AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

6-3-87
Vol. 52 No. 106
Pages 20695-21000

federal register

Wednesday
June 3, 1987

Briefings on How To Use the Federal Register—
For information on briefings in Chicago, IL, and Boston, MA, see announcement on the inside cover of this issue.

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

The **Federal Register** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders and Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The **Federal Register** will be furnished by mail to subscribers for $340.00 per year, or $170.00 for 6 months, payable in advance. The charge for individual copies is $1.50 for each issue, or $1.50 for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

There are no restrictions on the republication of material appearing in the **Federal Register**.

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

How To Cite This Publication: Use the volume number and the page number. Example: 52 FR 12345.

THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

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

WHO: The Office of the Federal Register.

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

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

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

CHICAGO, IL

WHEN: July 8, at 9 a.m.
WHERE: Room 204A,
Everett McKinley Dirksen Federal Building,
219 S. Dearborn Street,
Chicago, IL.
RESERVATIONS: Call the Chicago Federal Information Center, 312-353-0339.

BOSTON, MA

WHEN: July 15, at 9 a.m.
WHERE: Main Auditorium, Federal Building,
10 Causeway Street,
Boston, MA.
RESERVATIONS: Call the Boston Federal Information Center, 617-565-8129

Contents

Federal Register
Vol. 52. No. 106
Wednesday, June 3, 1987

ACTION
RULES
Official seal, 20714

Administrative Conference of the United States
NOTICES
Meetings:
Plenary Session, 20764

Agriculture Department
See Commodity Credit Corporation; Farmers Home Administration; Foreign Agricultural Service

Air Force Department
NOTICES
Meetings:
Air Force Academy Board of Visitors, 20766
Procurement:
Contracts—
Activities for possible conversion, 20766

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Colorado, 20765
New Mexico, 20765
South Dakota, 20765
West Virginia, 20765

Commerce Department
See National Oceanic and Atmospheric Administration

Commodity Credit Corporation
NOTICES
Targeted export assistance program, 20764

Defense Department
See also Air Force Department
PROPOSED RULES
Civilian health and medical program of uniformed services (CHAMPUS):
DRG based payment system, 20731

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation:
Mobil Gas Co. Inc., 20766

Energy Department
See Economic Regulatory Administration; Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Toxic substances:
Testing requirements—
Biphenyl, 20710
PROPOSED RULES
Hazardous waste:
Delisting petitions; availability of justifications, etc., 20914
Treatment, storage, and disposal facilities—
Landfill, surface impoundment, and waste pile closures, 20754
Pesticide chemicals in or on raw agricultural commodities; tolerances and exemptions, etc.:
Paraquat, 20751
Permethrin, 20753
NOTICES
Air pollution control; new motor vehicles and engines:
California pollution control standards—
Preemption waiver, 20777
Meetings:
Science Advisory Board, 20778
State-FIFRA Issues Research and Evaluation Group, 20779
Toxic and hazardous substances control:
Confidential business information; access by Congress, 20778

Executive Office of the President
See Presidential Documents

Farmers Home Administration
RULES
Loan and grant programs:
Multiple family housing borrowers and grant recipients; management and supervision, 20697

Federal Aviation Administration
RULES
Air carriers certification and operations:
Protective breathing equipment, 20950
Airworthiness directives:
British Aerospace, 20698
McDonnell Douglas, 20699, 20700 (2 documents)
Mitsubishi Heavy Industries, Ltd., 20701
Navigational facilities, non-Federal:
Microwave landing system transition policy, 20703
Transition areas, 20702, 20703 (2 documents)
PROPOSED RULES
Air carriers certification and operations:
Emergency evacuation systems and components; mandatory reporting, 20982
Airworthiness directives:
Aerospatiale, 20721
British Aerospace, 20722
Airworthiness standards:
Rotorcraft, normal and transport category; occupant restraint, 20938
VOR Federal airways; correction, 20825
NOTICES
Advisory circulars; availability, etc.:
Normal category and transport category rotorcraft seats; dynamic evaluation, 20947

Federal Communications Commission
RULES
Common carrier services:
Nonstructural safeguards for provision of enhanced services (Computer III proceeding), 20714

