Identifying information may be disclosed to the Department of Defense, the Office of Personnel Management, and the U.S. Postal Service for the purpose of conducting a computer match to identify delinquent debtors who are also current or former federal employees with salary or retirement benefits that could be used to reduce the debt.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures pursuant to 5 U.S.C. 552a (b)(12): Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681 a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3701 (a)(3)(B)).

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper Documents.

**RETRIEVABILITY:**

Name or number substitute.

**SAFEGUARDS:**

Storage in locked filing cabinets with access by authorized accounting personnel.

**RETENTION AND DISPOSAL:**

General Records Control Schedule, GAO rules and regulations, United States Mint Records Control Schedule. Destroyed in accordance with General Services Administration regulations.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Director for Budget and Finance, United States Mint, Judiciary Square Building, 633 3rd Street, NW, Washington, D.C. 20220; Budget and Accounting Officer, United States Mint, Independence Mall, Philadelphia, PA 19106; Budget and Accounting Officer, United States Mint, 320 West Colfax Avenue, Denver, CO 80204; Budget and Accounting Officer, United States Assay Office, San Francisco, CA 94102; Officer in Charge, United States Bullion Depository, Fort Knox, KY 40121; Budget and Accounting Officer; United States Bullion Depository, West Point, NY 10996.

**NOTIFICATION PROCEDURE:**

Same as included in System Manager. An employee or former employee is required to show an identification such as: (A) Employee identification, (B) Driver's license, (C) Other means of identification including social security number and date of birth.

**RECORD ACCESS PROCEDURES:**

For information on procedures for gaining access to and contesting records, individuals may contact the following official: Chief, Administrative Programs Division, United States Mint, Room 639, Judiciary Square Building, Washington, D.C. 20220

**CONTESTING RECORD PROCEDURES:**

See access above.

**RECORD SOURCE CATEGORIES:**

Mint employees and appropriate agency officials.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**TREASURY/MINT 00.006**

**SYSTEM NAME:**

Employee and Former Employee Travel and Training Accounting Information System—Treasury/Mint.

**SYSTEM LOCATION:**

Washington, D.C., United States Mint, Judiciary Square Building, 633 3rd Street, NW; Philadelphia, PA, United States Mint, Independence Mall; Denver, CO, United States Mint, 320 West Colfax Avenue; San Francisco, CA, United States Assay Office, 155 Hermann Street; West Point, NY, United States Bullion Depository; Fort Knox, KY, United States Bullion Depository.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees and former employees of the United States who have engaged in travel and training.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

(1) SF 1166 Voucher and Schedule of Payments with supporting documents such as: (A) SF 1012 Travel Voucher, (B) SF 1038 Application and Account for Advance of Funds, (2) Travel Authorities, (3) Government Travel Request SF 1169, (4) Request, Authorization, Agreement and Certification of Training.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. Chapter 41 (Training) and Chapter 57 (Travel).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES.**

Routine disclosure of information contained in this system of records may be made to the U.S. Department of Justice in connection with actual or potential criminal or civil litigation, and in connection with requests for legal advice. Disclosure may be made during a judicial or administrative proceeding. Routine disclosure of information may be made to furnish another federal

agency information to effect interagency salary or other administrative offset; to furnish a consumer reporting agency information to obtain commercial credit reports; to furnish a debt collection agency information for debt collection services; to furnish a consumer reporting agency with delinquency and default data which will be made available to private sector extenders of credit. Identifying information may be disclosed to the Department of Defense, the Office of Personnel Management, and the U.S. Postal Service for the purpose of conducting a computer match to identify delinquent debtors who are also current or former federal employees with salary or retirement benefits that could be used to reduce the debt.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper Documents.

**RETRIEVABILITY:**

Name or number substitute.

**SAFEGUARDS:**

Storage in locked filing cabinets with access by authorized accounting personnel only.

**RETENTION AND DISPOSAL:**

General Records Control Schedule, GAO rules and regulations, United States Mint Records Control Schedule. Destroyed in accordance with General Services Administration regulations.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Director for Budget and Finance, United States Mint, Judiciary Square Building, 633 3rd Street, NW., Washington, D.C. 20220; Budget and Accounting Officer, United States Mint, Independence Mall, Philadelphia, PA 19106; Budget and Accounting Officer; United States Assay Office, 155 Hermann Street, San Francisco, CA 94102; Budget and Accounting Officer, United States Bullion Depository, West Point, NY 10996; Officer in Charge, United States Bullion Depository, Fort Knox, KY 40121.

**NOTIFICATION PROCEDURE:**

Same as included in System Manager. An employee or former employee is required to show an identification such as: (A) Employee identification, (B) Drivers license, (C) Other means of identification including social security number and date of birth.

**RECORD ACCESS PROCEDURES:**

For information on procedures for gaining access to and contesting records, individuals may contact the following official: Chief, Administrative Programs Division, United States Mint, Room 639, Judiciary Square Building, Washington, D.C. 20220.

**CONTESTING RECORD PROCEDURES:**

See access above.

**RECORD SOURCE CATEGORIES:**

Mint employees and appropriate agency officials.

**SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**John F.W. Rogers,**

*Assistant Secretary of the Treasury (Management).*

[FR Doc. 86-29195 Filed 12-29-86; 8:45 am]

BILLING CODE 4810-37-M

# Sunshine Act Meetings

Federal Register
Vol. 51, No. 249
Tuesday, December 30, 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).

**NUCLEAR REGULATORY COMMISSION**

**DATE:** Weeks of December 29, 1986, January 5, 12 and 19, 1987.

**PLACE:** Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

**STATUS:** Open and Closed.

**MATTERS TO BE CONSIDERED:**

**Week of December 29**

No Commission Meetings

**Week of January 5**

Tentative

*Thursday, January 8*

10:00 a.m.
Briefing on Status of Safety Goal Implementation (Public Meeting)
2:00 p.m.
Discussion/Possible Vote on Full Power Operating License for Shearon Harris (Public Meeting)

*Friday, January 9*

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Proposed Order on Shearon Harris (Tentative)

**Week of January 12**

Tentative

*Wednesday, January 14*

10:00 a.m.
Briefing on Status of Palisades (Public Meeting)
10:00 a.m.

*Thursday, January 15*

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Discussion/Possible Vote of Full Power Operating License for Byron-2 (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**Week of January 19**

Tentative

*Thursday, January 22*

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

**ADDITIONAL INFORMATION:** Briefing on Status of Palisades (Public Meeting) *moved* from January 15 to January 14.
Discussion/Possible Vote of Full Power Operating License for Byron-2 *added* to January 15.

**TO VERIFY THE STATUS OF MEETING CALL (RECORDING)—**(202) 634–1498.

**CONTACT PERSON FOR MORE INFORMATION:** Andrew Bates (202) 634–1410.

December 24, 1986.

**Andrew L. Bates,**

*Office of the Secretary.*

[FR Doc. 86–29376 Filed 12–24–86; 2:13 pm]
BILLING CODE 7590–01–M

# Corrections

Federal Register
Vol. 51, No. 249
Tuesday, December 30, 1986

This section of the FEDERAL REGISTER contains editorial corrections of previously published Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. 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.

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1987, Addition

*Correction*

In notice document 86–28619 beginning on page 45506 in the issue of Friday, December 19, 1986, make the following correction:

On page 45511, in the second column, under **Commodities**, "8455–00–261–4510" should read "8455–00–261–4501".

BILLING CODE 1505-01-D

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 226

[Reg. Z; R-0577]

### Truth in Lending; Proposed Update to Official Staff Commentary

*Correction*

In proposed rule document 86–28316 beginning on page 45342 in the issue of Thursday, December 18, 1986, make the following correction:

On page 45343, in the third column, in the 16th line, "redefined" should read "refunded".

BILLING CODE 1505-01-D

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 226

[Regulation Z; Docket No. R-0577]

### Truth in Lending; Right of Rescission

*Correction*

In rule document 86–28315 beginning on page 45296 in the issue of Thursday, December 18, 1986, make the following correction:

On page 45297, in the first column, in the EFFECTIVE DATE, "December 6" should read "December 16".

BILLING CODE 1505-01-D

Federal Register

Tuesday
December 30, 1986

Part II

# Department of Energy

## Bonneville Power Administration

**Proposed Transmission and Wholesale Power Rate Adjustment, Public Hearings, and Opportunities for Public Review and Comment**

## DEPARTMENT OF ENERGY

### Bonneville Power Administration

### Proposed Wholesale Power Rate Adjustment, Public Hearings, and Opportunities for Public Review and Comment

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice of and Opportunities for Review and Comment. *BPA File No:* WP–87.

BPA requests that all comments and documents intended to become part of the Official Record compiled in the process of adjusting wholesale power rates contain the file number designation WP–87.

**SUMMARY:** The Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act) indicates that BPA must establish and periodically revise BPA's rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS). BPA is proposing to revise its wholesale power rate schedules, effective October 1, 1987, in order to produce sufficient revenue to fulfill its statutory requirements. Section 7 of the Pacific Northwest Power Act controls the establishment of BPA's rates.

Through a separate public process, BPA has completed an initial review of program cost levels for the fiscal year (FY) 1988 and 1989 budgets. This public process has influenced revenue requirement data for BPA's rate case. The Administrator will not reexamine program level decisions in the rate case. However, further opportunity for informal public comment has been established outside the rate case.

Opportunities will be available for interested persons to review the proposed rates and the supporting studies, to participate in hearings, and to submit written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in this process. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this notice.

*Responsible Official:* Ms. Shirley R. Melton, Director, Division of Rates, is the official responsible for the development of BPA's rates.

**DATES:** Persons wishing to become a formal "party" to the proceedings must notify BPA in writing of their intention to do so. The petitions to intervene must be received by January 9, 1987, and should be addressed as follows: Hon. Dean F. Ratzman, Hearing Officer, c/o Geoffrey Kronick, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. In addition, a copy of the intervention must be served on BPA's Office of General Counsel/APR, P.O. Box 3621, Portland, Oregon 97208.

A prehearing conference, required by the rate procedures, will be held before the Hearing Officer at 9:00 a.m. on January 16, 1987, at the Auditorium, Building DOB1, 5411 Hwy. 99, Vancouver, Washington. BPA will prefile the testimony of its witnesses at the prehearing conference.

Registration for the prehearing conference will begin at 8:30 a.m. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions, establish additional procedures, establish a service list, establish a procedural schedule, and consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs and for expediting cross-examination. A notice of the dates and times of the hearings will be mailed to all parties of record.

BPA proposes the following schedule for the formal hearings required by section 7(i) of the Pacific Northwest Power Act. A final schedule will be established by the Hearing Officer.

December 30, 1986—Initial studies available at BPA's Office of Public Involvement (Public Reference Room), 1002 NE. Holladay, 6th Floor, Portland, Oregon.
January 16, 1987—Prehearing Conference and BPA Direct Case Filed
January 26–30, 1987—BPA Witness Clarification
February 18, 1987—Parties' Direct Case Filed
March 16, 1987—Rebuttal Testimony Filed
April 6–24, 1987—Cross-Examination
June 15, 1987—Draft Record of Decision
July 31, 1987—Final Record of Decision

Two series of public field hearings regarding BPA's proposal will be held in various regional locations. At the first series, BPA will provide information concerning the ratemaking process and the issues in this rate case, and a synopsis of the rate proposal. Both the public's comments contained in a verbatim transcript of the hearings and all written comments received during the entire rate process will be made a part of the Official Record. The hearing officer may allow reasonable questioning of participants by BPA counsel. Presentation of testimony and evidence from formal parties will not be allowed at the field hearings.

Registration for the field hearings will be at 7 p.m., and the hearings will begin at 7:30 p.m. The dates and locations are:

February 3—The Cougar Room, Ridpath Hotel, W. 515 Sprague, Spokane, Washington.
February 4—The Guild Hall, The Sherwood Inn, 8402 S. Hosmer, Tacoma, Washington.
February 5—The Orcas Room, Everett Pacific Hotel, 3105 Pine St., Everett, Washington.
February 6—The Carriage Room, 748 W. Broadway, Jackson, Wyoming.
February 9—The Klamath Room, Red Lion Inn—Columbia River, 1401 N. Hayden Island Dr., Portland, Oregon.
February 10—Main Harris Hall, Lane County Building, 125 E. 8th, Eugene, Oregon.
February 11—Richland Federal Building, 825 Jadwin Avenue, Richland, Washington.
February 12—Burley Inn, 800 N. Overland Avenue, Burley, Idaho.

A second series of field hearings may be scheduled near the end of the formal hearings. These field hearings will provide the public an additional opportunity to comment, based on their review of the evidence presented in the formal hearings. BPA will consider the public's comments in the Draft Record of Decision. The hearing schedule and locations will be announced in newspapers in the region.

Written comments may be submitted until the close of all hearings. The last day for receipt of written comments will be specified in a later **Federal Register** notice (currently expected to be published in May 1987).

**ADDRESSES:** Written comments not submitted at the hearings should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathleen S. Johnson, Public Involvement office, at the address listed above, 503–230–3478. 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, 550 West Fort Street, Room 376/Box 035, Boise, Idaho 83724, 208–334–9137.

**SUPPLEMENTARY INFORMATION:**

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On November 7, 1986, BPA published in the **Federal Register** a notice of "Intent to Revise Wholesale Power Rates to Become Effective October 1, 1987; Request for Recommendations and Suggestions." 51 FR 40484. The notice satisfied certain contractual provisions between BPA and its customers by indicating that the revised rates are expected to become effective on October 1, 1987.

In order to assess its current rates, BPA determined the amount of revenue required to meet its financial obligations. The total revenue requirement for FY 1988 is $3.05 billion and for FY 1989 is $3.11 billion. BPA has determined that these revenue requirements would exceed the revenues BPA would expect to collect under its current rates. These FY 1988 and FY 1989 revenue requirements translate into an increase of 13.1 percent in the average Priority Firm Power rate, a 0.9 percent increase in the Industrial Firm Power rate, a 3.3 percent increase in the Surplus Firm Power rate, a 0.9 percent increase in the New Resources Firm Power rate, and a 6.0 percent increase in the average cost of nonfirm energy over the proposed 24-month rate period.

The proposed wholesale power rates have been prepared in accordance with BPA's statutory authority to develop rates, including the Bonneville Project Act of 1937, as amended, 16 U.S.C., 832 e and f (1976); the Flood Control Act of 1944, 16 U.S.C., 825 *et seq* (1976); the Regional Preference Act, 16 U.S.C., 837 *et seq* (1976); the Federal Columbia River Transmission System Act, 16 U.S.C., 838 g and h (1974); and the Pacific Northwest Electric Power Planning and Conservation Act of 1980, 16 U.S.C., 839 *et seq* (Supp. V, 1981).

BPA proposes that its wholesale power rate schedules and the General Rate Schedule Provisions (GRSPs) associated with these schedules become effective upon interim approval or final confirmation and approval by the Federal Energy Regulatory Commission (FERC). BPA will request FERC approval effective October 1, 1987. These rates are proposed to be in effect for differing periods of times. Section I.A. of the GRSPs specifies the proposed effective period for each rate.

The 1987 wholesale power rate schedules, and the GRSPs associated with these rate schedules, supersede BPA's 1985 rate schedules (which became effective July 1, 1985) to the extent stated in the Availability section of each 1987 rate schedule. These schedules and GRSPs shall be applicable to all BPA contracts, including contracts executed both prior to and subsequent to enactment of the Pacific Northwest Power Act.

In developing the proposed wholesale power rates, BPA considered many factors, including revenue requirements, costs of service, marginal costs, environmental impacts, ease of administration, revenue stability, rate continuity, ease of comprehension, economic efficiency, and statutory obligations. The major studies that have been prepared to support the proposed wholesale rates will be available for examination on December 30, 1986, at BPA's Public Reference Room, BPA Headquarters Building, 6th floor, 1002 NE., Holladay, Portland, Oregon. The studies also may be requested by phone or in writing from BPA's Public Involvement office and will be available at the Prehearing Conference. The wholesale power rate studies are:

1. Revenue Requirement Study
2. Segmentation Study
3. Loads and Resources Study
4. Marginal Cost Analysis
5. Section 7(b)(2) Rate Test Study
6. Wholesale Power Rate Development Study

To request any of the above studies by telephone, call BPA's document request line: 800–841–5867 for Oregon, 800–624–9495 for Washington, Idaho, Montana, California, Wyoming, Utah, and Nevada. Other callers should use 503–230–3478. Please request the study by its above title. Also state whether you require the accompanying published technical documentation; otherwise the study alone will be provided. (For example, ask for the "Revenue Requirement Study and Technical Documentation".)

An environmental assessment documenting the environmental impacts of the proposed rates and alternatives will be available.

**I. Procedures Governing Rate Adjustments and Public Participation**

Section 7(i) of the Pacific Northwest Power Act, 16 U.S.C. 839e(i), requires that rates be set according to certain procedures. These procedures include issuance of a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be governed by BPA's "Procedures Governing Bonneville Power Administration Rate Hearings," 51 FR 7611 (March 5, 1986), which implements, and in most instances expands, these statutory requirements. The proceedings for BPA's proposal to adjust transmission rates will be combined with the proceedings for BPA's proposal to adjust wholesale power rates.

BPA's procedures provide for publication of a notice of the proposed rates, a prehearing conference, a hearing, receipt of written comments, preparation of decisional documents, a decision, and the transmittal of the decision with supporting documentation to the Federal Energy Regulatory Commission. The procedures require that the Administrator specify in the **Federal Register** notice whether expedited rules will be used. In order to give the public the maximum opportunity to participate and have its views considered, the Administrator has determined and hereby gives notice that expedited rules of procedure will not apply to this proceeding. The hearing will be conducted according to the rule for general rate proceedings, § 1010.9 of BPA's Procedures Governing Bonneville Power Administration Rate Hearings.

In addition to its formal hearing process, BPA will also convene a series of public hearings at certain locations throughout the region. The purpose of these hearings is to present to interested members of the public a synopsis of BPA's rate proposal. The hearings will be held at the times and locations previously listed. The conduct of these hearings will be substantially the same as that of the public field hearings held for BPA's 1981, 1982, 1983, and 1985 rate proceedings. BPA staff will summarize the proposed rates after which the public will have an opportunity to present its comments, views, and opinions about the proposed rates.

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from "participants," who are defined in the procedures as any person who may express his views, but who does not intervene as a party. Participants' written comments will be made part of the official record of the case. The participant category gives the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon "parties." Participants are not entitled to participate in the prehearing conference, cross-examine parties' witnesses, seek discovery, serve or be served with documents, and are not subject to the same procedural requirements as parties. Participants, however, will be provided regular letters during the rate hearings summarizing the proceedings and are provided the opportunity to request materials presented during the hearings.

The second category of interest is that of a "party" as defined in §§ 1010.2 and 1010.4 of "The Procedures Governing Bonneville Power Administration Rate Hearings." 51 FR 7611 (March 5, 1986). Parties may participate in the prehearing conference, may call and cross-examine witnesses, and are entitled to service of documents from all other parties. Parties may also be cross-examined and required to serve documents on the other parties. To avoid unnecessary delay, cross-examination by parties may be limited by the Hearing Officer. Where parties have substantially similar positions, the Hearing Officer may appoint lead counsel to conduct cross-examination. If a party demonstrates that it would not be represented adequately in the joint presentation of an issue or issues, the Hearing Officer may permit separate examination or argument regarding such issue or issues.

In order to facilitate discovery and promote the efficient use of cross-examination, the Hearing Officer may schedule one or more transcribed sessions for the purpose of allowing parties and BPA to question witnesses about the contents of their prepared testimony. Cross-examination will be scheduled by the Hearing Officer as necessary following completion of the filing of all parties and BPA's direct cases, rebuttal testimony, discovery, and clarification. Parties will have the opportunity to file initial briefs at the close of cross-examination.

Persons wishing to become a formal "party" to BPA's rate proceeding must so notify BPA in writing. Petitions to intervene shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Any opposition to a petition to intervene must be filed and served at least 24 hours before the January 16 prehearing conference. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene shall be filed and served within 2 days after service of the petition. Intervention petitions will be available for inspection in the Public Reference Room of BPA's Office of Public Involvement, 6th Floor, 1002 NE. Holladay, Portland, Oregon. Interventions are subject to § 1010.4 of BPA's Procedures Governing Bonneville Power Administration Rate Hearings.

After the close of the hearings, BPA will file a Draft Record of Decision. The Hearing Officer will extend an opportunity to other parties to evaluate the record and analyze the law through briefs. The Draft Record of Decision will provide a written evaluation of the record addressing significant technical issues. The Hearing Officer also will extend an opportunity to all parties to file reply briefs.

Persons need not attend the hearings in order to have their views included in the record. Written comments may be included in the record if they are submitted before the close of the hearings. Written views, supporting information, questions, and arguments should be submitted to BPA's Public Involvement Manager.

The record will include, among other things, the transcripts of the hearings, written material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop the final proposed rates based on the entire record, including the record certified by the Hearing Officer, comments received from participants in the field hearings, other material and information submitted to or developed by the Administrator, and any other comments received during the rate development process. The basis for the final proposed rates will be expressed in the Administrator's Record of Decision. The Administrator will serve copies of the Administrator's Record of Decision on all parties and will file the final proposed rates together with the record with the Federal Energy Regulatory Commission (FERC) for confirmation and approval.

## II. Elements of the Pacific Northwest Power Act

The rate schedules contained in this publication are proposed in accordance with the Pacific Northwest Power Act, which was signed into law on December 5, 1980. The proposed rate schedules reflect many requirements contained principally in the Pacific Northwest Power Act's rate directives (section 7), as well as the conditions related to classes of customers and services contained in the Pacific Northwest Power Act's power sales directives (section 5).

A. *Services.* BPA's public body, cooperative, and Federal agency customers are entitled to have their current and future power requirements met by BPA. In addition, the residential and small farm consumers of investor-owned utilities (IOUs) share in the benefits of what are now BPA's lowest-cost resources.

The IOUs' net firm power requirements in the region (in excess of their own firm resources in the year prior to the Pacific Northwest Power Act) also can be served by BPA. These loads would be served at a different rate, as described below, but would retain the benefits of Federal system integration, reserves, risk sharing, and nonfirm energy supplies.

BPA's direct-service industrial (DSI) customers have received 20-year contracts for industrial power. These contracts include significant BPA rights to restrict service to the DSIs. These rights provide the region with a major portion of the planning and operating services that help to keep costs lower to all of the region's consumers.

B. *Costs.* The Act identifies three distinct resource pools, commonly referred to as the Federal base system resources (FBS), the exchange resources under section 5(c) of the Pacific Northwest Power Act (Exchange), and new resources.

The first pool, the FBS, is defined by section 3(10) of the Pacific Northwest Power Act as: (1) The Federal Columbia River Power System hydroelectric

projects; (2) the resources acquired by the Administrator under long-term contracts in force on the effective date of the Pacific Northwest Power Act; and (3) the resources acquired by the Administrator in an amount necessary to replace reductions in capability of the resources in (1) and (2). For the test years FY 1988 and FY 1989, the FBS used in developing rates includes the existing hydroelectric system, 30 percent of the output of the Trojan nuclear plant, 72 percent of the output from Hanford Generating Project, and the net-billed portions of the Washington Public Power Supply System plants 1, 2, and 3.

The Exchange resource pool consists of the power that BPA purchases from utilities, primarily IOUs, under the provisions of section 5(c), for the direct benefit of their residential and small farm consumers. For the rate period, the power eligible for exchange purchase is equal to 100 percent of the residential and small farm loads of the individual utilities in the region. BPA is directed to acquire the power at the offering utility's average system cost. The average system cost is determined using a methodology developed by BPA, pursuant to section 5 of the Pacific Northwest Power Act, in consultation with its customers, State regulatory bodies in the region, and the Pacific Northwest Electric Power Conservation Planning Council (Northwest Power Planning Council) (see 49 FR 39,293 (1984), and 50 FR 4,970 (1985)). BPA must then sell an equivalent amount of power to the utility under the rate schedule that is in effect for sales of wholesale Priority Firm power for exchanging utilities. The benefits of this exchange are to be passed through to the participating utility's residential and small farm loads within that region.

While the exchange provisions of the Pacific Northwest Power Act were presumed to benefit primarily investor-owned utility residential ratepayers, the average system cost methodology also permits publicly owned utilities to exchange. Thus, a portion of the projected exchange resource, exchange cost, and exchange load in this proposal is attributable to this public agency exchange.

The third resource pool is the "new resource" pool. It includes all new resources developed, purchased, or otherwise acquired by BPA other than Exchange resources and FBS replacements.

C. *Rates.* The costs of the various resource pools described above, plus the other costs incurred by the Administrator, must be recovered in a manner consistent with section 7 of the Pacific Northwest Power Act and provisions of other applicable law.

Section 7(b) directs the Administrator to establish a rate or rates for power sold to meet the general requirements of the public body, cooperative, and Federal agency customers within the region as well as power sold to utilities participating in the residential power exchange to serve their residential and small farm consumers. The 7(b) rate is to be based on FBS costs, and to the extent that the loads exceed the capability of the FBS, exchange resource costs. For test years FY 1988 and FY 1989, 7(b) loads exceed the capability of the FBS. Consequently, a portion of BPA's exchange resources is allocated to the 7(b) rate class.

In addition, section 7(b)(2) of the Pacific Northwest Power Act directs the Administrator to ensure that amounts to be charged for firm power for the general requirements of the public agency customers do not exceed an amount determined by certain assumptions contained in section 7(b)(2). In order to determine whether the public agency rate exceeds this level, BPA has conducted a separate study based on the section 7(b)(2) methodology and interpretation developed in a separate 7(i) proceeding. The results of this study indicate that, without adjustment the public agency rate would exceed this level. Hence, costs above this level have been allocated to other rates.

For test years FY 1988 and FY 1989, the DSIs are allocated the costs of resources remaining after serving 7(b) load, the majority of which are exchange resources. However, section 7(c)(2) of the Pacific Northwest Power Act directs that the rates charged the DSI customers beginning July 1, 1985, are to be based on the wholesale rates charged BPA's preference customers as adjusted for the margin typical of those charged by the region's public utilities for electricity sold to retail industrial consumers, and, pursuant to section 7(c)(3) of the Pacific Northwest Power Act, for the value associated with BPA's contractual rights to restrict DSI load for reserve purposes. In addition, BPA must ensure that the rates charged DSI customers are not lower than those in effect in the year ending June 30, 1985. Consistent with these statutory requirements, BPA has implemented a 10-year variable rate for its aluminum smelter DSIs that ties the price of power for these purchasers to the market price of aluminum. These statutory directives and the Variable rate may cause potential reallocations of costs and credits among customer classes.

## III. Wholesale Power Rate Schedules and General Rate Schedule Provisions

*Schedule PF–87—Priority Firm Power Rate*

Section I. Availability

This schedule is available for the contract purchase of firm power or capacity to be used within the Pacific Northwest. Priority Firm Power may be purchased by public bodies, cooperatives, and Federal agencies for resale to ultimate consumers, for direct consumption, construction, test and start-up, and station service.

Utilities participating in the exchange under section 5(c) of the Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act) may purchase Priority Firm Power pursuant to their Residential Purchase and Sale Agreements.

In addition, Bonneville Power Administration (BPA) may make power available to those parties participating in exchange agreements which use this rate schedule as the basis for determining the amount or value of power to be exchanged.

This schedule supersedes Schedule PF–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

This rate schedule includes the Preference rate and the Exchange rate. The Preference rate is available for the general requirements of public body, cooperative and Federal agency customers and includes credit attributed to the provision of section 7(b)(2) of the Pacific Northwest Power Act. The Exchange rate is available for all other sales under the rate schedule including all purchases of residential and small farm exchange power pursuant to the Residential Purchase and Sale Agreements and power purchased or valued at the Priority Firm Power rate for other than general requirements.

A. *Preference Rate.* 1. *Demand Charge.* a. $3.62 per kilowatt of billing demand occurring during all Peak Period hours.

b. No demand charge during Offpeak Period hours.

2. *Energy Charge.* a. 19.3 mills per kilowatthour of billing energy for the billing months September through March;

b. 15.3 mills per kilowatthour of billing energy for the billing months April through August.

B. *Exchange Rate.* 1. *Demand Charge.* a. $3.71 per kilowatt of billing demand occurring during all Peak Period hours.

b. No demand charge during Offpeak Period hours.

2. *Energy Charge.* a. 20.0 mills per kilowatthour of billing energy for the billing months September through March;

b. 15.9 mills per kilowatthour of billing energy for the billing months April through August.

Section III. Billing Factors

In this section, billing factors are listed for each of the following types of purchasers: Computed requirements purchasers (section III.A), purchasers of residential exchange power pursuant to the Residential Purchase and Sale Agreements (section III.B), and metered requirements purchasers and those Priority Firm Power purchasers not covered by sections III.A and III.B (section III.C).

A. *Computed Requirements Purchasers.* Purchasers designated by BPA as computed requirements purchasers pursuant to power sales contracts shall be billed in accordance with the provisions of this subsection.

1. *Billing Demand.* The billing demand for actual, planned, and contracted computed requirements purchasers shall be the higher of the billing factors "a" and "b," below:

a. the lower of:

(1) the larger of the Computed Peak Requirement or the Computed Average Energy Requirement; or

(2) the Measured Demand, before adjustment for power factor.

b. the lower of:

(1) the Computed Peak Requirement, or

(2) 60 percent of the highest Computed Peak Requirement during the previous 11 billing months (Ratchet Demand).

2. *Billing Energy.* The billing energy for actual, planned, and contracted computed requirements purchasers shall be:

a. for the months September through March, the sum of:

(1) 67 percent of the Measured Energy (excluding unauthorized increase), and

(2) 33 percent of the Computed Energy Maximum;

b. for the months April through August, the sum of:

(1) 77 percent of the Measured Energy (excluding unauthorized increase), and

(2) 23 percent of the Computed Energy Maximum.

B. *Purchasers of Residential Exchange Power.* Purchasers buying Priority Firm Power under the terms of a Residential Purchase and Sale Agreement shall be billed as follows:

1. *Billing Demand.* The billing demand shall be the demand calculated by applying the load factor, determined as specified in the Residential Purchase and Sale Agreement, to the billing energy for each billing period.

2. *Billing Energy.* The billing energy shall be the energy associated with the utility's residential load for each billing period. Residential load shall be computed in accordance with the provisions of the purchaser's Residential Purchase and Sale Agreement.

C. *Metered Requirements Purchasers, Other Purchasers Not Covered by Sections III.A and III.B, Above.* Purchasers designated as metered requirements customers and purchasers taking or exchanging power under this rate schedule who are not otherwise covered by sections III.A and III.B shall be billed as follows:

1. *Billing Demand.* The billing demand shall be the Measured Demand as adjusted for power factor, unless otherwise specified in the power sales contract.

2. *Billing Energy.* The billing energy shall be the Measured Energy, unless otherwise specified in the power sales contract.

Section IV. Adjustments and Special Provisions

A. *Power Factor Adjustment.* The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by 1 percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

B. *Low Density Discount (LDD).* BPA shall apply a discount to the charges for all Priority Firm Power sold to purchasers who are eligible for an LDD. Eligibility for the LDD and the amount of the discount (3, 5, or 7 percent) shall be determined pursuant to section III.C.3 of the GRSPs.

C. *Irrigation Discount.* BPA shall apply an irrigation discount, equal to 4.9 mills per kilowatthour, to the charges for qualifying energy purchased under this rate schedule. The irrigation discount shall be applied after calculation of the Low Density Discount. The discount shall apply only to energy purchased during the billing months of April through October. Eligibility for the irrigation discount and reporting requirements shall be determined pursuant to section III.C.4 of the GRSPs.

D. *Conservation Surcharge.* The Northwest Power Planning Council has recommended that a conservation surcharge be imposed on those customers subject to such surcharge as determined by the Administrator in accordance with BPA's Policy to Implement the Council-Recommended Conservation Surcharge. The Conservation Surcharge shall be applied pursuant to section III.C.7 of the GRSPs and subsequent to any other rate adjustments.

E. *Cost Recovery Adjustment Clause.* The Cost Recovery Adjustment Clause described in section III.C.5 of the GRSPs shall be applied to all purchases and exchanges under this rate schedule. The percentage increase or decrease calculated in sections III.C.5.a and II.C.5.b of the GRSPs shall be applied uniformly to the demand and energy charges contained in sections II.A and II.B and the irrigation discount contained in section IV.C of this rate schedule.

F. *Outage Credit.* Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any purchaser for those hours for which BPA is unable to deliver the full billing demand during that billing month due to an outage on the facilities used by BPA to deliver Priority Firm Power. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

G. *Unauthorized Increase.* BPA shall apply the charge for Unauthorized Increase to any purchaser of Priority Firm Power taking demand and energy in excess of its contractual entitlement.

1. *Rate for Unauthorized Increase.* 62.7 mills per kilowatthour.

2. *Calculation of the Amount of Unauthorized Increase.* Each 60-minute clock-hour integrated or scheduled demand shall be considered separately in determining the amount that may be considered an unauthorized increase. BPA first shall determine the amount of unauthorized increase related to demand and shall treat any remaining unauthorized increase as energy-related.

a. *Unauthorized Increase in Demand.* That portion of any Measured Demand during Peak Period hours, before adjustment for power factor, which

exceeds the demand that the purchaser is contractually entitled to take during the billing month and which cannot be assigned:

(1) to a class of power that BPA delivers on such hour pursuant to contracts between BPA and the purchaser; or

(2) to a type of power that the purchaser acquires from sources other than BPA and that BPA delivers during such hour, shall be billed:

(1) in accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) if such exhibit does not apply or is not a part of the purchaser's power sales contract, at the rate for Unauthorized Increase, based on the amount of energy associated with the excess demand.

b. *Unauthorized Increase in Energy.* The amount of Measured Energy during a billing month which exceeds the amount of energy which the purchaser is contractually entitled to take during that month and which cannot be assigned:

(1) to a class of power which BPA delivers during such month pursuant to contracts between BPA and the purchaser; or

(2) to a type of power which the purchaser acquires from sources other than BPA and which BPA delivers during such month, shall be billed:

(1) in accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) as unauthorized increase if such exhibit does not apply or is not a part of the purchaser's power sales contract.

H. *Coincidental Billing Adjustment.* Purchasers of Priority Firm Power who are billed on a coincidental basis and who have diversity charges or diversity factors specified in their power sales contracts shall have their charges for billing demand adjusted according to the provisions of section III.C.6 of the GRSPs. Computed requirements purchasers are not subject to the Coincidental Billing Adjustment for scheduled power.

I. *Energy Return Surcharge.* Any purchaser who preschedules in accordance with sections 2(a)(4) and 2(c)(2) of Exhibit E of the power sales contract and who returns, during a single offpeak hour, more than 60 percent of the difference between that purchaser's computed peak requirement and computed average energy requirement for the billing month shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.64 mills per kilowatthour for the months of April through November;

2. 1.54 mills per kilowatthour for the months of December through March.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the PF–87 rate is 79.7 percent FBS and 20.3 percent Exchange.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: the Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

*Schedule IP–87—Industrial Firm Power Rate*

Section I. Availability

This schedule is available to direct-service industrial (DSI) customers for both the contract purchase of Industrial Firm Power and the purchase of Auxiliary Power if requested by the DSI customer and made available by BPA. If a DSI customer purchasing power under this rate schedule requests and BPA makes available power under another applicable wholesale rate schedule the IP–87 rate schedule is available for that portion of power purchased not covered under the alternative rate schedule. This rate schedule supersedes Schedule IP–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

The following rates shall be applied when first quartile service is provided under this rate schedule in accordance with the terms of a purchaser's Power Sales Contract dated August 25, 1981. A separate billing adjustment for the reserves provided by the purchasers of Industrial Firm Power is not contained in this rate schedule; the value of reserves credit has been included in the determination of the demand and energy charges.

Any contractual reference to the IP Premium Rate shall be deemed to refer to the demand and energy charges set forth below. Any reference to the IP Standard Rate shall be deemed to refer to the same demand and energy charges minus the Discount for Quality of Service.

A. *Demand Charge.* 1. $4.21 per kilowatt of billing demand occurring during all Peak Period hours.

2. No demand charge during Offpeak Period hours.

B. *Energy Charge.* 1. 19.7 mills per kilowatthour of billing energy for the billing months September through March;

2. 15.7 mills per kilowatthour of billing energy for the billing months April through August.

Section III. Billing Factors

A. *Billing Demand.* The billing demand shall be the BPA Operating Level during the Peak Period as adjusted for power factor. If there is more than one BPA Operating Level during the Peak Period within a billing month, the billing demand shall be a weighted average of the BPA Operating Levels during the Peak Period for the billing month. The BPA Operating Level is defined in section III.A.10 of the General Rate Schedule Provisions (GRSPs). If BPA has agreed to serve a portion of a DSI load under an alternative rate schedule, the billing demand under the IP–87 rate schedule shall be specified in the contract initiating such arrangement.

However, if BPA has agreed, pursuant to section 4 of the direct-service industrial power sales contract, to sell Industrial Firm Power on a daily demand basis (transitional service), this section of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C.3 of the GRSPs.

B. *Billing Energy.* The billing energy shall be the Measured Energy for the billing month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

However, if BPA has agreed to serve only a portion of the DSI's load under the IP rate schedule, the billing energy for the power purchased under the IP rate shall be specified in the contract initiating such arrangement.

Section IV. Adjustments and Special Provisions

A. *Discount for Quality of First Quartile Service.* 1. *Application and Amount of First Quartile Discount.* If a purchaser requests discounted rate service, a discount of 0.6 mills per kilowatthour of billing energy shall be granted. This billing credit shall be applied to the monthly billing energy under section III.B for all power purchased under this rate schedule. No credit shall be applied to those purchases subject to unauthorized increase charges under section IV.D of this rate schedule.

2. *Eligibility Requirements for First Quartile Discount.* To qualify for the First Quartile Discount the purchaser must request discounted rate service in writing by April 2 of each calendar year. By virtue of making such request, the Purchaser is agreeing to accept the level and quality of First Quartile service described in section 6 of the Variable Industrial Rate contract. Such acceptance includes the waiver of contract rights provided in section 6.a(2)(a) of said contract.

B. *Curtailments.* BPA shall charge the DSI for curtailments of the lower three quartiles in accordance with the provisions of section 9 of the power sales contract. BPA shall apply the demand charge in effect at the time of the curtailment in the computation of the amount of the curtailment charge. In the event that a purchaser is found to be eligible to have a portion of their load served under an alternative rate schedule, application of the curtailment charge shall be specified in the contract instituting such arrangement.

C. *Cost Recovery Adjustment Clause.* The Cost Recovery Adjustment Clause described in section III.C.5 of the GRSPs and shall be applied to all power purchases under this rate schedule.

Application of the Cost Recovery Adjustment Clause shall result in a uniform percentage adjustment applied to the demand and energy charges, contained in section II, and the first quartile discount, if applicable, contained in section IV.A.1.

1. *Applicable Percentage if Cost Recovery Variance is Negative.* (Actuals Less Than Planned Funds from Operations.)

The percentage adjustment applied uniformly to the rate parameters specified in above section IV.C shall be determined pursuant to section III.C.5.c of the GRSP.

2. *Applicable Percentage if Cost Recovery Variance is Positive.* (Actuals Greater Than Planned Funds from Operations.)

The percentage adjustment applied uniformly to the rate parameters specified in above section IV.C shall be the lower of:

a. the percentage determined pursuant to section III.C.5.d. of the GRSPs, or

b. 3.5 percent.

D. *Unauthorized Increase.* 1. *Rate for Unauthorized Increase.* 62.7 mills per kilowatthour.

2. *Application of the Charge.* During any billing month, BPA may assess the unauthorized increase charge on the number of kilowatthours associated with the DSI Measured Demand in any one 60-minute clock-hour, before adjustment for power factor, that exceed the BPA Operating Level for that clock-hour, regardless of whether such Measured Demand occurs during the Peak or Offpeak Period.

E. *Power Factor Adjustment.* The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

F. *Outage Credit.* Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any DSI for those hours for which BPA is unable to deliver the full billing demand during that billing month due to an outage on the facilities used by BPA to deliver Industrial Firm Power. Such credit shall not be provided if BPA is able to serve the DSI's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the IP-87 rate is 99.4 percent Exchange and 0.6 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: the Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

*Schedule VI–87—Variable Industrial Power Rate*

Section I. Availability

This schedule is available to direct service industrial (DSI) customers for purchases under the Power Sales Contract implementing the Variable Industrial Power rate schedule (Variable Rate Contract) of: (1) Industrial Firm Power; and (2) Auxiliary Power if requested by the DSI customer and made available by BPA. This schedule is available only for that portion of a DSI's load used in primary aluminum reduction including associated administrative facilities, if any. By virtue of incorporation of this rate schedule and associated General Rate Schedule Provisions (GRSPs) in the Variable Rate Contract. DSIs electing to purchase power under this rate schedule contractually agree to the terms and conditions of this rate schedule. A DSI further agrees to waive for that portion of their load designated to purchase power at the VI rate, all rights they might otherwise have to purchase power at the Industrial Firm Power Rate Schedule for the duration of the Variable Rate Contract. The VI–B6 Rate Schedule was granted interim approval by the FERC on July 31, 1986. In accordance with provisions contained in schedule VI–86, section III.A. of schedule VI–87 has been adjusted and supersedes section III.A. of schedule VI–86. Section VI.J. supplements schedule VI–86. GRSPs effective July 1, 1985, as revised effective August 1, 1986, and as revised in the 1987 rate case and in subsequent wholesale rate filings are applicable to this rate schedule.

Section II. Term of the Rate

This rate schedule shall take effect on August 1, 1986, and shall terminate at midnight June 30, 1996, unless BPA elects to exercise its unilateral option to terminate the rate at midnight June 30, 1991. This termination right is described in section VI.E. of this rate schedule. Actions to invoke an early termination shall comply with section VI.E. of this rate schedule and with the provisions and stipulations set forth in the Variable Rate Contract.

Section III. Rate

A. *Revised Rate Charges Subject to Rate Case Adjustments.* The following rates shall apply to Industrial customers that meet the eligibility requirements and elect to purchase power under the Variable Industrial Power Rate Schedule. These rates shall remain in effect until the next Rate Adjustment Date, at which point the rates shall be

adjusted following the procedures set forth in section VI.C. of this rate schedule, unless the Cost Recovery Adjustment Clause triggers, at which point the rates shall be adjusted following the procedures set forth in section VI.G of this rate schedule. In addition, the Lower Rate Limit also will be subject to a biennial adjustment pursuant to section VI.B. of this rate schedule. The formula to be used in the calculation of the monthly power bill is contained in section IV. A separate billing adjustment for the value of the reserves provided by purchasers of Industrial Firm Power is not contained in this rate schedule; the value of reserves credit has been included in the determination of the Plateau Energy Charge.

1. *Base Variable Industrial Rate.* a. *Demand Charge.* $5.37 per kilowatt of billing demand occurring during the Peak Period. No demand charge is applied during Offpeak Period hours.

b. *Plateau Energy Charge.* 16.3 mills per kilowatthour of billing energy.

2. *First Quartile Service Discount.* 0.5 mills per kilowatthour of billing energy.

3. *Lower Rate Limit.* 8.5 mills per kilowatthour of billing energy.

4. *Upper Rate Limit.* 22.1 mills per kilowatthour of billing energy.

B. *Initial Rate Parameters Subject to Annual Adjustments.* The following rate parameters shall be used in determining the power bills for customers electing to purchase power under the Variable Industrial Power rate schedule. These parameters will be adjusted annually starting on July 1, 1987, and every July 1 thereafter, in accordance with the procedures contained in section VII.B. of the GRSPs.

1. *Lower Pivot Aluminum Price.* 61 cents per pound.

2. *Upper Pivot Aluminum Price.* 72 cents per pound.

Section IV. Formula

The Variable Industrial Power rate is a formula rate tied to the U.S. market price of aluminum. Under this rate schedule, the monthly energy charge varies in response to changes in the average price of aluminum in U.S. markets.

A. *Demand Charge.* 1. The Demand Charge, as stated in section III.A.1.a. of this rate schedule, remains constant over all aluminum prices. The demand charge is applied to billing demand occurring during all Peak Period hours for all billing months.

2. No demand charge during Offpeak Period hours.

B. *Energy Charge.* 1. *Plateau Energy Charge.* When the monthly billing aluminum price (described in section VII.A. of the GRSPs) is between the Lower Pivot Aluminum Price and the Upper Pivot Aluminum Price (as stated in sections III.B.1. and III.B.2. of this rate schedule), the monthly energy charge shall be the Plateau Energy Charge as stated in section III.A.1.b. of this rate schedule.

2. *Reductions to Plateau Energy Charge.* When the monthly billing aluminum price is less than the Lower Pivot Aluminum Price, the monthly energy charge shall be the greater of:

a. The Plateau Energy Charge−(LP−MAP)*(LS) where:

LP=the Lower Pivot Aluminum Price as stated in section III.B.1. of this rate schedule.

MAP=the monthly billing aluminum price in cents per pound determined pursuant to section VII.A. of the GRSPs.

LS=lower slope=1 mill per kilowatthour divided by 1 cent per pound.

or;

b. the Lower Rate Limit as stated in section III.A.3. of this rate schedule.

3. *Increases to Plateau Energy Charge.* When the monthly billing aluminum price is greater than the Upper Pivot Aluminum Price, the monthly energy charge shall be the lesser of:

a. The Plateau Energy Charge+(MAP−UP)*(US) where:

MAP=the monthly billing aluminum price in cents per pound, as determined according to section VII.A. of the GRSPs.

UP=the Upper Pivot Aluminum Price as stated in section III.B.2. of this rate schedule.

US=upper slope=0.75 mills per kilowatthour divided by 1 cent per pound.

or;

b. the Upper Rate Limit, as stated in section III.A.4. of this rate schedule.

Section V. Billing Factors

A. *Billing Demand.* 1. *Billing Demand for Customers Whose Entire BPA Load is Served at the Variable Industrial Power Rate.* The billing demand for power purchased shall be the BPA Operating Level during the Peak Period as adjusted for power factor. If there is more than one BPA Operating Level during the Peak Period within a billing month, the billing demand shall be a weighted average of the BPA Operating Levels during the Peak Period for the billing month. The BPA Operating Level is defined in section III.A.10 of the GRSPs.

2. *Billing Demand for Customers When Only a Portion of Their Total BPA Load is Served at the Variable Rate.* The Billing Demand shall be the portion of the BPA Operating Level attributable to the VI rate as determined by the method specified in the Variable Rate Contract.

3. *Billing Demand During Periods of Transitional Service.* If BPA has agreed, pursuant to section 4 of the direct-service industrial power sales contract, to sell Industrial Firm Power on a daily demand basis (transitional service), this section of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C of the GRSPs.

B. *Billing Energy.* The billing energy for power purchased shall be the Measured Energy for the billing month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

Section VI. Other Adjustments and Special Provisions

A. *Lower and Upper Pivot Aluminum Prices.* Effective July 1, 1987, and every July 1 thereafter, the Lower and Upper Pivot Aluminum Prices set forth in section III.B of the rate schedule shall be adjusted following the procedures set forth in section VII.B of the GRSPs. The adjusted Lower and Upper Pivot Aluminum Prices shall supersede the Lower and Upper Pivot Aluminum Prices contained in section III.B of the rate schedule. The revised Lower and Upper Pivot Aluminum Prices shall be used for billing purposes and subsequent adjustments to the Lower and Upper Pivot Aluminum Prices.

B. *Lower Rate Limit.* Beginning with the July 1, 1988 annual adjustment date and every second July 1 thereafter, the Lower Rate Limit as stated in section III.A.3. shall be increased by 1 mill per kilowatthour. The revised Lower Rate Limit shall supersede the Lower Rate Limit as stated in section III.A.3. of the rate schedule. This increase is in addition to rate adjustment increases in the Lower Rate Limit described in section VI.C. of this rate schedule. In the event that a rate adjustment date and the annual adjustment date occur simultaneously, the Lower Rate Limit shall be adjusted first for changes in the Plateau Energy Charge pursuant to section VI.C. of this rate schedule, and then increased by 1 mill per kilowatthour. The revised Lower Rate Limit shall be used for billing purposes and subsequent rate adjustments.

C. *Rate Adjustments.* The overall rate level of this rate shall be subject to adjustment in BPA's general wholesale power rate case following the procedures and directives of the Pacific

Northwest Power Act. The overall rate level consists of the Demand Charge, Plateau Energy Charge, and First Quartile Service Adjustment contained in sections III.A.1 and III.A.2; these shall be adjusted by a uniform percentage based on the percentage change in the overall rate level. The Lower and Upper Rate Limits as stated in sections III.A.3 and III.A.4 of this rate schedule shall be adjusted by an amount equal to the change, in mills per kilowatthour, in the Plateau Energy Charge The Lower and Upper Pivot Aluminum Prices shall not be adjusted in the rate case; rather, they shall be adjusted pursuant to the procedures described in section VII.B of the GRSPs. The lower and upper slopes shall not be adjusted. The rate for unauthorized increase shall be separately determined in each rate case.

D. *Discount for Quality of First Quartile Service.* If a purchaser requests First Quartile service with other than Surplus FELCC, a discount contained in section 111.A.2 of this rate schedule shall be granted. This billing credit shall be applied to the monthly billing energy under section V.B. for all power purchased under this rate schedule. No credit shall be applied to those purchases subject to unauthorized increase charges under section VI.G. of this rate schedule. To qualify for the First Quartile Discount the purchaser must waive any rights to Surplus FELCC to insure that BPA is able to market its firm surplus, including, but not limited to, any right to service with Surplus FELCC ahead of borrowed firm energy and the storage of Surplus FELCC prior to January 10 for service to the First Quartile after January. However, BPA will not restrict First Quartile service except when necessary to protect service to firm loads.

E. *Termination Provision.* The Administrator may terminate the Variable Industrial Power rate effective midnight June 30, 1991, upon a determination that significant changes in the conditions and expectations under which this rate was offered render the continuation of the Variable Industrial rate inconsistent with BPA's stated goals and objectives. BPA shall provide notification of such a determination pursuant to the provisions of the Variable Rate Contract. As part of the notification procedures, BPA shall provide a reasonable opportunity for interested parties to comment on BPA's determination, as well as to examine the comments submitted by other parties, prior to BPA taking final action to cancel the rate. If BPA determines that the Variable Industrial rate will remain in place until midnight June 30, 1996, BPA shall provide notice that so states and no additional action by BPA will be required.

F. *Curtailments.* BPA shall charge the customer for curtailments of the lower three quartiles in accordance with the provisions of section 9 of the power sales contract and the provisions contained in the Variable Rate Contract.

G. *Unauthorized Increase.* 1. Rate for Unauthorized Increase. 62.7 mills per kilowatthour.

2. Application of the Charge. During any billing month. BPA may assess the unauthorized increase charge on the number of kilowatthours associated with the DSI Measured Demand in any one 60-minute clock-hour, before adjustment for power factor, that exceed the BPA Operating Level for that clock-hour, regardless of whether such Measured Demand occurs during the Peak or Offpeak Period.

H. *Power Factor Adjustment.* The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the BPA Operating Level by 1 percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

I. *Outage Credit.* Pursuant to section 7 of the General Contract Provisions. BPA shall provide an outage credit to any DSI to whom BPA is unable to deliver the full billing demand during that billing month due to an outage on the facilities used by BPA to deliver Industrial Firm Power. Such credit shall not be provided if BPA is able to serve the DSI's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

J. *Cost Recovery Adjustment Clause.* The Cost Recovery Adjustment Clause described in section III.C.5 of the GRSPs shall be applied to all power purchases under this rate schedule consistent with the procedures to adjust the Variable Industrial rate and the provisions of the Variable Rate Contract.

Application of the Cost Recovery Adjustment Clause shall result in a percentage adjustment to be applied uniformly to the demand and Plateau Energy charges contained in section III.A.1 of this rate schedule and to the First Quartile discount specified in section III.A.2 of this rate schedule. The Lower and Upper Rate Limits stated in sections III.A.3 and III.A.4 of this rate schedule shall be adjusted by an amount equal to the change, in mills per kilowatthour, to the Plateau Energy charge due to application of the Cost Recovery Adjustment Clause. The adjusted rate parameters shall be used for billing purposes and supersede the rate charges subject to the adjustment contained in section III.A of this rate schedule. The adjusted rate parameters shall also be used in subsequent rate adjustments pursuant to section III.B of this rate schedule and to subsequent biennial adjustments to the lower rate limit pursuant to section VI.B of this rate schedule.

1. *Applicable Percentage if Cost Recovery Variance is Negative.* (Actuals Less Than Planned Funds from Operations.)

The percentage adjustment applied uniformly to the rate parameters specified in the above section IV.G shall be determined pursuant to section 5.c of the GRSPs.

2. *Applicable Percentage if Cost Recovery Variance is Positive.* (Actuals Greater Than Planned Funds from Operations.)

The percentage adjustment applied uniformly to the rate parameters specified in the above section IV.G shall be the lower of:

a. The percentage determined pursuant to 5.d. of the GRSPs, or

b. 1.7 percent.

Section VII. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act. BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the VI–87 rate is 99.4 percent Exchange and 0.6 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VIII. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following Acts, as amended: the Bonneville Project Act, the Flood

Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

*Schedule SI–87—Special Industrial Power Rate*

Section I. Availability

This rate schedule is available to any DSI purchaser using raw minerals indigenous to the region as its primary resource and qualifying for this special power pursuant to the procedures established in section 7(d)(2) of the Pacific Northwest Power Act. This schedule is available for the contract purchase of this special class of industrial power and also for the purchase of Auxiliary Power if requested by the DSI and made available by BPA. The Special Industrial Offpeak rate available for Hanna Nickel Smelting Company pursuant to the Amendatory Agreement executed July 1, 1985, remains in force and is retained herein. Except for the Special Industrial Offpeak rate, schedule SI–87 supersedes schedule SI–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

This rate schedule contains the Standard Special Industrial Power Rate and the Special Industrial Offpeak Rate. The Standard Special Industrial Power Rate is available to any qualifying DSI for full service provided during all hours of the day. The Special Industrial Offpeak Rate is a lower rate available to the Hanna Nickel Smelting Company (Hanna) for service during periods specified by BPA. A separate billing adjustment for the value of the reserves provided by purchasers of this special class of Industrial Power is not contained in the rate schedule; the adjustment is reflected in the Standard Special Industrial Power Rate.

A. *Standard Special Industrial Power Rate.* 1. *Demand Charge.* a. $3.24 per kilowattmonth of billing demand occurring during all Peak Period hours.

b. No demand charge during Offpeak Period hours.

2. *Energy Charge.* a. 17.8 mills per kilowatthour of billing energy for the billing months September through March;

b. 13.8 mills per kilowatthour of billing energy for the billing months April through August.

B. *Special Industrial Offpeak Rate.* 1. *Demand Charge.* No demand charge in any hour of the day.

2. *Energy Charge.* 7.0 mills per kilowatthour of billing energy during all billing months.

Section III. Billing Factors

A. *Billing Demand.* 1. *Standard Special Industrial Power Rate.* The billing demand for power purchased under the Standard Special Industrial Power Rate shall be the BPA Operating Level during the Peak Period as adjusted for power factor. If there is more than one BPA Operating Level during the Peak Period within a billing month, the billing demand shall be a weighted average of the Peak Period BPA Operating Levels for the billing month. The BPA Operating Level is defined in section III.A.10 of the General Rate Schedule Provisions (GRSPs).

However, if BPA has agreed, pursuant to section 4 of the direct-service industrial power sales contract, to sell Special Industrial Power on a daily demand basis (transitional service), this section of the rate schedule shall not apply, and BPA shall bill the purchaser in accordance with the provisions of section V.C of the GRSPs.

2. *Special Industrial Offpeak Rate.* There is no billing demand for purchases under the Special Industrial Offpeak rate.

B. *Billing Energy.* The billing energy under both the Standard Special Industrial and Special Industrial Offpeak Rates shall be the Measured Energy for the billing month, minus any kilowatthours on which BPA assesses the charge for unauthorized increase.

The kilowatthours of billing energy shall be prorated among the respective billing demands for the billing month.

Section IV. Selection of the SI–87 Rate for the Hanna Nickel Smelting Company

All purchasers, except for Hanna, shall purchase power under the Standard Special Industrial Power rate. Hanna shall have the option to select one of two types of service, standard service or offpeak service. In this case, BPA will provide standard service under the Standard Special Industrial Power Rate and offpeak service under the Special Industrial Offpeak Rate. Unless BPA receives a formal request from Hanna for service under the Special Industrial Offpeak Rate, all service will be standard service provided under the Standard Special Industrial Power Rate. To change the type of service provided and the associated rate, Hanna shall submit a formal request for service under the preferred rate option in accordance with the terms of the power sales contract providing for purchases under this rate schedule. Once Hanna has elected to purchase under one of the two options, all purchases of Special Industrial Power shall be subject to the terms and conditions of that rate option until such time that Hanna requests the other type of service.

Section V. Service Under the Special Industrial Offpeak Rate

BPA shall designate the hours during which offpeak service will be available, and shall provide at least 2 weeks notice before changing those designated hours. BPA shall identify at least 10 and up to 13 hours on each day Monday through Friday, 15 hours on Saturday, and 24 hours on Sunday, during which offpeak service will be available to the purchaser.

If Hanna has elected to be served under the Special Industrial Offpeak Rate, the Hanna may request, during the designated offpeak periods, service in an amount not to exceed the purchaser's Contract Demand. During all other hours Hanna shall curtail service to a level not to exceed 15 percent of Contract Demand.

Section VI. Adjustments and Special Provisions

A. *Curtailments.* BPA shall charge the DSI for curtailments in accordance with the provisions of the DSI's power sales contract. Any curtailment charge levied shall be computed using the Standard Special Industrial Power Rate.

B. *Unauthorized Increase Charge.* 1. *Rate for Unauthorized Increase.* 62.7 mills per kilowatthour.

2. *Application of the Charge.* During any billing month, BPA may assess the unauthorized increase charge on the number of kilowatthours associated with the DSI Measured Demand in any one 60-minute clock-hour, before adjustment for power factor, that exceed the BPA Operating Level for that clock-hour, regardless of whether such Measured Demand occurs during the Peak or Offpeak Period.

If BPA is providing service to Hanna under the Special Industrial Offpeak Rate, the amount by which Hanna's Measured Demand exceeds 15 percent of its Contract Demand during any hour other than the specified special hours shall be considered unauthorized increase.

C. *Power Factor Adjustment.* The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the GRSPs. The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment for service under the Standard Special

Industrial Power Rate, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. For service under the Special Industrial Offpeak Rate, BPA shall increase the billing energy by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

D. *Outage Credit.* Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any purchaser for those hours for which BPA is unable to deliver the full billing demand during that billing month due to an outage on the facilities used by BPA to deliver Special Industrial Power. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternative facilities or if the outage is for less than 30 minutes. In addition, no credit shall be applied to purchases under the Special Industrial Offpeak Rate. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

E. *Extended Service Provision.* The terms of this rate schedule may be extended for a period not to exceed June 30, 1990, in accordance with the Amendatory Agreement effective July 1, 1985, with the Hanna Nickel Smelting Company (Hanna). The Amendatory Agreement contains Hanna's agreement to make certain investments in a wet screening process at its Riddle facility.

Section VII. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The SI–87 rate is not based on the cost of resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VIII. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: the Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

*Schedule CF–87—Firm Capacity Rate*

Section I. Availability

This schedule is available for the purchase of Firm Capacity without energy on a Contract Demand basis. This schedule is available only to those purchasers holding Firm Capacity contracts executed prior to July 1, 1985. It supersedes Schedule CF–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

$44.28 per kilowatt per year of Contract Demand, billed monthly at the rate of $3.69 per kilowattmonth of Contract Demand.

Section III. Billing Factors

The billing demand shall be the Contract Demand.

Section IV. Adjustments and Special Provisions

A. *Conservation Surcharge.* The Northwest Power Planning Council has recommended that a conservation surcharge be imposed on those customers subject to such surcharge as determined by the Administrator in accordance with BPA's Policy to Implement the Council-Recommended Conservation Surcharge. The Conservation Surcharge shall be applied in accordance with section II.C.7 of the General Rate Schedule Provisions (GRSPs) and subsequent to any other rate adjustments.

B. *Extended Peaking Surcharge.* The monthly capacity rate specified in section II above shall be increased by the following extended peaking surcharge to compensate BPA for each hour that the purchaser's monthly demand duration exceeds 8 hours:

1. $0.0946 per kilowatt per hour of extended peaking for the months April through October;

2. $0.0533 per kilowatt per hour of extended peaking for the months November through March.

The charge shall be adjusted pro rata for each portion of an hour of extended peaking supplied to the purchaser.

The purchaser's monthly demand duration shall be determined by dividing:

1. the kilowatthours supplied to the purchaser under this rate schedule between the hours of 7 a.m. and 10 p.m. on the day of maximum kilowatthour use during those hours, provided such day is not a Sunday, by

2. The purchaser's Contract Demand for such month.

The purchaser's extended peaking shall be the amount by which the purchaser's monthly demand duration exceeds 8 hours. The extended peaking surcharge shall not be applied during periods when BPA does not require the delivery of peaking replacement energy by the purchaser.

C. *Energy Return Surcharge.* The energy associated with the delivery of Firm Capacity must be returned to BPA in accordance with the terms of the purchaser's Firm Capacity Contract. Unless waived by BPA, any purchaser whose energy returns during any single hour exceed 60 percent of the purchaser's Contract Demand during any single hour shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.64 mills per kilowatthour for the months April through October, and

2. 1.54 mills per kilowatthour for the months November through March.

D. *Cost Recovery Adjustment Clause.* The Cost Recovery Adjustment Clause described in section III.C.5 of the GRSPs shall be applied to all purchases under this rate schedule. The percentage increase or decrease calculated in sections III.C.5.a and III.C.5.b of the GRSPs shall be applied to the demand charges contained in sections II.A and II.B of this rate schedule.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the CF–87 rate is 76.8 percent FBS and 23.2 percent Exchange for contract year service.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: The Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

*Schedule CE–87—Emergency Capacity Rate*

Section I. Availability

This schedule is available for the purchase of capacity:

A. When an emergency exists on the purchaser's system, or

B. When the purchaser wishes to displace higher-cost firm capacity resources which are otherwise available to meet the purchaser's load, provided the purchaser requests such capacity and BPA has capacity available for such purpose.

This schedule supersedes Schedule CE–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

A. *Demand Charge.* $1.11 per kilowatt of demand per calendar week or portion thereof.

B. *Intertie Charge.* The demand charge specified above shall be increased by $0.15 per kilowatt per week for capacity made available at the Oregon-California or Oregon-Nevada border for delivery over the Pacific Northwest-Pacific Southwest (Southern) Intertie.

Section III. Billing Factors

The billing demand shall be the maximum amount requested by the purchaser and made available by BPA during a calendar week. If BPA is unable to meet subsequent requests by a purchaser for delivery at the demand previously established during such week, the billing demand for that week shall be the lower demand which BPA is able to supply.

Section IV. Billing Period

Bills shall be rendered monthly.

Section V. Special Provision

Energy delivered with such capacity shall be returned to BPA within 7 days of the date of delivery and shall be returned at times and rates of delivery agreed to by both the purchaser and BPA prior to delivery. BPA may agree to accept the return energy after the normal 7 day return period provided that such delay has been mutually agreed upon prior to delivery.

Section VI. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the CE–87 rate is 76.8 percent FBS and 23.2 percent Exchange.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VII. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions (GRSPs) and the following acts, as amended: The Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

*Schedule NR–87—New Resource Firm Power Rate*

Section I. Availability

This schedule is available for the contract purchase of firm power or capacity to be used within the Pacific Northwest. New Resource Firm Power is available to investor-owned utilities (IOUs) under net requirements contracts for resale to ultimate consumers, direct consumption, or use in construction, test and start up, and station service.

New Resource Firm Power also is available to any public body, cooperative, or Federal agency to the extent such power is needed to serve any increase in power requirements as defined in section 3.(13) of the Pacific Northwest Power Act as interpreted in Notice of Final Action (46 FR 44353, September 3, 1981).

In addition, BPA may make this rate available to those parties participating in exchange agreements that use this rate schedule as the basis for determining the amount or value of power to be exchanged.

This schedule supersedes Schedule NR–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

A. *Demand Charge.* 1. $4.53 per kilowatt-month of billing demand occurring during all Peak Period hours.

2. No demand charge during Offpeak Period hours.

B. *Energy Charge.* 1. 25.5 mills per kilowatthour of billing energy for the billing months September through March;

2. 21.2 mills per kilowatthour of billing energy for the billing months April through August;

Section III. Billing Factors

In this section billing factors are listed for computed requirements purchasers (section III.A), metered requirements purchasers, and those New Resource Firm Power purchasers not covered by section III.A. (section III.B.).

A. *Computed Requirements Purchasers.* Purchasers designated by BPA as computed requirements purchasers pursuant to power sales contracts shall be billed in accordance with the provisions of this section.

1. *Billing Demand.* The billing demand for actual, planned, and contracted computed requirements purchasers shall be the higher of the billing factors "a" and "b," below:

a. The lower of:

(1) The larger of the Computed Peak Requirement or the Computed Average Energy Requirement;

(2) The Measured Demand, before adjustment for power factor; or

b. The lower of:

(1) The Computed Peak Requirement; or

(2) 60 percent of the highest Computed Peak Requirement during the previous 11 billing months (Ratchet Demand).

2. *Billing Energy.* The billing energy for actual, planned, and contracted computed requirements purchasers shall be:

a. For the months September through March, the sum of:

(1) 50 percent of the Measured Energy, and

(2) 50 percent of the Computed Energy Maximum;

b. for the months April through August, the sum of:

(1) 55 percent of the Measured Energy, and

(2) 45 percent of the Computed Energy Maximum.

B. *Metered Requirements Purchasers and Other Purchasers Not Covered By Section III.A, Above.* Purchasers designated as metered requirements customers and purchasers taking power under this rate schedule who are not otherwise covered by section III.A shall be billed as follows:

1. *Billing Demand.* The billing demand shall be the Measured Demand as adjusted for power factor, unless otherwise specified in the power sales contract. However, purchasers who previously used the Firm Energy rate schedule, FE–2, either in the computation of their power bills or in the determination of the value of an exchange account, shall not be charged for demand under this rate schedule.

2. *Billing Energy.* The billing energy shall be the Measured Energy, unless otherwise specified in the power sales contract.

Section IV. Adjustments and Special Provisions

A. *Power Factor Adjustment.* The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions

(GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

B. *Cost Recovery Adjustment Clause.* The Cost Recovery Adjustment Clause described in section III.C.5 of the GRSPs shall be applied to all purchases and exchanges under this rate schedule. The percentage increase or decrease calculated in section II.C.5.a and III.C 5.b of the GRSPs shall be applied uniformly to the demand and energy charges contained in sections II.A and II.B of this rate schedule, and the irrigation discount contained in section IV.C of this rate schedule.

C. *Irrigation Discount.* BPA shall apply an irrigation discount, equal to 4.9 mills per kilowatthour, to the charges for qualifying energy purchased under this rate schedule. The irrigation discount shall be applied after calculation of the Low Density Discount. The discount shall apply only to energy purchased during the billing months of April through October. Eligibility for the irrigation discount and reporting requirements shall be determined pursuant to section III.C.4 of the GRSPs.

D. *Conservation Surcharge.* The Northwest Power Planning Council has recommended that a conservation surcharge be imposed on those customers subject to such surcharge as determined by the Administrator in accordance with BPA's Policy to Implement the Council-Recommended Conservation Surcharge. The Conservation Surcharge shall be applied in accordance with section III.C.7 of the GRSPs and subsequent to any other rate adjustments.

E. *Unauthorized Increase.* BPA shall apply the charge for Unauthorized Increase to any purchaser of New Resource Firm Power taking demand and/or energy in excess of its contractual entitlement.

1. *Rate for Unauthorized Increase.* 62.7 mills per kilowatthour.

2. *Calculation of the Unauthorized Increase.* Each 60-minute clock-hour integrated or scheduled demand shall be considered separately in determining the amount which may be considered an unauthorized increase. BPA shall first determine the amount of unauthorized increase related to demand and shall then treat any remaining unauthorized increase as energy-related.

a. *Unauthorized Increase in Demand.* That portion of any Measured Demand during Peak Period hours, before adjustment for power factor, that exceeds the demand which the purchaser is contractually entitled to take during the billing month and that cannot be assigned:

(1) to a class of power which BPA delivers on such hour pursuant to contracts between BPA and the purchaser; or

(2) to a type of power which the purchaser acquires from sources other than BPA and which BPA delivers during such hour, shall be billed:

(1) in accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) if such exhibit does not apply or is not a part of the purchaser's power sales contract, at the rate for Unauthorized Increase, based on the amount of energy associated with the excess demand.

b. *Unauthorized Increase in Energy.* The amount of Measured Energy during a billing month that exceeds the amount of energy which the purchaser is contractually entitled to take during that month and that cannot be assigned:

(1) to a class of power that BPA delivers during such month pursuant to contracts between BPA and the purchaser; or

(2) to a type of power that the purchaser acquires from sources other than BPA and that BPA delivers during such month, shall be billed:

(1) in accordance with the provisions of the "Relief from Overrun" exhibit to the power sales contract; or

(2) as unauthorized increase if such exhibit does not apply or is not a part of the purchaser's power sales contract.

F. *Coincidental Billing Adjustment.* Purchasers of New Resource Firm Power who are billed on a coincidental basis and who have diversity charges or diversity factors specified in their power sales contracts shall have their charges for billing demand adjusted according to the provisions of section III.C.6 of the GRSPs. Computed requirements purchasers are not subject to the Coincidental Billing Adjustment for scheduled power.

G. *Outage Credit.* Pursuant to section 7 of the General Contract Provisions, BPA shall provide an outage credit to any purchaser for those hours for which BPA is unable to deliver the full billing demand during the billing month due to an outage on the facilities used by BPA to deliver New Resource Firm Power. Such credit shall not be provided if BPA is able to serve the purchaser's load through the use of alternative facilities or if the outage is for less than 30 minutes. The amount of the credit shall be calculated according to the provisions of section III.C.2 of the GRSPs.

H. *Energy Return Surcharge.* Any purchaser who preschedules in accordance with sections 2(a)(4) and 2(c)(2) of Exhibit E of the Power Sales contract and who returns, during a single offpeak hour, more than 60 percent of the difference between that purchaser's estimated computed peak requirement and estimated computed average energy requirement for the billing month shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.64 mills per kilowatthour for the months of April through October, and

2. 1.54 mills per kilowatthour for the months of November through March.

Section V. Resource Cost Contribution

In compliance with Section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the NR–87 rate is 100.0 percent Exchange.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: the Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

*Schedule SP–87—Short-Term Surplus Firm Power Rate*

Section I. Availability

This rate schedule is available for the purchase of Surplus Firm Power or capacity for the period ending September 30, 1992, including purchases under the Western Systems Power Pool (WSPP) agreements. This schedule also is available for use in tandem with Schedule SL–87 for sales of Long-Term Surplus Firm Power, with SP–87 applicable during some or all of the same period ending September 30, 1992. BPA is not obligated to make power or energy available under this rate schedule if such power or energy would displace sales under the IP–87, VI–87,

PF–87, and NR–87 rate schedules. Schedule SP–87 supersedes schedule SP–85 and associated GRSPs, except in the case of contracts for sales under schedule SP–85 which become effective on or before September 30, 1987.

Section II. Rate

A. *Contract Rate.* 1. *Demand Charge.* a. For contracts that specify 12 months of service per year, $56.52 per kilowatt per year of Contract Demand billed monthly at the rate of $4.71 per kilowatt of Contract Demand occurring during all Peak Period hours in each billing month.

b. For contracts that specify service for fewer than 12 months per year, the monthly demand charge shall be assessed only for the specified service months at the rate of $4.71 per kilowatt of Billing Demand occurring during the Peak Period plus:

$4.71* (12—specified service months)* .25 divided by specified service months

c. No demand charge during Offpeak Period hours.

2. *Energy Charge.* 24.4 mills per kilowatthour of Billing Energy.

B. *Flexible Rate.* 30.9 mills per kilowatthour of Billing Energy. The rate may be specified at a higher or lower charge, as mutually agreed by BPA and the purchaser. In no case shall the rate exceed 100 percent of the fixed and variable unit costs of generation and transmission of BPA's highest cost resource including exchange resources. No resource cost determination is needed for sales at less than or equal to the Contract rate.

C. *Intertie Service.* Rates shall be increased for delivery of Short-Term Surplus Firm Power over the Pacific Northwest-Pacific Southwest Intertie. The adder shall be either of the following:

1. 1.6 mills per kilowatthour; or,
2. $0.63 per kilowatt per month.

Section III. Billing Factors

The billing factors shall be the Measured Demand and Measured Energy, unless otherwise specified in the contract.

Section IV. Adjustments and Special Provisions

A. *Power Factor Adjustment.* The adjustment for power factor for BPA customers that are billed for Short-Term Surplus Firm Power on metered amounts, when specified in this rate schedule or in the contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand or energy by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

B. *Extended Peaking Surcharge.* 1. For contract purchases of capacity, the monthly capacity rate specified in section II.A above shall be increased by the following extended peaking surcharge to compensate BPA for each hour that the purchaser's monthly demand duration exceeds 8 hours:

a. $0.0946 per kilowatt per hour of extended peaking for the months April through October;

b. $0.0533 per kilowatt per hour of extended peaking for the months November through March.

The charge shall be adjusted pro rata for each portion of an hour of extended peaking supplied to the purchaser.

2. The purchaser's monthly demand duration shall be determined by dividing:

a. The kilowatthours supplied to the purchaser under this rate schedule between the hours of 7 a.m. and 10 p.m. on the day of maximum kilowatthour use during those hours, provided such day is not a Sunday, by

b. The purchaser's Contract Demand for such month.

3. The purchaser's extended peaking shall be the amount by which the purchaser's monthly demand duration exceeds 8 hours. The extended peaking surcharge shall not be applied during periods when BPA does not require the delivery of peaking replacement energy by the purchaser.

C. *Energy Return Surcharge.* The energy associated with the delivery of contract capacity purchases must be returned to BPA in accordance with the terms of the contract under which purchases are made. Unless waived by BPA, any purchaser whose energy returns during any single hour exceed 60 percent of the purchaser's Contract Demand during any single hour shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.64 mills per kilowatthour for the months April through October;

2. 1.54 mills per kilowatthour for the months November through March.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the SP–87 rate is 99.4 percent Exchange and 0.6 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: the Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

*Schedule SL–87—Long-Term Surplus Firm Power Rate*

Section I. Availability

This rate schedule is available for the long-term purchase of Surplus Firm Power or capacity for contracts with BPA having a term of up to 20 years. This schedule also may be used in tandem with Schedule SP–87 and applied to long-term sales of Surplus Firm Power for the period beginning on or before October 1, 1992.

Section II. Rate

A. *Demand Charge.* 1. $4.71 per kilowatt of billing demand occurring during the Peak Period in each billing month.

2. For contracts that specify service for fewer than 12 months per year, the monthly demand charge shall be assessed only for the specific service months at the rate of 4.71 per kilowatt of Billing Demand occurring during the Peak Period plus:

$4.71* (12—specified service months)* .25 divided by specified service months

3. No demand charge during Offpeak Period hours.

B. *Energy Charge.* 24.4 mills per kilowatthour of billing energy.

C. *Intertie Service.* Rates shall be increased for delivery of Long-Term Surplus Firm Power over the Pacific Northwest-Pacific Southwest Intertie. The adder shall be either of the following:

1. 1.6 mills per kilowatthour; or,
2. $0.63 per kilowatt per month.

Section III. Billing Factors

The billing factors shall be the Contract Demand and Measured Energy, unless otherwise specified in the contract.

Section IV. Adjustments and Special Provisions

A. *Escalation Factor.* 1. *Calendar Year Adjustment.* Each January 1, each rate component of the Long-Term Surplus Firm Power rate shall be increased as follows:

$SL_n = SL_{n-1} * 1.02$.

where $SL_n$ = The demand and energy charges of the Long-Term Surplus Firm Power rate in effect beginning each January 1 of the relevant calendar year.

$SL_{n-1}$ = The Long-Term Surplus Firm Power demand and energy charges in effect on December 31 of the previous calendar year.

2. *Adjustment Resulting From Adoption of New Priority Firm Power Rate Schedules.* On the effective date of any future Priority Firm Power (PF) rate adjustment, the rate for Long-Term Surplus Firm Power ($SL_n$) as determined in section IV.A.1 above, shall be adjusted as follows:

$SL_{new} = SL_n * PF_{new}$ divided by $PF_{prev}$

where $SL_{new}$ = The effective surplus firm power demand and energy charges as adjusted to reflect a new PF rate.

$PF_{new}$ = The newly adjusted average PF rate or successor rate(s) (in mills per kilowatthour). Such average rate shall be calculated at the load factor of the proposed sale, and assume a uniform demand in all months. If there is more than one PF rate, the average shall be determined by a weighting based on forecasted sales in the relevant rate case.

$PF_{prev}$ = The average PF rate or successor rate(s) (in mills per kilowatthour) in effect during the previous rate period. Such average rate shall be calculated at the load factor of the proposed sale, and assuming a uniform demand in all months. If there is more than one PF rate, the average shall be determined by a weighting based on forecasted sales in the relevant rate case.

B. *Power Factor Adjustment.* The adjustment for power factor for BPA customers that are billed for Long-Term Surplus Firm Power on metered amounts, when specified in this rate schedule or in the contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent

To make the power factor adjustment. BPA shall increase the billing demand or energy by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

C. *Extended Peaking Surcharge.* 1. For contract purchases of capacity, the monthly capacity rate specified in section I.A. above shall be increased by the following extended peaking surcharge to compensate BPA for each hour that the purchaser's monthly demand duration exceeds 8 hours:

a. $0.0946 per kilowatt per hour of extended peaking for the months April through October, and

b. $0.0533 per kilowatt per hour of extended peaking for the months November through March.

The charge shall be adjusted pro rata for each portion of an hour of extended peaking supplied to the purchaser.

2. The purchaser's monthly demand duration shall be determined by dividing:

a. The kilowatthours supplied to the purchaser under this rate schedule between the hours of 7 a.m. and 10 p.m. on the day of maximum kilowatthour use during those hours, provided such day is not a Sunday, by

b. The purchaser's Contract Demand for such month.

3. The purchaser's extended peaking shall be the amount by which the purchaser's monthly demand duration exceeds 8 hours. The extended peaking surcharge shall not be applied during periods when BPA does not require the delivery of peaking replacement energy by the purchaser.

4. The extended peaking surcharge shall be subject to the escalation factor specified in section IV.A. above.

D. *Energy Return Surcharge.* 1. The energy associated with the delivery of contract capacity purchases must be returned to BPA in accordance with the contract terms. Unless waived by BPA, any purchaser whose energy returns during any single hour exceed 60 percent of the purchaser's Contract Demand during any single hour shall be subject to the following surcharge for each additional kilowatthour so returned:

a. 3.64 mills per kilowatthour for the months April through October;

b. 1.54 mills per kilowatthour for the months November through March.

2. The energy return surcharge shall be subject to the escalation factor specified in section IV.A. above.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the SL–87 rate is 99.4 percent Exchange and 0.6 percent New Resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: the Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

*Schedule FD–87—Short-Term Firm Displacement Power Rate*

Section I. Availability

This schedule is available for the short-term contract purchase of Firm Displacement Power or capacity by Pacific Northwest utilities for use within the Pacific Northwest for the period ending September 30, 1992. Generation from resources displaced by Firm Displacement purchases shall be exported from the Pacific Northwest on a firm basis for a period of at least 3 years. This schedule may be used in tandem with schedule FL–87 for sales of Long-Term Firm Displacement Power, with FD–87 applicable during some or all of the short-term period ending September 30, 1992.

Section II. Rate

A. *Contract Rate.* 1. *Demand Charge.* a. For contracts that specify 12 months of service per year, $54.36 per kilowatt per year of Contract Demand billed monthly at the rate of $4.53 per kilowatt of Contract Demand occurring during the Peak Period in each billing month.

b. For contracts that specify service for fewer than 12 months per year, the monthly demand charge shall be assessed only for the specified service months at the rate of $4.53 per kilowatt of Billing Demand occurring during the Peak Period plus:

$4.53* (12—specified service months) * .25 divided by specified service months

c. No demand charge during Offpeak Period hours.

2. *Energy Charge.* 23.7 mills per kilowatthour of Billing Energy.

B. *Flexible Rate.* Energy and/or demand charges for Short-Term Firm Displacement Power may be specified at rates higher or lower than the above charges, as mutually agreed upon by BPA and the purchaser. The rate shall not exceed 100 percent of the fixed and variable costs of generating and transmitting BPA's highest cost resource, including exchange resources.

Section III. Billing Factors

The billing factors shall be the Contract Demand and Contract Energy.

Section IV. Adjustments and Special Provisions

A. *Extended Peaking Surcharge.* 1. For contract purchases of capacity, the monthly capacity rate specified in section I.A above shall be increased by the following extended peaking surcharge to compensate BPA for each hour that the purchaser's monthly demand duration exceeds 8 hours:

a. $0.0946 per kilowatt per hour of extended peaking for the months April through October;

b. $0.0533 per kilowatt per hour of extended peaking for the months November through March.

The charge shall be adjusted pro rata for each portion of an hour of extended peaking supplied to the purchaser.

2. The purchaser's monthly demand duration shall be determined by dividing:

a The kilowatthours supplied to the purchaser under this rate schedule between the hours of 7 a.m. and 10 p.m. on the day of maximum kilowatthour use during those hours, provided such day is not a Sunday, by

b. The purchaser's Contract Demand for such month.

3. The purchaser's extended peaking shall be the amount by which the purchaser's monthly demand duration exceeds 8 hours. The extended peaking surcharge shall not be applied during periods when BPA does not require the delivery of peaking replacement energy by the purchaser.

B. *Energy Return Surcharge.* The energy associated with the delivery of Firm Displacement capacity must be returned to BPA in accordance with the terms of the purchaser's Firm Displacement contract. Unless waived by BPA, any purchaser whose energy returns during any single hour exceed 60 percent of the purchaser s Contract Demand during any single hour shall be subject to the following surcharge for each additional kilowatthour so returned:

1. 3.64 mills per kilowatthour for the months April through October;

2. 1.54 mills per kilowatthour for the months November through March.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the FD–87 rate is 100.0 percent Exchange.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: The Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

*Schedule FL–87—Long-Term Firm Displacement Power Rate*

Section I. Availability

This schedule is available for the long-term purchase of Firm Displacement Power or capacity by Pacific Northwest utilities for use within the Pacific Northwest for contracts having a term from 5 to 20 years. Generation from resources displaced by Firm Displacement purchases shall be exported from the Pacific Northwest on a firm basis during the contract period. This schedule may be used in tandem with schedule FD–87 and applied to long-term sales of Firm Displacement power for the period beginning on or before October 1, 1992. Schedule FL–87 supersedes schedule FD–85 and associated GRSPs, except in the case of contracts for sales under schedule FD–85, which become effective on or before September 30, 1987.

Section II. Rate

A. *Demand Charge.* 1. For contracts that specify 12 months of service per year, $54.36 per kilowatt per year of Contract Demand billed monthly at the rate of $4.53 per kilowatt of Contract Demand occurring during the Peak Period in each billing month.

2. For contracts that specify service for fewer than 12 months per year, the monthly demand charge shall be assessed only for the specified service months at the rate of $4.53 per kilowatt of Billing Demand occurring during the Peak Period plus:

$4.53* (12—specified service months) * .25 divided by specified service months

3. No demand charge during Offpeak Period hours.

B. *Energy Charge.* 23.7 mills per kilowatthour of Billing Energy.

Section III. Billing Factors

The billing factors shall be the Contract Demand and Contract Energy.

Section IV. Adjustments and Special Provisions

A. *Escalation Factor.* 1. *Calendar Year Adjustment.* Each January 1, each rate component of the Long-Term Firm Displacement Power rate shall be increased as follows:

$FL_n = FL_n - 1$ multiplied by 1.02

where $FL_n$ = The demand and energy charges of the Long-Term Firm Displacement Power rate in effect beginning each January 1 of the relevant calendar year.

$FL_n - 1$ = The Long-Term Firm Displacement Power demand and energy charges in effect on December 31 of the previous calendar year.

2. *Adjustment Resulting From Adoption of New Priority Firm Power Rate Schedules.* On the effective date of any future Priority Firm Power (PF) rate adjustment, the rate for Long-Term Firm Displacement Power ($FL_n$) as determined in section IV.A.1. above, shall be adjusted as follows:

$FL_{new} = FL_n$ multiplied by $F_{new}$ divided by $PF_{prev}$

where $FL_{new}$ = The effective Long Term Firm Displacement Power demand and energy charges as adjusted to reflect a new PF rate.

$PF_{new}$ = The newly adjusted average PF rate or successor rate(s) (in mills per kilowatthour). Such average rate shall be calculated at the load factor of the proposed sale, and assume a uniform demand in all months. If there is more than one PF rate, the average shall be determined by a weighting based on forecasted sales in the relevant rate case.

$PF_{prev}$ = The average PF rate or successor rate(s) (in mills per kilowatthour) in effect during the previous rate period. Such average rate shall be calculated at the load factor of the proposed sale, and assuming a uniform demand in all months. If

there is more than one PF rate, the average shall be determined by a weighting based on forecasted sales in the relevant rate case.