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities under OMB review, 20779
(2 documents)

Federal Election Commission
RULES
Presidential primary and general election candidates; public financing
Transmittal to Congress, 20864

Federal Emergency Management Agency
NOTICES
Agency information collection activities under OMB review, 20780

Federal Energy Regulatory Commission
RULES
Bonneville Power Administration; confirmation of rates, 20704
PROPOSED RULES
Natural gas companies (Natural Gas Act), etc.:
Purchased gas adjustment regulations, 20828
NOTICES
Electric rate and corporate regulation filings:
El Paso Electric Co. et al., 20767
Hydroelectric applications, 20768
Small power production and cogeneration facilities; qualifying status:
First Energy Associates et al., 20775
Applications, hearings, determinations, etc.:
Arizona Public Service Co., 20776
Public Service Commission of District of Columbia, 20776
United Illuminating Co., 20777
Utah Power & Light Co., 20777

Federal Highway Administration
PROPOSED RULES
Engineering and traffic operations:
National bridge inspection standards; frequency of inspection and inventory, 20726

Federal Maritime Commission
NOTICES
Investigations, hearings, petitions, etc.:
Old Republic Insurance Co. et al., 20780
Meetings; Sunshine Act, 20823

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
KeyCorp; correction, 20780
Northern Bancorp., Inc., et al., 20780

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
Puritan-Bennett Aero Systems Co., 20723

Fish and Wildlife Service
RULES
Endangered and threatened species:
Florida scrub jay, 20715
Mount Graham red squirrel, 20994
PROPOSED RULES
Migratory bird hunting:
Seasons, limits, and shooting hours; establishment, etc., 20757

Food and Drug Administration
RULES
Human drugs:
Antibiotic drugs—
Cephalexin monohydrate tablets, 20709
NOTICES
Medical devices; premarket approval:
PERM-WET Wetting and Soaking Solution and PERM-CLEAN Daily Cleaner; correction, 20825

Foreign Agricultural Service
NOTICES
Targeted export assistance program, 20764

Health and Human Services Department
See Food and Drug Administration; National Institutes of Health; Public Health Service

Housing and Urban Development Department
NOTICES
Organization, functions, and authority delegations:
Regional offices, etc.; order of succession—
Atlanta, 20788
Real estate settlement procedures:
Settlement statement additions, 20782

Indian Affairs Bureau
PROPOSED RULES
Tribal government:
San Pasqual Band of Mission Indians in California, enrollment, 20727

Interior Department
See also Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau
PROPOSED RULES
Hearings and appeals procedures:
Administrative proceeding; disclosure of evidence, 20755

International Trade Commission
NOTICES
Import investigations:
Amorphous metals and amorphous metal articles, 20788
Battery-powered smoke detectors, 20789
Electrically resistive monocomponent toner and "black powder" preparations, 20789
Forged steel crankshafts from Brazil, West Germany, and United Kingdom, 20790
Garment hangers, 20791
Insulated security chests, 20791

Interstate Commerce Commission
NOTICES
Motor carriers:
Declaratory order petitions—
Staten Island Rapid Transit Operating Authority, 20791
Railroad operation, acquisition, construction, etc.:
Connecticut Central Railroad Co., 20792
Railroad services abandonment:
Norfolk & Western Railway Co., 20792

Justice Department
See also Juvenile Justice and Delinquency Prevention Office
NOTICES
Pollution control; consent judgments:
Wholesale Oil Co., 20792

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements:
Families of missing children; psychological consequences and promising interventions, 20974

Labor Department
See Occupational Safety and Health Administration; Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Montana, 20788

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 20793

National Institutes of Health
NOTICES
Meetings:
National Institute of Allergy and Infectious Diseases, 20782
Neurofibromatosis; consensus development conference, 20781

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Gulf of Alaska groundfish, 20720
Tuna, Atlantic fisheries, 20719
NOTICES
Grants; availability, etc.:
Fishing industry research and development project—Saltonstall-Kennedy funds, 20962
Meetings:
Pacific Fishery Management Council, 20766
South Atlantic Fishery Management Council, 20766