B. *Extended Peaking Surcharge.* 1. For contract purchases of capacity, the monthly capacity rate specified in section I.A. above shall be increased by the following extended peaking surcharge to compensate BPA for each hour that the purchaser's monthly demand duration exceeds 8 hours:

a. $0.0946 per kilowatt per hour of extended peaking for the months April through October, and

b. $0.0533 per kilowatt per hour of extended peaking for the months November through March.

The charge shall be adjusted pro rata for each portion of an hour of extended peaking supplied to the purchaser.

2. The purchaser's monthly demand duration shall be determined by dividing:

a. The kilowatthours supplied to the purchaser under this rate schedule between the hours of 7 a.m. and 10 p.m. on the day of maximum kilowatthour use during those hours, provided such day is not a Sunday, by

b. The purchaser's Contract Demand for such month.

3. The purchaser's extended peaking shall be the amount by which the purchaser's monthly demand duration exceeds 8 hours. The extended peaking surcharge shall not be applied during periods when BPA does not require the delivery of peaking replacement energy by the purchaser.

4. The extended peaking surcharge shall be subject to the escalation factor specified in section IV.A above.

C. *Energy Return Surcharge.* 1. The energy associated with the delivery of Long Term Firm Displacement capacity must be returned to BPA in accordance with the terms of the purchaser's Firm Displacement contract. Unless waived by BPA, any purchaser whose energy returns during any single hour exceed 60 percent of the purchaser's Contract Demand during any single hour shall be subject to the following surcharge for each additional kilowatthour so returned:

a. 3.64 mills per kilowatthour for the months April through October;

b. 1.54 mills per kilowatthour for the months November through March.

2. The energy return surcharge shall be subject to the escalation factor specified in section IV.A. above.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the FL–87 rate is 100.0 percent Exchange.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

*Schedule NF–87—Nonfirm Energy Rate*

Section I. Availability

This schedule is available for the purchase of nonfirm energy to be used both inside and outside the United States including sales under the Western Systems Power Pool (WSPP) agreements and sales to consumers. This schedule also applies to energy delivered for emergency use under the conditions set forth in section V.A of the General Rate Schedule Provisions (GRSPs). BPA is not obligated to offer nonfirm energy to any purchaser that results in displacement of firm power purchases under BPA's Power Sales Contracts. The offer of nonfirm energy under this schedule shall be determined by BPA. Schedule NF–87 supersedes Schedule NF–85 which went into effect on an interim basis on July 1, 1985, and was subsequently revised on an emergency basis and approved on an interim basis on May 1, 1986.

Section II. Rates

The average cost of Nonfirm Energy is 23.0 mills per kilowatthour. The NF–87 rate schedule provides for upward and downward flexibility from this average cost. All rates in this rate schedule shall be subject to the NF Rate Cap contained in section IV.C of the GRSPs.

A. *Standard Rate.* The Standard rate is any offered rate not to exceed the NF Rate Cap specified in section IV.C of the GRSPs.

B. *Market Expansion Rate.* The Market Expansion rate is any offered rate below the Standard rate in effect. BPA may have one or more Market Expansion rates in effect simultaneously.

C. *Incremental Rate.* The Incremental rate is the Incremental Cost of energy plus 2.0 mills per kilowatthour, where the Incremental Cost is defined as all identifiable costs (expressed in mills per kilowatthour) that BPA would have avoided had it not produced or purchased the energy being sold under this rate

D. *Contract Rate.* The Contract rate is 14.9 mills per kilowatthour of billing energy.

Section III. Adjustments to Rates

A. *Guaranteed Delivery Surcharge.* A surcharge of 2.0 mills per kilowatthour of billing energy is applied to guaranteed delivery of nonfirm energy under the Standard rate and Market Expansion rate.

B. *Intertie Adder.* All rates specified shall be increased by 1.6 mills per kilowatthour for nonfirm energy scheduled for delivery over the Pacific Northwest-Pacific Southwest Intertie.

Section IV. Billing Factors

The billing energy for nonfirm energy purchased under this rate schedule shall be the Measured Energy unless otherwise specified by contract.

Section V. Application and Eligibility

Any time that BPA has nonfirm energy for sale, the Standard rate, the Market Expansion rate, the Incremental rate, the Contract rate, or a combination of these rates may be in effect.

A. *Standard Rate.* The Standard rate is:

1. available for all purchases of nonfirm energy; and

2. applies to nonfirm energy purchased pursuant to the Relief from Overrun Exhibit to the power sales contract.

B. *Market Expansion Rate.*

1. *Application of the Market Expansion Rate.* The Market Expansion rate applies when BPA determines that all markets at the Standard rate have been satisfied and BPA offers additional nonfirm energy

2. *Market Expansion Rate Qualification Criteria.* In order to purchase Nonfirm Energy at the Market Expansion rate, a purchaser must:

a. Have a displaceable resource, displaceable purchase of electricity, or

b. Be an end-user load with a displaceable alternative fuel source.

In addition, a purchaser must demonstrate one of the following:

a. Shutdown or reduction of the output of the displaceable resource in an amount equal to the amount of Market Expansion rate energy purchased; or

b. Reduction of a displaceable purchase and the output of the resource associated with that purchase, in an

amount equal to the amount of Market Expansion rate energy purchased; or

c. Shutdown or reduction of the identified output of the resource(s) indirectly in an amount equal to the amount of Market Expansion rate energy purchased. For example, the purchase may be used to run a pumped storage unit; or

d. That an end-user alternate fuel source is reduced in an amount equivalent to the amount of Market Expansion rate energy purchased.

3. *Eligibility Criteria for Market Expansion Rate.* a. When only one Market Expansion rate is offered:

Purchasers qualifying under section V.B.2 who purchased Nonfirm Energy directly from BPA are eligible to purchase power under the Market Expansion rate offered if the decremental cost of the qualifying resource, purchase, or qualifying alternative fuel source is lower than the Standard rate in effect plus two mills per kilowatthour.

Purchasers qualifying under section V.B.2.b who purchase Nonfirm Energy through a third party are eligible to purchase power under the Market Expansion rate offered if the cost of the qualifying alternative fuel source is lower than the Standard rate in effect plus 4 mills per kilowatthour.

b. When more than one Market Expansion rates are offered:

Purchasers qualifying under section V.B.2 who purchase Nonfirm Energy directly from BPA are eligible to purchase power under the Market Expansion rate if the decremental cost of the qualifying resource, purchase, or qualifying alternative fuel source is lower than the Standard rate in effect plus 2 mills per kilowatthour. The rate applicable to a purchaser shall be the highest Market Expansion rate offered that is below the purchaser's qualifying decremental cost minus 2 mills per kilowatthour.

Purchasers qualifying under section V.B.2.b who purchase Nonfirm Energy through a third party are eligible to purchase power under the Market Expansion rate if the decremental cost of the qualifying alternative fuel source is lower than the Standard rate plus 4 mills per kilowatthour. The rate applicable to a purchaser shall be the highest Market Expansion rate offered that is below purchaser's qualifying decremental cost minus 4 mills per kilowatthour.

C. *Incremental Rate.* The Incremental rate applies to sales of energy:

1. that is produced or purchased by BPA concurrently with the nonfirm energy sale;

2. that BPA may at its option not produce or purchase; and

3. that has an Incremental Cost greater than the Standard rate (plus the Intertie Adder, if applicable) less 2.0 mills per kilowatthour.

D. *Contract Rate.* The Contract rate applies to contracts (except power sales contracts offered pursuant to sections 5(b), 5(c), and 5(g) of the Pacific Northwest Power Act) that refer to the Contract rate:

1. for the sale of nonfirm energy; or

2. for determining the value of energy.

E. *Western System Power Pool Transactions.* BPA may make available Nonfirm Energy for transactions under the Western System Power Pool (WSPP) agreement. WSPP sales shall be subject to the terms and conditions specified in the WSPP agreement and shall be consistent with regional and public preference. The rate for transactions under the WSPP agreement is any rate within the limits specified by the Standard, Market Expansion, and Incremental rates but may differ from the actual rate offered for non-WSPP transactions in any hour. The rate for WSPP transactions is independent of any other rate offered concurrently under this rate schedule outside that agreement.

F. *End-User Rate.* BPA may agree to a Nonfirm Energy rate or rate formula for nonfirm purchases by end-users. Such rate or rate formula shall be within the limits specified for the Standard and Market Expansion rates but may differ from the actual rates offered during any hour.

Section VI. Delivery

A. *Rate of Delivery.* BPA shall determine the amount of nonfirm energy to be made available for each hour. Such determination shall be made for each applicable nonfirm energy rate.

B. *Guaranteed Delivery.* 1. *Availability.* BPA will determine the amount and duration of Nonfirm Energy to be offered on a guaranteed basis. Such daily or hourly amounts may be as small as zero or as much as all the nonfirm energy that BPA plans to offer for sale on such days.

2. *Conditions.* Scheduled amounts of guaranteed nonfirm energy may not be changed except:

a. When BPA and the purchaser mutually agree to increase or decrease the scheduled amounts; or

b. When BPA must reduce nonfirm energy deliveries in order to serve firm loads because of unexpected generation or transmission loss.

Section VII. Resource Cost Contribution

Pursuant to section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The approximate cost contribution of different resource categories to the average cost of Nonfirm Energy is 54.2 percent FBS, 0.2 percent New Resources, and 45.6 percent Exchange.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VIII. General Provisions

Sales of energy under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

*Schedule SS–87—Share-the-Savings Rate*

Section I. Availability

This rate schedule is available for the contract purchase of Nonfirm Energy to be used both inside and outside the United States for the displacement of a qualifying resource, displaceable purchase of electricity, or end-user load that can be served with alternate fuel sources. Nonfirm Energy will be made available under this rate schedule only to purchasers who have executed a contract with BPA specifying use of the Share-the-Savings Rate. BPA is not obligated to offer Nonfirm Energy to any purchaser that results in displacement of firm power purchases under BPA's Power Sales Contracts. The offer of Nonfirm Energy under this rate schedule shall be determined by BPA. Schedule SS–87 supersedes Schedule SS–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

The rate shall depend on the Decremental Cost, expressed in mills per kilowatthour, of the qualifying resource, displaceable purchase of electricity, or end-user load that can be served with alternative fuel sources. Decremental Cost, as used in this rate schedule, shall be defined in the applicable contract.

A. *Economy Energy Rate.* For Decremental Cost equal to or greater than 23.0 mills per kilowatthour, the rate shall be 50 percent of the Decremental

Cost plus 6.0 mills per kilowatthour of billing energy.

B. *Displacement I Rate.* For Decremental Cost less than 23.0 mills per kilowatthour and greater than or equal to 8.0 mills per kilowatthour, the rate shall be 75 percent of the Decremental Cost.

C. *Displacement II Rate.* For Decremental Cost less than 8.0 mills per kilowatthour, the rate shall be Decremental Cost minus 2.0 mills per kilowatthour.

Section III. Billing Factors

The billing energy for Nonfirm Energy purchased under this rate schedule shall be the Measured Energy unless otherwise specified in the Share-the-Savings Rate contract.

Section IV. Application and Eligibility

At any time that BPA makes Nonfirm Energy available under this rate schedule, one or more of the rates identified in section II may be in effect concurrently. During any period in which Nonfirm Energy is offered BPA may impose a floor price, expressed in mills per kilowatthour, below which Nonfirm Energy is not available under this rate schedule. The floor shall be specified by BPA at the time Nonfirm Energy is offered, the duration of which shall be determined by BPA.

A. *General Requirements.* 1. In order to purchase Nonfirm Energy under the Share-the-Savings Rate, the purchaser must have executed a contract specifying application of the Share-the-Savings Rate Schedule.

2. A purchaser must have a displaceable resource, displaceable purchase of electricity, or be an end-user load with a displaceable alternate fuel source.

3. End-user loads with alternate fuel sources may not use the Decremental Cost of a displaceable purchase of electricity to qualify for this rate.

4. Identified resources may be displaced indirectly; for example, by using the purchase to run a pumped storage unit.

B. *Displacement Rate Service.* Purchasers of Displacement rate energy, under either Displacement I or II rate or both, must demonstrate one of the following:

1. Shutdown or reduction of the output of the displaceable resource in an amount equal to the amount of Displacement Rate energy purchased; or

2. Reduction of a displaceable purchase and the output of the resource associated with that purchase, in an amount equal to the amount of Displacement Rate energy purchased; or

3. Shutdown or reduction of output of the identified resource(s) indirectly in an amount equal to the amount of Displacement Rate energy purchased. For example, the purchase may be used to run a pumped storage unit; or

4. That an end-user alternate fuel source is reduced in an amount equivalent to the amount of Displacement Rate energy purchased.

C. *BPA Service Priority.* When Nonfirm Energy is available under this rate schedule, BPA shall determine the applicable rate (or rates) based on the Decremental Cost of the displaceable resource, displaceable purchase of electricity, resource to be displaced indirectly, or displaceable end-user alternate fuel source. BPA will sell Nonfirm Energy under this rate schedule consistent with regional and public preference.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The SS–87 rate is not based on the cost of BPA resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions and the following Acts, as amended: The Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

*Schedule EB–87—Energy Broker Rate*

Section I. Availability

This rate schedule may be applied to both sales and purchases of Nonfirm Energy among those participants in the Western Systems Coordinating Council (WSCC) Energy Broker System between whom agreements for energy transmission have been transacted. BPA shall determine the availability of energy to be provided under this rate schedule. This schedule supersedes Schedule EB–85, which went into effect on an interim basis on July 1, 1985.

Section II. Rate

The following formula shall be used in determining the rate at which power will be sold or purchased at the Energy Broker rate:

$$EB\text{–}87 = \frac{BP + SP}{2}$$

where:

EB–87 = Energy Broker Rate,
BP = Quoted Buy Price, and
SP = Quoted Sell Price.

The Energy Broker will identify potential transactions when the Sell Price is at least 4.0 mills per kilowatthour less than the Buy Price. The final transaction rate for brokered Nonfirm Energy will be based on splitting the difference between the quoted Buy and Sell Prices, with the settlement for wheeling charges and energy losses determined in accordance with Exhibit A of the WSCC Broker Transmission Service Agreement.

When a transaction involving BPA takes place on the Energy Broker System, the BPA Buy Price and BPA Sell Price shall be defined as follows:

A. The BPA Buy Price is the estimated decremental or equivalent expense per kilowatthour that otherwise would have been incurred by BPA in generating or purchasing power from alternative sources in lieu of brokered energy scheduled for delivery to BPA during that hour.

B. The BPA Sell Price is the estimated incremental or equivalent expense per kilowatthour that would be incurred by BPA in supplying broker-identified energy scheduled for delivery during such hour to the buyer from resources that are available to supply power during that hour as determined by BPA.

Section III. Billing Factors

The billing energy for power purchased under this rate schedule shall be the Measured Energy unless otherwise specified in the power sales contract.

Section IV. Delivery

BPA shall determine the amount of delivery for Energy Broker energy to be made available to each purchaser for each hour that Energy Broker energy is requested.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The cost contribution of different resource categories to the EB–87 rate is based upon the specific resource(s) offered during the scheduled time of sale.

B. The forecasted average cost of resources available to BPA under

average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour after displacement by BPA's available secondary energy.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the General Rate Schedule Provisions (GRSPs) and the following acts, as amended: The Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

*Schedule RP–87—Reserve Power Rate*

Section I. Availability

This schedule is available for the purchase of power:

A. In cases where a purchaser's power sales contract states that the rate for Reserve Power shall be applied;

B. For which BPA determines no other rate schedule is applicable; and

C. To serve a purchaser's firm power load in circumstances where BPA does not have a power sales contract in force with such purchaser, and BPA determines that this rate should be applied.

This rate schedule may be applied to power purchased by entities outside the United States.

This rate schedule supersedes Schedule RP–85 which went into effect on an interim basis on July 1, 1985.

Section II. Rate

A. *Demand Charge.* 1. $3.55 per kilowatt of billing demand occurring during all Peak Period hours.

2. No demand charge during Offpeak Period hours.

B. *Energy Charge.* 1. 25.2 mills per kilowatthour of billing energy.

Section III. Billing Factors

The factors to be used in determining the billing for power purchased under this rate schedule are as follows:

A. *Billing Demand.* If applicable, the billing demand shall be the Contract Demand as specified in the power sales contract. Otherwise the billing demand shall be the Measured Demand as adjusted for power factor.

B. *Billing Energy.* The billing energy shall be the Contract Demand multiplied by the number of hours in the billing month, if use of the Contract Demand for determining billing energy is specified in the power sales contract. Otherwise the billing energy for such purchasers shall be the Measured Energy.

Section IV. Power Factor Adjustment

The adjustment for power factor, when specified in this rate schedule or in the power sales contract, shall be made in accordance with the provisions of both this section and section III.C.1 of the General Rate Schedule Provisions (GRSPs). The adjustment shall be made if the average leading power factor or average lagging power factor at which energy is supplied during the billing month is less than 95 percent.

To make the power factor adjustment, BPA shall increase the billing demand by one percentage point for each percentage point or major fraction thereof (0.5 or greater) by which the average leading power factor or average lagging power factor is below 95 percent. BPA may elect to waive the adjustment for power factor in whole or in part.

Section V. Resource Cost Contribution

In compliance with section 7(j) of the Pacific Northwest Power Act, BPA has made the following determinations:

A. The RP–87 rate is not based on the cost of resources.

B. The forecasted average cost of resources available to BPA under average water conditions is 19.0 mills per kilowatthour.

C. The forecasted cost of resources to meet load growth is 29.0 mills per kilowatthour.

Section VI. General Provisions

Sales of power under this schedule shall be subject to the GRSPs and the following acts, as amended: The Bonneville Project Act, the Flood Control Act of 1944, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act.

*General Rate Schedule Provisions*

Section I. Adoption of Revised Rate Schedules and General Rate Schedule Provisions

A. *Approval of Rates.* These 1987 rate schedules and General Rate Schedule Provisions (GRSPs) shall become effective upon interim approval or final confirmation and approval by the Federal Energy Regulatory Commission (FERC). BPA will request FERC approval effective October 1, 1987. BPA proposes that the following schedules, and the GRSPs associated with these schedules, be effective for two years: PF–87, IP–87, CE–87, CF–87, NR–87, SS–87, NF–87, EB–87, and RP–87. The VI–87 rate schedule reflects adjustments of and supplements to the rate schedule VI–86 and associated GRSPs (which are to be in effect for 10 years). Sections III.A and VI.J of the VI–87 rate schedule are to be in effect for two years. BPA proposes that rate schedule SI–87 be effective two years, except for the Special Industrial Offpeak rate provision, which is to remain in effect through June 30, 1990, pursuant to an Amendatory Agreement between BPA and Hanna Nickel Smelting Company executed July 1, 1985.

BPA proposes that the following schedules, and the GRSPs associated with these schedules, be effective for five years: FD–87 and SP–87. BPA proposes that the Nonfirm Energy Rate Cap be effective for 12 years. BPA proposes that the following schedules be effective for 20 years: FL–87 and SL–87.

B. *General Provisions.* These 1987 rate schedules, and the GRSPs associated with these rate schedules, supersede BPA's 1985 rate schedules (which became effective July 1, 1985) to the extent stated in the Availability section of each 1987 rate schedule. These schedules and GRSPs shall be applicable to all BPA contracts, including contracts executed both prior to and subsequent to enactment of the Pacific Northwest Power Act.

Section II. Types of BPA Service

A. *Priority Firm Power.* Priority Firm Power is electric power (capacity, energy, or capacity and energy) that BPA will make continuously available for resale to ultimate consumers, or for direct consumption, construction, test and start-up, and station service by public bodies, cooperatives, and Federal agencies. (Construction, test and start-up, and station service are defined in section V.B of these GRSPs.)

Utilities participating in the exchange under section 5(c) of the Pacific Northwest Power Act may purchase Priority Firm Power pursuant to their Residential Purchase and Sale Agreements.

In addition, BPA may make Priority Firm Power available to those parties participating in exchange agreements specifying use of the Priority Firm rate for determining the amount or value of power to be exchanged.

Power purchased under the power rate schedule is to be used to meet the purchaser's actual firm load within the Pacific Northwest. Such power may be restricted in accordance with the Restriction of Deliveries section of these GRSPs (section V.E). However, BPA shall not restrict Priority Firm Power until Industrial Firm Power has been restricted in accordance with the provisions of section II.C of these GRSPs.

Any increase in energy consumption of a load as defined in:

1. Section 3(13) of the Pacific Northwest Power Act, or

2. Section 8 of any BPA utility power sales contract, shall be considered New Resource Firm Power and shall be served under the New Resource Firm Power rate.

B. *New Resource Firm Power.* New Resource Firm Power is electric power (capacity, energy, or capacity and energy) that BPA will make continuously available:

1. For any new large single load as defined in section 3(13) of the Pacific Northwest Power Act and as described in section 8 of any BPA utility power sales contract,

2. For firm power purchased by investor-owned utilities pursuant to power sales contracts with BPA, and

3. For construction, test and start-up, and station service for facilities owned or operated by investor-owned utilities.

New Resource Firm Power is to be used to meet the purchaser's actual firm load within the Pacific Northwest. Such power may be restricted in accordance with the Restriction of Deliveries section of these GRSPs (section V.E). However, BPA shall not restrict New Resource Firm Power until Industrial Firm Power has been restricted in accordance with the provisions of section II.C of these GRSPs.

C. *Industrial Firm Power.* Industrial Firm Power is electric power that BPA will make continuously available to a direct-service industrial (DSI) purchaser pursuant to the DSI's power sales contract and subject to:

1. The restriction applicable to deliveries of all firm power pursuant to the Uncontrollable Forces and Continuity of Service provisions of the General Contract Provisions of the power sales contract, and

2. The restrictions given in the Restriction of Deliveries section of the power sales contract.

D. *Special Industrial Power.* Special Industrial Power is electric power which BPA will make continuously available to any DSI that qualifies for the Special Industrial Power rate pursuant to section 7(d)(2) of the Pacific Northwest Power Act. This power is similar in nature to Industrial Firm Power, but is subject to greater restriction by BPA. Special Industrial Power is made available to the qualifying DSI upon adoption of, and subject to, an amendment modifying its power sales contract.

E. *Auxiliary Power.* Auxiliary Power is that power which a DSI requests and which BPA agrees to make available to serve that portion of the DSI's load which is in excess of the DSI's Operating Demand for Industrial Firm Power or Special Industrial Power.

F. *Firm Capacity.* Firm Capacity is capacity that BPA assures will be available in the amount(s) and during the period(s) specified in the power sales contract. The energy associated with this capacity must be returned to BPA. Firm Capacity may be restricted pursuant to the Restriction of Deliveries section of these GRSPs (section V.E).

G. *Surplus Firm Power.* Surplus Firm Power is firm power (capacity, energy, or capacity and energy) in excess of the amount required to meet BPA's existing contractual obligations to provide firm service. Surplus Firm Power may be used either for resale or direct consumption by purchasers both inside and outside the United States. Such power however, may be restricted pursuant to the Restriction of Deliveries section of these GRSPs (section V.E).

H. *Nonfirm Energy.* Nonfirm Energy is supplied or made available by BPA to a purchaser under an arrangement that does not have the guaranteed continuous availability feature of firm power. Nonfirm energy is mostly sold under the Nonfirm Energy rate schedule, NF–87. Nonfirm energy also may be supplied under the Share-the-Savings rate schedule, SS–87, which is available as an experimental rate for contract purchase. Nonfirm energy sales also may be made under the Energy Broker rate schedule, EB–87, which is available to Western Systems Coordinating Council (WSCC) members participating in the Energy Broker System.

In addition, BPA also can make nonfirm energy available under the Nonfirm Energy rate schedule to the Western Systems Power Pool (WSPP) subject to terms and conditions agreed upon by the members participating in the WSPP and in accordance with BPA policy for such arrangements.

However, Nonfirm Energy that has been purchased under a guarantee provision in the Nonfirm Energy rate schedule shall be provided to the purchaser in accordance with the provisions of that schedule and the power sales contract if applicable. BPA may make Nonfirm Energy available to purchasers both inside and outside the United States.

I. *Reserve Power.* Reserve Power is firm power sold to a purchaser:

1. In cases where the purchaser's power sales contract states that the rate for Reserve Power shall be applied;

2. to provide service when no other type of power is deemed applicable; and

3. to serve the purchaser's firm power loads under circumstances where BPA does not have a power sales contract in force with the purchaser.

Sales of Reserve Power are subject to the Restriction of Deliveries section of these GRSPs (section V.E).

J. *Firm Displacement Power.* Firm Displacement Power is firm power (capacity, energy, or capacity and energy) that BPA makes available to Pacific Northwest utilities for use within the Pacific Northwest. The purchased power will replace the generation from resources that is exported from the Pacific Northwest on a firm basis for a period of at least 3 years. Such power may be restricted pursuant to the Restriction of Deliveries section of the GRSPs (section V.E).

Section III. Billing Factors and Billing Adjustments

A. *Billing Factors for Demand.* 1. *Measured Demand.* The purchaser's Measured Demand shall be determined in the manner described in this section. Measured Demand shall be that portion of the metered or scheduled demand that is purchased from BPA under the applicable rate schedule. For those contracts to which BPA is a party and that provide for delivery of more than one class of electric power to the purchaser at any point of delivery, the portion of each 60-minute clock-hour integrated demand assigned to any class of power shall be determined pursuant to the power sales contract. The portion of the total Measured Demand so assigned shall constitute the Measured Demand for each such class of power.

The Measured Demand shall be determined from the metered demand or the scheduled demand, as hereinafter defined. The Measured Demand shall be determined on either a coincidental or a noncoincidental basis, as provided in the purchaser's power sales contract.

a. Metered Demand. The metered demand in kilowatts shall be the largest of the 60-minute clock-hour integrated demands, adjusted as specified in the power sales contract, at which electric energy is delivered to a purchaser:

(1) At each point of delivery for which the metered demand is the basis for determination of the Measured Demand,

(2) During each time period specified in the applicable rate schedule, and

(3) During any billing period.

Such largest integrated demand shall be determined from measurements made either in the manner specified in the power sales contract or as provided in section VI.A. herein. In determining the metered demand, BPA shall exclude any abnormal integrated demands due to or resulting from:

(1) Emergencies or breakdowns on, or maintenance of, the Federal system facilities, and

(2) Emergencies on the purchaser's facilities, provided that such facilities have been adequately maintained and prudently operated, as determined by BPA.

b. *Scheduled Demand.* The scheduled demand in kilowatts shall be the largest of the hourly demands at which electric energy is scheduled for delivery to a purchaser:

(1) To each system for which scheduled demand is the basis for determination of the Measured Demand,

(2) During each time period specified in the applicable rate schedule, and

(3) During any billing period.

Scheduled amounts are deemed delivered for the purpose of determining billing demand.

2. *Ratchet Demand.* The Ratchet Demand in kilowatts shall be the maximum demand established during a specified period of time either during or prior to the current billing period. The demand on which the ratchet is based is specified in the relevant rate schedule or in these GRSPs. For utilities purchasing under the PF or NR rate schedules, the Ratchet Demand is based on the highest demand during prior billing months. When the Ratchet Demand is used as a billing factor, BPA shall have specified in the appropriate schedules or GRSPs:

a. The period of time over which the ratchet shall be calculated,

b. The type of demand to be used in the calculation, and

c. The percentage (if any) of that demand which will be used to calculate the Ratchet Demand.

3. *Contract Demand.* The Contract Demand shall be the maximum number of kilowatts that the purchaser agrees to purchase and BPA agrees to make available, subject to any limitations included in the power sales contract. BPA may agree to make deliveries at a rate in excess of the Contract Demand at the request of the purchaser, but shall not be obligated to continue such excess deliveries. Any contractual or other reference to Contract Demand as expressed in kilowatthours shall be deemed, for the purpose of these GRSPs, to refer to the term "Contract Energy."

4. *Computed Peak Requirement.* For purchasers designated to purchase on the basis of computed requirements, the Computed Peak Requirement shall be determined as specified in the purchaser's power sales contract. That specification is provided in:

a. Sections 16, 17(c), and 17(f), as adjusted by other sections of the contract, for actual computed requirements purchasers;

b. Sections 16, 17(a), and 17(f), as adjusted by other sections of the contract, for planned computed requirements purchasers; and

c. Sections 16 and 17(b), as adjusted by other sections of the contract, for contracted computed requirements purchasers.

5. *Computed Average Energy Requirement.* For computed requirements purchasers, the Computed Average Energy Requirement shall be determined as specified in the purchaser's power sales contract. That specification is provided in:

a. Sections 16, 17(c), and 17(f), as adjusted by other sections of the contract, for actual computed requirements purchasers;

b. Sections 16, 17(a), and 17(f), as adjusted by other sections of the contract, for planned computed requirements purchasers; and

c. Sections 16 and 17(b), as adjusted by other sections of the contract, for contracted computed requirements purchasers.

6. *Operating Demand.* The Operating Demand is that demand which is established by each DSI in accordance with section 5(b) of the DSI's power sales contract. Unless the DSI has requested, and BPA has granted, an Auxiliary Demand, the Operating Demand establishes a limit with respect to:

a. The demand which the purchaser may impose on BPA; and

b. The total amount of energy during a billing month which the DSI is entitled to purchase from BPA.

7. *Curtailed Demand.* A Curtailed Demand is the number of kilowatts of industrial power (Industrial Firm Power or Special Industrial Power) during the billing month which results from the DSI's request for such power in amounts less than the Operating Demand therefor. Each purchaser of industrial power may curtail its demand according to the terms of its power sales contract (which permits up to three levels of Curtailed Demand each month).

8. Restricted Demand. Restricted Demand is the number of kilowatts of industrial power (either Industrial Firm Power or Special Industrial Power) that results when BPA has restricted delivery of such power for one clock-hour or more. BPA shall make such restrictions according to the terms of the DSI's power sales contract. In a given billing month, there are as many possible levels of Restricted Demand for a DSI as there are number of restrictions.

9. *Auxiliary Demand.* Auxiliary Demand is the number of kilowatts of Auxiliary Power that a DSI requests and that BPA agrees to make available to serve a portion of the DSI's load during the period specified in the DSI's request. The DSI may request up to three levels of Auxiliary Demand during a billing month.

If BPA agrees to a request for Auxiliary Power but later becomes unable to supply such demand, the Restricted Demand for Auxiliary Power is deemed to be the Auxiliary Demand for such period of restriction. Auxiliary Power may be curtailed by the DSI according to the provisions of section 9(a) of the DSI's power sales contract.

BPA shall make Auxiliary Power available to Industrial Firm Power purchasers under the Industrial Firm Power Rate Schedule at the Standard Industrial Rate. Auxiliary Power sales to DSIs electing to purchase under the Variable Industrial Power Rate Schedule (VI–87) shall be made at the rate determined pursuant to section III of the VI–87 rate schedule. Auxiliary Power sales to DSIs purchasing under the Special Industrial Rate will be made only at the Standard Special Industrial Power Rate.

10. *BPA Operating Level.* The BPA Operating Level is, for the purpose of these rate schedules and GRSPs, an hourly amount of industrial power (Industrial Firm Power or Special Industrial Power) for a DSI that is equal to the lowest of the following demands during that hour:

a. Operating Demand plus Auxiliary Demand, if any;

b. Curtailed Demand; or

c. Restricted Demand.

The weighted average BPA Operating Level for each DSI can be determined by summing the hourly BPA Operating Levels and dividing by the number of hours in the billing month.

Each DSI must request service from BPA for each billing month in accordance with the terms of the power sales contract. The requested level of service will be the BPA Operating Level, provided BPA does not need to restrict the DSI and provided BPA agrees to supply any requested Auxiliary Demand. Each requested level of service may include a designation for both the Peak Period and the Offpeak Period. A DSI may request and BPA may agree to a level of service for the Offpeak Periods other than that in the Peak Period. If a DSI does not separately designate a requested level of service for the Peak and Offpeak Periods, the BPA Operating Level is the basis for determining if a DSI has incurred an unauthorized increase.

Any DSI whose Measured Demand, before adjustment for power factor, during any 1 hour exceeds the BPA

Operating Level for that hour shall be subject to unauthorized increase charges for each kilowatthour of unauthorized increase associated with each overrun.

Only the BPA Operating Level applicable during the Peak Period will be used in determining the Billing Demand for power purchased under the Industrial Firm Power rate schedule, the Variable Industrial Power rate schedule, and the Standard Rate under the Special Industrial rate schedule. During the Peak Period the BPA Operating Level may be no greater than the Operating Demand for the billing month unless the customer has requested, and BPA has agreed to supply, the Auxiliary Demand.

B. *Billing Factors for Energy.* 1. *Measured Energy.* The purchaser's Measured Energy shall be determined in the manner described in this section. Measured Energy shall be that portion of the metered or scheduled energy that is purchased from BPA under the applicable rate schedule. For those contracts to which BPA is a party and that provide for delivery of more than one class of electric power to the purchaser at any point of delivery, the portion of each 60-minute clock-hour integrated demand assigned to any class of power shall be determined pursuant to the power sales contract. The sum of the portions of the demands so assigned shall constitute the Measured Energy for each such class of power.

The Measured Energy shall be determined from the metered energy or the scheduled energy, as hereinafter defined.

a. *Metered Energy.* The metered energy for a purchaser shall be the number of kilowatthours that are recorded on the appropriate metering equipment, adjusted as specified in the power sales contract, and delivered to a purchaser:

(1) At all points of delivery for which metered energy is the basis for determination of the Measured Energy, and

(2) During any billing period.

The metered energy shall be determined from measurements made either in the manner specified in the power sales contract or as provided in section VI.A herein.

b. *Scheduled Energy.* The scheduled energy in kilowatthours shall be the sum of the hourly demands at which electric energy is scheduled for delivery to a purchaser:

(1) For each system for which scheduled energy is the basis for determination of the Measured Energy, and

(2) During any billing period.

Scheduled amounts are deemed delivered for the purpose of determining billing energy.

2. *Computed Energy Maximum.* The Computed Energy Maximum equals the product of the number of hours in the billing month and the Computed Average Energy Requirement.

3. *Contract Energy.* The Contract Energy shall be the maximum number of kilowatthours that the purchaser agrees to purchase and BPA agrees to make available, subject to any limitations included in the power sales contract.

C. *Billing Adjustments.* 1. *Power Factor Adjustment.* The formula for determining average power factor is as follows:

$$\text{Average power factor} = \frac{\text{Kilowatthours}}{\sqrt{(\text{Kilowatthours})^2 + (\text{Reactive kilovoltamperehours})^2}}$$

The data used in the above formula shall be obtained from meters that are ratcheted to prevent reverse registration. These data then shall be adjusted for losses, if applicable, before determination of the average power factor.

When deliveries to a purchaser at any point of delivery either:

a. Include more than one class of power, or

b. Are provided under more than one rate schedule and it is impracticable to meter the kilowatthours and reactive kilovoltamperehours for each class or rate schedule separately, the average power factor of the total deliveries for the month will be used, where applicable, as the power factor for all power delivered to such point of delivery.

To maintain acceptable operating conditions on the Federal system, BPA may, unless specifically otherwise agreed, restrict deliveries of power to a purchaser with a low power factor. Such restriction may be made to a point of delivery or to a purchaser's system at any time that the average leading power factor or average lagging power factor for all classes of power delivered to such point or to such system is below 75 percent.

2. *Outage Credit.* To the extent that BPA is unable to provide full service to a purchaser during the billing month as a result of interruptions in service due to reasons cited in the General Contract Provisions, BPA shall adjust the charges for those hours for billing demand for such purchaser to reflect BPA's inability to provide full service, provided such adjustment is mandated by the purchaser's power sales contract. The adjustment is provided on a point of delivery basis. To compute the adjustment for noncoincidentally billed systems, BPA shall determine the monthly demand charge(s) for the point(s) of delivery where the outage(s) occurred, multiply by the number of hours of outage, and divide by the total number of hours in the billing month. For coincidentally billed points of delivery, the adjustment shall apply only to those points of delivery at which BPA was unable to provide full service. For partial outages (such as an outage on one feeder in a substation with several feeders), BPA shall determine an equivalent interruption in order to arrive at the number of hours to be used in the calculation of the credit.

3. *Low Density Discount (LDD).* a. *Basic LDD Principles.* A predetermined discount shall be applied each billing month to the charges for all power purchased under the Priority Firm Power rate schedule by eligible purchasers as defined in section b, below. The discount shall be calculated on an annual basis and shall become effective with the first billing period in the calendar year. Retroactive billing for the LDD may be required if the data are not available by the January billing date. The level of the discount shall be determined from the following ratios:

(1) The purchaser's total electric energy requirements during the previous calendar year (the purchaser's firm sales, nonfirm sales to firm retail loads, sales for resale, and associated losses, but excluding nonfirm sales to nonfirm retail loads) divided by the value of the purchaser's depreciated electric plant (excluding generation plant) at the end of such year, and

(2) The average number of consumers (annual and seasonal consumers with residential, industrial, commercial, and irrigation accounts, but excluding separately billed services for water heating,electric space heating, and security lights) during the previous calendar year divided by the number of pole miles of distribution line at the end of such year. Distribution lines are defined as those that deliver electric energy from a substation or metering point, at a voltage of 34.5 kV or less, to the point of attachment to the consumer's wiring and include primary, secondary, and service facilities.

These calculations shall be based on data provided in the purchaser's annual financial and operating report. In calculating these ratios, BPA shall use data pertaining to the purchaser's entire electric utility system within the region. Results of the calculations shall not be rounded.

Customers who have not provided BPA with all four requisite pieces of annual data (see a.(1) and a.(2) above) by June 30 of each year shall be declared ineligible for the LDD effective with the June billing period for that year. BPA shall extend a customer's eligibility from the previous year through the June billing period of the following year and shall make any necessary retroactive adjustments once the new data have been processed. If no data have been received by December 31 for the previous calendar year, BPA shall assume that the utility did not qualify for an LDD for that year. Low Density Discounts issued from January 1 to June 30 shall be assumed to have been in error, and the utility shall be billed for any such discounts issued.

Revisions to the data used to calculate the amount of the LDD may be made by the purchaser for a period of up to 2 years from the first day to which the data apply. However, such revisions shall not apply to periods when the customer was ineligible for a discount due to late data submission.

b. *Eligibility Criteria.* To qualify for a discount, the purchaser must meet all five of the following eligibility criteria:

(1) The purchaser must serve as an electric utility offering power for resale;

(2) The purchaser must agree to pass the benefits of the discount through to the purchaser's consumers within the region served by BPA;

(3) The purchaser's average retail rate for the reporting year must exceed the average Priority Firm Power rate in effect for the qualifying period plus 10 percent. For CY 1987, the average Priority Firm Power rate shall be the average of the PF–85 rate for 9 months and the PF–87 Preference rate for 3 months. For CY 1988, the average Priority Firm Power rate shall be the PF–87 Preference rate.

(4) The purchaser's kilowatthour-to-investment ratio (Ratio 3.a.(1)) must be less than 100;

(5) The purchaser's consumers-per-mile ratio (Ratio 3.a.(2)) must be less than 12; and

(6) The purchaser must qualify for a discount based on the criteria in section c, below

c. *Discounts.* The purchaser shall be awarded the greatest discount for which that purchaser qualifies. The discounts and the qualifying criteria for those discounts are listed below.

(1) Three percent, for any purchaser for whom:

(a) The kilowatthour-to-investment ratio is equal to or greater than 25 but less than 35; or

(b) The consumers-per-mile ratio is equal to or greater than 5 but less than 7.

(2) Five percent, for any purchaser for whom:

(a) The kilowatthour-to-investment ratio is equal to or greater than 15 but less than 25; or

(b) The consumers-per-mile ratio is equal to or greater than 3 but less than 5.

(3) Seven percent, for any purchaser for whom:

(a) The kilowatthour-to-investment ratio is less than 15; or

(b) The consumers-per-mile ratio is less than 3.

4. *Irrigation Discount.* a. *Basic Irrigation Discount Principles.* A discount of 4.9 mills per kilowatthour shall be applied to the charges for qualifying irrigation energy purchased under the Priority Firm Power and New Resource Firm Power rate schedules, during the billing months of April through October. This discount shall be applied subsequent to calculation of the Low Density Discount, if applicable. Any energy on which the irrigation discount is claimed shall be metered separately by the purchaser, and used exclusively for irrigation or drainage pumping.

b. *Qualifying Energy Purchases.* The qualifying irrigation energy shall be determined as follows:

(1) All irrigation energy must be used exclusively for the purpose of irrigation and drainage pumping on agricultural land and be measured at the end-use irrigation customer's meter. The discount shall apply to the measured energy sales at the end-use.

(2) Energy subject to the discount must be purchased during the billing months of April through October.

(3) Purchasers of exchange energy under the Residential Purchase and Sale Agreement (RPSA) are eligible for the irrigation discount for the portion of their irrigation load qualifying for the exchange under the RPSA contracts.

(4) General requirements customers with their own resources are eligible for an irrigation discount for a portion of their irrigation sales equal to the share of their total load served by BPA (i.e., total irrigation sales multiplied by BPA billing energy divided by total utility system requirements for the billing month).

c. *Initial Reporting Requirements.* Requests for the Irrigation Discount must include the following information:

(1) To receive an irrigation discount, a purchaser must file a request for the discount with its local BPA Area or District office by April 1 each year.

(2) In the request, the purchaser must certify that the irrigation energy is sold exclusively for use in irrigation and drainage pumping and that the discount is passed, in its entirety, to the irrigation consumer. BPA retains the right to verify, in a manner satisfactory to the Administrator, that the discounted energy is used for the sole benefit of the purchaser's irrigation load. The qualifying energy shall be measured at the end-use meter.

(3) The purchaser shall also list each irrigation account number in its request. If the purchaser is an exchanging utility, the purchaser shall also identify the size (in horsepower) of the connected load for each account. That account list shall be updated on a monthly basis if accounts are added, deleted, or changed. In addition, the utility shall state whether its irrigation consumers are billed monthly, bimonthly, or seasonally.

d. *Annual Reporting Requirements.* Purchasers shall submit an irrigation report to their local BPA Area or District office in order to receive the irrigation discount. Purchasers are required to report information related to irrigation energy on a monthly basis. In order to qualify for the discount, the purchaser must submit all data to BPA by December 31 of the calendar year in which the load occurred. Irrigation reports to BPA shall include the following monthly information for the reporting period:

(1) Utility name;

(2) Period for which the report is being made;

(3) Total irrigation sales and total qualifying irrigation energy sales by month;

(4) Total irrigation sales by month under 400 horsepower, for exchanging utilities; and

(5) Total utility system requirements by month (in kilowatthours).

The credit for the irrigation discount is contingent on submittal of actual monthly irrigation sales data based on BPA billing months. Utilities shall provide evidence that the full 4.9 mills per kilowatthour discount was passed through to the end-users' electricity bills.

5. *Cost Recovery Adjustment Clause.*

a. *Terms and Conditions.* The Cost Recovery Adjustment Clause applies to the Priority Firm Power, Industrial Firm Power, Variable Industrial Power, Firm Capacity, and New Resource Firm Power rate schedules, directly, and the Long-Term Surplus Firm and Long-Term Firm Displacement Power rate schedules through the escalation factors based on the Priority Firm rate schedule.

After the first 12 months of the rate period or September 30, 1988, whichever occurs first, BPA shall evaluate actual financial performance, by comparing BPA's actual fiscal year 1988 funds from operations (net revenues plus charges not requiring funds), to the fiscal year 1988 funds from operations that rates were designed to achieve. When this evaluation is performed, if actuals differ from planned funds from operations for the fiscal year (evaluation period) as specified herein, BPA shall adjust applicable 1987 wholesale power rate schedules beginning January 1, 1989, and ending September 30, 1989, (adjustment period).

Rate schedules subject to the Cost Recovery Adjustment Clause shall be adjusted only if BPA's actual fiscal year funds from operations are either:

(1) $60 million or greater above planned funds from operations, or

(2) $60 million or greater below planned funds from operations.

Any resulting upward rate adjustment shall not be greater than 10 percent.

In the event that BPA determines to extend its 1987 wholesale power rates beyond September 30, 1989, BPA shall apply the Cost Recovery Adjustment Clause evaluation each fiscal year following FY 1988 and apply the resulting adjustment, if warranted, to the January 1–September 30 period thereafter, for any adjustment period prior to a BPA general rate change. Future evaluation and application shall be in accordance with the provisions stated herein.

b. *Cost Recovery Adjustment Formula.* BPA shall determine the variance between actual and planned funds from operations for the evaluation period using the following formula:

$$CRV = AFFO - PFFO$$

where:

CRV = Evaluation period cost recovery variance (in millions of dollars): total underrecovery (if CRV is negative) or overrecovery (if CRV is positive) of planned funds from operations;

AFFO = Actual evaluation period funds from operations (in millions of dollars): BPA's reported fiscal year funds from operations calculated as the sum of net revenues, depreciation, and amortization of conservation and fish & wildlife investment;

PFFO = Planned evaluation period funds from operations (in millions of dollars); FY 1988 PFFO = $224.328; FY 1989 PFFO = $223.109; FY 1990 PFFO = $244.524; FY 1991 PFFO = $277.517. PFFO for evaluation periods subsequent to FY 1988 will be adjusted for any changes intended from the application of the Cost Recovery Adjustment Clause. The additional amount intended to be collected (rebated) during the previous application period due to triggering of the Cost Recovery Adjustment Clause shall be added to (subtracted from) PFFO for evaluation periods subsequent to FY 1988.

The Cost Recovery Adjustment Clause shall not be applied if the absolute value of CRV is less than or equal to $60 million.

c. *Application if CRV is Negative.* If the absolute value of CRV is greater than $60 million, and if CRV is negative, the percentage increase, rounded to the nearest tenth of a percent, shall be the lesser of:

(1) 10.0 percent; or

(2)

$$\frac{CRU}{FR} \times 100$$

where:

CRU = Cost Recovery Underrun is the absolute value of CRV minus $20 million;

FR = the sum of the forecasted revenues from the classes of service subject to the Cost Recovery Adjustment Clause for the adjustment period. For the period January 1, 1989 through September 30, 1989, FR = $1,401.0 million. FR does not include forecasted revenues from public exchange sales and sales from utilities where average system cost is deemed equal to BPA's PF rate. These two types of sales are subject to the Cost Recovery Adjustment Clause, but significant additional revenues could not be collected from them during the rate period through application of the Cost Recovery Adjustment Clause. For any subsequent adjustment periods, FR shall be calculated based on BPA's revenue projections made to demonstrate the adequacy of BPA's rates for that fiscal year to the Federal Energy Regulatory Commission.

d. *Application if CRV is Positive.* If the absolute value of CRV is greater than $60 million, and if CRV is positive, the percentage decrease rounded to the nearest tenth of a percent, unless otherwise specified in a rate schedule, shall be equal to:

$$\frac{CRO}{FR} \times 100$$

where:

CRO = Cost Recovery Overrun: CRV minus $20 million

FR = the sum of the forecasted revenues from the classes of service subject to the Cost Recovery Adjustment Clause for the adjustment period. For the period January 1, 1989 through September 30, 1989, FR = $1,401.0 million. FR does not include forecasted revenues from public exchange sales and sales from utilities where average system cost is deemed equal to BPA's PF rate. These two types of sales are subject to the Cost Recovery Adjustment Clause, but significant additional revenues could not be collected from them during the rate period through application of the Cost Recovery Adjustment Clause. For any subsequent adjustment periods, FR shall be calculated based on BPA's revenue projections made to demonstrate the adequacy of BPA's rates to the Federal Energy Regulatory Commission.

e. *Implementation of the Cost Recovery Adjustment.* BPA shall make an initial calculation within 45 days of the end of the evaluation period to identify the difference between AFFO and PFFO.

By November 15, 1988, BPA shall notify the purchasers under each applicable rate schedule of BPA's initial findings concerning the difference between AFFO and $224.328 million (PFFO) for the FY 1988 evaluation period. If no adjustment is required, the notice shall so state, identifying the basis for BPA's position, and no further action will be initiated by BPA. However, if BPA determines that an adjustment to the rates is required, BPA also shall provide written notice to all interested parties, by November 15,

1988, explaining how BPA arrived at its initial findings and how the proposed adjustment was calculated. Notice shall include BPA's data and assumptions; additional documentation shall be available upon request. In addition to written notification, BPA may, but is not obligated to, hold a public comment forum to clarify its determinations and solicit comments. Parties wishing to submit written comments must do so by close of business on December 15, 1988. Interested parties shall be afforded a reasonable opportunity to examine all comments received. Consideration of comments and more current information may result in the final adjustment differing from the proposed adjustment. Before implementing the adjustment, BPA shall notify all affected parties of the amount of the final adjustment.

In the event that no general change in BPA's rates is implemented and the Cost Recovery Adjustment Clause is applied in subsequent periods, comparable notice and comment requirements will apply.

6. *Coincidental Billing Adjustment.* Purchasers of Priority Firm Power and New Resource Firm Power shall be billed on a noncoincidental demand basis for power purchased at each point of delivery under the applicable rate schedule(s) unless the power sales contract specifically provides for coincidental demand billing among particular points of delivery. For the purpose of these rate schedules and GRSPs, the purchaser's noncoincidental demand is the sum of the highest hourly peak demands during the billing month for each of the purchaser's points of delivery. The purchaser's coincidental demand is the highest demand for the billing month calculated by summing, for each hour of every day, the purchaser's demands for power purchased under the applicable rate schedule at all coincidentally billed points of delivery.

7. *Conservation Surcharge.* The Conservation Surcharge shall be applied monthly and shall equal 10 percent of the customer's total monthly charge for all power purchased under each rate schedule subject to the surcharge. The PF, CF, and NR rate schedules are subject to the Conservation Surcharge. If only a portion of the customer's service area is subject to the surcharge, then the amount of the surcharge shall equal 10 percent of the total charge for all power purchases multiplied by: (a) the portion of the customer's total retail load that is subject to the surcharge, divided by (b) the customer's total retail load.

D. *Billing-Related Definitions.* 1. *Peak Period.* The Peak Period includes the hours from 7 a.m. through 10 p.m. on any day Monday through Saturday inclusive. There are no exceptions to this definition; that is, it does not matter whether the day is a normal working day or a holiday. Any charges based on Peak Period hours shall be computed starting with the 8 a.m. meter reading since this reading applies to the 7 o'clock hour (7 a.m. to 8 a.m.). The 10 p.m. meter reading (for the 9 p.m. to 10 p.m. period) is the last meter reading of the day applicable to the Peak Period.

2. *Offpeak Period.* The Offpeak Period includes all hours which do not occur during the Peak Period. Thus, the Offpeak Period consists of the hours from 10 p.m. to 7 a.m., Monday through Saturday and all hours on Sunday. This definition does not apply to the Special Industrial Offpeak Rate.

Section IV. Other Definitions

A. *Computed Requirements Purchasers.* 1. *Designation as a Computed Requirements Purchaser.* A purchaser shall be designated as a computed requirements purchaser if it is so designated pursuant to the provisions of its power sales contract.

When a purchaser operates two or more separate systems, only those systems designated by BPA will be covered by this section.

2. *Purpose of the Computed Requirements Designation.* Use of the computed requirements designation is intended to assure that each purchaser who purchases power from BPA to supplement its own firm resources will purchase amounts of firm capacity and firm energy substantially equal to that which the purchaser would otherwise have to provide on the basis of normal and prudent operations.

The amount of capacity and energy required for normal and prudent operations shall be determined pursuant to the purchaser's power sales contract.

B. *Definitions Relating to Nonfirm Energy.* 1. *Decremental Cost.* Unless otherwise specified in a contractual arrangement, decremental cost as applied to Nonfirm Energy transactions shall be defined as:

a. All identifiable costs (expressed in mills per kilowatthour) associated with the use of a displaceable thermal resource or end-user load with alternate fuel source to serve a purchaser's load that the purchaser is able to avoid by purchasing power from BPA, rather than generating the power itself or using an alternate fuel source; or

b. All identifiable costs (expressed in mills per kilowatthour) to serve the load of a displaceable purchase of energy that the purchaser is able to avoid by choosing not to make the alternate energy purchase.

All identifiable costs as used in the above definition may be reduced to reflect costs of purchasing BPA energy such as transmission costs, losses, or loopflow constraints that are agreed to by BPA and the purchaser.

C. *NF Rate Cap.* 1. *Application of the NF Rate Cap for This Effective Rate Period.* The NF Rate Cap shall dictate the highest rate at which BPA may offer Nonfirm Energy under the NF–87 rate schedule in any month. The NF Rate Cap shall be determined monthly and shall be equal to the greater of the following:

a. BASC; or

b BASC + .30(DEC − BASC)

Where

BASC = BPA's average system cost, determined by dividing BPA's total system costs by BPA's total system sales. For this rate period BASC has been determined to be 25.0 mills per kilowatthour.

DEC = The Average Oil Price as determined in accordance with section IV.C.3 of these GRSPs.

2. *Monthly Notification of NF Rate Cap.* BPA shall provide monthly notification to all of its customers of the NF Rate Cap as determined pursuant to section IV.C of these GRSPs. As part of this notification, BPA shall include its determination of the Average Oil Price. The announcement will be made at least 10 calendar days prior to the first day of the month in which the NF Rate Cap applies.

3. *Determination of BASC.* For purposes of determining BASC, the following definition shall apply:

a. BPA's total system costs shall be the sum of all BPA's costs forecasted in each general rate case for the applicable rate period, including total transmission costs, Federal base system costs, new resource costs, exchange resource costs, and other costs not specifically allocated to a rate pool, such as section 7(g) costs.

b. BPA's total annual system sales shall be the sum of all BPA's system firm and nonfirm sales forecasted each general rate case for the applicable test period.

4. *Average Oil Price Calculation.* The Average Oil Price shall be determined monthly by BPA. Actual transaction prices during the last complete calendar month prior to the month in which the Rate Cap applies shall be used in the calculation of the Average Oil Price. For purposes of this rate schedule, the Average Oil Price shall be based on the Singapore Cargo Price of LS Waxy Resid 0.3%S (Singapore Price) F.O.B. published in Platt's *Oilgram Price Report.* The

Average Oil Price for the month shall be rounded to the nearest cent and determined using the following formula:

$$\frac{(ASP * OTH) + TRAN}{0.615\ (kWh/bbl)(\$/mills)}$$

Where:

ASP=Average Singapore Price which is derived from the sum of the simple daily average of the highest and lowest Singapore price, expressed in dollars per barrel and rounded to the nearest cent, for last complete 1-month period divided by the number of days in that 1-month period.

TRAN=Transportation and Shipping costs. For the period October 1, 1987 through September 30, 1988, transportation/ costs shall be $1.65 per barrel. For the period October 1, 1988 through September 30, 1989, transportation costs shall be $1.70 per barrel. For periods beyond September 30, 1989, transportation/ cost shall be determined by multiplying $1.70 per barrel times a General Cost Index rounded to the nearest whole cent. For purposes of the NF Rate Cap, the General Cost Index shall be based on quarterly GNP Implicit Price Deflators for a calendar year as published by the U.S. Department of Commerce, Bureau of Economic Analysis. The General Cost Index for a month shall be determined by dividing the most recent published quarterly GNP Implicit Price Deflator by the GNP Implicit Price Deflator published for the second quarter of calendar year 1989.

OTH=1.10

The factor of 0.615 (kWh/bbl)($/mills) assumes 6.15 million Btu per barrel and a heat rate of 10,000 Btu per kilowatthour. The factor also restates the price determined by the oil formula in terms of mills per kilowatthour.

5. *Changes in the Average Oil Price Indicators.* Throughout the rate period, BPA will monitor the relationship between the Average Singapore Price and fuel prices reported by utilities. If, as a result of monitoring this relationship, BPA determines that the Average Singapore Price no longer serves as an approximation of utility fuel prices, BPA may develop and substitute an alternative indicator. BPA shall provide a 3-month notification to all its customers of its intent to substitute another indicator for the Average Singapore Price. As part of this notification, BPA shall explain the reason for changing indicators and propose a replacement indicator. Interested parties will have until close of business 3 weeks from the date of notification to submit written comments on BPA's findings and proposal. Consideration of comments and more current information may cause the final price indicator to differ from what was proposed. BPA shall notify all of its customers of the final determination 1 month prior to the month in which the price indicator will be used in the NF Rate Cap formula.

6. *Application of the NF Rate Cap for Future Rate Periods.* BPA shall apply the NF Rate Cap in the manner described above for a 12-year period beginning on the date the rates contained herein are made effective on an interim or final basis by the Federal Energy Regulatory Commission (FERC). For a 12-year period, the following provisions shall also apply:

a. The NF Rate Cap shall apply to all sales of nonfirm energy under any applicable rate schedule.

b. BASC shall be redetermined in each subsequent general rate case according to the above formula and will be in effect for the entire rate period over which the rates are in effect.

Section V. Application of Rates Under Special Circumstances

A. *Energy Supplied for Emergency Use.* A purchaser taking Priority Firm or New Resource Firm Power shall pay in accordance with the Nonfirm Energy rate schedule, NF–87, and Emergency Capacity rate schedule, CE–87, for any electric energy or capacity which has been supplied:

1. For use during an emergency on the purchaser's system, or

2. Following an emergency to replace energy secured from sources other than BPA during such emergency.

Mutual emergency assistance may, however, be provided and payment therefore settled under exchange agreements.

B. *Construction, Test and Start-Up, and Station Service.* Power for the purpose of construction, test and start-up, and station service shall be made available to eligible purchasers under the Priority Firm and New Resource Firm Power Rate Schedules. Such power must be used in the manner specified below:

1. Power sold for construction is to be used in the construction of the project.

2. Power sold for test and start-up may be used prior to commercial operation both to bring the project on line and to ensure that the project is working properly.

3. Power sold for station service may be purchased at any time following commercial operation of the project. Station service power may be used for project start-up, project shut-down, normal plant operations, and operations during a plant shut-down period.

C. *Application of Rates during Initial Operation Period—Transitional Service.*

1. *Eligibility for Transitional Service.* For an initial operating period, as specified in the power sales contract, beginning with the commencement of operation of a new industrial plant, a major addition to an existing plant, or reactivation of an existing plant or important part thereof, BPA may agree to bill the purchaser in accordance with the provisions of this section. This section shall apply to both:

a. DSIs having new, additional or reactivated plant facilities, and

b. utility purchasers serving industrial purchasers with power purchased from BPA. BPA will provide transitional service to utilities for only those industrial loads for which the demand can be separately metered by the utility and recorded on a daily basis.

2. *Calculation of the Daily Demand.* If BPA agrees to provide transitional service, the billing demand for the industrial load for the billing month shall be the average of the daily billing demands, as adjusted for power factor. The Daily Demand for each day shall be the higher of factors a. and b. below:

a. 100 percent of the Measured Demand for the day (regardless of whether such Measured Demand occurs during the Peak Period or the Offpeak Period); or

b. the highest daily billing demand that has occurred during the period of restoration as defined in section 4(e) of the power sales contract.

3. *Billing for Transitional Service.* Utilities receiving transitional service shall provide BPA with daily demand information for the industrial consumer for whom transitional service is provided. To compute the power bill for the point of delivery which includes the load being served with transitional service, BPA shall, at its discretion, either:

a. determine the demand for the pertinent point of delivery without the industrial load and then add the average daily demand for such industrial load; or

b. bill the entire point of delivery on a daily demand basis.

Daily demand billing shall not affect the level of any curtailment charge or energy charge assessed by BPA.

For DSIs purchasing Industrial Firm Power, transitional service is purchased at the effective rate, unless otherwise

requested by the DSI and approved by BPA. BPA will provide transitional service to purchasers of Special Industrial Power only under the Standard Special Industrial Power Rate.

D. *Changes in a DSI's BPA Operating Level.* If a DSI requests a waiver regarding the notice requirements specified in the DSI's power sales contract for a voluntary change in its BPA Operating Level, and if BPA does not grant the waiver, or if the DSI fails to give notice of such a change and does not request a waiver, the DSI shall be billed as if no notice has been provided until such time as the number of days in the notice period have passed. If, however, BPA agrees to waive the notice requirement, the power bill shall reflect the requested changes as of the requested effective date specified in the notice or, at BPA's discretion, a date of BPA's choosing within the notice period.

E. *Restriction of Deliveries.* Deliveries of capacity or energy to any purchaser may be restricted when operation of the facilities used by BPA to serve such purchaser is:

1. suspended,
2. interrupted,
3. interfered with,
4. curtailed, or
5. restricted

by the occurrence of any condition described in the Uncontrollable Forces or Continuity of Service sections of the General Contract Provisions of the power sales contract.

Section VI. Billing Information

A. *Determination of Estimated Billing Data.* If the amounts of capacity, energy, or the 60-minute integrated demands for energy purchased from BPA must be estimated from data other than metered or scheduled quantities, historical patterns, and pertinent weather data, BPA and the purchaser will agree on billing data to be used in preparing the bill. If the parties cannot agree on estimated billing quantities, derived by any method, a determination binding on both parties shall be made in accordance with the arbitration provisions of the power sales contract.

B. *Load Shift and Outage Reports.* Load shift and outage reports must be submitted to BPA within 4 days of the corresponding load shift or outage. Reports may be made by telephone, mail, or other electronic processes where available. If customer reports are not received in a timely manner, BPA has the option to withhold load shift or outage credit.

C. *Billing for New Large Single Loads.* Any BPA customer whose total load includes one or more New Large Single Loads (NLSL) as defined by section 3(13) of the Pacific Northwest Power Act or as determined by section 8 of the purchaser's power sales contract shall be billed for the NLSL(s) at the New Resource Firm Power Rate. The power requirements associated with the NLSL shall be established in a manner consistent with the provisions of this section.

The purchaser shall warrant to BPA that NLSLs are separately metered. The metering must include provisions for determining:

1. the NLSL demand during BPA's diurnal capacity billing periods,
2. the NLSL energy during BPA's energy billing periods, and
3. the NLSL reactive energy for the billing month.

The design for the metering equipment for the NLSL must be approved by BPA. Testing and inspections of such metering installations shall be as provided in the General Contract Provisions.

On a monthly basis, each purchaser of New Resource Firm Power shall report to BPA the quantity of power used by the NLSL during the *purchaser's* billing period. Data provided to BPA by the purchaser must be submitted to BPA within 2 normal working days of the date the purchaser reads the meters. BPA may elect to adjust the NLSL data for losses from the point of metering to the closest BPA point of delivery for the purchaser.

D. *Determination of Measured Demand.* 1. For points of delivery with fully operational metering under the Revenue Metering System (RMS), demand shall be measured from 0000 hours on the first day of the billing period through 2400 hours on the last day of the billing period.

2. For points of delivery that do not have RMS metering, demand shall be measured from 0000 hours on the first complete (24 hour) day of the available metering data through 2400 hours on the last complete day of the available metering data. Billing demand will be determined from the period of available metering data that most closely matches the official billing period of the customer.

E. *Determination of Measured Energy.* 1. For points of delivery with fully operational metering under RMS, energy shall be measured from 0000 hours on the first day of the billing period through 2400 hours on the last day of the billing period.

2. For points of delivery that do not have RMS metering, measured energy shall be the quantity of usage recorded on the meter between meter readings.

F. *Billing Month.* Meters normally will be read and bills computed at intervals of 1 month. A month is defined as the interval between meter-reading dates which normally will be approximately 30 days. If service is for less than or more than the normal billing month, the monthly charges stated in the applicable rate schedule shall be adjusted appropriately.

The calendar month in which the purchaser's meter is scheduled to be read determines the billing month. (Thus, a bill associated with a meter scheduled to be read on April 10 would be an April bill.) The charges for the winter and summer periods identified in the rate schedules apply to the purchaser's billing months.

G. *Payment of Bills.* Bills for power shall be rendered monthly by BPA. Failure to receive a bill shall not release the purchaser from liability for payment. Bills for amounts due BPA of $50,000 or more must be paid by direct wire transfer; customers who expect that their average monthly bill will not exceed $50,000 and who expect special difficulties in meeting this requirement may request, and BPA may approve, an exemption from this requirement. Bills for amounts due BPA under $50,000 may be paid by direct wire transfer or mailed to the Bonneville Power Administration, P.O. Box 6040, Portland, Oregon 97228–6040, or to another location as directed by BPA. The procedures to be followed in making direct wire transfers will be provided by the Office of Financial Management and updated as necessary.

1. *Computation of Bills.* Demand and energy billings for power purchased under each rate schedule shall be rounded to whole dollar amounts, by eliminating any amount which is less than 50 cents and increasing any amount from 50 cents through 99 cents to the next higher dollar.

2. *Estimated Bills.* At its option, BPA may elect to render an estimated bill for that month to be followed at a subsequent billing date by a final bill. Such estimated bill shall have the validity of and be subject to the same payment provisions as a final bill.

3. *Due Date.* Bills shall be due by close of business on the 20th day after the date of the bill (due date). This requirement holds also for revised bills (see section 6 below). Should the 20th day be a Saturday, Sunday, or holiday (as celebrated by the purchaser), the due date shall be the next following business day.

4. *Late Payment.* Bills not paid in full on or before close of business on the due date shall be subject to a penalty charge of $25. In addition, an interest charge of one-twentieth percent (0.05 percent) shall be applied each day to the sum of the unpaid amount and the penalty

charge. This interest charge shall be assessed on a daily basis until such time as the unpaid amount and penalty charge are paid in full.

Remittances received by mail will be accepted without assessment of the charges referred to in the preceding paragraph provided the postmark indicates the payment was mailed on or before the due date. Whenever a power bill or a portion thereof remains unpaid subsequent to the due date and after giving 30 days' advance notice in writing, BPA may cancel the contract for service to the purchaser. However, such cancellation shall not affect the purchaser's liability for any charges accrued prior thereto under such contract.

5. *Disputed Billings.* In the event of a disputed billing, full payment shall be rendered to BPA and the disputed amount noted. Disputed amounts are subject to the late payment provisions specified above. BPA shall separately account for the disputed amount. If it is determined that the purchaser is entitled to the disputed amount, BPA shall refund the disputed amount with interest, as determined by BPA's Office of Financial Management.

BPA retains the right to verify, in a manner satisfactory to the Administrator, all data submitted to BPA for use in the calculation of BPA's rates and corresponding rate adjustments. BPA also retains the right to deny eligibility for any BPA rate or corresponding rate adjustment until all submitted data have been accepted by BPA as complete, accurate, and appropriate for the rate or adjustment under consideration.

6. *Revised Bills.* As necessary, BPA may render a revised bill. A revised bill shall replace all previous bills issued by BPA that pertain to a specified customer for a specified billing period if the amount of the revised bill is less than the amount of the original bill. If the amount of the revision causes an additional amount to be due BPA beyond the original bill, a revised bill will be issued for the difference.

The date of the revised bill shall be determined as follows:

a. If the amount of the revised bill is equal to or less than the amount of the bill which it is replacing, the revised bill shall have the same date as the replaced bill.

b. If the amount of the revised bill is greater than the amount of the bill which it is replacing, the additional amount will be billed on a separate bill, and the date of the revised bill shall be its date of issue.

Section VII. Variable Industrial Rate Parameters and Adjustments

A. *Monthly Average Aluminum Price Determination.* 1. *Calculation of the Monthly Billing Aluminum Price.* The monthly billing aluminum price shall be determined by BPA for, each billing month. For purposes of this rate schedule, the monthly billing aluminum price shall be based on the average price of aluminum in U.S. markets during the third calendar month prior to the billing month. The average price of aluminum in U.S. markets shall be defined as the average U.S. Transaction Price reported for the month by *Metals Week,* in cents per pound, rounded to the nearest tenth of a cent.

2. *Notification of the Monthly Average Aluminum Price.* BPA shall provide, 45 days prior to the billing month, written notification to purchasers under this rate schedule of the monthly billing aluminum price to be used for billing purposes. Upon written request supporting documentation shall be provided.

3. *Changes in Aluminum Price Indicators.* In the event that BPA determines that factors outside its control render the monthly average U.S. Transaction Price unusable as an approximation of U.S. market prices, BPA may develop and substitute another indicator for prices in U.S. markets. BPA shall notify interested parties of its intent to do so at least 120 days prior to the billing month in which the change would become effective. In this notification, BPA shall explain the reason for the substitution and specify the replacement indicator it intends to use. BPA also shall describe the methodology to determine the monthly billing aluminum price to be used for billing purposes under this rate schedule and shall provide the necessary data to be used in the calculation. Interested persons will have until close of business three weeks from the date of the notification to provide comments. Consideration of comments and more current information may cause the final methodology and the substitute aluminum price index to differ from those proposed. BPA shall notify all affected parties, and those parties that submitted comments, of its final determination 90 days prior to the billing month the new indicator shall be effective.

B. *Annual Adjustments to the Lower and Upper Pivot Aluminum Prices.* On July 1, 1987, and every July 1 thereafter, the Lower and Upper Pivot Aluminum Prices, as stated in sections III.B. of the rate schedule, shall be subject to change for billing purposes as herein described. The term annual adjustment date shall refer to July 1 of each year.

1. *Implementation Procedures.* Beginning in 1987 and every year thereafter, prior to April 1 of that year, BPA shall provide the purchasers under this rate schedule preliminary written estimates of proposed adjustments to the Lower and Upper Pivot Aluminum Prices. By the last working day of the month of April, BPA shall notify interested parties in writing of BPA's revised determinations concerning changes to the Lower and Upper Pivot Aluminum Prices. BPA shall describe how the adjustments were determined and provide the data used in the calculations. In addition to written notification, BPA may, but is not obligated to, hold a public comment forum to clarify its determinations and solicit comments. Interested persons may submit comments on the determinations to BPA and other parties. Comments will be accepted until close of business on the last working Friday in May. Consideration of comments and more current information may result in the final adjustment differing from the proposed adjustment. By June 30 of each year, BPA shall notify all VI purchasers, those parties that submitted comments, and parties that requested notification, of the final determination.

2. *Annual Adjustment Procedures.* a. *Annual Adjustment of the Lower Pivot Aluminum Price.* Beginning with the July 1, 1987, annual adjustment date, for each year that the Variable Industrial rate is in effect, the Lower Pivot Aluminum Price as stated in section III.B.1 of the rate schedule shall be adjusted on the July 1 annual adjustment date. The Lower Pivot Aluminum Price shall be revised by multiplying 59 cents per pound by the Cost Escalation Index described in section VII.B.3.b of these GRSPs and rounded to the nearest tenth of a cent. The revised Lower Pivot Aluminum Price shall replace the Lower Pivot Aluminum Price as stated in section III.B.1 of the rate schedule and shall be used to determine the energy rate in the subsequent 12 billing months

b. *Annual Adjustment of the Upper Pivot Aluminum Price.* For each year that the Variable Industrial rate is in effect, the Upper Pivot Aluminum Price as stated in section III.B.2 of the rate schedule shall be adjusted on the July 1 annual adjustment date.

(1) *Annual adjustment for the period beginning July 1, 1987, and ending June 30, 1991.* The Upper Pivot Aluminum Price shall be revised by multiplying 72 cents per pound by the Cost Escalation Index described in section VII.B.3.c of

these GRSPs and rounded to the nearest tenth of a cent. The revised Upper Pivot Aluminum Price shall supersede the Upper Pivot Aluminum Price as stated in section III.B.2 of the rate schedule and shall be used to determine the energy rate in the subsequent 12 billing months.

(2) *Annual Adjustment for the period beginning July 1, 1991, and ending June 30, 1996.* The Upper Pivot Aluminum Price will be adjusted such that the Average Historical Aluminum Price described in section VII.B.4 of these GRSPs is the mid-point between the adjusted Upper Pivot Aluminum Price and the Average Historical Lower Pivot Aluminum Price described in section VII.B.5 below, except as limited to the greater of 65 cents per pound or the adjusted Lower Pivot Point for the year.

The Upper Pivot Aluminum Price shall equal the greater of:

(a) (2)×(AAP)−ALP:

where:

AAP=the Average Historical Aluminum Price described in section VII.B.4 of these GRSPs.

ALP=the Average Historical Lower Pivot Aluminum Price described in section VII.B.5 of these GRSPs.

(b) 65.0 cents per pound escalated to current dollars using the Cost Escalator for the Upper Pivot Aluminum Price described in section VII.B.3.c of these GRSPs.

or:

(c) The adjusted Lower Pivot Aluminum Price for the year.

The revised Upper Pivot Aluminum Price' shall supersede the Upper Pivot Aluminum Price as stated in section III.B.2 of the rate schedule and shall be used to determine the energy rate in the subsequent 12 months.

3. *Cost Escalators.* a. The cost indices described below shall be used in calculating the appropriate cost escalators. Each index shall be rounded to the nearest one-tenth of a percent, or three significant places.

(1) *Electricity Cost Index.* The average VI-86 rate in mills per kilowatthour based on the Plateau Energy Charge and the Discount for Quality of First Quartile Service in effect on the April 1 preceding the annual adjustment date and a load factor of 98.5 percent; divided by 22.8 mills per kilowatthour (the average VI-86 rate assuming the plateau energy charge and the Discount for Quality of First Quartile Service in 1986).

(2) *Labor Cost Index.* The annual average hourly earnings for the U.S. primary aluminum industry (SIC 3334) over the previous complete calendar year, from the Employment and Earnings, published by the U.S. Department of Labor, Bureau of Labor Statistics (BLS), divided by $14.20 per hour (the value of SIC 3334 earnings reported for 1985).

(3) *Alumina Cost Index.* The annual average of the monthly billing aluminum prices described in section VII.A of the GRSPs for the previous 1-year period beginning July 1 through June 30 divided by 50.8 cents per pound (the average U.S. Transaction price over the period April 1985 through March 1986).

(4) *Other Costs Index.* The annual average GNP Implicit Price Deflator for the previous complete calendar year, as published by the U.S. Department of Commerce, Bureau of Economic Analysis, divided by 1.117 (the value of the GNP Implicit Price Deflator for 1985 with 1982=1.000).

In the event the indices delineated above are discontinued or revised in a manner that BPA determines renders them unusable for calculating a consistent cost index, BPA will adjust or substitute another similar price index, following advance notification and opportunity for public comment as described in section VII.B.1. of these GRSPs.

b. The Cost Escalator for the Lower Pivot Aluminum Price shall be a weighted average of the four indices contained in section VII.B.3.a above. The following weights shall be assigned each index:

| | |
|---|---|
| Electricity Cost Index | 0.30 |
| Labor Cost Index | .20 |
| Alumina Cost Index | .20 |
| Other Costs Index | .30 |

c. The Cost Escalator for the Upper Pivot Aluminum Price shall be a weighted average of the Electricity Cost and Other Cost Escalators as stated in sections VII.B.3.a.(1) and VII.B.3.a.(4) above. The following weights shall be assigned each index:

Electricity Cost Index—.25
Other Costs Index—.75

4. *Average Historical Aluminum Price.* Prior to the July 1, 1991, annual adjustment date and every annual adjustment date thereafter, an average historical aluminum price shall be calculated for the period the Variable rate has been in effect. The average historical aluminum price shall be determined following the procedures set forth below:

a. Each monthly billing aluminum price determined pursuant to section VII.A. of these GRSPs for the period August 1, 1986, through June 30 immediately preceding the annual adjustment date, shall be escalated to the current year dollars using the Price Deflator procedures described in section VII.B.6. below.

b. The sum of the escalated monthly billing aluminum prices shall be divided by the number of months in the period and rounded to the nearest tenth of a cent to obtain the Average Historical Aluminum Price.

5. *Average Historical Lower Pivot Aluminum Price.* Prior to the July 1, 1991, annual adjustment date and every annual adjustment date thereafter, the average of the Lower Pivot Aluminum Prices for the period the Variable Industrial rate has been in effect shall be calculated following the procedures set forth below:

a. The Lower Pivot Aluminum Price in each month for the period August 1, 1986, through June 30 of the calendar year preceding the annual adjustment date, shall be escalated to the current year's dollars using the Price Deflator procedures described in section VII.B.6. below.

b. The sum of the escalated monthly Lower Pivot Aluminum Prices shall be divided by the number of months in the period, and rounded to the nearest tenth of a cent to obtain an Average Historical Lower Pivot Aluminum Price.

6. *Price Deflator Procedures.* For purposes of converting nominal dollars to real dollars in the calculation of the Average Historical Aluminum Price and the Average Historical Lower Pivot Aluminum Price, the following Price Deflator procedures shall be used:

a. Monthly billing aluminum prices and Lower Pivot Aluminum Prices for any calendar months July through December, shall be inflated by multiplying the price by the ratio of the GNP Implicit Price Deflator for the calendar year prior to the annual adjustment date divided by the Implicit Price Deflator for the calendar year in which the price occurred.

b. Monthly billing aluminum prices and Lower Pivot Aluminum Prices for any calendar months January through June, shall be inflated by multiplying the price by the ratio of the Implicit Price Deflator for the calendar year prior to the annual adjustment date divided by the Implicit Price Deflator for the calendar year prior to the year in which the price occurred.

Each price shall be rounded to the nearest tenth of a cent.

## IV. Major Studies and Issues

A. *Major Studies.* 1. *Revenue Requirement Study.* The Bonneville Project Act, the Flood Control Act of 1944, the Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act require

BPA to design rates that are projected to return revenues sufficient to recover the cost of acquiring, conserving, and transmitting the electric power that BPA markets, including the amortization of the Federal investment in the FCRPS over a reasonable period, and to recover BPA's other costs and expenses. This Study includes a determination of whether current rates will produce enough revenue to satisfy BPA's repayment obligations.

In an order dated January 27, 1984 (49 FR 4130), the Federal Energy Regulatory Commission (FERC) set forth a number of requirements that would enable FERC to fulfill its obligations under the Pacific Northwest Power Act, which requires that transmission rates provide an equitable allocation of the costs of the Federal transmission system between Federal and non-Federal power using the system. The January 27, 1984, order requested the development of separate repayment studies for the generation and transmission portions of the FCRPS. Pursuant to the Commission's order, the 1987 Initial Revenue Requirement Study incorporates separate repayment studies for the generation and transmission components of the FCRPS for FY 1988 and FY 1989.

The Revenue Requirement Study for the 1987 initial rate proposal is based on revenue and cost estimates for FY 1988 and FY 1989. BPA's Revenue Requirement Study reflects actual amortization and interest payments paid through September 30, 1985. In addition, it reflects all FCRPS obligations incurred pursuant to the Pacific Northwest Power Act, including exchange costs.

BPA's total revenue requirement is determined within the Revenue Requirement Study. The study used for this proposal demonstrates that, for the two test years FY 1988 and FY 1989, the revenue requirements are projected to be $3.05 and $3.11 billion, respectively.

All expenses and obligations to be recovered through FCRPS rates must be functionalized between generation and transmission. The various methods for functionalization include the use of the Direction of Effort Study, specific identification, and the general application of constructive associations. The results of this process are then used to construct the separate generation and transmission revenue requirements used in the rate proposals.

The Revenue Requirement Study also includes the Repayment Study which demonstrates the adequacy of the proposed revenues to recover all the cost of the FCRPS over the repayment period.

2. *Segmentation Study.* BPA operates and maintains the Federal Columbia River Transmission System (FCRTS) in order to provide various transmission services throughout the region. Because most services do not require the use of the entire system, the FCRTS is divided into nine segments, each providing a distinct type of service. The nine segments are: integrated network, Pacific Northwest-Southwest (Southern) Intertie; Northern Intertie; Eastern Intertie; generation integration; fringe area; and delivery segments for public agency, direct-service industrial, and investor-owned utility customers.

The Segmentation Study categorizes the facilities of the FCRTS according to the types of services they provide, thereby identifying the associated costs of these services. This provides the basis for segmenting the projected transmission expenses used in BPA's rate proposals. This division of the FCRTS according to specific services is essential to the equitable allocation of transmission costs between Federal and non-Federal customers using the system.

3. *Loads and Resources Study.* The Loads and Resources Study presents all the load and resource data necessary for developing BPA's wholesale power rates. It is one of the first steps in preparing rates. This study incorporates results from load forecasts, resource analyses, and BPA's Resource Strategy.

BPA developed econometric forecasts of nongenerating public utility loads. These forecasts used employment data for Washington, Oregon, and Idaho as an input. A direct service industrial (DSI) load forecast was prepared using econometric models and economic analyses for nonaluminum loads and a computer simulation model for aluminum loads. The simulation model describes the operations of each aluminum plant in the Pacific Northwest based on projections of operating costs and the price of aluminum. Forecasts of investor-owned utility system loads and residential exchange loads used in the study are submitted to BPA by the respective utilities.

BPA's conservation savings estimates are developed using a variety of assumptions. This process is designed to reflect expected conditions in the region regarding loads, resource expenses, contracts, and concepts of flexibility. Estimating begins with the development of conservation supply curves that identify conservation availability as a function of cost, timing, current contracts, and technology. These curves are used in BPA's Least-Cost Mix Model, from which a least-cost schedule of annual conservation targets is determined through 2002. The targets, in combination with contractual considerations, penetration rates, and decisions about initiation and implementation rates, determine final conservation savings estimates.

Conservation acquisitions reflect the capability and flexibility concepts encouraged by the Northwest Power Planning Council's Power Plan. These concepts allow BPA to react to various circumstances and uncertainties.

The load/resource balance determines BPA's obligation during the test years and each corresponding 42-month critical period. It determines the magnitude of supply of surplus firm power in the region and on the Federal system in each critical period. These results stem from a hydroregulation study that incorporates system constraints such as the Water Budget for fish migration, the operation of thermal plants, and projected resource acquisitions. For this rate filing, two 42-month (critical period) hydro studies and two 40-year hydro studies were completed. The first set of studies starts in July 1987; the second set starts in July 1988. The 40-year studies determine nonfirm energy for the region.

BPA's customers determine those resources dedicated to serve their firm load. The firm surplus is used to serve firm load for the purposes of cost allocation, rate design, and revenue forecasting.

Capacity was analyzed using 1929–30 water conditions. The results are incorporated in the capacity rate development.

4. *Marginal Cost Analysis (MCA).* The Marginal Cost Analysis (MCA) is conducted by BPA to identify the marginal costs BPA would incur for new generation and transmission loads on seasonal, daily, and hourly bases. The MCA provides a basis for developing rates that promote economic efficiency. Questions relating to the measurement of marginal cost, application of marginal costs to rates, and the adjustment of such rates to the revenue requirement are considered in developing the MCA.

The marginal cost of generation is based on results from BPA's resource planning models—the Least Cost Mix Model (LCMM) and the System Analysis Model (SAM). The LCMM provides information concerning the types of resources and the annual cost of those resources acquired to meet load growth. The SAM provides information on the cost of operating those resources acquired to meet load growth. In addition, the SAM provides information on the cost of operating those resources in conjunction with the existing system and the level of secondary revenues experienced under expected water conditions. The marginal cost of

generation is classified between capacity and energy using the cost of a generic combustion turbine as the least-cost source of capacity.

Two transmission segments, network and generation-integration, are considered in the MCA. The marginal cost of transmission network is based on projected transmission investments for fiscal years 1988–1995. It is classified to capacity and energy based on an analysis of the reasons causing transmission network investment.

The marginal cost of generation-integration is based on the cost of integrating a generic baseload thermal plant into BPA's transmission system. It is classified to capacity and energy in the same manner as the marginal cost of generation.

The marginal cost of generation energy is seasonally, but not diurnally, differentiated. The marginal cost of transmission network energy is neither seasonally nor diurnally differentiated. Marginal generation capacity cost variations occur hourly and diurnally but not seasonally. The marginal cost of generation capacity does not vary substantially between months. Therefore, generation capacity charges are not seasonally differentiated.

The classification results for the marginal cost of generation are used in the Wholesale Power Rate Development Study to uniformly classify generation costs. The results for seasonal and diurnal differentiation of the marginal cost of capacity are used to time differentiate capacity rates. Marginal cost results are also used directly in the development of the Reserve Power rate.

5. *Section 7(b)(2) Rate Test Study.* Section 7(b)(2) of the Pacific Northwest Power Act directs BPA to assure that the wholesale power rates effective after July 1, 1985, to be charged its public body, cooperative, and Federal agency customers (the 7(b)(2) customers) for their general requirements for the rate test period plus the ensuing 4 years are no higher than the costs of power to those customers for the same time period if specified assumptions are made. The effect of the rate test is to protect the 7(b)(2) customers' wholesale firm power rates from certain costs resulting from provisions of the Pacific Northwest Power Act. The rate test can result in a reallocation of costs from the 7(b)(2) customers to other rate classes. The Section 7(b)(2) Rate Test Study describes the application and results of the section 7(b)(2) rate test implementation methodology.

The rate projections and the actual rate test itself are performed by BPA's Supply Pricing Model (SPM). The SPM simulates BPA's ratesetting process, using load, resource, and cost data consistent with that used in this rate proposal. The assumptions and ratesetting processes such as load/resource balancing, cost allocation, and rate design are also consistent with this rate proposal. The SPM calculates two sets of wholesale power rates for BPA's preference customers: (1) a set of rates for the test period and the ensuing 4 years, assuming that section 7(b)(2) is not in effect (program case rates); and (2) a set for the same period considering the five assumptions listed in section 7(b)(2) (7(b)(2) case rates). Certain specified section 7(g) costs are subtracted from the program case rates. The SPM then discounts each year's rates to the test year of the relevant rate case, averages each set of discounted rates, and compares the two resulting averages rounded to the nearest tenth of a mill. If the average of the discounted program case rates less the 7(g) costs is larger than the average discounted 7(b)(2) case rates, the rate test triggers. If the rate test triggers, the amount of dollars to be reallocated in the test period (7(b)(2) amount) is calculated by multiplying the difference between the discounted program case and 7(b)(2) case rates by the general requirements loads of the preference customers. The 7(b)(2) amount is used as an adjustment to the allocated costs in the rate case test period.

The section 7(b)(2) rate test triggers in this proposal, causing costs to be reallocated in the test period. The Priority Firm rate applied to the general requirements of the 7(b)(2) customers has been reduced by the 7(b)(2) amount while all other rates, including the Priority Firm rate applied to customers purchasing under the Residential and Small Farm Power Exchange program, have been increased by an allocation of the 7(b)(2) amount.

6. *Wholesale Power Rate Development Study.* The Wholesale Power Rate Development Study combines the *Cost of Service Analysis* and the *Wholesale Power Rate Design Study* used in previous rate cases. This document consists of two sections. The first section performs all the steps in the rate development process previously performed in the Cost of Service Analysis. The second section performs all the steps in the rate development process previously performed in the Wholesale Power Rate Design Study.

a. *Cost of Service Analysis Section.* The Cost of Service Analysis (COSA) section of the Wholesale Power Rate Development Study apportions BPA's test year revenue requirement to customer classes based on the use of specific types of service by each customer class. BPA's revenue requirement is functionalized to transmission and generation in the Functionalization Study. Transmission costs are identified with segments of the transmission system in BPA's Segmentation Study. The results of these studies are used in the Cost of Service Analysis to determine the costs of providing such services to BPA's customers. The Cost of Service Analysis further identifies costs of specific types of service by performing the following steps.

*Classification.* BPA classifies costs to the energy and capacity components of electric power. In this rate case, generation costs are uniformly classified in the proportions of 80 percent of the generation costs to energy and 20 percent to capacity. This uniform classification adopted for the COSA is based on the results of BPA's Marginal Cost Analysis and reflects the relative costs of acquiring additional energy and capacity resources in both the long and the short run. Transmission costs are classified entirely to capacity.

*Seasonal Differentiation.* When costs of providing electric service vary substantially, whether by time of day or season of the year, it is appropriate to reflect this variation when allocating costs among customer classes and in the subsequent design of rates. Energy costs are seasonally differentiated on the basis of the cost of hydroelectric storage and the characteristics of the Federal generating system. Costs of generation capacity and transmission do not vary substantially between seasons; therefore, such costs are not seasonally differentiated.

*Allocation.* The final major step in the COSA is to allocate the functionalized, segmented, classified, and seasonally differentiated costs to customer classes.

Costs are allocated to classes of service on the basis of the relative use of services. Energy costs are allocated to customer classes on the basis of relative kilowatthour use by each class, and on the proportion of total load placed on each resource pool by that class. The measure used for allocating peaking capacity costs is the coincidental peak megawatt. Coincidental peak loads measure the contribution of each customer class's load to system peak loads. Because the power system is constructed in part to meet coincidental peak loads (relative to the system peak), the coincidental peak megawatt (rather than the customer's monthly peak load) is used as a basis for allocating the costs of generation and transmission capacity.

Costs of the nine Federal transmission system segments and exchange costs functionalized to transmission are allocated on the basis of coincidental peak megawatts that are not seasonally differentiated. Costs are allocated to customer classes on the basis of deemed use of the transmission system by power customers and on the basis of actual use of the transmission system by wheeling (non-Federal transmission) customers.

Costs not associated with resource pools are allocated to customer classes on the basis of total use of services without regard to the resource pools that provided that service.

B. *Wholesale Power Rate Design Section.* The COSA determines the costs of serving BPA's various customer classes. The Wholesale Power Rate Design section uses the allocated costs developed in the COSA as a starting point for designing rates which will recover BPA's total revenue requirement during the test period. It is the final step in the development of BPA's wholesale power rates. In the rate design section, the COSA results are modified: (1) To reflect BPA's rate design objectives; (2) to comport with contractual requirements; (3) to reflect the results of other BPA studies and commitments made in other public involvement processes under section 7(i) of the Pacific Northwest Power Act; and (4) to comport with requirements of applicable legislation, including the Bonneville Project Act, the Flood Control Act of 1944, The Federal Columbia River Transmission System Act, and the Pacific Northwest Power Act. BPA's rate design objectives include recovery of the revenue requirement, rate and revenue stability, practicality, fairness, and efficency.

Development of the 1987 wholesale power rates incorporates for the first time a number of provisions, including implementation of: (1) the Variable Industrial Power rate; (2) the IP–PF rate link; (3) allocation of costs and revenues resulting from the WNP–3 Settlement Exchange Agreements; (4) the triggering of the section 7(b)(2) rate test, and (5) a Cost Recovery Adjustment Clause.

Adjustments to the COSA results include the following:

*Excess Revenue Credits.* In the COSA, BPA allocates its entire test period revenue requirement to firm power loads on the basis of resources available under critical water conditions. Under normal circumstances, BPA is able to generate additional (secondary) energy which can be sold on a nonfirm basis. Revenues which BPA expects to receive from sales of nonfirm energy are credited to BPA's firm power and wheeling customers through rate design adjustments. BPA also includes in the revenues it credits to its firm power customers those revenues (opportunity costs) it expects to receive from sales to the DSI first quartile.

*DSI First Quartile Service.* The DSIs are not allocated costs in the COSA for service to their first quartile. BPA serves DSI first quartile loads with nonfirm energy. The opportunity costs, or revenues which BPA would have received for this power in other markets, are charged to the DSIs, thereby increasing their allocated costs. Revenues obtained by service to the first quartile from surplus firm power sold in the open market reduce the Surplus Firm Power revenue deficiency. Revenues received from service to the first quartile by nonfirm energy are credited to firm power rates.

*Revenue Deficiencies.* BPA is obliged to sell power at contractually fixed rates to two classes of customers, the Columbia Storage Power Exchange (CSPE) customers and capacity/energy exchange customers. In the COSA, BPA allocates costs to these customer classes. These COSA-allocated costs, adjusted for the excess revenue credit, are compared with the revenues BPA expects to receive under the contractually fixed rates for these customers. Any revenue deficiency is allocated through an adjustment affecting all other rate classes.

*Surplus Power Open Market Revenue Deficiency.* BPA expects to sell a portion of its surplus firm power at fully allocated cost. BPA assumes that the remainder of its surplus firm power will be sold in the open market at prices lower than the fully allocated cost, thereby causing a revenue deficiency. The difference between expected surplus power open market revenues and fully allocated cost is allocated to all other customers in the Surplus Power Open Market Revenue Deficiency Adjustment.

*Special Industrial Adjustment.* Legislation requires that BPA provide a special rate to direct-service industrial customers using raw minerals indigenous to the region as their primary resources. BPA has one such industrial customer to which it grants a special rate. The difference between revenues at that special rate and the fully allocated cost of service is a revenue deficiency which is allocated to all other firm power customers through the Special Industrial Adjustment.

*Equalization of Demand Adjustment.* BPA has historically applied the same demand charges for sales to firm capacity customers as are applied to its Priority Firm power customers. In order to achieve a uniform demand charge, a rate design adjustment is required.

*7(c)(2) Adjustment.* In BPA's post-1985 rates, the rates applicable to the DSIs are not based on the cost of serving the DSIs. Rather, the rates are a function of either the "floor" rate or the rates charged BPA's preference customers. BPA recently established a formula for this latter relationship. This formula (the IP–PF rate link) will be applied for the first time in the 1987 rate filing. In addition, the rate design for the DSIs in the 1987 rate filing continues to implement the Variable Industrial Power (VI) rate, tying the rate charged to BPA's aluminum smelter DSIs to the price of aluminum.

The 7(c)(2) adjustment is made to account for the difference between the costs allocated to the DSIs and the revenues resulting from the applicable DSI rate, incorporating any revenue variance from VI purchasers due to forecasted aluminum prices.

BPA determines the Priority Firm Power rate demand and energy charges and applies those charges to the DSI billing determinants. The result is the "applicable wholesale rate," to which is added the "net margin," yielding the DSI margin-based rate. The DSI revenues, based on assuming the margin-based rate, serve as the charge for power purchases and based on adjustments for aluminum smelters according to the formula contained in the VI rate schedule, are compared with the costs allocated to the DSIs. Any difference is either a revenue deficiency or surplus, and is allocated to all adjustable rates, including the Priority Firm Power rate.

This process is repeated until an additional repetition causes no change in the Priority Firm Power rate. The surplus or deficiency in revenues when comparing DSI revenues with DSI allocated costs is termed the "7(c)(2) delta," and is the amount of the 7(c)(2) adjustment. The allocation of this 7(c)(2) delta causes the relationship between the Priority Firm Power rate and the Industrial Firm Power rate to be maintained, and allows BPA to set all rates such that BPA can recover its total revenue requirement.

*7(b)(2) Adjustment.* Section 7(b)(2) of the Pacific Northwest Power Act provides rate protection to BPA's preference customers from certain costs resulting from the provisions of the Act. This is described in the Section 7(b)(2) Rate Test Study. The 7(b)(2) adjustment credits BPA's preference customers' rates to the extent necessary as indicated in the Section 7(b)(2) Rate Test Study, and assigns the cost of such credit to rates applicable to other BPA

customers. Because the loads of both BPA's preference customers and exchanging utilities are combined in the 7(b) rate pool, it is necessary to bifurcate the Priority Firm Power rate in order to grant the 7(b)(2) credit only to BPA's preference customers. Preference customers may purchase power from BPA at the Priority Firm Preference rate. For purposes of calculating the net benefit of the exchange to exchanging utilities, the Priority Firm Exchange rate is used. After the 7(b)(2) adjustment, BPA adjusts the margin-based rate applicable to the DSIs such that the applicable wholesale rate is based on the Priority Firm rate for public agencies which includes the 7(b)(2) credit. Any revenue deficiency resulting from such an adjustment is allocated to rates other than DSI rates and the Priority Firm rate for preference customers.

*DSI Floor Rate Adjustment.* BPA performs a test to determine whether the DSI margin-based rate is above or below a floor rate specified in section 7(c)(2) of the Pacific Northwest Power Act. If the DSI rate is below that floor rate, the DSI rate is raised to the floor rate, and a rate design adjustment is necessary to credit additional revenues from the DSIs to other firm power customers.

All of the above adjustments are made to the functionalized, classified, segmented and seasonalized costs allocated in the COSA as a starting point. Therefore the adjustments themselves are functionalized, classified, segmented, and seasonalized where appropriate. After all adjustments are made, the final rates are calculated.

Final rates calculated in the Wholesale Power Rate Development Study are included in BPA's General Rate Schedules. These rate schedules are applied in conjunction with BPA's General Rate Schedule Provisions (GRSPs) which define the applicability of the rate to the type of service provided.

B. *Wholesale Power Rates.* Individual rate schedules are discussed in section 1, below. Issues related to more than one schedule are presented in section 2.

1. *Description of Individual Rate Schedules.* a. *Priority Firm Power Rate, PF-87.* BPA sells Priority Firm Power to public bodies, cooperatives, Federal agencies, and utilities participating in the residential exchange under section 5(c) of the Pacific Northwest Power Act. This rate schedule is also available for the purchase of capacity which will require the return of associated energy. This power must be used to meet firm loads within the Pacific Northwest. Two power rates will be available under this rate schedule. One will be available for the general requirements of public bodies, cooperatives, and Federal agencies. The other will be available for all other purchasers eligible for Priority Firm Power, including utilities participating in the residential exchange.

The priority firm load is served with FBS and exchange resources. The PF-87 rate consists of a demand charge that is time-differentiated on hourly basis and an energy charge that is seasonally differentiated. A low density discount and an irrigation discount are available to qualifying utilities. The PF rate also includes the Cost Recovery Adjustment Clause, a new feature; and the Council-recommended Conservation Surcharge, a power factor penalty, and a charge for unauthorized increase. The billing factors for computed requirements customers taking priority firm power continue to be designed to enhance BPA's revenue stability.

b. *Industrial Firm Power Rate, IP-87.* The IP-87 rate schedule applies to sales of Federal power to BPA's DSI customers. The level of the IP-87 rate is a function of two elements, the Administrator's "applicable wholesale rates" to public agency customers and a net margin. The net margin has been established in an earlier section 7(i) proceeding establishing the IP-PF rate link.

The demand charge in the IP-87 rate remains constant throughout the rate period, but is time differentiated on an hourly basis. There is no demand charge for deliveries during offpeak hours. The energy charge is seasonally differentiated. The IP-87 rate also includes the Cost Recovery Adjustment Clause, a power factor adjustment, and a charge for unauthorized increases which may apply in both the peak and offpeak hours.

c. *Variable Industrial Power Rate, VI-87.* The VI-87 rate is available through a contractual agreement with aluminum smelter DSIs. All of BPA's aluminum smelter DSI customers have signed contracts to purchase power under the Variable Industrial Power rate. The VI-87 rate is a formula rate that changes when the price of aluminum decreases or increases outside of a range of aluminum prices specified in the rate schedule. Within the specified range of aluminum prices, the rate does not vary with aluminum prices. The level of the "plateau" rate is adjusted to follow the DSI margin-based rate.

The VI-87 rate contains a demand charge that remains constant throughout the rate period, but is differentiated on an hourly basis. The demand charge does not fluctuate with changes in aluminum prices. There is no demand charge during the offpeak period. The energy charge is not seasonally differentiated but varies with the price of aluminum according to a specified formula. A discount for first quartile service is also available for those purchasers that request first quartile service with other than Surplus FELCC. The VI-87 rate also includes the Cost Recovery Adjustment Clause, a power factor adjustment, and a charge for unauthorized increases which may apply in both the peak and offpeak hours.

d. *Special Industrial Power Rate, SI-87.* This rate schedule is available to purchasers qualifying for a special class of industrial power as provided in section 7(d)(2) of the Pacific Northwest Power Act. Section 7(d)(2) authorizes BPA to establish a special rate for any DSI using, as its primary resource, raw minerals indigenous to the Pacific Northwest region.

The only customer that currently qualifies for this Special Industrial rate is the Hanna Nickel Smelting Company. The SI-87 rate schedule contains two rate options, a Standard rate and an Offpeak rate. The Standard rate incorporates the value associated with BPA's ability to restrict Hanna's load under specific circumstances and has been increased to follow the increase in the PF-87 rate. The resulting SI-87 Standard rate is slightly below the PF-87 rate to approximate the rate Hanna would have paid absent the Pacific Northwest Power Act. The SI-87 Standard rate has an hourly differentiated demand charge and seasonally differentiated energy charges. The rate includes adjustments for power factor and unauthorized increase.

The Offpeak rate of 7 mills per kilowatthour proposed in the 1985 rate case has been extended. This extension is in accordance with the Amendatory Agreement effective July 1, 1985, with the Hanna Nickel Smelting Company. The Offpeak rate is an energy charge and does not contain a demand charge. Under the SI-87 Offpeak rate, Hanna must curtail power purchases during a contractually specified period within BPA's peak period to 15 percent of its Contract Demand.

e. *Firm Capacity Rate, CF-87.* The CF-87 rate applies to utilities purchasing firm capacity from BPA on an annual basis. Energy associated with this capacity is to be returned to BPA. CF-B7 loads are served with FBS and exchange resources. The rate includes the Cost Recovery Adjustment Clause, the Council-recommended Conservation Surcharge, an extended peaking surcharge for capacity taken in excess

of 8 hours per day, and a seasonally differentiated surcharge for rates of energy return in excess of 60 percent of Contract Demand. This rate schedule will be available only to purchasers who have executed contracts prior to July 1, 1985.

The extended peaking surcharge is based on the reduction in hydro peaking capability due to sustaining generation for an additional 10 hours per week. The returned energy surcharge is based on the reduction in hydro peaking capability due to high rates of energy being returned in any given hour, which causes a risk of spilled firm energy.

f. *Emergency Capacity Rate, CE–87.* The CE–87 rate schedule is applied to capacity used either to meet emergencies on the purchaser's system or to displace non-BPA resources. BPA provides such capacity to utilities on a weekly basis if it is requested and if excess capacity is available. The energy associated with the delivery of this capacity must be returned to BPA.

To determine the CE–87 rate, the Firm Capacity rate for a contract year was divided by the number of weeks in a year and then increased by 30 percent to cover additional administrative and general costs. Because costs associated with deliveries over the Pacific Northwest-Pacific Southwest (Southern) Intertie have not been allocated to this service category in the COSA, such deliveries are subject to an additional charge.

g. *New Resource Rate, NR–87.* The NR–87 rate is available for the purchase of firm power by investor-owned utilities under net requirements contracts for resale, direct consumption, or for use in construction, test and start-up, and station service. It is also available for service to new large single loads of public bodies, cooperatives, or Federal agencies. BPA also proposes that this rate schedule be available for the purchase of capacity which will require the return of associated energy.

Exchange energy costs are allocated to this class of service to serve the small amount of energy load forecasted during the test year. However, the NR–87 rate is set to approximate a rate based on both capacity and energy allocated exchange costs so that it can be applied to any load that qualifies for NR–87 service. The energy charges for the NR–87 rate reflect the increased cost to be collected through the energy charges due to setting the demand charge equal to the equalized demand charge. The demand charges are based on the Surplus Firm Power rate demand charges adjusted for intertie losses, and are diurnally time-differentiated. The rate also includes the new Cost Recovery Adjustment Clause.

h. *Short-Term Surplus Firm Power Rate, SP–87.* The SP–87 rate is available for the short-term purchase of Surplus Firm Power or capacity for the period ending September 30, 1992. The SP–87 rate consists of a Contract rate and a flexible rate. The Contract rate has demand and energy charges, and is based on the fully allocated cost of surplus firm power, made up of: Exchange resources and new resources. Demand charges are diurnally differentiated. The flexible rate is a market-based rate that is flexible upward and downward as mutually agreed upon by the contracting parties. The flexible rate may have a demand and energy component or an energy component only. Rates may not exceed 100 percent of the fixed and operating costs of BPA's highest cost resource. The SP rate includes an intertie service charge, an extended peaking surcharge for capacity sales, and an energy return surcharge.

i. *Short Term Firm Displacement Power Rate, FD–87.* The FD–87 rate is available for the contract purchase of Short-Term Firm Displacement Power or capacity by utilities in the Pacific Northwest for the period ending September 30, 1992. These purchases are for the purpose of meeting Pacific Northwest loads and allowing the export of the power displaced by FD purchases outside the Pacific Northwest.

This rate schedule is intended to help BPA to market its surplus firm power. The FD–87 rate is composed of a contract rate and a flexible rate. The contract rate is based on the fully allocated costs of surplus firm power and has demand and energy charges. The flexible rate is a market-based rate, whose rate level may be higher or lower than the contract rate. Short-term rates may have demand and energy charges or an energy charge only. Rates may not exceed 100 percent of the fixed and operating costs of BPA's highest cost resource.

j. *Long-Term Surplus Power Rate, SL–87.* The SL–87 rate is available for the long-term purchase of Surplus Firm Power or capacity for contracts having a term up to 20 years. Like the SP–87 rates, the SL–87 rate consists of a demand and energy charge based on the fully allocated cost of surplus resources: exchange resources and new resources. Demand charges are diurnally differentiated, and they may be adjusted to reflect partial year service.

Because of the 20-year term of SL–87, an escalation factor is included in the rate schedule. Each January 1, the demand and energy charges shall be increased by 2 percent of the previous rate; in addition, the SL–87 shall be increased by the same percentage increase as the PF rate, on the effective date of any future PF rate change.

Other adjustments in SL–87 are an intertie service charge, an extended peaking surcharge for capacity sales, and an energy return surcharge.

k. *Long Term Firm Displacement Rate, FL–87.* The FL–87 rate is available for the long-term purchase of Firm Displacement Power for contracts having a term of up to 20 years. The FL–87 rate consists of a demand and energy charge based on the fully allocated cost of surplus firm power. Demand charges are diurnally differentiated, and they may be adjusted to reflect partial year service.

Because of the 20-year term of FL–87, an escalation factor is included in the rate schedule. Each January 1, the demand and energy charges shall be increased by 2 percent of the previous rate; in addition, the SL–87 shall be increased by the same percentage increase as the PF rate, on the effective date of any future PF rate change.

Other adjustments in SL–87 are an intertie service charge, an extended peaking surcharge for capacity sales, and an energy return surcharge.

l. *Nonfirm Energy Rate, NF–87.* The NF–87 rate is available for the purchase of nonfirm energy both inside and outside the Pacific Northwest and outside the United States. The proposed NF–87 rate structure contains rates that are applicable under varying operating and marketing conditions. The NF–87 rate schedule contains a Contract rate and three rates that can be applied depending on market conditions: the Standard Rate, the Market Expansion Rate, and the Incremental Rate. All rates within the NF rate schedule are subject to an NF Rate Cap. The NF Rate Cap is defined as the greater of BPA's average system cost or BPA's average system cost plus 30 percent of the difference between gas/oil prices and BPA's average system cost. BPA's average system cost is determined for the rate period. Gas/oil prices are determined monthly based on prices published in Platt's Oilgram Report. BPA may sell nonfirm energy at one or more of the rates at the same time. When BPA determines that nonfirm energy can be sold on a guaranteed basis, BPA will offer guaranteed energy at amounts and for periods of time that BPA finds prudent. Any energy scheduled under the guarantee delivery provision shall be delivered except when BPA and the purchaser mutually agree to change the scheduled amounts or when BPA must

reduce NF–87 deliveries to serve firm loads because of unexpected generation loss in the Pacific Northwest. Guaranteed nonfirm energy may be offered under any of the rates in the NF–87 schedule.

The Standard rate is BPA's rate of general applicability. The Standard rate allows flexibility of prices charged both above and below BPA's average cost of nonfirm energy, within the limits of the NF Rate Cap. The Standard rate will be offered at only one level at any time, and the level of that offer will depend on market conditions that BPA faces at a particular time.

Nonfirm energy sales may also be made at the Market Expansion rate when BPA is unable to sell all available FCRPS energy at the Standard rate. To qualify for the rate, the purchaser must demonstrate that purchases under the Standard rate would not be economic. The Market Expansion rate will help ensure that BPA displaces the greatest possible amount of thermal generation and will enhance NF–87 revenues. The rate is flexible and may be at any level that BPA offers below the Standard rate. BPA may offer more than one price level under the Market Expansion rate simultaneously. The Market Expansion rate is available whenever the decremental cost of the displaced resource or purchase is less than the applicable Standard rate plus 2.0 mills per kilowatthour. The Market Expansion rate is available for alternative fuel end-users. A purchaser must purchase at the highest market expansion price for which the purchaser's displaceable resource or purchase qualifies.

The NF–87 Incremental rate shall be applied to sales of energy produced or purchased concurrently with the Nonfirm Energy sale which BPA may, at its option, not produce or purchase, and when the incremental cost is greater than the Standard rate less 2.0 mills per kilowatthour. The rate shall be equal to the incremental cost of the power plus 2.0 mills per kilowatthour.

m. *Share-the-Savings Rate, SS–87.* The proposed SS–87 rate schedule is available for the purchase of nonfirm energy as an alternative to the NF–87 rate schedule. The SS–87 rate is available for purchasers both inside and outside the Pacific Northwest and outside the United States. In order to purchase nonfirm energy at the SS–87 rate, the purchaser must execute a contract with BPA specifying use of the SS–87 rate schedule. Purchasers contracting for use of the SS–87 schedule may not purchase under the NF–87 rate schedule during the term of the contract.

The SS–87 schedule consists of three rates. The rate for a particular purchaser shall depend on the decremental cost of the resource or purchase that will be displaced with a purchase under the SS–87 schedule. The three rates are the Economy Energy rate, the High Cost Displacement rate, and the Low Cost Displacement rate. Each of these rates specifies a price dependent on the decremental cost of the displaced resource or purchase, but each specifies a different portion of that cost to be recovered by the rate plus a different fixed adder.

n. *Energy Broker Rate, EB–87.* In October 1981, BPA entered into an agreement with the Western Systems Coordinating Council (WSCC) to participate in WSCC's Energy Broker Program. The Broker Program offered by WSCC is a communication and scheduling procedure for matching potential sellers of electric energy with potential buyers. The proposed EB–87 rate offered by BPA is available for both sale and purchase of nonfirm energy among participants in the WSCC Energy Broker System, between whom agreements for energy transmission have been transacted.

o. *Reserve Power Rate, RP–87.* The proposed RP–87 rate schedule is available for the purchase of: (1) Firm power to meet a purchaser's unanticipated load growth as provided in a purchaser's power sales contract; (2) power for which BPA determines no other rate schedule is applicable; or (3) power to serve a purchaser's firm power loads in circumstances where BPA does not have a power sales contract in force with such a purchaser, and BPA determines that the rate should be applicable. BPA expects that the RP–87 rate schedule will be used primarily to meet emergency power shortages on a purchaser's system and to charge, pursuant to the power sales contract, for unauthorized increases in the case of minimal power overruns.

The Reserve Power rate is based directly on the results of the Marginal Cost Analysis. The proposed RP–87 rate will provide BPA's customers with price signals that reflect the cost of producing additional kilowatts and kilowatthours, regardless of BPA's revenue requirement. An adjustment for power factor and a charge for unauthorized increase are also included in the RP–87 rate schedule.

2. *Other Rate Issues.* a. *Risk Mitigation.* BPA projected revenues are subject to significant variations due to variations in aluminum prices, fuel prices, economic conditions, and weather conditions. To reflect these risks, BPA performed a Risk Assessment Analysis for this filing. The Analysis indicated that the potential revenue underrecoveries exceed $300 million per year. To offset this revenue risk, BPA has included mitigation measures in this proposal. These measures include the cost recovery adjustment clause, excess revenue determination, and investment service coverage.

b. *Cost Recovery Adjustment Clause.* BPA has studied various methods of assuring its ability to repay the U.S. Treasury during the rate period. One of the risk management measures proposed is a Cost Recovery Adjustment Clause.

The purpose of the Cost Recovery Adjustment Clause is to enhance BPA's ability to make its scheduled U.S. Treasury payments with funds provided from current operations. The Cost Recovery Adjustment Clause is included in the Priority Firm, Industrial Firm, Variable Industrial, Firm Capacity, and New Resource Firm Power rate schedules.

The Cost Recovery Adjustment Clause compares actual financial performance with the financial results that rates were designed to achieve. When this comparison is performed, BPA will make an automatic adjustment to the rates charged specified customers if actuals are significantly different from planned financial results. This adjustment would increase or decrease rates, depending on whether actual financial performance was worse or better than forecast. These increases or decreases would be applied to all demand and energy charges of the rates to which they apply.

The comparison of actual performance to forecasted performance will be made following the first full year of the rate period, after Fiscal Year 1988. Any adjustment, to the extent one is warranted, would be calculated during October, November, and December 1988, and the adjustment would be applied to demand and energy revenues due from customers affected by the Cost Recovery Adjustment Clause during January through September 1989.

The proposed Cost Recovery Adjustment Clause would be applied only if BPA's FY 1988 funds from operations fell outside the predesignated range of either $60 million greater than planned or $60 million less than planned. Any resulting adjustment would cause an upward rate adjustment of no greater than 10 percent. The only limit on a downward rate adjustment is for the DSIs, who are subject to a floor rate.

If BPA's forecasts of revenues and costs determine that no change from

BPA's 1987 rates is warranted in 1989 or in any subsequent fiscal year, the Cost Recovery Adjustment Clause will be available for calendar years following FY 1989, or for any period prior to a BPA general rate filing.

c. *Excess Revenue Determination.* The excess revenues from nonfirm energy and surplus firm power were determined using 1939 water conditions instead of the average of the 40 water years 1929 to 1968, as had been assumed in rate filings prior to 1985.

d. *Investment Service Coverage.* The Investment Service Coverage is used in the determination of FCRPS revenue requirements to provide an acceptable level of interest coverage consistent with BPA's requirement to operate in accordance with sound business principles. The Investment Service Coverage increases the likelihood that BPA will be able to make its planned payments to the U.S. Treasury at the end of FYs 1988 and 1989. Further, the Investment Service Coverage is intended to improve BPA's financial condition as reflected in BPA's financial statements, and demonstrates the commitment and willingness of BPA to fully meet its obligations to the U.S. Treasury as planned.

e. *Application of NF Rate Cap for Future Rate Periods.* BPA is proposing an NF Rate Cap for a 12-year period to apply to all nonfirm energy sales.

Issued in Portland, Oregon on December 10, 1986.

**Robert E. Ratcliffe,**

*Acting Administrator.*

[FR Doc. 86-28962 Filed 12-29-86; 8:45 am]

BILLING CODE 6450-01-M

## Proposed Transmission Rate Adjustment, Public Hearings, and Opportunities for Public Review and Comment

**AGENCY:** Bonneville Power Administration (BPA), DOE.

**ACTION:** Notice and Opportunities for Review and Comment. *BPA File No:* TR-87.

BPA requests that all comments and documents intended to become part of the Official Record compiled in the process of adjusting transmission rates contain the file number designation TR-87.

**SUMMARY:** The Pacific Northwest Electric Power Planning and Conservation Act (Pacific Northwest Power Act) states that BPA must establish and periodically revise BPA's rates so that they are adequate to recover, in accordance with sound business principles, the costs associated with the acquisition, conservation, and transmission of electric power, and to recover the Federal investment in the Federal Columbia River Power System (FCRPS). BPA is proposing to revise its transmission rate schedules, effective October 1, 1987, in order to produce sufficient revenue to fulfill its statutory requirements. Section 7 of the Pacific Northwest Power Act provides for the establishment of BPA's rates.

Through a separate public process BPA has completed an initial review of program cost levels for the fiscal year (FY) 1988 and 1989 budgets. This public process has influenced revenue requirement data for BPA's rate case. The Administrator will not re-examine program level decisions in the rate case. However, further opportunity for informal public comment has been established outside the rate case.

Opportunities will be available for interested persons to review the proposed rates and the supporting studies, to participate in hearings, and to submit written comments. During the development of the final rate proposal, BPA will evaluate all written and oral comments received in this process. Consideration of comments and more current data may result in the final rate proposal differing from the rates proposed in this notice.

*Responsible Official:* Ms. Shirley R. Melton, Director, Division of Rates, is the official responsible for the development of BPA's rates.

**DATES:** Persons wishing to become a formal party to the proceedings must notify BPA in writing of their intention to do so. The petitions to intervene must be received by January 9, 1987, and should be addressed as follows: Hon. Dean F. Ratzman, Hearing Officer, c/o Geoffrey Kronick, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212. In addition, a copy of the intervention petition must be served on BPA's Office of General Counsel/APR, P.O. Box 3621, Portland, Oregon 97208.

A prehearing conference, required by BPA's rate procedures, will be held before the Hearing Officer at 9 a.m. on January 16, 1987, at the Auditorium, Building DOB1, 5411 Hwy. 99, Ross Complex, Vancouver, Washington. Registration for the Prehearing Conference will begin at 8:30 a.m. BPA will prefile the testimony of its witnesses at the prehearing conference. The Hearing Officer will act on all intervention petitions and oppositions to intervention petitions; will establish additional procedures, a service list, and a procedural schedule; and will consolidate parties with similar interests for purposes of filing jointly sponsored testimony and briefs and for expediting cross examination. A notice of the dates and times of the hearings will be mailed to all parties of record.

BPA proposes the following schedule for the formal hearings required by section 7(i) of the Pacific Northwest Power Act. A final schedule will be established by the Hearing Officer.

December 30, 1986—Initial studies available at BPA's Office of Public Involvement (Public Reference Room), 1002 NE. Holladay, 6th Floor, Portland, Oregon;

January 16, 1987—Prehearing Conference and BPA Direct Case Filed;

January 26-30, 1987—BPA Witness Clarification;

February 18, 1987—Parties' Direct Case Filed;

March 16, 1987—Rebuttal Testimony Filed;

April 6-24, 1987—Cross-Examination;

June 15, 1987—Draft Record of Decision; and

July 31, 1987—Final Record of Decision.

Two series of public field hearings regarding BPA's proposal will be held in various regional locations. At the first series, BPA will provide information concerning the ratemaking process, the issues in this rate case, and a synopsis of the rate proposal. Public comments contained in a verbatim transcript of the hearings and all written comments received will be made a part of the Official Record. The hearing officer may allow reasonable questioning of participants by BPA counsel. Presentation of testimony and evidence from formal parties will not be allowed at the field hearings. Registration for the field hearings will be at 7 p.m., and the hearings will begin at 7:30 p.m. The dates and locations are:

February 3—The Cougar Room, Ridpath Hotel, H. 515 Sprague, Spokane, Washington;

February 4—The Guild Hall, The Sherwood Inn., 8402 S. Hosmer, Tacoma, Washington;

February 5—The Orcas Room, Everett Pacific Hotel, 3105 Pine St., Everett, Washington;

February 6—The Virginian, 750 W. Broadway, Jackson, Wyoming;

February 9—The Klamath Room, Red Lion Inn—Columbia River, 1401 N. Hayden Island Dr., Portland, Oregon;

February 10—Main Harris Hall, Lane County Building, 125 E. 8th, Eugene, Oregon;

February 11—Richland Federal Building, 825 Jadwin Avenue, Richland, Washington; and

February 12—Burley Inn, 800 N. Overland Avenue, Burley, Idaho.

A second series of field hearings will be scheduled near the end of the formal hearings. These field hearings will provide the public an additional opportunity to comment based on its review of the evidence presented in the formal hearings. BPA will consider the public comments in the Draft Record of Decision. The hearing schedule and locations will be announced in newspapers in the region.

Written comments may be submitted until the close of all hearings. The last day for receipt of written comments will be specified in a later **Federal Register** notice (currently expected to be published in May 1987).

**ADDRESSES:** Written comments not submitted at the hearings should be submitted to Ms. Donna L. Geiger, Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

**FOR FURTHER INFORMATION CONTACT:** Ms. Kathleen S. Johnson, Public Involvement Office, at the address listed above, 503–230–3478. 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; and
Mr. Frederic D. Rettenmund, Boise District Manager, 550 West Fort Street, Room 376/Box 035, Boise, Idaho 83724, 208–334–9137.

**SUPPLEMENTARY INFORMATION:**

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## I. Background

On November 7, 1986, BPA published in the **Federal Register** a notice of "Intent to Revise Transmission Rates to Become Effective October 1, 1987; Request for Recommendations and Suggestions" (51 FR 40483). The notice satisfied certain contractual provisions between BPA and its customers by indicating that revised rates are expected to become effective on October 1, 1987. All 1987 transmission rates are proposed to be in effect for 2 years, through September 30, 1989, with the exception of the FPT–87.3 schedule, which would be effective 3 years, through September 30, 1990.

In developing the proposed transmission rates, BPA considered many factors, including revenue requirements, costs of service, environmental impacts, economic efficiencies, rate continuity, and contractual and statutory obligations. The major studies that have been prepared to support the proposed transmission rates will be available for examination on December 30, 1986, at BPA's Public Reference Room, BPA Headquarters Building, 6th floor, 1002 NE. Holladay, Portland, Oregon. The studies also may be requested by phone or in writing from BPA's Public Involvement office and will be available at the Prehearing Conference. The documents pertinent to the development of BPA's proposed transmission rates are the Revenue Requirement Study, Segmentation Study, Wholesale Power Rate Development Study, and Transmission Rate Design Study.

To request any of the above studies by telephone, call BPA's document line: 800–841–5867 for Oregon, 800–624–9495 for Washington, Idaho, Montana, California, Wyoming, Utah, and Nevada. Other callers should use 503–230–3478. Please request the study by its above title. Also state whether you require the accompanying published technical documentation, otherwise the study alone will be provided. (For example, ask for the "Revenue Requirement Study and Technical Documentation.")

Many transmission agreements were negotiated prior to the 1974 Federal Columbia River Transmission System Act (Transmission Act) and reflect conditions and policies prevalent at the time of negotiation. Provisions which differ between agreements include the types of facilities available, type of service, frequency of rate adjustments, determination of losses, and calculation of billing determinants. Some agreements, for example, specify that transmission rates can be changed annually, while other agreements limit rate adjustments to once every 3 years.

Many agreements prescribe the method and factors to be used in determining the cost of providing service and in designing rates. Many are "formula" power agreements and the factors specified in these agreements are the forerunners of the current Formula Power Transmission (FPT) rate schedules. Applicable legislation requires transmission system costs to be equitably allocated between Federal and non-Federal power utilizing the system. The cost of service portion of BPA's Wholesale Power Rate Development Study (WPRDS) determines the equitable allocation of costs and this allocation of costs determines the overall level of the transmission rates. In cases where BPA is required by contractual provisions to use a specific rate design method, such methods are used in this rate proposal. These rate design methods do not interfere with BPA's abilities to adjust the overall level of the rates.

Some transmission agreements do not permit changes in rate methodology. In some cases, the rates proposed in this notice will not be applicable to such agreements. BPA intends to apply its historical rate schedules to these agreements, as required.

## II. Procedures Governing Rate Adjustments and Public Participation

Section 7(i) of the Pacific Northwest Power Act, 16 U.S.C. 839e(i), requires that rates be set according to certain procedures. These procedures include issuance of a **Federal Register** notice announcing the proposed rates; one or more hearings; the opportunity to submit written views, supporting information, questions, and arguments; and a decision by the Administrator based on the record developed during the hearing process. This proceeding will be governed by BPA's "Procedures Governing Bonneville Power Administration Rate Hearings" (51 FR 7611, March 5, 1986), which implements, and in most instances expands, these statutory requirements. The proceedings for BPA's proposal to adjust transmission rates will be combined with the proceedings for BPA's proposal to adjust wholesale power rates.

BPA's procedures provide for publication of a notice of the proposed rates, a prehearing conference, a

hearing, receipt of written comments, preparation of decisional documents, a decision, and the transmittal of the decision with supporting documentation to the Federal Energy Regulatory Commission. The procedures require that the Administrator specify in the **Federal Register** notice whether expedited rules will be used. In order to give the public the maximum opportunity to participate and have its views considered, the Administrator has determined and hereby gives notice that expedited rules of procedure will not apply to this proceeding. The hearing will be conducted according to the rule for general rate proceedings, § 1010.9 of BPA's "Procedures Governing Bonneville Power Administration Rate Hearings."

In addition to its formal hearing process, BPA also will convene a series of public hearings at certain locations throughout the region. The purpose of these hearings is to present to interested members of the public a synopsis of BPA's rate proposal. The hearings will be held at the times and locations previously listed. The conduct of these hearings will be substantially the same as that of the public field hearings held for BPA's 1981, 1982, 1983, and 1985 rate proceedings. BPA staff will summarize the proposed rates, after which the public will have an opportunity to present their comments, views, and opinions about the proposed rates.

BPA distinguishes between "participants in" and "parties to" the hearings. Apart from the formal hearing process, BPA will receive comments, views, opinions, and information from participants, who are defined in the procedures as any person who may express his views, but who does not intervene as a party. Participants' written comments will be made part of the official record of the case. The participant category gives the public the opportunity to participate and have its views considered without assuming the obligations incumbent upon parties. Participants are not entitled to participate in the prehearing conference, cross-examine parties' witnesses, seek discovery, or serve or be served with documents, and are not subject to the same procedural requirements as parties. Participants will, however, be provided regular letters during the rate hearings summarizing the proceedings and are provided the opportunity to request materials presented during the hearings.

The second category of interest is that of a "party" as defined in §§ 1010.2 and 1010.4 of "The Procedures Governing Bonneville Power Administration Rate Hearings." Parties may participate in prehearing conferences, may call and cross-examine witnesses, and are entitled to service of documents from all other parties. Parties also may be cross-examined and required to serve documents on the other parties. To avoid unnecessary delay, cross-examination by parties may be limited by the Hearing Officer. Where parties have substantially similar positions, the Hearing Officer may appoint lead counsel to conduct cross-examination. If a party demonstrates that it would not be represented adequately in the joint presentation of an issue or issues, the Hearing Officer may permit separate examination or argument regarding such issue or issues.

In order to facilitate discovery and promote the efficient use of cross-examination, the Hearing Officer may schedule one or more transcribed sessions for the purpose of allowing parties and BPA to question witnesses about the contents of their prepared testimony. Cross-examination will be scheduled by the Hearing Officer as necessary following completion of the filing of all parties' and BPA's direct cases, rebuttal testimony, discovery, and clarification. Parties will have the opportunity to file initial briefs at the close of cross-examination. The Hearing Officer will extend an opportunity to the parties to evaluate the record and analyze the law through briefs.

Persons wishing to become a formal party to BPA's rate proceeding must so notify BPA in writing. Petitions to intervene shall state the name and address of the person and the person's interests in the outcome of the hearing. Petitioners may designate no more than two representatives upon whom service of documents will be made. BPA customers and customer groups whose rates are subject to revision in the hearing will be granted intervention, based on a petition filed in conformity with this section. Other petitioners must explain their interests in sufficient detail to permit the Hearing Officer to determine whether they have a relevant interest in the hearing. Any opposition to a petition to intervene must be filed and served at least 24 hours before the January 16 prehearing conference. All timely applications will be ruled on by the Hearing Officer. Late interventions are strongly disfavored. Opposition to an untimely position to intervene shall be filed and served within 2 days after service of the petition. Intervention petitions will be available for inspection in the Public Reference Room of BPA's Office of Public Involvement, 6th Floor, 1002 NE Holladay, Portland, Oregon. Interventions are subject to Rule 1010.4 of the "Procedures Governing Bonneville Power Administration Rate Hearings."

After the close of the hearings, BPA will file a Draft Record of Decision. The Draft Record of Decision will provide a written evaluation of the official record addressing significant technical issues. The Hearing Officer also will extend an opportunity to all parties to file reply briefs.

Persons need not attend the hearings in order to have their views included in the record. Written comments may be included in the record if they are submitted before the close of the hearings. Written views, supporting information, questions, and arguments should be submitted to BPA's Public Involvement Manager.

The record will include, among other things, the transcripts of the hearings, written material submitted by the parties and participants, documents developed by the BPA staff, and other material accepted into the record by the Hearing Officer. The Hearing Officer then will review the record, will supplement it if necessary, and will certify the record to the Administrator for decision.

The Administrator will develop the final proposed rates based on the entire record, including the record certified by the Hearing Officer, comments received from participants in the field hearings, other material and information submitted to or developed by the Administrator, and any other comments properly received during the rate development process. The basis for the final proposed rates will be expressed in the Administrator's Record of Decision. The Administrator will serve copies of the Administrator's Record of Decision on all parties and will file the final proposed rates together with the record with FERC for confirmation and approval.

## III. Transmission Rate Schedules and General Transmission Rate Schedule Provisions

*Schedule FPT–87.1—Formula Power Transmission*

Section I. Availability

This schedule supersedes schedule FPT–85.1 for all firm transmission agreements which provide that rates may be adjusted not more frequently than once a year. It is available for firm transmission of electric power and energy using the Main Grid and/or Secondary System of the FCRTS. This schedule is for full-year and partial-year service and for either continuous service or intermittent service so long as firm

availability of service is required. For facilities at lower voltages than the Secondary System, a different rate schedule may be specified.

Section II. Rate

A. *Full-Year Service.* The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the Main Grid Charge, the Secondary System Charge, and Intertie Charge, as applicable and as specified in the Agreement.

1. Main Grid Charge. The Main Grid Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Main Grid Distance Factor: The amount computed by multiplying the Main Grid Distance by $0.0246 per mile;

b. Main Grid Interconnection Terminal Factor: $0.22;

c. Main Grid Terminal Factor: $0.28;

d. Main Grid Miscellaneous Facilities Factor: $1.16;

2. Secondary System Charge. The Secondary System Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Secondary System Distance Factor: The amount determined by multiplying the Secondary System Distance by $0.1379 per mile;

b. Secondary System Transformation Factor: $2.19;

c. Secondary System Intermediate Terminal Factor: $0.83;

d. Secondary System Interconnection Terminal Factor: $0.41;

3. Intertie Charge. For use of the Southern (Pacific Northwest-Pacific Southwest) Intertie facilities: $5.93.

B. *Partial-Year Service.* The monthly charge per kilowatt of billing demand shall be as specified in Section 11.A for all months of the year. For agreements whose term is 5 years or less and which specify service for fewer than 12 months per year, the monthly charge shall be:

1. During months for which service is specified, the monthly charge defined in Section II.A, and

2. During other months, the monthly charge defined in Section II.A multiplied by 0.2.

Section III. Billing Factors

Unless otherwise stated in the Agreement, the billing demand shall be the largest of:

A. The Transmission Demand;

B. The highest hourly Scheduled Demand for the month; or

C. The Ratchet Demand.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

*Schedule FPT–87.3—Formula Power Transmission*

Section I. Availability

This schedule supersedes schedule FPT–83.3 for all firm transmission agreements which provide that rates may be adjusted not more frequently than once every 3 years. It is available for firm transmission of electric power and energy using the Main Grid and/or Secondary System of the FCRTS. This schedule is for full-year and partial-year service and for either continuous service or intermittent service so long as firm availability of service is required. For facilities at lower voltages than the Secondary System, a different rate schedule may be specified.

Section II. Rate

A. *Full-Year Service.* The monthly charge per kilowatt of billing demand shall be one-twelfth of the sum of the Main Grid Charge, the Secondary System Charge, and Intertie Charge, as applicable and as specified in the Agreement.

1. Main Grid Charge. The Main Grid Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Main Grid Distance Factor: The amount computed by multiplying the Main Grid Distance by $0.0246 per mile;

b. Main Grid Interconnection Terminal Factor: $0.22;

c. Main Grid Terminal Factor: $0.28;

d. Main Grid Miscellaneous Facilities Factor: $1.16;

2. Secondary System Charge. The Secondary System Charge shall be the sum of one or more of the following component factors as specified in the Agreement:

a. Secondary System Distance Factor: The amount determined by multiplying the Secondary System Distance by $0.1379 per mile;

b. Secondary System Transformation Factor: $2.19;

c. Secondary System Intermediate Terminal Factor: $0.83;

d. Secondary System Interconnection Terminal Factor: $0.41;

3. Intertie Charge. For use of the Southern (Pacific Northwest-Pacific Southwest) Intertie facilities: $5.93.

B. *Partial-Year Service.* The monthly charge per kilowatt of billing demand shall be as specified in Section II.A for all months of the year. For agreements whose term is 5 years or less and which specify service for fewer than 12 months per year, the charge shall be:

1. During months for which service is specified, the monthly charge defined in Section II.A, and

2. During other months, the monthly charge defined in Section II.A multiplied by 0.2.

Section III. Billing Factors

Unless otherwise stated in the Agreement, the billing demand shall be the largest of:

A. The Transmission Demand;

B. The highest hourly Scheduled Demand for the month; or

C. The Ratchet Demand.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

*Schedule IR–87—Intergration of Resources*

Section I. Availability

This schedule supersedes IR–85 and is available for firm transmission service for electric power and energy using the Main Grid and/or Secondary System of the FCRTS. The definitions of Main Grid and Secondary Systems are the same as for the FPT–87.1 and FPT–87.3 rate schedules and are contained in the General Transmission Rate Schedule Provisions. For facilities at lower voltages than the Secondary System, a different rate schedule may be specified.

Section II. Rate

The monthly charge shall be the sum of A and B where:

A. *The Demand Charge Shall Be:*

1. $0.2680 per kilowatt of billing demand; or

2. For Points of Integration (POI) specified in the Agreement as being

short distance POI's, for which Main Grid and Secondary System facilities are used for a distance of less than 75 circuit miles, the following formula applies:

[0.2 + (0.8/75 × transmission distance)]
($0.2680 per kilowatt of billing demand)

Where:

the billing demand for a short distance POI is the demand level specified in the Agreement for such POI, and the transmission distance is the circuit miles between the POI for a generating resource of the customer and a designated Point of Delivery (POD) serving load of the customer. Short distance POI's are determined by BPA after considering factors in addition to transmission distance.

B. *The Energy Charge Shall Be:* 0.91 mills/kWh of billing energy.

Section III. Billing Factors

To the extent that the Agreement provides for the customer to be billed for transmission in excess of the Transmission Demand or Total Transmission Demand, as defined in the Agreement, at the nonfirm transmission rate (currently ET–87), such transmission service shall not contribute to either the Billing Demand or the Billing Energy for the IR rate provided that the customer requests such treatmment and BPA approves in accordance with the prescribed provisions in the Agreement.

A. *Billing Demand.* The billing demand shall be the largest of:

1. The Transmission Demand, except under General Transmission Agreements where a Total Transmission Demand is defined;

2. The highest hourly Scheduled Demand for the month; or

3. The Ratchet Demand.

B. *Billing Energy.* The billing energy shall be the monthly sum of scheduled kilowatt hours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

*Schedule IS–87—Southern Intertie Transmission*

Section I. Availability

This schedule supersedes IS–85 and is available for all transmission on the Southern (Pacific Northwest—Pacific Southwest) Intertie.

Section II. Rate

A. *Nonfirm Rate.* The charge for nonfirm transmission of non-BPA power shall be 1.6 mills/kWh of billing energy.

B. *Firm Service.* 1. *Firm Power Transmission Rate.* The charge for firm transmission service for firm power sales, as determined by BPA, of Pacific Northwest Scheduling Utilities shall be $.825 per kW per month of billing demand.

2. *Lost Opportunity Rate.* The charge for firm transmission service for firm transactions other than firm power sales of Pacific Northwest Scheduling Utilities described in Section II.B.1, above, shall be determined as specified below:

a. *Applicability.* Firm transmission will only be made available to purchasers under this rate schedule who have executed a contract with BPA specifying use of the Lost Opportunity Rate. The following is a nonexclusive list of transactions to which the Lost Opportunity Rate may apply:

(1) Capacity/energy and seasonal exchanges;

(2) Capacity sales; and

(3) Transactions involving extraregional resources other than those dedicated to Pacific Northwest load (i.e., transactions involving resources other than Existing Pacific Northwest Resources).

b. *Rate.* The Lost Opportunity Transmission Rate shall not be less than the Firm Power Transmission Rate (Section 11.B.1, above) nor exceed BPA's Surplus Power Contract Rate (Schedule SP–87) for demand and energy. The rate shall be determined and adjusted by quantifying the impact of the transaction on BPA's net revenues.

c. *Implementation Procedures*—Upon request, BPA shall provide the customer for a given transaction under this rate schedule with preliminary written estimates of proposed charges, adjustments including considerations of value to BPA of the proposed arrangement, and the data underlying the quantification. BPA will provide for up to 30 days of public comment on the proposed quantification of the rate. Comments will be accepted until close of business on the last working day of the specified time period. Consideration of comments and more current information may result in the final charges differing from the proposed charges. BPA shall notify all parties requesting notification of the final determination of the Lost Opportunity Rate applicable to the transaction.

Section III. Billing Factors

A. For services under Section II.A, the billing energy shall be the monthly sum of the scheduled kilowatthours, plus the monthly sum of kilowatthours allocated but not scheduled. The amount of allocated but not scheduled energy that is subject to billing may be reduced prorata by BPA due to forced intertie outages, and other uncontrollable forces that may reduce intertie capacity.

B. The billing demand shall be the Transmission Demand as defined in the Agreement.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

*Schedule IN–87—Northern Intertie Transmission*

Section I. Availability

This schedule supersedes IN–85 and is available for all transmission on the Northern Intertie.

Section II. Rate

The charge for transmission of non-BPA power on the Northern Intertie shall be 1.22 mills/kWh.

Section III. Billing Factors

*Billing Energy.* The billing energy shall be the monthly sum of the scheduled kilowatthours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

*Schedule IE–87—Eastern Intertie Transmission*

Section I. Availability

This schedule supersedes IE–85 and is available for all nonfirm transmission on the Eastern Intertie.

Section II. Rate

The charge for transmission of nonfirm energy on the Eastern Intertie shall be 2.08 mills/kWh.

Section III. Billing Factors

*Billing Energy.* The billing energy shall be the monthly sum of the scheduled kilowatthours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

*Schedule ET–87—Energy Transmission*

Section I. Availability

This schedule supersedes Schedule ET–85, unless otherwise specified in the Agreement, with respect to delivery using FCRTS facilities other than the Southern Intertie, Eastern Intertie, or the Northern Intertie, and is available for nonfirm transmission between points within the Pacific Northwest. BPA may interrupt service which is provided under this rate schedule.

Section II. Rate

The charge for such nonfirm transmission of non-Federal electric energy shall be 1.71 mills/kWh.

Section III. Billing Factors

*Billing Energy.* The billing energy shall be the monthly sum of scheduled kilowatthours.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

*Schedule MT–87—Market Transmission*

Section I. Availability

This schedule is available for transmission with respect to Western Systems Power Pool (WSPP) transactions using FCRTS facilities for Transmission Services provided to participants under the WSPP agreement.

Section II. Rate

The charge shall be determined in advance by BPA. The charge shall not exceed 33 percent of the difference between the highest Decremental Cost of generation of the WSPP and the lowest Decremental Cost of generation of the WSPP as determined by the WSPP Operating Committee during the year prior to the effective date of the WSPP agreement. The Operating Committee may determine that a subsequent redetermination is necessary based upon the immediately preceding year's experience. However, the transmission charge shall not be less than 1 mill per kilowatthour.

Section III. Billing Factors

The billing factors shall be specified in advance by BPA, as to representing the Transmission Service use or reservation.

Section IV. General Provisions

Service provided under this transmission rate schedule shall be subject to the General Transmission Rate Schedule Provisions and the following Acts, as amended: the Bonneville Project Act, the Regional Preference Act (Pub. L. 88–552), the Federal Columbia River Transmission System Act, and the Pacific Northwest Electric Power Planning and Conservation Act.

The meaning of terms used in the transmission rate schedules shall be as defined in agreements or provisions which are attached to agreements or as in any of the above acts.

*General Transmission Rate Schedule Provisions*

Section I. Adoption of Revised Transmission Rate Schedules and General Transmission Rate Schedule Provisions

A. *Approval of Rates.* These rate schedules and General Transmission Rate Schedule Provisions (GTRSP) shall become effective upon interim approval or final confirmation and approval by the Federal Energy Regulatory Commission. BPA will request FERC approval effective October 1, 1987. BPA is requesting that all proposed Transmission Rate Schedules be effective for a period of 2 years, from October 1, 1987, through September 30, 1989, with the exception of the FPT 87.3 Schedule, which would be effective for a period of 3 years, through September 30, 1990.

B. *General Provisions.* These 1987 Transmission Rate Schedules and associated GTRSP supersede in their entirety BPA's 1985 Transmission Rate Schedules and GTRSP (which became effective July 1, 1985) but do not supersede prior rate schedules required by agreement to remain in force.

C. *Interpretation.* If a provision in the executed Agreement is in conflict with a provision contained herein, the former shall prevail.

Section II. Billing Factor Definitions and Billing Adjustments

A. *Billing Factors.* 1. *Scheduled Demand.* The largest of hourly amounts wheeled which are scheduled by the customer during the time period specified in the rate schedules.

2. *Metered Demand.* The Metered Demand in kilowatts shall be largest of the 60-minute clock-hour integrated demands measured by meters installed at each POD during each time period specified in the applicable rate schedule. Such measurements shall be made as specified in the Agreement. BPA, in determining the Metered Demand, will exclude any abnormal readings due to or resulting from (a) emergencies or breakdowns on, or maintenance of, the FCRTS; or (b) emergencies on the customer's facilities, provided that such facilities have been adequately maintained and prudently operated as determined by BPA. If more than one class of power is delivered to any POD, the portion of the metered quantities assigned to any class of power shall be as agreed to by the parties. The amount so assigned shall constitute the Metered Demand for such class of power.

3. *Transmission Demand.* The demand as defined in the Agreement.

4. *Total Transmission Demand.* The sum of the transmission demands as defined in the Agreement.

5. *Ratchet Demand.* The maximum demand established during the previous 11 billing months. Exception: If a Transmission Demand or Total Transmission Demand has been decreased pursuant to the terms of the Agreement during the previous 11 billing months, such decrease will be reflected in determining the Ratchet Demand.

B. *Billing Adjustments.* Average Power Factor. The adjustment for average power factor, when specified in a transmission rate schedule or in the Agreement, shall be made in accordance with the average power factor section of the General Wheeling Provisions.

To maintain acceptable operating conditions on the Federal system, BPA may restrict deliveries of power at any time that the average leading power factor or average lagging power factor for all classes of power delivered to such point or to such system is below 85 percent.

Section III. Other Definitions

Definitions of the terms below shall be applied to these provisions and the Transmission Rate Schedules, unless otherwise defined in the Agreement.

A. *Agreement.* An agreement between BPA and a customer to which these rate schedules and provisions may be applied.

B. *Decremental Cost.* As used in the MT rate schedule, Decremental Cost is as defined in the WSPP agreement.

C. Eastern Intertie. The segment of the FCRTS for which the transmission facilities consist of the Townsend-Garrison double-circuit 500 kV transmission line segment including related terminals at Garrison.

D. *Electric Power.* Electric peaking capacity (kW) and/or electric energy (kWh).

E. *Entity.* An owner of a resource other than a Scheduling Utility.

F. *Existing Pacific Northwest Resources.* As used in the IS rate schedule, existing PNW resources are:

a. The Pacific Northwest resources of Scheduling Utilities that were operational on September 7, 1984;

b. The extraregional resources of Scheduling Utilities dedicated to Pacific Northwest load on September 7, 1984, which include pro rata portions of Montana Power Company's and Pacific Power and Light Company's shares of Colstrip 4 based on the ratio of their regional loads to their total loads and the Idaho Power Company's share of Valmy 2; and

c. The Pacific Northwest resources of Pacific Northwest Entities that were operational on September 7, 1984, and for which a continuing relationship had been established by that date with a Scheduling Utility or BPA to serve Pacific Northwest load.

Existing Pacific Northwest Resources do not include BPA resources.

G. *Firm Transmission Service.* Transmission service which BPA provides for any non-BPA power except for transmission service which is scheduled as nonfirm. If the firm service is provided pursuant to an Agreement, the terms of the Agreement may further define the service.

H. *Integrated Network.* The segment of the FCRTS for which the transmission facilities provide the bulk of transmission of electric power within the Pacific Northwest, excluding facilities not segmented to the network in the Wholesale Power Rate Development Study used in BPA's rate development.

I. *Main Grid.* As used in the FPT and IR rate schedules, that portion of the Integrated Network with facilities rated 230 kV and higher.

J. *Main Grid Distance.* As used in the FPT rate schedules, the distance in airline miles on the Main Grid between the POI and the POD. multiplied by 1.15.

K. *Main Grid Interconnection Terminal.* As used in the FPT rate schedules, Main Grid terminal facilities that interconnect the FCRTS with non-BPA facilities.

L. *Main Grid Miscellaneous Facilities.* As used in the FPT rate schedules, switching, transformation, and other facilities of the Main Grid not included in other components.

M. *Main Grid Terminal.* As used in the FPT rate schedules. the Main Grid terminal facilities located at the sending and/or receiving end of a line exclusive of the Interconnection terminals.

N. *Nonfirm Transmission Service.* Interruptible transmission service which BPA may provide for non-BPA power.

O. *Northern Intertie.* The segment of the FCRTS for which the transmission facilities consist of two 500 kV lines between Custer substation and the United States-Canadian border, one 500 kV line between Custer and Monroe Substations, and two 230 kV lines from Boundary substation to the United States-Canadian border, and the associated substation facilities.

P. *Point of Integration (POI).* Connection points between the FCRTS and non-BPA facilities where non-Federal power is made available to BPA for wheeling.

Q. *Point of Delivery (POD).* Connection points between the FCRTS and non-BPA facilities where non-Federal power is delivered to a customer by BPA.

R. *Scheduling Utility.* A utility, not including BPA, that operates a generation control area within the Pacific Northwest, and any utility within BPA's generation control area that schedules with BPA and is designated as a computed requirements customer.

S. *Secondary System.* As used in the FPT and IR rate schedules, that portion of the Integrated Network facilities with operating voltage of 115 kV or 69 kV.

T. *Secondary System Distance.* As used in the FPT rate schedules, the number of circuit miles of Secondary System transmission lines between the secondary POI or the Main Grid and the POD or the lower voltage FCRTS facilities which may be used on a use-of-facility basis.

U. *Secondary System Interconnection Terminal.* As used in the FPT rate schedules, the terminal facilities on the Secondary System that interconnect the FCRTS with non-BPA facilities.

V. *Secondary System Intermediate Terminal.* As used in the FPT rate schedules, the first and final terminal facilities in the Secondary System transmission path exclusive of the Secondary System Interconnection terminals.

W. *Secondary Transformation.* As used in the FPT rate schedules, transformation from Main Grid to Secondary System facilities.

X. *Southern Intertie.* The segment of the FCRTS for which the major transmission facilities consist of two 500 kV AC lines from John Day Substation to the Oregon-California border, a portion of the 500 kV AC line from Buckley Substation to Summer Lake Substation, and one 1,000 kV DC line between the Celilo Substation and the Oregon-Nevada border, and associated substation facilities.

Y. *Transmission Service.* As used in the MT rate schedule, Transmission Service is as defined in the WSPP agreement.

Section IV. Billing Information

A. *Payment of Bills.* Bills for transmission service shall be rendered monthly by BPA. Failure to receive a bill shall not release the customer from liability for payment. Bills for amounts due of $50,000 or more must be paid by direct wire transfer; customers who expect that their average monthly bill will not exceed $50,000 and who expect special difficulties in meeting this requirement may request, and BPA may approve, an exemption from this requirement. Bills for amounts due BPA under $50,000 may be paid by direct

wire transfer or mailed to the Bonneville Power Administration, P.O. Box 6040, Portland, Oregon 97228–6040, or to another location as directed by BPA. The procedures to be followed in making direct wire transfers will be provided by the Office of Financial Management and updated as necessary.

1. Computation of Bills. The transmission billing determinant is the electric power quantified by the method specified in the Agreement or Transmission Rate Schedule. Scheduled power or metered power will be used.

The transmission customer shall provide necessary information to BPA for any computation required to determine the proper charges for use of the FCRTS, and shall cooperate with BPA in the exchange of additional information which may be reasonably useful for respective operations.

Demand and energy billings for transmission service under each applicable rate schedule shall be rounded to whole dollar amounts, by eliminating any amount which is less than 50 cents and increasing any amounts from 50 cents through 99 cents to the next higher dollar.

2. Estimated Bills. At its option, BPA may elect to render an estimated bill to be followed at a subsequent billing date by a final bill. The estimated bill shall have the validity of and be subject to the same payment provisions as a final bill.

3. Due Date. Bills shall be due by close of business on the 20th day after the date of the bill (due date). Should the 20th day be a Saturday, Sunday, or holiday (as celebrated by the customer), the due date shall be the next following business day.

4. Late Payment. Bills not paid in full on or before close of business on the due date shall be subject to a penalty charge of $25. In addition, an interest charge of one-twentieth percent (0.05 percent) shall be applied each day to the sum of the unpaid amount and the penalty charge. This interest charge shall be assessed on a daily basis until such time as the unpaid amount and penalty charge are paid in full.

Remittances received by mail will be accepted without assessment of the charges referred to in the preceding paragraph provided the postmark indicates the payment was mailed on or before the due date. Whenever a power bill or a portion thereof remains unpaid subsequent to the due date and after giving 30 days advance notice in writing, BPA may cancel the contract for service to the customer. However, such cancellation shall not affect the customer's liability for any charges accrued prior thereto under such agreement.

5. Disputed Billings. In the event of a disputed billing, full payment shall be rendered to BPA and the disputed amount noted. Disputed amounts are subject to the late payment provisions specified above. BPA shall separately account for the disputed amount. If it is determined that the customer is entitled to the disputed amount, BPA shall refund the disputed amount with interest, as determined by BPA's Office of Financial Management.

BPA retains the right to verify, in a manner satisfactory to the Administrator, all data submitted to BPA for use in the calculation of BPA's rates and corresponding rate adjustments. BPA also retains the right to deny eligibility for any BPA rate or corresponding rate adjustment until all submitted data have been accepted by BPA as complete, accurate, and appropriate for the rate or adjustment under consideration.

6. Revised Bills. At its option, BPA may render a revised bill. A revised bill shall replace all previous bills issued by BPA that pertain to a specified customer for a specified billing period if the amount of the revised bill is less than the amount of the original bill. If the amount of the revision causes an additional amount to be due BPA beyond the original bill, a revised bill will be issued for the difference.

The date of the revised bill shall be determined as follows:

a. If the amount of the revised bill is equal to or less than the amount of the bill which it is replacing, the revised bill shall have the same date as the replaced bill.

b. If the amount of the revised bill is greater than the amount of the bill which it is replacing, the date of the revised bill shall be its date of issue.

## IV. Major Studies

BPA has prepared several analyses and studies in the process of developing the transmission rates presented in this notice. They are the Loads and Resources Study, Marginal Cost Analysis, Revenue Requirement Study, Segmentation Study, Wholesale Power Rate Development Study, and the Transmission Rate Design Study. The Revenue Requirement Study, the Segmentation Study, the cost of service section of the Wholesale Power Rate Development Study, and the Transmission Rate Design Study have the most direct bearing on the rates filed in this notice. Their relevance to the proposed transmission rates is described below.

A. *Revenue Requirement Study.* The Bonneville Project Act, the Flood Control Act, the Transmission System Act, and the Pacific Northwest Power Act require BPA to design rates that are projected to return revenues sufficient to recover the cost of producing, acquiring, conserving, and transmitting the electric power that BPA markets, and to recover the cost of transmission and generation facilities. The Revenue Requirement Study also includes a determination of whether current rates will produce enough revenue to satisfy BPA's repayment obligation.

The Federal Energy Regulatory Commission (FERC) has set forth a number of requirements that would enable the FERC to fulfill its obligations under the Pacific Northwest Power Act. 49 FERC 4130. BPA is required to establish transmission rates that provide an equitable allocation of the costs of the Federal transmission system between Federal and non-Federal power using the system. In addition, BPA is required to develop separate repayment studies for the generation and transmission portions of the FCRPS. The 1987 initial Revenue Requirement Study incorporates separate repayment studies for the generation and transmission components of the FCRPS for FY 1988 and FY 1989. The Revenue Requirement Study for the 1987 initial rate proposal is based on revenue and cost estimates for FY 1988 and FY 1989. In order to meet its fiscal responsibilities, BPA's Revenue Requirement Study reflects actual amortization and interest payments paid through September 30, 1985. In addition, it reflects all FCRPS obligations pursuant to the Pacific Northwest Power Act, including exchange costs.

BPA's total revenue requirement is determined within the Revenue Requirement Study. The study used for this proposal demonstrates that, for the two test years FY 1988 and FY 1989, the revenue requirements are projected to be $3.05 and $3.11 billion respectively.

All expenses and obligations to be recovered through FCRPS rates must be functionalized between generation and transmission. The various methods for functionalization include the use of the Direction of Effort Study, specific identification, and the general application of constructive associations. The results of this process are then used to construct the separate generation and transmission revenue requirements used in the rate proposals.

The Revenue Requirement Study also includes the Repayment Study which demonstrates the adequacy of the proposed revenues necessary to recover

all the cost of the FCRPS over the repayment period.

B. *Segmentation Study.* BPA operates and maintains the Federal Columbia River Transmission System (FCRTS) in order to provide various transmission services throughout the region. Because most services do not require the use of the entire system, the FCRTS is divided into nine segments, each providing a distinct type of service. The nine segments are: integrated network; Pacific Northwest-Southwest (Southern) Intertie; Northern Intertie; Eastern Intertie; generation integration; fringe area; and delivery segments for public agency, direct-service industrial, and investor-owned utility customers.

The Segmentation Study categorizes the facilities of the FCRTS according to the types of services they provide, thereby identifying the associated costs of these services. This provides the basis for segmenting the projected transmission expenses used in BPA's rate proposals. The results of the study include the historical and projected investment amount and the average of the last three years' operations and maintenance expenses. In addition, the facilities of the integrated network are similarly divided among distinct services.

This division of the FCRTS according to specific services is essential to the equitable allocation of transmission costs between Federal and non-Federal customers using the system.

C. *Wholesale Power Rate Development Study.* The Wholesale Power Rate Development Study (WPRDS) combines the Cost of Service Analysis and the Wholesale Power Rate Design Study used in previous rate filings. The first section of the WPRDS performs all the steps in the rate development process previously performed in the Cost of Service Analysis. The second section performs all the steps in the rate development process previously performed in the Wholesale Power Rate Design Study. The Wholesale Power Rate Design Study section does not directly relate to the development of transmission rates.

Cost of Service Analysis. The cost of service section of the Wholesale Power Rate Development Study apportions BPA's test year revenue requirement to customer classes based on the use of specific types of service by each customer class. The results of the Revenue Requirement and Segmentation Studies are used in the cost of service study to determine the costs of providing such services to BPA's customers. The cost of service study further identifies transmission costs of specific types of service by classification and allocation as described below.

*Classification.* BPA classifies costs to the energy and capacity components of electric power. In this rate filing, generation costs are uniformly classified with 80 percent of the generation costs to energy and 20 percent to capacity. This uniform classification adopted for the cost of service study is based on the results of BPA's Marginal Cost Analysis and reflects the relative costs of acquiring additional energy and capacity resources in both the long and the short run. Transmission costs are classified entirely to capacity.

*Allocation.* The final major step in the cost of service study is to allocate the functionalized, segmented, and classified costs to customer classes.

Costs are allocated to classes of service on the basis of the relative use of services. Energy costs are allocated to customer classes on the basis of relative kilowatthour use by each class and on the proportion of total load placed on each resource pool by that class. The measure used for allocating peaking capacity costs is the coincidental peak megawatt. Coincidental peak loads measure the contribution of each customer class's load to system peak loads. Because the power system is constructed to meet coincidental peak loads, the coincidental peak megawatt (rather than the customer's monthly peak load) is used as a basis for allocating the costs of generation and transmission capacity.

Costs of the nine Federal transmission system segments and exchange costs functionalized to transmission are allocated on the basis of coincidental peak megawatts that are not seasonally differentiated. Costs are allocated to customer classes on the basis of deemed use of the transmission system by power customers and on the basis of actual use of the transmission system by wheeling (non-Federal transmission) customers. The cost of service is the principal mechanism used to equitably allocate costs between Federal and non-Federal power utilizing the FCRTS.

D. *Transmission Rate Design Study.* 1. Transmission System Revenue Requirement Adjustment. Prior to the design of transmission rates, the WPRDS-derived network wheeling (IR and FPT) revenue requirement must be adjusted to account for revenue in excess of allocated costs. Revenue received from the ET–87 and the Nonfirm Energy (NF–87) rates are credited against the allocated costs of wheeling service derived in the WPRDS. The credit from the NF–87 rate is functionalized between generation and transmission by considering the transmission portion of the rate as the average cost per kilowatthour of transmitting energy for wholesale power services. The transmission credit is obtained by multiplying this average cost by the estimated nonfirm energy sales. It is then divided among those segments of the transmission system which carry nonfirm energy sales, except the three interties, in proportion to their allocated costs. The anticipated revenue associated with the ET–87 rates is credited against Network costs.

2. Proposed Wheeling Rate Schedules. a. *Formula Power Transmission (FPT).* The FPT–87 rate schedule is available for the firm wheeling of power. The form of this rate includes a distance or mileage component for transmission lines and various transformation and terminal charges. The FPT rate form is designed to reflect a wheeling formula which has been prescribed historically by contract provisions.

In the design of the FPT–87 rate, the first step is to quantify costs for the specific types of transmission facilities treated in the rate components. Estimates of the use of these facilities are determined from a power flow of the projected peak load period for the test year. The power flow study assumes certain resource and load conditions that BPA believes are reasonable for normal hydro conditions. Unit costs for the FPT rate components are derived by dividing facility cost by power flow facility use.

b. *Integration of Resources (IR).* The IR–87 rate is a flexible transmission service designed to reflect BPA's postage-stamp pricing policy. The IR service does not recognize specific contract paths, but rather provides access to all FCRTS facilities contained in the definitions of Main Grid and Secondary System.

The IR–87 rate is calculated by dividing the adjusted revenue requirement for the class into two equal parts to reflect a 50–50 classification of costs to capacity and energy. The quotient of these costs and the appropriate billing determinant (contract demand for capacity-related costs; total energy usage for energy) yields the rates.

As in the IR–85 rate a short-distance discount formula is retained in the proposed IR–87 rate. Utilities have a choice of either the FPT rate schedule or the IR–87 rate schedule as the only rate to apply to all of their firm wheeling needs over Main Grid and Secondary System facilities of the FCRTS, except as otherwise agreed by BPA. Utilities may choose the rate schedule which

yields the lower total charge for transmission service.

c. *Incidental Energy Transmission (ET), Intertie (IN, IE, IS) Transmission, and Market Transmission (MT).* For this rate filing, rate schedules are again offered on the Northern and Southern Interties which apply to all wheeled power on these segments whatever the characteristics of the power. The IE rate schedule applies only to nonfirm energy wheeled on the Eastern Intertie. The ET rate will be limited to intraregional FCRTS facilities excluding the interties.

The schedule for Energy Transmission (ET–87) class of service is not allocated costs in the WPRDS. Accordingly it is necessary to determine the level of the rate by other means. The ET–87 rate is designed to approximate the rate level of firm wheeling charges on the network by dividing the WPRDS revenue requirement for the firm wheeling class by expected energy usage of firm wheeling on the system.

For the 1987 transmission rate proposal, BPA is proposing to restructure the Southern Intertie rates. The proposed IS–87 rate consists of three parts: (1) A mills per kilowatthour rate applicable to nonfirm use or hourly reservation of intertie capacity; (2) a $ per kW average cost-based rate for firm use, assured delivery; and (3) a charge to be determined, based on the impact to BPA net revenues for allowing wheeling service. This latter charge applies to a variety of transactions including firm use for capacity/energy and seasonal exchanges, and for transactions involving extraregional resources.

The Northern Intertie (IN–87) rate schedule is calculated by dividing segment costs by projected wheeling energy.

The Eastern Intertie (IE–87) rate is developed by dividing total costs by Colstrip demands assuming a 70 percent plant factor. Any revenues from this rate are credited against the revenue requirement from firm wheeling over the Eastern Intertie pursuant to the Townsend-Garrison Transmission (TGT–1) rate schedule.

BPA is proposing a new rate schedule in the 1987 transmission rate proposal called Market Transmission (MT–87). This rate schedule was developed for use among Western Systems Power Pool (WSPP) participants and has a flexible service charge with a ceiling, initially of 33 mills/kWh, and a floor of 1 mill per kilowatthour.

*Other Studies.* An environmental assessment documenting the environmental impacts of the proposed rates and alternatives will be available.

Issued in Portland, Oregon, December 10, 1986.

**Robert E. Ratcliffe,**

*Acting Administrator.*

[FR Doc. 86–28899 Filed 12–29–86; 8:45 am]

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Part III

# Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 216

North Pacific Fur Seal—Pribilof Island Population; Designation as Depleted; Proposed Rule

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 216**

**[Docket No. 50219-6214]**

## North Pacific Fur Seal—Pribilof Island Population; Designation as Depleted

**AGENCY:** National Marine Fisheries Service (NMFS), NOAA, Commerce.

**ACTION:** Proposed rule; notice of meeting.

**SUMMARY:** The NMFS proposes to designate the Pribilof Island population of North Pacific fur seals as depleted under the Marine Mammal Protection Act (MMPA). This action is required by the MMPA when a species or population stock falls below its optimum sustainable population (OSP). Since the current Pribilof Island population of North Pacific fur seals is below 50 percent of the population levels observed in the 1940s and early 1950s, this population is believed to be below a level which can maintain maximum net productivity, the lower bound of the OSP range. If this population stock is designated as depleted, the MMPA requires that certain additional restrictions on taking and importation be applied.

**DATES:** Comments must be submitted on or before February 6, 1987; public meeting, January 21, 1987, 10 a.m.; requests to present oral comments must be received on or before January 13, 1987.

**ADDRESSES:** Written comments and requests to present oral comments may be mailed to Mr. Robert B. Brumsted, Acting Director, Office of Protected Species and Habitat Conservation, F/M4, NMFS, Washington, DC 20235; the meeting will be held in Room C117, Federal Building, 701 C Street, Anchorage, Alaska.

**FOR FURTHER INFORMATION CONTACT:** Georgia Cranmore, 202-673-5351, or Michael Gosliner, 202-673-5206.

**SUPPLEMENTARY INFORMATION:**

### Background

A Status Review of the North Pacific Fur Seal (*Callorhinus ursinus*) on the Pribilof Islands, Alaska, was prepared in response to a petition by the Humane Society of the United States to add the North Pacific fur seal to the U.S. List of Endangered and Threatened Wildlife, according to the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543). A notice of the NMFS determination not to list the fur seal as a threatened species; incorporating the complete text of the Status Review for the Pribilof Island population, was published in the Federal Register on March 6, 1985 (50 FR 9232). The denial of the ESA petition was based on a number of factors, including the size of the species population. However, conclusions regarding the status of the Pribilof Island population indicated that it is probably below 50 percent of its carrying capacity based on a comparison of current population levels and those observed in the 1940s and early 1950s.

Carrying capacity is the number of animals that a given ecosystem can support in terms of food availability, space requirements, and other factors. Carrying capacity can change if one or more of the environmental factors on which the population depends also changes. In the case of the Pribilof Island population of North Pacific fur seals, however, the Status Review concludes that the carrying capacity of the Bering Sea and North Pacific Ocean for fur seals has probably not changed significantly since peak numbers of animals were observed during the 1940s-1950s.

Carrying capacity is the upper bound of a range of population levels known as Optimum Sustainable Population (OSP). When consistent with its objective of maintaining the health and stability of the marine environment, the goal of the Marine Mammal Protection Act of 1972 (MMPA), 16 U.S.C. 1361-1407, is the maintenance of OSP for marine mammals. OSP as defined at 50 CFR 216.3 is a range of population levels from the largest supportable within the ecosystem (carrying capacity) to the population level that results in maximum net productivity (MNP). MNP is the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and growth, less losses due to natural mortality (See 41 FR 55536, December 21, 1976).

The Status Review found that the population size of North Pacific fur seals at which maximum productivity would occur is approximately 60 percent of the carrying capacity. Since the Pribilof Island population is at less than 50 percent of carrying capacity, it falls below the lower bound of OSP, and is, by definition, depleted. The MMPA defines "depletion" to mean, among other things, "any case in which the Secretary [of Commerce], after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under . . . this Act, determines that a species or population stock is below its optimum sustainable population . . . ." The Marine Mammal Commission (MMC) provided a formal recommendation to designate the Pribilof Island population of North Pacific fur seals as depleted under the MMPA.

Once a species or population stock has been designated as depleted, takings from that population are permitted only by Alaskan Natives for subsistence and handicraft purposes, for research purposes, and small incidental takes may be authorized under certain circumstances. In addition, the following MMPA restrictions apply: A depleted species or population stock is not eligible for a waiver of the moratorium on taking and importation, 16 U.S.C. 1371(a)(3)(A); it may not be taken or imported for public display purposes and no taking may be permitted in the course of commercial fishing operations, 16 U.S.C. 1371(a)(3)(B); it may not be taken pursuant to the small take exemption of section 101(a)(4), 16 U.S.C. 1371(a)(4); however, Pub. L. 99-659, signed November 14, 1986, extends the coverage of section 101(a)(5), 16 U.S.C. 1371(a)(5), to depleted species such that small incidental takes of such species or population stocks can be authorized for specified activities other than commercial fishing; and regulatory restrictions under the MMPA may be imposed on the taking of the species or stock by Alaskan Natives, 16 U.S.C. 1371(b). In the case of the Pribilof Island population of fur seals, subsistence regulations have already been issued under the authority of the Fur Seal Act of 1966, as amended (FSA) (16 U.S.C. 1151 et seq.) (See 51 FR 24828, July 9, 1986). Thus, the NMFS does not contemplate further rulemaking regarding native taking of fur seals as a consequence of a possible depletion designation.

Data collected by the NMFS this decade suggest that the number of fur seals taken in fishing operations in the North Pacific is insignificant (perhaps less than 50 per year based on observer reports including those taken in the Japanese high seas mothership salmon driftnet fishery, which may be from a different population), relative to the total fur seal population on the Pribilof Islands (about 800,000). Once the Pribilof Island population is designated as depleted, however, no further permits can be granted to allow incidental takes. Thus, any incidental take of fur seals from the Pribilof Islands during the course of commercial fishing operations will result in a violation of the MMPA. Assuming all reasonable efforts are made to avoid taking a depleted species,

and that annual takes remain at insignificant levels, no serious adverse impacts are expected on foreign or domestic fishing fleets.

Until 1985, management of fur seals fell only partially within the purview of the MMPA by virtue of section 113. Section 113 provides that the MMPA shall not be considered to contravene the provisions of any existing international treaty or convention and its implementing legislation which applies to the taking of marine mammals. The exception created by section 113 of the MMPA clearly covered the Interim Convention on Conservation of North Pacific Fur Seals of 1957 and ensured that the Convention, and the FSA sections that implement the Convention, superseded application of the MMPA. These views received judicial approval in *International Fund for Animal Welfare* v. *Baldrige* (D.D.C. Civ. Action No. 84–1838 Order of the Court dated June 28, 1984). Judge Gesell found that the fur seal population was below its OSP level, but that the commercial harvest was not barred by the MMPA's moratorium on taking as long as the Convention remained in force.

From 1957 through 1984, a commercial harvest of fur seals on the Pribilof Islands was conducted under the authority of the Convention. The Convention came into force on October 14, 1957, and was extended in 1963, 1969, 1976, and 1980. Under the terms of the 1980 extension, the Convention expired on October 14, 1984. On October 12, 1984, the United States, Canada, Japan, and the Soviet Union signed a Protocol that, upon acceptance by all four nations, would have extended the Convention until October 13, 1988. Japan, Canada, and the Soviet Union ratified the 1984 Protocol. On March 20, 1985, the President transmitted the Protocol to the Senate, requesting its advice and consent. On June 13, 1985, a hearing was held on the Protocol before the Senate Committee on Foreign Relations, but no final action has yet been taken.

In consultation with the Departments of State and Justice, and the MMC, NOAA determined that no commercial harvest could be conducted under existing domestic law, absent Senate ratification of the Protocol extending the Convention or provisional application of the Protocol. Accordingly, on July 8, 1985 (50 FR 27914), the NMFS issued an emergency interim rule to govern subsistence taking of North Pacific fur seals for the 1985 season under the authority of section 105(a) of the FSA. The purpose of the interim rule was to limit the take of seals to a level providing for the legitimate subsistence needs of the Pribilovians and to restrict taking by sex, age, and season for herd management purposes. A permanent subsistence rule was proposed on May 15, 1986 (51 FR 17896), and a final rule was published on July 9, 1986 (51 FR 24828).

During consideration of the subsistence harvest regulations, a number of issues were raised concerning the OSP of the fur seals. In the preamble to the 1985 rule, the NMFS summarized the findings of the March 6, 1985 Status Review concerning OSP, and requested comments on and any additional data relevant to the issue of depletion for the North Pacific fur seal. At that time the MMC provided its formal recommendation to designate the Pribilof Island population of North Pacific fur seals as depleted under the MMPA. Four other commenters on the rule also requested a finding of depletion. Since a finding of depletion is a condition precedent to regulation of a subsistence harvest under the MMPA but not under the FSA, the NMFS chose not to make such a finding part of its 1986 proposed rulemaking, under section 105(a) of the FSA, and to address the issue independently. As noted by the MMC in comments on the interim rule, the designation of depletion carries with it certain restrictions which may affect the interests of private parties and other Federal and state agencies. Interested parties should therefore be provided an opportunity to review and comment on any proposed designation as an issue separate from any proposed subsistence rules.

When the proposed permanent rule on Subsistence Taking of North Pacific Fur Seals (51 FR 17898) was published on May 15, 1986, the NMFS indicated that any designation of depletion for fur seals would follow separate notice-and-comment rulemaking procedures. The use of informal rulemaking to designate a species as depleted is consistent with past practice. The Hawaiian monk seal (*Monachus schauinslandi*) and the bowhead whale (*Balaena mysticetus*) were declared depleted through informal rulemaking after 30-day comment periods (see 41 FR 24393 and 41 FR 30120 for Hawaiian monk seals and 42 FR 29946 and 42 FR 60149 for bowhead whales). Support for using informal rulemaking can be found in Section 102 of the MMPA. For example, section 102(d) provides that section 102 (b) and (c) prohibitions on importation shall not apply to items imported into the United States "before the date on which the Secretary publishes notice in the **Federal Register** of his proposed rulemaking with respect to the designation of the species or stock concerned as depleted . . ." 16 U.S.C. 1372(d). The use of informal rulemaking to make a depletion designation is supported by recommendation of the MMC.

Following publication of the proposed permanent rule on Subsistence Taking of North Pacific Fur Seals, the MMC repeated its request that the Pribilof Island population be designated as depleted. The U.S. Fish and Wildlife Service and the Center for Environmental Education also recommended a finding of depletion. The MMC stated its position that the designation of fur seals in this instance is mandatory and not optional since the population is below its OSP. The State of Alaska also addressed the depletion issue in its comments on the proposed rule. The Alaska Governor's Office urged a very careful and thorough review of all available scientific data before any proposal is made on this issue. The State further commented that "miscalculations about fur seals will have serious ramifications for management of other resources and for the Pribilof Islanders." The State questioned whether or not population levels attained during the 1940s and early 1950s reflect the actual long-term carrying capacity of the environment for fur seals, and whether or not the annual rate of decline is actually as high as reported.

In the preamble to the final permanent rule (51 FR 24833) the NMFS responded to comments on depletion by stating its intention to propose a separate rule designating the Pribilof Island population as depleted. The preamble to this rule would contain summaries of all pertinent scientific information for thorough public review and discussion prior to a final decision on the depletion designation.

During the final drafting stage of the proposed rule, the NMFS received two petitions, requesting rulemaking to designate the Pribilof Island population of North Pacific fur seals as depleted under the MMPA, from the following individuals:

(1) Donald C. Mitchell, on behalf of the Kokechik and Qaluyaat Fishermen's Associations, representing Yup'ik Eskimo commercial and subsistence fishermen, dated October 24, 1986; and

(2) Roger E. McManus, on behalf of the Center for Environmental Education, dated October 30, 1986.

Copies of these petitions may be obtained by writing to the address listed above.

Interest has been expressed by Alaskan Native groups and some Congressional offices in a public meeting in Alaska on the proposed rule. Accordingly, the NMFS is announcing a meeting, on the date and at the address listed above, to accept oral comments and to answer any questions concerning the proposed rule.

**Population Status**

The general biology of the North Pacific (or northern) fur seal (*Callorhinus ursinus*) is described in Fiscus (1978), Lander (1979), and Fowler (in press (c)). In the eastern North Pacific, most of the fur seal population breeds on the Pribilof Islands, located in the eastern Bering Sea. Information on the distribution of fur seals may be found in Kajimura (1984), Fiscus (1978), and Bigg (1982).

Each spring, fur seals return to their breeding island from pelagic winter foraging grounds. Adult males arrive first and establish territories on the breeding rookeries. Pregnant females begin arriving in June and most pupping occurs in early July. Pups and older animals leave the islands in early November. The early winter migration takes them to the coasts of British Columbia, Washington, Oregon, and California. Older males appear to remain in the northern part of the range, while young males and females of all ages spend the winter feeding in the southern part. The northward migration begins in March to bring the animals back to the breeding colonies on the Pribilof Islands where the annual cycle is repeated.

Females generally begin giving birth to pups at about 5 to 6 years. Peak reproductive activity occurs between 7 to 14 years. The pregnancy rate of adult females is between 60 and 80 percent depending on age. Males reach peak reproductive activity at about 9 or 10. Fur seals from the Pribilof Islands feed in the vicinity of the islands during the breeding season and throughout their range during winter. Fur seals feed on a wide range of different fish and cephalopod species of about 20 to 30 cm in length. They are opportunistic feeders, and the composition of the diet appears to depend very heavily on the composition of suitably-sized forage species available (Kajimura 1984).

Research conducted on the Pribilof Island population of the North Pacific fur seal prior to the mid-1960s is reviewed by Scheffer, Fiscus, and Todd (1984). Research and management since the 1960s are documented in Roppel (1984). Additional information on the history of research and management of this population is found in Roppel and Davey (1965). Based on the data resulting from the research described in these publications, periodic descriptions of the status of the Pribilof Island population have been produced (e.g., Johnson 1975, Lander and Kajimura 1982, Lander 1979, and Fowler 1985a). Accounts of stock size, abundance, and trends can be found in the Workshop Reports of the Standing Scientific Committee of the North Pacific Fur Seal Commission (NPFSC) (NPFSC 1984), Lander (1979), Scheffer et al. (1984), and Fowler (1985a).

A scientific workshop was held in November 1983 to attempt to establish the status of the Pribilof Island population. However, the attendees concluded that "Given the available data and analyses, it is not possible to clearly determine whether the Pribilof fur seal population is currently at, above, or below carrying capacity levels; whether carrying capacity has changed significantly in the last two or three decades; or whether the observed population decline is due to declining carrying capacity, increased mortality, or some combination of both." (Page 17, "Report of Workshop on Status of Northern Fur Seals, Pribilof Islands, November 14–16, 1983, Northwest and Alaska Fisheries Center, NMFS, Seattle, WA.)

The total population of North Pacific fur seals is between 1.19 and 1.23 million (Fowler 1985a), compared to the estimated 1.77 million seals in the late 1970s (Lander 1979). The reduced population level follows declines observed on Robben Island in the western Pacific, and especially on the Pribilof Islands. Approximately 72 percent of the total fur seal population breeds on the Pribilof Islands. The estimated Pribilof Island stock size in the late 1970s was 1.3 million and only 871,000 in 1983 (NPFSC 1984), a decline of one-third in less than a decade. The current (1986) population is about 800,000.

The number of pups born each year is one index of total population size. On St. Paul Island, the number of pups born increased from about 67,000 in 1912 to about 162,000 in 1924. No records exist for 1925 to 1939. There is some doubt concerning the validity of the 1940–1950s pup estimates, and, consequently, the size of the population existing at that time. For example, the estimate of the 1940 year class (469,000 pups born on St. Paul Island (York 1985a)) was based on a sample of only one rookery, with no confidence interval attached to the estimate. Thus, this estimate may have been seriously biased. Estimates of the size of the pup population in the early 1950s (about 450,000) are also open to question. These estimates were based on back calculations of bull counts in the late 1950s and early 1960s using a sample of adult males, whose age distribution may not have been representative of the adult male population. The female harvest (1956–68) is an additional factor that may have caused a bias in the original estimate of pups produced in the 1950s. It is possible that the estimates of pup numbers in the 1940s and early 1950s are too high and the decline in pup numbers from an estimated 450,000 in the mid 1950s to about 172,000 in the mid 1980s (or a decline of about 62 percent) may not be a true index of the decline in the population as a whole.

In view of the lack of complete reliability on the estimates of pups in the 1940s and early 1950s, other comparisons can be made to provide insight into the approximate level of decline in the population. For example, the mean pup estimate on St. Paul Island for the period 1962–1964 was 274,500, and the mean of the estimate for 1984–1986 was 174,600 or about 36 percent less. According to York and Hartley (1981) there would have been 60,000 more pups born by 1963 had there been no female harvest. This results in an estimated 334,500 pups born in 1956, for a decline of 48 percent to the 1984–86 estimate.

At the 1983 workshop on the status of fur seals, referenced above, the participants recognized that there were several indicators, in addition to pup numbers, that might suggest the current status of the population relative to the apparent peak in abundance in the 1940s and early 1950s. In 1983, harem bull estimates (down 53 percent), idle male estimates (down 56 percent), and commercial harvest levels (down 50 percent), had all declined significantly since the 1940s and early 1950s. The foregoing information, and preliminary analyses of photographs of rookery space utilization since about 1915, suggest a decline of about 50 percent in the population.

The reduction in the numbers of fur seals on the Pribilof Islands since 1950 is the result of at least two phases of decline separated by a period of limited increase. The first decline occurred between the mid 1950s and the late 1960s when the commercial harvest of female seals was allowed. Between the late 1960s and mid 1970s the number of pups born increased slightly. The second decline on the Pribilof Islands since 1950 started with a decrease in pup numbers in the mid to late 1970s and continues to the present. This trend is reflected in both the number of pups born and in the

numbers of adult territorial males counted on both islands.

The rate of the second decline can be estimated in several ways. One method is to apply the model

$N_t = N_o e^{-rt}$

to the number of pups born on St. Paul Island from 1975 to 1985. $N_t$ is number of pups born in year t and $N_o$ is pups born at the beginning of the period. The linear regression equation is

$Y_t = a + bt$

where

$Y_t$ is in (pups born in year t) and b is an estimate of r, the rate of decline.

This method results in an estimated decline of 5.6 percent per year ($p < 0.05$). Using population data from 1975 to 1985, other rate estimates may be derived but all fall within the range of 4 to 8 percent with the same confidence interval as the above analysis (Fowler 1985b).

There is some indication that pup numbers on St. Paul Island may have stabilized during the period 1981–1986 and this could signal an end to the decline (York and Kozloff 1986). A decline in pup numbers, similar to that observed on the Pribilofs, occurred on Robbin Island, USSR, but has apparently stabilized in recent years according to Soviet scientists. Between 1975 and 1981, the St. Paul herd declined 7.56 percent per year. Since 1981, there is no significant difference in the pup estimates on St. Paul Island, which have averaged 172,000 pups per year. Using data on St. Paul from 1981 to the present results in an estimated rate of decline of 1.8 percent. However, pups born on St. George Island appear to be declining at about 5–7 percent per year. In addition, direct counts of territorial males on St. Paul declined from 5,490 in 1980 to 4,372 in 1985, or by about 20 percent. Idle bull counts on St. Paul Island in 1986 were down 40 percent from 1985 (breeding bull counts were up only 4 percent) suggesting that a loss of cohorts during the previous 4–6 years may have been greater than predicted from current pup counts. Counts of idle males can be greatly affected by weather and interspecific behavior and thus we can not fully interpret this apparently significant one-year change.

Changes in the amount of food available for fur seals has been suggested as a factor in the decline of the Pribilof Island population. This would constitute a change in the carrying capacity of the environment. If food resources were limited, however, one would expect reduced mean body sizes, reduced growth rates, and higher pup mortality; and this is not the case. As reviewed in Fowler (1984a, in press (a)), for example, the average body size of both males and females has increased, a response more consistent with increased rather than decreased levels of food resources. Body length (in several age classes of both sexes) and tooth size show similar responses (Fowler 1982, in press (a)).

Catastrophic changes in food availability, that might explain a population decline of one-third in less than a decade, would likely result in increases in the length of the feeding cycle of fur seals at sea. However, recent work appears to indicate that feeding trips to sea have declined in duration during the decline in population numbers since the 1950s. This may be in response to increased food availability, and is consistent with the increase in pup weights observed by Kozloff and Briggs (1986).

Although food resources are probably the principal determinant of the carrying capacity for large mammals, other factors could also be important. These include diseases and toxic substances. The incidence of mortality due to disease remains to be evaluated. However, diseases usually cause precipitous change in population levels followed by gradual increases, a pattern very different from that observed for fur seals on the Pribilof Islands. Toxic substances in the form of heavy metals or organic pesticides might contribute to increased mortality. A number of recent studies have evaluated these possibilities (e.g., Goldblatt and Anthony (1983); Calambokidis and Peard (1982)). So far, all of the results indicate that existing levels of contaminants in fur seal tissues occur at low or safe levels.

Factors in the carrying capacity for fur seals also include the abiotic environment. Any changes in temperature or salinity, which correlate with changes in the population, might be thought to contribute to the population decline. For example, York (1985b) found a correlation between sea surface temperature at Pine Island, British Columbia, and juvenile survival for the first two years at sea. The correlation involves increased mortality with decreased temperatures (after a lag time). No mechanism has yet been identified to explain this correlation. The Standing Scientific Committee of the NPFSC examined a decline in the temperature of surface waters in the eastern Pacific Ocean. This decline (about 0.75 °C) occurred from 1945 to 1970 when the seal population was declining due to the female harvest. Since the mid 1970s the temperatures of both the North Pacific Ocean and the Bering Sea have returned to levels observed in the 1940s and 1950s, when the population was at a high and relatively stable level. Changes observed in the abiotic environment do not appear to be consistently related to changes in the fur seal population on the Pribilof Islands.

Biomass trends for red king crab and several species of groundfish in the eastern Bering Sea indicate that important components of the Bering Sea ecosystem have undergone dramatic change during the 1970s and early 1980s. These changes have been attributed to natural environmental variation as opposed to fishery related causes. While no definitive quantitative statements can be made about carrying capacity of this ecosystem, this information indicates that the Bering Sea ecosystem is dynamic. This characteristic suggests that the carrying capacity may not have been constant.

If changes have occurred in the resources or measurable abiotic components of the fur seal's ecosystem which would be detrimental to the Pribilof Island fur seal population, these changes have gone undetected in field studies. Fur seals, as indicators of current environmental conditions, show characteristics such as increased body size and increased pup survival that show that the ecosystem can still support a fur seal population as high as that observed in the 1940s and 1950s. The most apparent reason for the decline in North Pacific fur seals is a recent decline in survival of animals from the time they leave land to the time they return for reproduction. This conclusion was reached by the Standing Scientific Committee of the NPFSC (Fowler 1985a).

An important cause of the unexpected increase in at-sea mortality appears to be entanglement in marine debris, including fishing gear and plastic packing bands (Fowler 1985b). Although untested, entanglement has been implicated by correlation with several population parameters and may account for a large portion of the herd decline. At this time, available data do not support alternative causes for the fur seal decline but research is continuing on this question.

While there exists uncertainty regarding some of the underlying data, estimates indicate that the North Pacific fur seal population on the Pribilof Islands is currently below 50 percent of its carrying capacity, based on current population levels (about 800,000) compared to those of the 1940s and early 1950s (about 1.8 million). Since the late 1970s the Pribilof Island population has declined by one-third. Current pup

mortality on land, growth rates, and the variance in mortality rates on land and at sea are all characteristic of a population substantially below its carrying capacity (Fowler in press (b)). Based on empirical information for fur seals (Smith 1973) and interspecific comparisons (Fowler 1984b), the population at which maximum productivity (maximum natural growth of the total population) would occur is about 60 percent of the carrying capacity. Since the current population is below 50 percent of the levels observed in the 1940s and early 1950s (NPFSC 1983), the population is considered to be below levels which can maintain maximum net productivity, the lower bound of the OSP range.

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## Classification

The NOAA Administrator determined that this proposed rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. This rule will not result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices; or (c) a significant adverse effect on the U.S. economy. A regulatory impact review concludes that this rule will have no economic effects save those nondiscretionarily mandated by statute. Consequently, the General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule if adopted, will not have a significant economic impact on a substantial number of small entities. Additionally, this rule does not contain a collection of information requirement subject to the Paperwork Reduction Act.

A designation of depletion in this instance, which is similar to a listing action under section 4(a) of the ESA, is categorically excluded from the requirement to prepare an environmental assessment (EA) or an environmental impact statement (EIS) (NOAA Directives Manual 02–10 Environmental Review Procedures, 49 FR 29647, para. 5.c.(3)(h), implementing the National Environmental Policy Act of 1969 (NEPA)). It is not expected that the designation action will have a significant effect on the human environment or come within any exception to the categorical exclusion. Any regulations or major actions resulting from the depletion designation, however, would be subject to the requirement to prepare and EA or EIS. A 1985 EIS was prepared on the Convention which includes a complete review of the environment of the Pribilof Islands, and EAs were published in July 1985 and May 1986 to assess impacts of the subsistence taking of fur seals on the Pribilof Islands. Copies of these NEPA documents are available by writing to the address listed above.

## List of Subjects in 50 CFR Part 216

Administrative practices and procedure, Marine mammals, Penalties, Reporting and recordkeeping requirement.

Dated: December 22, 1986.

**William E. Evans,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

## PART 216—[AMENDED]

Accordingly, 50 CFR Part 216 Subpart A is proposed to be amended as follows:

1. The authority citation for Part 216 continues to read as follows:

**Authority: 16 U.S.C. 1361 et seq.**

2. Section 216.15 is revised to read as follows:

**§ 216.15 Depleted species.**

The following species or population stocks have been designated by the Assistant Administrator as depleted under the provisions of the Act.

(a) Hawaiian monk seal (*Monachus schauinslandi*).

(b) Bowhead whale (*Balaena mysticetus*).

(c) North Pacific fur seal (*Callorhinus ursinus*), Pribilof Island population.

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Tuesday
December 30, 1986

Part IV

# Commission on the Bicentennial of the United States Constitution

45 CFR Part 2010

Constitution Bicentennial Educational Grant Program; Interim Rule and Announcement and Application Instructions

## COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

### 45 CFR Part 2010

### Constitution Bicentennial Educational Grant Program

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

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

**SUMMARY:** These regulations establish the basic policies and procedures that the Commission on the Bicentennial of the United States Constitution (Commission) will use to announce, solicit, award and manage the Constitution Bicentennial Educational Grant Program authorized by Title V of the Arts, Humanities, and Museums Amendments of 1985 (Pub. L. 99–194). This interim regulation is supplemented by a detailed grant program announcement appearing elsewhere in this issue and a set of grant procedures for organizations and individuals receiving grant assistance from the Commission. Copies of the Commission's grant procedures for organizations and individuals may be obtained from the Division of Educational Programs. Public comment is requested.

**DATES:** Effective Date: December 31, 1986. Comments must be received by March 2, 1987.

**ADDRESS:** 736 Jackson Place NW., Washington, DC 20503. Tel. (202) 653–5110.

**FOR FURTHER INFORMATION CONTACT:** Joseph Phelan, Director of Educational Programs, Commission on the Bicentennial of the U.S. Constitution, 736 Jackson Place NW., Washington, DC 20503 (202) 653–5110.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Commission on the Bicentennial of the United States Constitution was established by Pub. L. 98–101, 97 Stat. 719 and signed into law by the President on September 29, 1983. The Commission is comprised of 23 members; the Honorable Warren Burger, retired Chief Justice of the United States, serves as Chairman of the Commission. Additional information on the Commission functions can be found in Title 45 of the Code of Federal Regulations, Part 2000. The organization and functions rule covering Commission operations was published in the **Federal Register** as a final rule on February 28, 1986 (see 51 FR 7220). Title V of the Arts, Humanities, and Museums Amendments of 1985 (Pub. L. 99–194) authorizes the Commission to make grants for the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights which are designed for use by elementary or secondary students. In addition, the Commission is authorized under Title V of the Act to implement an annual national bicentennial Constitution and Bill of Rights competition for use in elementary and secondary schools. To implement this authority, the Commission established its grant-making authority within the Commission's Division of Educational Programs. The Director and professional staff of the Division of Educational Programs will administer the Constitution Bicentennial Educational Grant Program with guidance from the seven-member Commission Advisory Committee on Educational Projects. The provisions in this rule were approved by the Commission at its meeting on November 21, 1986.

#### Classification

This is not a major rule under E.O. 12291 since it has no significant impact upon the economy, nor does it affect prices or economic competition. This interim rule has no significant impact on the environment and preparation of an environmental impact statement is not necessary.

#### Compliance With Executive Order 12372

The Commission has determined that the Bicentennial Education Grant Program of this part are not subject to Executive Order 12372 on Intergovernmental Review of Federal Programs.

#### Public Comment

This is an interim rule which has been put into effect promptly so that grant awards can be made in time to celebrate the 200th anniversary of the signing of the U.S. Constitution in the fall of 1987. Public comments are requested for a period of 60 days beginning on December 31, 1986 and ending on March 2, 1987. All comments received during the comment period will be considered and, if changes are warranted, this rule will be amended accordingly.

#### Statutory Authority

This regulation is issued under the general powers granted to the Commission by Pub. L. 98–101 as amended, and Title V of Pub. L. 99–194.

#### List of Subjects in 45 CFR Part 2010

Elementary and secondary education, Grant programs—education, U.S. Constitution Bicentennial.

Issued in Washington, DC, on December 29, 1986.

**Mark W. Cannon,**

*Staff Director.*

For the reasons set out in the preamble and under the authorities cited above, a new Part 2010 is added to Title 45, Code of Federal Regulations, to read as follows:

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

## PART 2010—CONSTITUTION BICENTENNIAL EDUCATIONAL GRANT PROGRAM

#### Subpart A—General

Sec.



#### Subpart B—Projects Assisted by the Commission



#### Subpart C—How to apply for a grant



#### Subpart D—How Awards Are Made



#### Subpart E—Grantee Responsibilities



**Authority:** 20 U.S.C. 959; Title V of Pub. L. 99–194; 99 Stat. 1346.

### Subpart A—General

#### § 2010.1 Program purpose.

The purpose of the Commission's Constitution Bicentennial Educational Grant Program is to fund the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights. Instructional materials and programs developed with Commission funding must be designed for use by elementary and secondary school teachers and students.

#### § 2010.2 Eligible parties.

Local educational agencies, private elementary and secondary schools, private organizations, individuals, and State and local agencies in the United

States are eligible to apply for grant funding from the Commission. Grants will not be made to profit making organizations.

**§ 2010.3 Types of awards.**

(a) The Commission will make two types of awards with its authorized grant funding. The awards are as follows:

(1) $2,700,000 of the grant funding is available to support the Center for Civic Education's program for a National Bicentennial Competition on the Constitution and the Bill of Rights.

(2) $1,000,000 of the grant funding is available to fund the development of instructional materials and programs on the Constitution and Bill of Rights. Awards in this category of funding will be competitive and discretionary to eligible applicants as specified in § 2010.2 of this Part.

(b) A portion of the above amounts may be used for necessary Commission administrative expenses, including staff, required to operate this grant program.

**§ 2010.4 Applicable laws and regulations.**

The following laws, regulations, and procedures apply to applicants for and recipients of grants under this part:

(a) The Bicentennial Commission on the U.S. Constitution Act (Pub. L. 98–101).

(b) Title V of the Arts, Humanities, and Museums Amendments of 1985 (Pub. L. 99–194).

(c) The regulations in this Part 2010.

(d) The applicable Office of Management and Budget Circulars (A–87, A–21, A–122, A–102, A–110, and A–128).

(e) The Commission's Statement of General Grant Conditions For Organizations.

(f) The Commission's Statement of General Grant Conditions For Individuals.

(g) The Grant Agreement accompanying every assistance award.

**§ 2010.5 Program definitions.**

Program definitions applicable to the Commission's grant program are contained in the standard grant conditions for organizations and individuals.

## Subpart B—Projects Assisted by the Commission

**§ 2010.10 What may be funded.**

(a) The Commission is authorized to fund the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights for use in elementary and secondary schools. The Commission will accept grant proposals from any eligible party as specified in § 2010.2 of this Part.

(b) The Commission is also authorized to implement the National Bicentennial Competition on the Constitution and Bill of Rights. This is an on-going educational program that has been developed by the Center for Civic Education with prior federal assistance. Congress has directed the Commission to award a grant for program implementation to the Center. Consequently, no other grant proposals from any other party will be accepted for this program.

**§ 2010.11 What may not be funded.**

The following activities may not be assisted with Commission funding:

(a) Real Property acquisition.

(b) Construction.

(c) Study and research in pursuit of an academic degree.

(d) Activities of a partisan or political nature.

(e) Activities that would involve the Commission in the policy-making processes of any government or government agency.

**§ 2010.12 Funding priority.**

(a) The Commission will give priority to proposals that focus on strengthening the ability of elementary and secondary teachers to teach successfully the principles of the Constitution and the Bill of Rights to students. This may be through the development of instructional materials or through conferences and institutes. Important ideas and texts about the Constitution and Bill of Rights should be emphasized. Projected funded with Commission funds must demonstrate how students will benefit.

(b) The Commission believes that the objectives of paragraph (a) of this section are highly appropriate to conferences and institutes for elementary and secondary teachers or to the development of instructional materials. All proposed projects should focus on one or more of the following:

(1) The Constitution's provisions, antecedents, history, and the structure of the government it establishes.

(2) The relationship of the Constitution of American politics, society, and thought.

(3) The connection between self-government as outlined by the Constitution and the purposes of political life that are defined in the Declaration of Independence.

## Subpart C—How to Apply for a Grant

**§ 2010.20 Annual program announcement.**

Once each year, the Commission makes available to the public a comprehensive grant program announcement explaining how to apply to the Commission for project assistance. Copies are available from the Commission upon written request. Although these regulations are controlling in any conflict with the grant program announcement, applicants are urged to study the program announcement carefully as proposals are developed.

**§ 2010.21 Grant application kit.**

Each year, the Commission develops a grant application kit which contains instructions and forms necessary to apply to the Commission for a grant. All applicants must use the forms and instructions provided by the Commission. Copies are available from the Commission upon written request.

**§ 2010.22 Administrative rejection of applications.**

An application may be administratively rejected without further consideration if any of the following are noted:

(a) The applicant is not an "eligible party" under § 2010.2 of this Part.

(b) The applicant is a suspended or debarred grantee with any other federal agency pursuant to Executive Order 12549.

(c) The application does not have an original signature.

(d) The application does not contain a budget and budget narrative.

(e) The application does not contain the required one-page proposal abstract.

(f) The application lacks any other required element.

## Subpart D—How Awards Are Made

**§ 2010.30 How applications are evaluated.**

(a) On the basis of the selection criteria contained in the Grant Program Announcement, the Commission undertakes an administrative review and merit review of every application submitted for funding consideration.

(b) An administrative review is a review of an application for completeness and submission in conformity with the application requirements in the Grant Program Announcement.

(c) A merit review is a substantive review of the applicant's proposed activities in terms of appropriateness, feasibility, conformity with the Commission's priorities and the selection criteria, and the quality of the project staffing.

## Subpart E—Grantee Responsibilities

### § 2010.40 The grant agreement.

(a) When the Commission awards a grant, the Commission's funding commitment to the recipient is formalized through a written bilateral grant agreement between the Commission and the grantee. The grant agreement will state the following:

(1) The names of the parties entering into the grant agreement.

(2) The amount of funding being provided by the Commission.

(3) The scope of activities authorized to be conducted by the grantee with Commission funding.

(4) The method of funding, the schedule of payments, and the dates interim financial and performance reports are due during the term of the grant agreement.

(5) Any special conditions that must be followed by the grantee during the term of the grant agreement.

(b) Grant agreements may incorporate by reference the grant proposal, grant budget, and the Commission's Statement of General Grant Conditions for Individuals or Organizations.

### § 2010.41 Post-award disputes and appeals.

(a) Should any post-award dispute arise between the Commission and a grantee, every attempt will be made to resolve the dispute informally between the Commission program officer, grantee and the Director of Educational Programs.

(b) If a dispute between the Commission and the grantee cannot be resolved informally, the grantee may appeal any adverse decision in writing to the General Counsel of the Commission. A written appeal must contain a discussion of the dispute, attempts to informally resolve any disagreements, and the practical and legal relief sought.

(c) The General Counsel may hold a factfinding conference with the disputing parties or decide the dispute on the written appeal record provided by the grantee and the Commission staff. The General Counsel shall issue a written decision of findings and conclusions within 30 days after receiving an appeal.

(d) If the decision of the General Counsel is adverse, the grantee may make a final appeal to the Chairman of the Commission within five days after receiving the decision of the General Counsel. The Staff Director of the Commission shall function as the Chairman's designee for receipt and processing of final administrative appeals to the Chairman. The decision of the Chairman is final.

[FR Doc. 86-29153 Filed 12-29-86; 8:45 am]

BILLING CODE 6340-01-M

## COMMISSION ON THE BICENTENNIAL OF THE UNITED STATES CONSTITUTION

### Constitution Bicentennial Educational Grant Program; Announcement and Application Instructions

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

**ACTION:** Grant program announcement and application instructions.

**SUMMARY:** The Commission on the Bicentennial of the United States Constitution announces its newly established Constitution Bicentennial Educational Grant Program. The Commission is soliciting grant applications for the development of instructional materials and programs on the Constitution and Bill of Rights which are designed for use by elementary or secondary school students. This grant program announcement and application instructions informs all interested individuals and organizations about the closing dates for the receipt of applications for funding and how applications must be prepared for funding consideration by the Commission. The application instructions are based on the law and regulation which contain the key requirements for all applicants to follow in seeking funding from the Commission.

**DATES:** Applications will be accepted from January 2, 1987 until February 15, 1987 at 5:30 pm.

**ADDRESS:** For further information contact: Director of Educational Programs, Commission on the Bicentennial of the U.S. Constitution, 736 Jackson Place, NW., Washington, D.C. 20503, (202) 653–5110.

**SUPPLEMENTARY INFORMATION:**

### Program Announcement for the Constitution Bicentennial Educational Grant Program

*I. Introduction*

The 200th Anniversaries of the signing and ratification of the United States Constitution present important opportunities to encourage renewed scholarly reflection about, and public interest in, the principles and foundations of constitutional government. In 1976, we celebrated the Bicentennial of the Declaration of Independence which sets forth the principles of just government. In 1987, we commemorate a Constitution which was designed to put those principles into practice and which has provided a stable and workable plan of government for 200 years.

Democratic, constitutional government depends upon an informed citizenry; yet studies have demonstrated a lack of citizen knowledge about the Constitution and American history. This has been especially true of students in recent years. It is an important task to encourage renewed vigor in the teaching of the fundamentals of American government and the Constitution in our elementary and secondary schools. Teachers of history, government, and social studies need encouragement and resources to do this job properly. The grants program outlined here is designed to help provide those resources and that encouragement.

Duties of the Commission

The Commission on the Bicentennial of the United States Constitution (the Commission) was established by Pub. L. 98–101, 97 Stat. 719, and signed by the President on September 29, 1983. Appointment of the Commission and designation of the Chairman was announced by the President on June 25, 1985; Commission members were sworn into office on July 30, 1985. The Honorable Warren E. Burger, then Chief Justice of the United States, was designated Chairman.

The Commission was created to promote and coordinate activities commemorating the 200th Anniversary of the United States Constitution. Section 6 of Pub. L 98–101 charges the Commission with the following duties:

1. To plan and develop activities appropriate to commemorate the bicentennial of the Constitution, including a limited number of projects to be undertaken by the Federal Government seeking to harmonize and balance the important goals of ceremony and celebration with the equally important goals of scholarship and education.

2. To encourage private organizations, and State and local governments to organize and participate in bicentennial activities commemorating or examining the drafting, ratification and history of the Constitution and the specific features of the document.

3. To coordinate, generally, activities throughout all the States.

4. To serve as a clearinghouse for the collection and dissemination of information about bicentennial events and plans.

Section 501(a) of Pub. L. 99–194 expanded the Commission's educational responsibilities by creating a Constitution Bicentennial Educational Grants Program "for the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights . . . for use by elementary or secondary school students." The Commission is also required to fund an existing program to implement an Annual National Bicentennial Constitution and Bill of Rights Competition for use in elementary and secondary schools.

*II. The Program Mandate*

Title V of the Arts, Humanities, and Museums Amendments of 1985 (Pub. L. 99–194) and the subsequent appropriations act authorizes the Commission to make grants (1) "to local educational agencies, private elementary and secondary schools, private organizations, individuals, and State and local public agencies in the United States for the development of the instructional materials and programs on the Constitution of the United States and the Bill of Rights which are designed for use by elementary or secondary school students" and (2) to fund an existing program to implement an Annual National Bicentennial Constitution and Bill of Rights Competition for use by elementary and secondary schools.

To implement this authority, the Commission established its Constitution Bicentennial Educational Grants Program within the Commission's Division of Educational Programs. The Director and professional staff of the Division of Educational Programs will administer the Constitution Bicentennial Educational Grants Program with guidance from the seven-member Commission Advisory Committee on Educational Projects.

In keeping with its Congressional mandate, the Commission invites proposals for programs designed to provide elementary and secondary school teachers with a strengthened understanding of the Constitution, its antecedents, provisions, structure and history. Proposed programs should demonstrate how students will benefit and should result in instructional ideas, materials, and methods which teachers can share with others.

*III. Who May Apply and What Can Be Funded*

The Commission is authorized to accept applications from and award grants to:

(1) Local Educational Agencies;

(2) Private Elementary and Secondary Schools;

(3) Private Organizations;

(4) Individuals; and

(5) State and Local Public Agencies in the United States.

Grants will not be made to profit-making organizations.

Note: Colleges and universities are eligible to apply provided they fall under categories (1), (3), or (5) and the proposed project is designed for use in elementary and secondary schools.

What Activities May Be Funded

The Commission is authorized to fund the development of instructional materials and programs on the Constitution of the United States and the Bill of Rights for use in elementary and secondary schools.

The Commission is also authorized to implement the National Bicentennial Competition on the Constitution and Bill of Rights. This in an on-going educational program that has been developed by the Center for Civic Education with prior federal assistance. Congress has directed the Commission to award a grant for program development and implementation to the Center. Consequently, no other grant proposals from any other party will be accepted for a national bicentennial competition.

Priority Subject Areas for Grants

The Commission will give priority to proposals that focus on strengthening the ability of elementary and secondary teachers to teach successfully the principles and the history of the Constitution, the Bill of Rights, and subsequent amendments to students. This may be through the development of instructional materials or through conferences and institutes. Instructional materials may include audio and video tapes as well as printed curricular materials. Important ideas and texts about the Constitution and Bill of Rights should be emphasized. Projects funded with Commission funds must demonstrate how students will benefit.

The Commission anticipates that conferences will usually be one to three days in duration while institutes might last one to four weeks. The primary distinction between conferences and institutes is the depth of study on a particular topic. Yet the objectives of conferences and institutes are the same: to improve elementary and secondary school teaching and to produce instructional materials on the Constitution's origins, provisions, development, and contemporary application. Proposals for developing instructional materials independent of conferences or institutes are also encouraged.

Important outcomes of any proposal are enhancing the skill of teachers to teach the principles and the history of the Constitution, the Bill of Rights, and subsequent amendments to young students and developing improved instructional materials. The Commission believes that conferences and institutes will be more effective if teachers are given the opportunity to read materials and prepare lesson plans and teaching ideas prior to the conference or institute. Proposals for conferences, institutes, or for the development of instructional materials should focus on one or more of the following:

(1) The Constitution's antecedents, provisions, structure, amendments, and historical development.

(2) The relationship of the Constitution to American politics, society, and thought.

(3) The connection between self-government as outlined by the Constitution and the purposes of political life that are defined in the Declaration of Independence.

The examples listed below are illustrations of conferences, institutes, or instructional materials which might be developed. These examples are designed to serve as points of departure for other substantive proposals. Many of these suggestions for conferences or institutes can also be adapted to the development of instructional materials outside the format of a conference or an institute.

1. An *institute* for thirty secondary school social science teachers from area schools in which two constitutional scholars give a series of lectures and, with master teachers, lead workshops. *The Federalist,* Anti-Federalist documents, and other writings are used to gain a deeper understanding of the Constitution and Founding Era. Relying upon these texts, the lectures and workshops treat a variety of topics including the following: the extended commercial republic, separation of powers, federalism, legislative power, executive power, judicial power, the Bill of Rights, and subsequent amendments. Special teaching workshops are interspersed with the other activities in order for master teachers and participants to share ideas and formulate plans for developing and incorporating these materials into the classroom.

2. A small liberal arts college hosts a *conference* for fifty secondary school teachers of American history and government from a five state area in which constitutional scholars, curriculum specialists, and master teachers present a combined lecture/workshop program designed to improve basic knowledge about the creation of the Constitution and the birth of the Bill of Rights, and to provide ideas for using these materials in the classroom. Introduction to successful programs, suggestions for innovative teaching techniques, and guidelines for incorporating new materials into existing curricula are explored.

3. An *institute* for elementary school teachers, modeled after the secondary school institute, but the workshops and lectures are directed towards adapting the concepts implicit in the Constitution, the Bill of Rights, subsequent amendments, and our constitutional democracy into terms that can be understood by young children. An additional area of concern includes strengthening teachers' basic understanding of the Constitution, its antecedents, and its implications so that they can better interpret concepts for young students. The lectures and workshops include an exploration of ways to use music, art, or role-playing to bring the Founding period to life. An additional topic deals with the use of biographies as the basis for introducing young students to the Founders and constitutional concepts.

4. A *conference* for secondary school teachers which addresses the theory and practice of representation at the time of the Founding. The format combines scholarly lectures with discussions of primary source materials. The examination is divided into four segments: (1) 17th and 18th Century theory of representation; (2) pre-constitutional American theory and practices; (3) the theory of the Constitution; and, (4) the development of the American constitutional system. Readings are taken from Locke, the debates of the Constitutional Convention, *The Federalist,* Tocqueville, pamphlet literature, and modern texts.

5. *Development of curricular materials* consisting of lessons and a teacher's guide designed to improve teaching about the fundamentals of American constitutionalism in secondary schools. The lessons are designed to fit into existing courses and to complement standard high school textbooks on civics, American history, and American government. The lessons focus on *The Federalist* and the writing of the Anti-Federalists about the Constitution, the Bill of Rights, and subsequent amendments. The readings include substantial excerpts from the most important primary sources such as public documents, speeches, letters and essays which illustrate the range of opinions about the principles and the provisions of the Constitution and their historical development.

6. *Development of curricular materials and lesson plans* for students and teachers designed to enrich teaching about constitutional history in elementary schools. The lesson plans

focus on the contributions of significant individuals to the success of the American experiment in constitutionalism and emphasize biographies. The lessons include those figures who supported the move for a revision of the Articles of Confederation, those who met at Philadelphia to draft a new Constitution, those who argued for and against the Constitution in the state ratifying conventions, and those who supported the move for the adoption of the Bill of Rights. Lessons are also devoted to those statesmen who contributed to the establishment and successful operation of the new government. Finally, some lessons might focus on the lives of private men and women who lived during this and later periods of American history.

7. A summer *institute* for elementary school educators designed to give elementary school teaching teams, composed of social studies teachers and media specialists, an academically stimulating background on the roots, historical development, and significance of the United States Constitution. Daily sessions held during the four-week resident institute examine the creation, ratification, and significance of the Constitution from historical, political and philosophical perspectives. Major texts from the humanities are used. Special interest groups are scheduled throughout each week along with workshops on educational theory, classroom methods and activities. Two prominent guest lecturers highlight the second and third weeks of the institute. Two follow-up workshops are held, one in November and another in March or April. During the school year following the institute, the Project Director visits the participants' schools and conducts on-site evaluations.

8. A four-week *institute* for secondary school teachers focuses on legal and philosophical dimensions of the United States Constitution. Objectives include: (1) providing a solid legal and philosophic understanding of the Constitution; (2) exploring the principles and continued vitality of the Constitution; (3) creating an appreciation of the relationship between philosophy and law in the Constitution; and, (4) developing skills for analyzing contemporary political problems in constitutional terms. The first two-week session is devoted to constitutional studies; the second two-week session to helping participants design study aids and learning tools for use in the classroom.

The Commission emphasizes that the projects discussed above are only examples. Those given here should not be substitutes for exemplary approaches that address the purpose of the Commission's Grant Program.

In planning projects and drafting proposals, the Commission suggests that applicants pay particularly close attention to the discussion of the review process and selection criteria contained in Sections V and VI.

What Activities May Not Be Funded

Real property acquisition, construction, and research undertaken in the pursuit of an academic degree may not be assisted with Commission funding. The Commission will not fund grant proposals of a partisan political nature, proposals to intervene in ongoing disputes, or proposals that would bring the Commission into the policymaking processes of any government or government agency. In addition, the Commission will not use political tests or political qualifications in selecting or monitoring any grantee.

*IV. Budget Information*

*Allowable costs:* The allowable project costs include salaries and wages for key personnel, administrative assistants and secretaries, fringe benefits, consultant fees, travel expenses (including subsistence costs when traveling) for key personnel and participants, stipends for participants, supplies and materials used in the project, services such a cost of duplication and printing, long distance telephone, equipment rental or purchase, postage, and other services not included in the other categories or in the indirect cost pool and related to the project objectives. Stipends should be the same for all participants in a particular institute or conference but the stipend for a particular institute or conference will be determined by the length of the institute or conference. Institutes may provide travel expenses, room and board (if residency is required), plus a stipend of up to $200 per week. Organizations applying to conduct an institute or conference are encouraged to consider seeking matching support for part of their project.

Schools and school systems should be asked to endorse the project. Schools from which the participants are finally selected are expected to contribute to the cost of the institute or conference (e.g. for one institute, schools may be expected to make a $200 cash contribution to the sponsoring institution for each participating teachers.) The Commission encourages cost-sharing from applicants it believes are capable of contributing to the support of an authorized project. Generally, the Commission's share of the total costs of an institute or conference is not expected to exceed 80 percent.

All cost must be reasonable, necessary to accomplish project objectives, allowable in terms of the applicable federal cost principles, auditable, and incurred during the grant period. Charges to the project of items such as salaries, fringe benefits, travel, and contractual services must conform to the written policies and established practices of the applicant organization.

*Non-allowable Costs:* Grant money may not be used as honoraria for individuals who simply speak at the conferences or institutes. The restriction shall not prohibit funds from being used to support individuals whose broader participation in a conference or institute includes a speech.

*Anticipated Grant Range: Curricular materials—$5,000–50,000; Institutes—$25,000–75,000; Conferences—$5,000–25,000.*

*V. Review Process*

Although applicants must follow the format prescribed under "PROPOSAL CONTENT," the proposal should not simply mirror the examples or content of this announcement. We anticipate that this discussion will help the applicant to conceive and write a stronger proposal by alerting the applicant to the ways in which it will be read and judged.

Applicants will submit a narrative of their proposal which is limited fifteen double-spaced pages. The applicant may submit more than one proposal; the quality of each will be assessed independently.

The examination of grant applications begins with an "Administrative Review" for completeness and conformity with the application requirements stated in this announcement. After this review, the application will be given a "Merit Review," first by external reviewers and then by members of the Commission staff. The readers of the application may be faculty, educational administrators, government administrators or journalists. These readers are chosen for their ability to assess the significance of a broad range of important issues on the Constitution, the Bill of Rights, and subsequent amendments and they often have practical experience in educational programs. But they almost certainly will know little about a particular need, approach, or location. The application must therefore address a general audience and avoid jargon and technical language. Readers are asked to review a large number of applications so that they can gain perspective on relative

significance. It is, therefore, imperative that the application be limited to fifteen double-spaced pages.

The "Merit Review" will focus on the relative significance and importance of applications. Applicants should be sure to discuss (1) the constitutional issue or educational need being addressed; (2) the proposed activities in some detail; and (3) the desired results or outcomes of the project. The final stage of review by the Commission will include consideration of the feasibility of proposals as well as the full range of issues raised in this section. The external reviewers may include both generalists and specialists. Proposals may also be reviewed by other specialists later in the process when technical questions arise.

After thorough review of the applications, Commission staff may telephone applicants in order to verify or clarify information about the project. The Commission may also contact others who are in a position to know the applicant's work and plans, or who would be affected by the project. The Commission has set April 30, 1987, as its target date for award decisions.

Commissioners, Commission staff, and external reviewers will remove themselves from consideration of any application for a grant which might reasonably present the appearance of a conflict of interest. Individuals who believe they may have a potential conflict of interest arising from present to prior association with the applicant or for any other reason, shall bring the situation to the attention of the Commission's General Counsel for guidance.

Throughout the review process, external reviewers and Commission staff will make judgments about the extent to which a project will contribute to providing elementary and secondary teachers and students with a strengthened understanding of the Constitution and Bill of Rights.

*VI. Selection Criteria*

The Commission has developed the following criteria as general guidelines for judging all project proposals:

(1) The proposed project is designed to strengthen elementary and secondary teachers' capacity to appreciate our constitutional heritage, including the Bill of Rights, and to produce improved instructional materials which will help teach young students about the Constitution's provisions, antecedents, history, and the structure of government which it creates.

(2) The proposed project designed to benefit elementary and secondary students, and to be academically rigorous in a way that is appropriate for the age group toward which it is directed.

(3) The proposed project is cost-effective in that expenditures are reasonable and appropriate to the objective of the proposed project. Cost-effectiveness is especially important since the funds the Commission has discretion to grant are limited.

Although applicants are not being required to match or share costs in any of the activities proposed for Commission funding, the Commission encourages applications that include in-kind services or other sources of funding. Preference may be given to applicants who propose in-kind services in the project budget.

(4) Applicants have the capacity to carry out the project as evidenced by:

(a) Academic and administrative qualifications of the project personnel;

(b) Quality of project design; and

(c) Soundness of project management plan.

(5) Potential of the proposed project for wider dissemination and use by others. Both schools represented and organizations hosting an institute or conference should agree to implement the plans developed by the teachers during the program.

The decision to award grant funding is solely within the discretion of the Commission based upon its judgment of how best to fufill the statutory purposes of the grant program

*VII. Submission Procedures and Closing Dates for Receipt of Proposals*

Every application for a grant from the Commission must be made on application forms prescribed by the Commission. Photocopies of the forms are acceptable. A complete application package consists of the following item:

(1) Standard Form 424 with attachments;

(2) Proposal abstract (one page);

(3) Proposal narrative (5–15 *double-spaced* typed pages); and

(4) Proposal budget.

The closing date for receipt of grant application is February 15, 1987. Late applications will not be accepted.

The announced closing date and procedures for guaranteeing timely submission will be strictly observed. The Commission reserves the option to invite additional applications after the closing date, if grant funding is not exhausted. If new application are invited, notification will be placed in the **Federal Register.**

Applicants should also note that the closing date applies to both the date the application is mailed and the hand delivery date. A mailed application meets the requirement if it is mailed on or before the pertinent closing date and the required proof of mailing is provided. Proof of mailing may consist of one of the following; (a) a legibly dated U.S. Postal Service postmark; (b) a legible receipt with the date of mailing stamped by the U.S. Postal Service; (c) a dated shipping label, invoice or receipt from commercial carrier; or, (d) any other tangible proof of mailing acceptable to the Commission.

If an application is sent through the U.S. Postal Service, the Commission will not accept either of the following as proof of mailing:: (1) a private metered postmark; or, (2) a mail receipt that is not dated by the U.S. Postal Service. Please use first class mail. All applicants will receive acknowledgment notices upon receipt of proposals.

Mailing Address and Telephone:

Commission on the Bicentennial of the United States Constitution , 736 Jackson Place, NW, Washington, DC 20503, Attn: Direction of Education Programs, Educational Grant Program. Telephone (202) 653–5110

Final Proposals Sent by Mail:

February 15, 1987.

Hand Delivered Final Proposals:

Hand delivered final proposals will be accepted daily between the hours of 8:00 a.m. and 5:30 p.m., Eastern Standard Time except Saturdays, Sundays and Federal Holidays. Proposals will not be accepted after 5:30 p.m. on any closing date.

Number of copies of Final Proposal

All applicants must submit one (1) signed original application and four (4) copies. Each copy must be covered with a signed Standard Form 424.

Proposal Content

All applicants urged to develop proposals that are concise and clearly written. The proposal must contain the components listed below:

*Title Page:* Use Standard Form 424 (SF 424). Additional instructions are printed on the reverse side of SF 424.

*Abstract:* Attach a one-page, double-spaced abstract following SF 424. This is a key element in all applications, and should include: (1) a brief description of the project; (2) the proposed activities; and, (3) the project's intended outcome.

*Budget:* Applicants will prepare a complete budget including details of expenditures for salary, travel, etc. Indirect costs may be assessed at a rate previously approved by another agency of the federal government. Applicants

who need to establish an indirect cost rate should contact the Commission.

*Budget Explanation:* Applicants will include a budget statement explaining (1) the basis used to estimate major cost (professional personnel, consultants, travel and indirect costs) and any other costs that may appear unusual; and (2) how the major costs relate to the proposed budget activities.

*Project Narrative:* Applicants must provide a narrative statement limited to fifteen double-spaced typed pages. Include the following information:

(I.) *Project Description:* A description of the project activities and how they relate to the selection criteria;

(II.) *Outcome and Plans for Wider Impact:* A description of the project's outcome and prospects that the project will have a continuing impact and will benefit others beyond the program participants (provide an estimate of number of teachers/students who will benefit);

(III.) *Other Aspects of the Project:* A description of any other especially significant aspects of the proposed project; and

(IV.) *Personnel and Institutional Information:* For key project staff, please attach descriptions of relevant education and experience. (Applicants may submit as an appendix to the proposal up to ten pages of background information on their institutions or agencies which is relevant to a full understanding of the significance and feasibility of the proposed project.)

## Equal Opportunity

The Commission on the Bicentennial of the United States Constitution is responsible for ensuring compliance with and enforcement of public laws prohibiting discrimination because of race, color, national origin, sex, handicap, and age in programs and activities receiving federal assistance under this grant program. Any person who believes he or she has been discriminated against in any program, activity, or facility receiving a Commission grant should write immediately to Lane V. Sunderland, Director of Educational Programs, Commission on the Bicentennial of the United States Constitution, 736 Jackson Place, NW., Washington, DC 20503.

## Authority Citation

(20 U.S.C. 959; Title V of Pub. L. 99-194; 45 CFR Part 2010.)

**Lane V. Sunderland,**

*Director, Educational Programs.*

BILLING CODE 6340-01-M

OMB Approval No. 0348-0006

# FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION (Mark appropriate box)
- ☐ NOTICE OF INTENT (OPTIONAL)
- ☐ PREAPPLICATION
- ☒ APPLICATION

2. APPLICANT'S APPLICATION IDENTIFIER
a. NUMBER
b. DATE Year month day 19

3. STATE APPLICATION IDENTIFIER
NOTE: TO BE ASSIGNED BY STATE
a. NUMBER N/A
b. DATE ASSIGNED Year month day N/A 19

Leave Blank

SECTION I—APPLICANT/RECIPIENT DATA

4. LEGAL APPLICANT/RECIPIENT
a. Applicant Name
b. Organization Unit
c. Street/P.O. Box
d. City
e. County
f. State
g. ZIP Code.
h. Contact Person (Name & Telephone No.)

5. EMPLOYER IDENTIFICATION NUMBER (EIN)

6. PROGRAM (From CFDA)
a. NUMBER | | | * | | | |
MULTIPLE ☐
b. TITLE Bicentennial Education Grant Program

7. TITLE OF APPLICANT'S PROJECT (Use section IV of this form to provide a summary description of the project.)

8. TYPE OF APPLICANT/RECIPIENT
A—State; B—Interstate; C—Substate Organization; D—County; E—City; F—School District; G—Special Purpose District; H—Community Action Agency; I—Higher Educational Institution; J—Indian Tribe; K—Other (Specify):
Enter appropriate letter ☐

9. AREA OF PROJECT IMPACT (Names of cities, counties, states, etc.)

10. ESTIMATED NUMBER OF PERSONS BENEFITING

11. TYPE OF ASSISTANCE
A—Basic Grant; B—Supplemental Grant; C—Loan; D—Insurance; E—Other
Enter appropriate letter(s) ☐☐

12. PROPOSED FUNDING

| | | |
|---|---|---|
| a. FEDERAL | $ | .00 |
| b. APPLICANT | | .00 |
| c. STATE | | .00 |
| d. LOCAL | | .00 |
| e. OTHER | | .00 |
| f. Total | $ | .00 |

13. CONGRESSIONAL DISTRICTS OF:
a. APPLICANT
b. PROJECT

15. PROJECT START DATE Year month day 19

16. PROJECT DURATION Months

18. DATE DUE TO FEDERAL AGENCY ► Year month day 19

14. TYPE OF APPLICATION
A—New; B—Renewal; C—Revision; D—Continuation; E—Augmentation
Enter appropriate letter ☐

17. TYPE OF CHANGE (For 14c or 14e)
A—Increase Dollars; B—Decrease Dollars; C—Increase Duration; D—Decrease Duration; E—Cancellation; F—Other (Specify):
Enter appropriate letter(s) ☐☐☐

19. FEDERAL AGENCY TO RECEIVE REQUEST
a. ORGANIZATIONAL UNIT (IF APPROPRIATE) Commission on the Bicentennial of the U.S. Constitution
b. ADMINISTRATIVE CONTACT (IF KNOWN) Director of Education
c. ADDRESS
736 Jackson Place, NW
Washington, D.C. 20503

20. EXISTING FEDERAL GRANT IDENTIFICATION NUMBER

21. REMARKS ADDED ☐ Yes ☐ No

SECTION II—CERTIFICATION

22. THE APPLICANT CERTIFIES THAT ► To the best of my knowledge and belief, data in this preapplication/application are true and correct, the document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is approved.
a. YES, THIS NOTICE OF INTENT/PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____
b. NO, PROGRAM IS NOT COVERED BY E.O. 12372 ☒ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW ☐

23. CERTIFYING REPRESENTATIVE
a. TYPED NAME AND TITLE
b. SIGNATURE

SECTION III—FEDERAL AGENCY ACTION

24. APPLICATION RECEIVED Year month day 19

25. FEDERAL APPLICATION IDENTIFICATION NUMBER

26. FEDERAL GRANT IDENTIFICATION

27. ACTION TAKEN
- ☐ a. AWARDED
- ☐ b. REJECTED
- ☐ c. RETURNED FOR AMENDMENT
- ☐ d. RETURNED FOR E.O. 12372 SUBMISSION BY APPLICANT TO STATE
- ☐ e. DEFERRED
- ☐ f. WITHDRAWN

28. FUNDING

| | | |
|---|---|---|
| a. FEDERAL | $ | .00 |
| b. APPLICANT | | .00 |
| c. STATE | | .00 |
| d. LOCAL | | .00 |
| e. OTHER | | .00 |
| f. TOTAL | $ | .00 |

29. ACTION DATE ► Year month day 19

30. STARTING DATE Year month date 19

31. CONTACT FOR ADDITIONAL INFORMATION (Name and telephone number)

32. ENDING DATE Year month date 19

33. REMARKS ADDED ☐ Yes ☐ No

NSN 7540-01-008-8162
PREVIOUS EDITION IS NOT USABLE

424-103

STANDARD FORM 424 PAGE 1 (Rev. 4-84)
Prescribed by OMB Circular A-102

## GENERAL INSTRUCTIONS FOR THE SF-424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted in accordance with OMB Circular A-102. It will be used by Federal agencies to obtain applicant certification that states which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process have been given an opportunity to review the applicant's submission.

## APPLICANT PROCEDURES FOR SECTION I

Applicant will complete all items in Section I with the exception of Box 3, "State Application Identifier." If an item is not applicable, write "NA." If additional space is needed, insert an asterisk "*," and use Section IV. An explanation follows for each item:

*Item*

1. Mark appropriate box. Preapplication and application are described in OMB Circular A-102 and Federal agency program instructions. Use of this form as a Notice of Intent is at State option. Federal agencies do not require Notices of Intent.

2a. Applicant's own control number, if desired.

2b. Date Section I is prepared (at applicant's option).

3a. Number assigned by State.

3b. Date assigned by State.

4a–4h. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of applicant, and name and telephone number of the person who can provide further information about this request.

5. Employer Identification Number (EIN) of applicant as assigned by the Internal Revenue Service.

6a. Use Catalog of Federal Domestic Assistance (CFDA) number assigned to program under which assistance is requested. If more than one program (e.g., joint funding), check "multiple" and explain in Section IV. If unknown, cite Public Law or U.S. Code.

6b. Program title from CFDA. Abbreviate if necessary.

7. Use Section IV to provide a summary description of the project. If appropriate, i.e., if project affects particular sites as, for example, construction or real property projects, attach a map showing the project location.

8. "City" includes town, township or other municipality.

9. List only largest unit or units affected, such as State, county, or city.

10. Estimated number of persons directly benefiting from project.

11. Check the type(s) of assistance requested.

A. Basic Grant—an original request for Federal funds.

B. Supplemental Grant—a request to increase a basic grant in certain cases where the eligible applicant cannot supply the required matching share of the basic Federal program (e.g., grants awarded by the Appalachian Regional Commission to provide the applicant a matching share).

E. Other. Explain in Section IV.

12. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included. If the action is a change in dollar amount of an existing grant

*Item*

(a revision or augmentation under item 14), indicate only the amount of the change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 12a—amount requested from Federal Government. 12b—amount applicant will contribute. 12c—amount from State, if applicant is not a State. 12d—amount from local government, if applicant is not a local government. 12e—amount from any other sources, explain in Section IV.

13b. The district(s) where most of action work will be accomplished. If city-wide or State-wide, covering several districts, write "city-wide" or "State-wide."

14. A. New. A submittal for project not previously funded.

B. Renewal. An extension for an additional funding/budget period for a project having no projected completion date, but for which Federal support must be renewed each year.

C. Revision. A modification to project nature or scope which may result in funding change (increase or decrease).

D. Continuation. An extension for an additional funding/budget period for a project with a projected completion date.

E. Augmentation. A requirement for additional funds for a project previously awarded funds in the same funding/budget period. Project nature and scope unchanged.

15. Approximate date project expected to begin (usually associated with estimated date of availability of funding).

16. Estimated number of months to complete project after Federal funds are available.

17. Complete only for revisions (item 14c), or augmentations (item 14e).

18. Date preapplication/application must be submitted to Federal agency in order to be eligible for funding consideration.

19. Name and address of the Federal agency to which this request is addressed. Indicate as clearly as possible the name of the office to which the application will be delivered.

20. Existing Federal grant identification number if this is not a new request and directly relates to a previous Federal action. Otherwise, write "NA."

21 Check appropriate box as to whether Section IV of form contains remarks and/or additional remarks are attached.

## APPLICANT PROCEDURES FOR SECTION II

Applicants will always complete either item 22a or 22b *and* items 23a and 23b.

22a. Complete if application is subject to Executive Order 12372 (State review and comment).

22b. Check if application is not subject to E.O. 12372.

23a. Name and title of authorized representative of legal applicant.

## FEDERAL AGENCY PROCEDURES FOR SECTION III

Applicant completes only Sections I and II. Section III is completed by Federal agencies.

26. Use to identify award actions.

27. Use Section IV to amplify where appropriate.

28. Amount to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions will be included. If the action is a change in dollar amount of an existing grant (a revision or augmentation under item 14), indicate only the amount of change. For decreases, enclose the amount in parentheses. If both basic and supplemental amounts are included, breakout in Section IV. For multiple program funding, use totals and show program breakouts in Section IV. 28a—amount awarded by Federal Government. 28b—amount applicant will contribute. 28c—amount from State, if applicant is not a State. 28d—amount from local government, if applicant is not a local government. 28e—amount from any other sources, explain in Section IV.

29. Date action was taken on this request.

30. Date funds will become available.

31. Name and telephone number of agency person who can provide more information regarding this assistance.

32. Date after which funds will no longer be available for obligation.

33. Check appropriate box as to whether Section IV of form contains Federal remarks and/or attachment of additional remarks.

☆ GPO : 1984 O - 421-526 (140)

DETACH AND, AS NECESSARY, STAPLE TO ABOVE SHEET.

SECTION IV—REMARKS *(Please reference the proper item number from Sections I, II or III, if applicable)*

OMB APPROVAL NO. 3312-0015
EXPIRES 12/89

## APPLICATION FOR FEDERAL ASSISTANCE (Short Form)

**PART I — Budget Data**

| Object Class Categories | Current Approved Budget (a) | Change Requested (b) | New or Revised Budget (c) |
|---|---|---|---|
| 1. Personnel | | | |
| 2. Fringe Benefits | | | |
| 3. Travel | | | |
| 4. Equipment | | | |
| 5. Supplies | | | |
| 6. Contractual | | | |
| 7. Stipend Expenses | | | |
| 8. Other | | | |
| 9. Total Direct Charges | | | |
| 10. Indirect Charges | | | |
| 11. TOTAL | | | |
| 12. Federal Share | | | |
| 13. Non-Federal Share | | | |
| 14. Project Income | | | |

15. Detail on Indirect Costs:

Type of Rate (Mark one box) ☐ Provisional ☐ Predetermined ☐ Final ☐ Fixed

Rate_____% Base $ _____ Total Amount $_____

16. ATTACH BUDGET EXPLANATION ON MAJOR COST ITEMS FOLLOWING THIS PAGE.

**PART II — Program Narrative Statement**

Project Narrative: APPLICANTS MUST PROVIDE A NARRATIVE STATEMENT LIMITED TO FIFTEEN DOUBLE-SPACED TYPED PAGES. Include the following information:

I) ***Project Description***: A description of the project activities and how they relate to the selection criteria;

II) ***Outcome and Plans for Wider Impact***: A description of the project's outcome and prospects that the project will have a continuing impact and will benefit others beyond the project participants;

III) ***Other Aspects of the Project***: A description of any other especially significant aspects of the proposed project; and

IV) ***Personnel and Institutional Information***: For key project staff, please attach descriptions of relevant education and experience. (Applicants may submit as an appendix to the proposal up to ten additional pages of background information on their institutions or agencies which is relevant to a full understanding of the significance and feasibility of the proposed project.)

# INSTRUCTIONS

## PART I

Items 1-11 – Enter on Lines 1-11 in Column (c) the total amounts needed for the project. If this is an application for *new grants*, leave Columns (a) and (b) blank. If this is an application for amendments, changes or supplements, show the current approved budget in Column (a); enter in Column (b) on the appropriate line(s) the amount of the change, amendment or supplement; add each line entry in Column (a) to the line entries in Column (b) and enter the total for each line in Column (c). The amounts shown in Column (c) represent the amount of the new or revised grant budget.

Item 12 — Enter the Federal share of the amount on Line 11.

Item 13 — Enter the non-Federal share of the amount on Line 11.

Item 14 — Enter the amount of estimated income, if any, to be generated by the project. Do not add or subtract this amount from the total project amount. The estimated amount of project income may be considered by the Federal grantor agency in determining the total amount of the grant award.

Item 15 — Enter the type of indirect cost rate (provisional, predetermined, final or fixed), the rate that will be in effect during the funding period, and the amount of the base to which the rate is applied.

## PART II

The Project Narrative statement should show the need, objectives, approach, the geographical location of the project and the benefits expected to be obtained from the assistance. Attach any data that may be needed to establish the applicant's eligibility for receiving assistance under the Federal program. Refer to the Annual Program Announcement for more details.

## PART III — ASSURANCES

The applicant hereby assures and certifies that it will comply with the regulations, policies, guidelines, and requirements including the applicable OMB Circulars Nos. (A-21. A-110, A-122, A-87, A-102, and A-128) as they relate to the application, acceptance and use of Federal funds for this Federally assisted project. The Applicant also assures and certifies with respect to the grant that:

1. It possesses legal authority to apply for the grant; that a resolution, motion or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

2. It will comply with Title VI of the Civil Rights Act of 1964(P.L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any project or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this agreement.

3. It will comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) prohibiting employment discrimination where (1) the primary purpose of a grant is to provide employment or (2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the grant-aided activity.

4. It will comply with the provisions of the Hatch Act which limit the political activity of employees.

5. It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to educational institution employees of State and local governments.

6. It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

7. It will give the grantor agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.

8. It will comply with all requirements imposed by the Federal grantor agency concerning special requirements of law, program requirements, and other administrative requirements approved in accordance with applicable Office of Management and Budget Circulars.

9. It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

10. It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 42 USC 4012a. Section 102(a) requires the purchase of flood insurance as a condition for the receipt of any Federal financial assistance for machinery, equipment, fixtures, and furnishings to be used in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

11. It will assist the Federal grantor agency in its compliance with Section 106 of the National Historic Preservation Act of 1966 as amended (16 U.S.C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U.S.C. 469a-1 et seq.) by (a) consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects (see 36 CFR Part 800.0) by the activity, and notifying the Federal grantor agency of the existence of any such properties, and by (b) complying with all requirements established by the Federal grantor agency to avoid or mitigate adverse effects upon such properties.

[FR Doc. 86-29154 Filed 12-29-86; 8:45 am]

BILING CODE 6340-01-C

federal register

Tuesday
December 30, 1986

Part V

# Department of Justice

Bureau of Prisons

28 CFR Parts 544, 545 and 551

Control, Custody, Care, Treatment, and Instruction of Inmates; Adult Basic Education (ABE) Programs and Inmate Financial Responsibility Program; Final Rule Correction, Interim Rule and Proposed Rule

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### 28 CFR Part 544

### Control, Custody, Care, Treatment, and Instruction of Inmates; Adult Basic Education (ABE) Programs

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Notice of correction.

**SUMMARY:** This notice corrects an inadvertent omission of the public comment date for the Bureau of Prisons' interim rule on Adult Basic Education (ABE) Programs, previously published in the Federal Register November 21, 1986 (at 51 FR 42166). The effective date heading should have read, "**EFFECTIVE:** November 21, 1986; Public Comment must be received on or before January 30, 1987."

**FOR FURTHER INFORMATION CONTACT:** Hank Jacob, Office of General Counsel, Bureau of Prisons, Phone 202/272–6874.

Dated: December 22, 1986.

Norman A. Carlson,

*Director, Bureau of Prisons.*

[FR Doc. 86–29162 Filed 12–29–86; 8:45 am]

BILLING CODE 4410–05–M

### 28 CFR Part 551

### Control, Custody, Care, Treatment, and Instruction of Inmates

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Interim rule.

**SUMMARY:** In this document, the Bureau of Prisons is publishing an amendment to its rule on Birth Control, Pregnancy, Child Placement, and Abortion. The revision is necessitated by a Congressional amendment in the Fiscal Year 1987 Continuing Resolution for Appropriations (Pub. L. 99–500) prohibiting the use of funds appropriated by this resolution to be used in paying for abortions, except in cases of rape or a danger to the mother's life.

**DATES:** Effective Date: December 30, 1986. Comments on the Interim Rule must be received on or before January 30, 1987.

**ADDRESS:** Office of General Counsel, Bureau of Prisons, Room 770, 320 1st Street NW., Washington, DC 20534. Comments received will be available for examination by interested persons at the above address.

**FOR FURTHER INFORMATION CONTACT:** Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

**SUPPLEMENTARY INFORMATION:** In this document, the Bureau of Prisons is publishing an amendment to its final rule on Birth Control, Pregnancy, Child Placement, and Abortion. A final rule on this subject was published in the Federal Register June 29, 1979 (at 44 FR 38252 et seq.). The present amendment is necessitated by a congressional amendment to the Fiscal Year 1987 Continuing Resolution for Appropriations (Pub. L. 99–500) which prohibits the use of appropriated funds, including those of the Bureau of Prisons, from paying for abortions, except in cases of rape or danger to the mother's life. For this reason, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for advance public comment, and delay in effective date.

Based on this Congressional mandate, the Bureau of Prisons has decided to publish a completely revised § 551.23. While the rule will become effective immediately, the Bureau is interested in receiving public comment on the revised rules and suggestions on how the rule may be further refined/modified. Accordingly, the Bureau has decided to publish its revision as an interim rule with public comment invited. Public comment received on or before January 30, 1987 will be considered before publication of the final rule.

In addition to a revised § 551.23, § 551.24(d) is clarified by substituting the phrase "appropriately placed" for "appropriately cared for". The intent of the paragraph is unchanged

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons, has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

### List of Subjects in 28 CFR Part 551

Prisoners.

### Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), 28 CFR, Chapter V Part 551, Subpart C is amended.

Dated: December 22, 1986.

Norman A. Carlson,

*Director.*

### SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

### PART 551—MISCELLANEOUS

1. The authority citation for Part 551 is revised to read as follows:

**Authority:** 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5006–5024, 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99; Pub. L. 99–500 (209).

### Subpart C—Birth Control, Pregnancy, Child Placement, and Abortion

A. In Part 551, Subpart C, revise § 551.23 to read as follows:

#### § 551.23 Abortion.

(a) The inmate has the responsibility to decide either to have an abortion or to bear the child.

(b) Pursuant to Congressional mandate (section 209 of Pub. L. 99–500, Fiscal Year 1987 Continuing Resolution for Appropriations), the Bureau of Prisons may pay for an abortion only where the life of the mother would be endangered if the fetus were carried to term or if the pregnancy is the result of rape. With the exception of the two above-mentioned circumstances, an inmate may elect to have an abortion, provided that she pays for the abortion with her own funds or through the assistance of community facilities.

(c) The Warden shall provide an interested inmate with medical, religious and social counseling to aid her in making the decision whether to have an elective abortion. If an inmate is in one of the two exception groups (see paragraph (b) of this section), and chooses to have an abortion, she shall sign a statement to that effect. Staff shall then arrange for the abortion at a hospital or clinic outside the institution. If an inmate does not fall in one of the two exception categories, but chooses to have an abortion, staff shall provide the inmate with information about the availability of community abortion facilities. The inmate shall sign a written statement acknowledging that she has been provided the counseling and information called for in this policy.

(d) The inmate shall sign a statement of responsibility for the decision to have an elective abortion, including an indication of the plans for payment for the abortion. A copy of this documentation is to be provided to the Medical Director. In those cases where the Bureau may not pay for the abortion, Bureau of Prisons appropriated funds

may still be used for escort and reasonable transportation charges.

(e) At an inmate's written request, ordinarily submitted through the unit manager, the medical staff shall arrange for the elective abortion to take place at the appropriate clinic outside the institution.

B. In § 551.24, revise paragraph (d) to read as follows:

**§ 551.24 Child placement.**

* * * * *

(d) The institution staff shall work closely with community agencies and persons to ensure the child is appropriately placed. The staff shall give notice to the responsible community agency of the inmate's plan for her child. Child welfare workers may come to the institution in appropriate cases to interview and counsel an inmate.

[FR Doc. 86-29163 Filed 12-29-86; 8:45 am]

BILLING CODE 4410-05-M

**DEPARTMENT OF JUSTICE**

**Bureau of Prisons**

**28 CFR Part 545**

## Control, Custody, Care, Treatment, and Instruction of Inmates; Inmate Financial Responsibility Program

**AGENCY:** Bureau of Prisons, Justice.

**ACTION:** Extension of Comment Period.

**SUMMARY:** This notice extends the public comment date for the Bureau of Prisons' proposed rule on its Inmate Financial Responsibility Program, previously published in the **Federal Register**, November 21, 1986 (at 51 FR 42167). The public comment date is extended from December 22, 1986 to January 22, 1987.

**DATED:** The comment period is extended to January 22, 1987.

**FOR FURTHER INFORMATION CONTACT:** Hank Jacob, Office of General Counsel, Bureau of Prisons, Phone 202/272-6874.

Dated: December 22, 1986.

**Norman A. Carlson,**

*Director, Bureau of Prisons.*

[FR Doc. 86-29164 Filed 12-29-86; 8:45 am]

BILLING CODE 4410-05-M

federal register

Tuesday
December 30, 1986

Part VI

# Department of Transportation

## Research and Special Programs Administration

## City of New York Appeal of Denial of Non-Preemption Determination No. NPD-1; Notice of Decision

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

[Docket No. NPDA-2]

### City of New York Appeal of Denial of Non-Preemption Determination No. NPD-1

**AGENCY:** Research and Special Programs Administration, Department of Transportation.

**ACTION:** Decision on appeal from denial of non-preemption determination.

**SUMMARY:** On September 9, 1985, pursuant to section 112(b) of the Hazardous Materials Transportation Act (HMTA), the Department of Transportation issued an administrative ruling denying New York City's request for a waiver of preemption for its ordinance banning the transportation of spent nuclear fuel. Pursuant to 49 CFR 107.225, the City filed an administrative appeal to this ruling. This document contains the decision of the Department denying the appeal.

**FOR FURTHER INFORMATION CONTACT:** Barbara Betsock, Office of Chief Counsel, Research and Special Programs Administration at (202) 366-4400.

**SUPPLEMENTARY INFORMATION:**

#### Background

New York City's ban on transportation of spent nuclear fuel having been determined to be inconsistent with the Department's regulation for the highway routing of radioactive materials and thus preempted by section 112(a) of the HMTA, the City applied to the Department for a waiver of preemption under section 112(b) of the act. In Non-Preemption Determination No. NPD-1 (50 FR 37308, September 12, 1985), the Department denied the City's request for a waiver of preemption.

The City filed an administrative appeal to the denial of the waiver of preemption. Because of the extensive public interest in the matter and the precedential effect of this first non-preemption decision, the Department again solicited public comment. 50 FR 47321. Comments were received from the State of Connecticut, members of Congress, shippers of radioactive material, and private citizens and groups. Those comments have been considered in the preparation of this decision.

#### The City's Appeal

The City argues that the Department erred in failing to address the two statutory criteria concerning equivalent level of safety and burden on commerce and in denying its application for lack of a showing of exceptional circumstances. The City views the Department's ruling as involving a "novel interpretation of the legislative history of the Act which flies in the face of the plain language of the statute." Specifically, the City believes that section 112 of the HMTA leaves the Secretary no discretion to deny an application for preemption when the applicant demonstrates that its requirement provides an equivalent level of safety and does not unreasonably burden commerce. The City asserts that it has made such a demonstration.

The City also challenges that part of the reasoning underlying the Department's decision that deals with the existence of alternate routing authority vested in the States. Specifically, the City argues that the alternate routing authority is useless here because the Department's scheme does not provide a mechanism for resolution of disputes between States.

Finally, the City implies that it has been misled by the Department in its attempts to obtain a non-preemption determination. It describes the Department's interpretation of section 112 as "novel" and indicates that during consideration of its application, "the Department gave no hint that the City was proceeding improperly and in fact gave the City direction and advice as to the details of the study and methodology that would be acceptable . . ."

#### The Agency's Decision—Threshold Showing of Exceptional Circumstances

In the non-preemption determination on which this appeal is based (NPD-1), the Department announced that requests for such determinations will be considered on the merits only if an applicant can demonstrate that its inconsistent state or local rule is necessary, in light of exceptional local circumstances, to assure the adequate level of safety intended by the HMTA. An objective showing that exceptional circumstances render the level of safety provided by the Department's rule inadequate for that locale is sufficient for this threshold showing. The Department denied the City's application for a waiver of preemption because it failed to make this showing. The Department did not address, as unnecessary for a decision, the other criteria, namely whether the City's ordinance would provide a level of safety comparable to that intended by the uniform rule and whether the City's ordinance would unreasonably burden commerce. The City argues that the Department must address these criteria, that they are the only criteria which the Department may consider, and that, if the City's ordinance satisfies these criteria, the City is entitled to a waiver of preemption.

In order to make these arguments, the City ignores the legislative history underlying section 112(b) of the HMTA, which establishes the authority for granting waivers of preemption, and relies entirely on what it perceives to be a plain reading of section 112(b). However, the language of section 112(b) is not nearly so plain:

> Section 112(b) State Laws—Any requirement, of a State or political subdivision thereof, which is not consistent with any requirement set forth in this title, or in a regulation issued under this title, is not preempted *if*, upon the application of an appropriate State agency, the Secretary, determines, in accordance with procedures to be prescribed by regulation, that such requirement (1) affords an equal or greater level of protection to the public than is afforded by the requirements of tnis title or of regulations issued under this title and (2) does not unreasonably burden commerce. Such requirement shall not be preempted to the extent specified in such determination by the Secretary for so long as such State or political subdivision thereof continues to administer and enforce effectively such requirement.

(Emphasis added). Section 112(b) merely permits a waiver of preemption to be granted provided certain criteria are met. Neither explicit mandatory (e.g. "the Secretary shall") nor explicit permissive (e.g. "the Secretary, in her discretion, may") language is used, although the Congress which drafted the HMTA clearly knew how to express itself in those terms. *See*, for example, the explicitly permissive language allowing grants of exemption from regulations found in section 107(a) of the HMTA ("[t] he Secretary . . . is authorized"), and the explicitly mandatory language requiring issuance of regulations concerning transportation of radioactive materials on passenger aircraft in section 108(a) ("the Secretary shall"). Furthermore, the language of section 112(b) can be considered to convey a "plain meaning" only if the meaning is the one intended by Congress.

Since its adoption, the Department has viewed the language of section 112(b) to permit discretionary Secretarial action rather than, as the City argues, to require it. This view is wholly consistent with the statutory language and better effectuates the Congressional intent as evidenced by the statutory aims and the legislative history. Resort to the legislative history is appropriate for the purpose of

clarifying the meaning of the provision and to determine whether Congress provides the Secretary any guidance for the exercise of her discretion.

As discussed in the decision which forms the basis for this appeal, the legislative history provides specific guidance for the exercise of Secretarial discretion under section 112(b). Specifically, this guidance is found in the Senate Report that accompanied the language which ultimately became section 112(b):

> Section 112. (Relationship to Other Laws)
>
> This section sets out the general guidelines for how this bill, and regulations promulgated under it, are to interact . . . with the laws of States and other political subdivisions. The Committee endorses the principle of Federal preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation. However, the Committee is aware that *certain exceptional circumstances may necessitate immediate action to secure more stringent regulations.* For the purpose of meeting such emergency situations, the Committee has provided that any State or political subdivision may request, and the Secretary *may grant,* approval of regulations which vary from Federal regulations, provided that they are equivalent or more stringent and place no burden on interstate commerce.

Sen. Rept. 1192 (93d Cong., 2d Sess.) at pp. 37–38 (Emphasis added). Congress intended the non-preemption determination authorized by section 112(b) to allow variance from the Federal rules to meet exceptional local need and not as a routine mechanism to defeat the uniformity Congress intended the HMTA to achieve.

The HMTA is based on two major policies as expressed by Congress in the Act and in the legislative history: (1) Transportation of hazardous materials should be regulated by the Secretary to assure an adequate level of safety and (2) the regulation of that transportation should be uniform nationwide. These policies assure the protection of public safety both directly (by establishing safety standards) and indirectly (by preventing confusion and transportation delays due to varying state and local requirements). To effectuate these policies, broad discretionary regulatory authority is centralized in the Department of Transportation to issue uniform standards providing adequate levels of safety. Congress specifically provided for the preemption of State and local rules which are inconsistent with the Federal scheme of regulation even though the State or local rule may provide for a greater level of safety in the enacting jurisdiction. The HMTA provides that variances from the uniform system of regulation are allowed so long as the DOT-established adequate levels of safety are maintained (in the enacting jurisdiction and in other jurisdictions affected by the enacting jurisdiction's rule) and commerce is not burdened unreasonably.

If, as the City argues, the Secretary were required to grant, without a showing of specific local need, requests for variances for state and local regulations which otherwise qualify (i.e. which will maintain adequate levels of safety and will not unreasonably burden commerce), the statutory scheme for uniform regulations which provide adequate levels of safety would be threatened. Furthermore, in the case of highway routing of radioactive materials, the uniformity of the national standards (achieved by the application of the regulations without regard to locale) would be jeopardized by parochial interests unrelated to safety, with local transportation "bans" becoming commonplace. Consider a situation in which shipments from one source heading west are involved. Assume that, under the DOT rules, the carrier may choose either of two preferred routes—a northwesterly route through State A or a southwesterly route through State B.

State A bans such shipments and seeks a non-preemption determination based upon a showing that the southwesterly route provides equivalent levels of safety and the ban does not unreasonably burden commerce. *Under the City's analysis,* the Secretary would be required to grant State A a waiver of preemption and the carrier would be forced to use the southwesterly route. State B then bans such shipments and seeks a non-preemption determination. Assuming that there is no alternate route which could provide an equivalent level of safety other than the now banned northwesterly route through State A, State B's request would be denied solely because State A was first in time to request a waiver. Under DOT's analysis, neither State could impose a ban and effectively export shipments of radioactive material to the neighboring State unless there were some exceptional circumstances making particular local routes unacceptable from a safety standpoint. DOT's reasoning provides for national safety and fairness. The City's rationale results in the exporting of a safety risk from one locale to another.

**Timing of Interpretation**

Although not explicitly stated, the City implies error in DOT's requiring a threshold showing of exceptional circumstances, arguing that DOT has not previously published this "interpretation". DOT was not required to do so in its publication of procedural reguations since the threshold showing goes to substance, not procedure. As the initial proceeding for a nonpreemption determination, NPD–1 was an appropriate forum in which to enunciate this statutorily-based requirement, particularly when, as discussed below, there is no prejudice to the rights of the affected parties. Assuming, for the sake of argument, that DOT should have previously published this criterion, failure to have done so does not amount to prejudicial error.

In the first place, Congress, not DOT, established a prerequisite showing of exceptional circumstances. In fact, DOT must consider whether this threshold showing has been made or a decision without such consideration could amount to reversible error upon judicial review. Secondly, the rights of the City have not been prejudiced by lack of knowledge of DOT's interpretation. As noted in the decision underlying this appeal, the City was informed by the 1982 interlocutory ruling (which the City had requested) that it had not supplied sufficient support to meet this threshold showing. The City resubmitted its application in 1984 proffering substantially the same showing with respect to exceptional circumstances. Two public commenters on the application noted the inadequacy of this showing. Although the Department allowed the City to file a "rebuttal" to public comments, the City chose to limit its supplemental filing to buttressing its comparative risk analysis and its contention that no unreasonable burden on commerce would occur. Further, in this appeal, the City has chosen to limit its challenge to the narrow legal issue of whether exceptional circumstances must be demonstrated rather than to attempt to make the showing. Finally, nothing precludes the City, either now or should exceptional circumstances develop later, from resubmitting an application for a non-preemption determination.

**Preferred Route Selection as Alternate Procedure**

The City reads DOT's comments concerning the availability of preferred route selection under HM–164 as prohibiting use of the non-preemption procedure to secure a variance for State or local regulations that effectively result in selection of routes other than those "preferred" within the meaning of HM–164. In doing so, the City misconstrues DOTs intention. Given the appropriate circumstances (including a

demonstrated need—the threshold showing), not present here, a non-preemption determination could be used to secure such a result. Absent those circumstances, the preferred route selection procedure established in HM–164 is the only available procedure, short of a change in the regulation, to secure the same result.

Although the City claims that DOT misled it by implying that a nonpreemption proceeding would be a proper way to achieve the result desired by the City, DOT notified the City in its 1982 interlocutory ruling of the requirement for a showing of exceptional circumstances as a prerequisite for this method. The City chose, for its own reasons, to ignore this early advice on its petition. While the City sought more specific guidance on the showing of equivalent levels of safety, it did not seek guidance on demonstrating exceptional circumstances and that demonstration remained the same throughout the proceeding.

As discussed above, the circumstances required for a non-preemption determination relate to need, that is, a specific State or local need for varying regulations to maintain the level of safety deemed adequate by the Secretary. In this proceeding, the City has relied on population density and lack of an Interstate bypass around the City to demonstrate this need. Although population density continues to play a role in the routing regulations, during their development in HM–164 the Department rejected population density as the major criterion in favor of time in transit. Mandatory use of Interstate bypasses, when available, was included in the rules as a uniform way to provide an incremental improvement in levels of safety in most cases. DOT recognized the special interest of States in the issue and crafted the rules to allow the States the ability, subject to extensive guidelines that assure consistency with the aims of the regulation, to select alternate preferred routes. The City has chosen not to avail itself of this procedure.

Instead, the City, having failed in the rulemaking to obtain the result it wanted, now asks DOT to grant variance from the regulations on the same grounds considered and rejected in the rulemaking. Granting the requested variance under these circumstances would not only violate the Congressional intent in allowing for waivers of preemption, but also constitute an arbitrary and capricious withdrawal of the authority recognized as properly lying with the States under the rule.

The City also argues that resort to the preferred route selection procedure under HM–164 would be futile in this case because of the lack of cooperation by Connecticut and that, in any case, the procedure is fatally flawed because of the lack of a Federal mechanism to resolve such disputes. On the contrary, a mechanism, namely, the non-preemption determination, is already available to "resolve disputes" or to otherwise solve problems when there is a need to assure the adequate levels of safety established by DOT. Here there is no indication that adequate levels are not maintained by use of the Interstate System through the City. Furthermore, the impacted State (Connecticut) strongly disagrees that the alternate routing would in fact result in even a marginal improvement in safety. In the face of this, Federal intervention to impose alternate routing would be unreasonable.

In arguing for mandated DOT dispute resolution in the absence of a safety need, the City misses the point of the preferred route selection process. Federal routing rules for radioactive material were not established out of any Federal concern that such shipments could not be transported safely; thus there is no real need for a dispute resolution mechanism in most cases since *adequate* levels of safety are achieved despite possible disputes. Indeed, DOT noted at the time HM–164 was adopted that, under the Federal regulatory scheme already in place, such shipments constitute very low risk hazardous materials shipments. Instead, the routing rules were established to ward off the possibility that communities in banning such shipments, would actually increase risks by forcing shipments onto circuitous, possibly secondary routes. In HM–164, DOT determined that use of the Interstate Highway System provides adequate levels of safety nationwide. The preferred route selection process is merely an optional means by which States can, if they wish, vary routes within the States consistent with the aims of the rule. Generally speaking, given the adequate level of safety provided by use of the Interstate System, selection of alternate preferred routing by States could be expected to increase safety only marginally. Furthermore, the Department recognizes that the alternate routing need not necessarily result in any increase in safety, but may be done by a State for other reasons unrelated to safety.

Rather than a waiver of preemption, what the City in fact seeks is a result which imposes alternate routing for shipments from Brookhaven through Connecticut. Of course, the grant of a waiver of preemption concerning a transportation ban would not necessarily "impose" specific alternate routes. However, that result may arise, practically speaking, from the lack of more than one alternate route. Here, despite DOT's advice to consider a generic case to obtain waiver for a transportation "ban," the City chose to limit its application to consideration of shipments from Brookhaven via only one of several possible highway routes through the City. If, as the City urges, the Department were to grant a waiver of preemption without any showing of exceptional circumstances justifying a Citywide transportation ban, that waiver would appropriately be limited to shipments from Brookhaven via the specific routing on which the application was based (i.e. Long Island Expressway, Clearview Expressway, Throgs Neck Bridge). A carrier could then use other preferred routes through the City. The result desired by the City, namely, alternate routing via Connecticut, would be frustrated because of the existence of these alternate preferred routes.

**Conclusion**

For the reasons discussed above, I affirm the decision of the Director, Office of Hazardous Materials Transportation, in NPD–1 denying the City's request for a non-preemption determination.

Issued in Washington, DC on December 23, 1986.

**M. Cynthia Douglass,**

*Administrator.*

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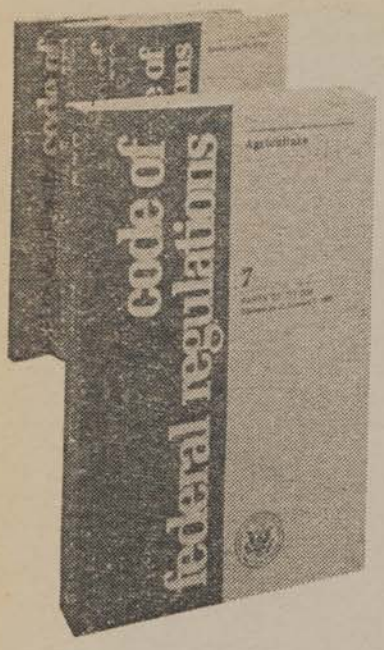


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