National Science Foundation
NOTICES
Antarctic Conservation Act of 1978; permit applications, etc., 20794

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 20823
Operating licenses, amendments; no significant hazards considerations:
Bi-weekly notices, 20794

Occupational Safety and Health Administration
NOTICES
Meetings:
Construction Safety and Health Advisory Committee, 20793

Pacific Northwest Electric Power and Conservation Planning Council
NOTICES
Meetings; Sunshine Act, 20823

Pension and Welfare Benefits Administration
NOTICES
Meetings:
Employee Welfare and Pension Benefits Plans Advisory Council, 20793

Presidential Documents
PROCLAMATIONS
Special observances:
George C. Marshall Month (Proc. 5663), 20695

Public Health Service
See also Food and Drug Administration; National Institutes of Health
RULES
Grants:
Health professions student loan program, 20986
PROPOSED RULES
Grants:
Health professions student loan program, 20989

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 20823
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 20813, 20815 (2 documents)
Pacific Stock Exchange, Inc., 20816
Applications, hearings, determinations, etc.:
Bankers National Life Insurance Co. et al., 20817
Lifetime Global Equity Trust, 20818

Small Business Administration
NOTICES
Disaster loan areas:
Texas, 20820

State Department
PROPOSED RULES
Visas, nonimmigrant documentation:
Applications; designated location (Immigration Reform and Control Act implementation), 20725
NOTICES
Meetings:
Shipping Coordinating Committee, 20820

Transportation Department
See Federal Aviation Administration; Federal Highway Administration

Treasury Department
NOTICES
Agency information collection activities under OMB review, 20820, 20821 (2 documents)

United States Information Agency
NOTICES
Grants; availability, etc.:
Private non-profit organizations in support of international educational and cultural activities, 20821

Separate Parts In This Issue

Part II
Department of Energy, Federal Energy Regulatory Commission, 20828

Part III
Federal Election Commission, 20864

Part IV
Environmental Protection Agency, 20914

Part V
Department of Transportation, Federal Aviation Administration, 20938

Part VI
Department of Transportation, Federal Aviation Administration, 20950

Part VII
Department of Commerce, National Oceanic and Atmospheric Administration, 20962

Part VIII
Department of Justice, Juvenile Justice and Delinquency Prevention Office, 20974

Part IX
Department of Transportation, Federal Aviation Administration, 20982

Part X
Department of Health and Human Services, Public Health Service, 20986

Part XI
Department of the Interior, Fish and Wildlife Service, 20994

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

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR
Proclamations:
5663 20695

7 CFR
1930 20697

11 CFR
106 20864
9001 20864
9002 20864
9003 20864
9004 20864
9005 20864
9006 20864
9007 20864
9012 20864
9031 20864
9032 20864
9033 20864
9034 20864
9035 20864
9036 20864
9037 20864
9038 20864
9039 20864

14 CFR
39 (4 documents) 20698–20701
71 (2 documents) 20702, 20703
121 20950
171 20703
Proposed Rules:
27 20938
29 20938
39 (2 documents) 20721, 20722
71 20825
121 20982

16 CFR
Proposed Rules:
13 20723

18 CFR
300 20704
Proposed Rules:
154 20828
282 20828
375 20828
381 20828

21 CFR
442 20709

22 CFR
Proposed Rules:
41 20725

23 CFR
Proposed Rules:
650 20726

25 CFR
Proposed Rules:
76 20727

32 CFR
Proposed Rules:
199 20731

40 CFR
799 20710
Proposed Rules:
180 (2 documents) 20751, 20753
260 20914
264 20754
265 (2 documents) 20754, 20914
270 (2 documents) 20754, 20914

42 CFR
57 20986
Proposed Rules:
57 20989

43 CFR
Proposed Rules:
4 20755

45 CFR
1204 20714

47 CFR
64 20714

50 CFR
17 (2 documents) 20715, 20994
285 20719
672 20720
Proposed Rules:
20 20757

Federal Register
Vol. 52. No. 106
Wednesday. June 3, 1987

Presidential Documents

Title 3—

The President

Proclamation 5663 of June 1, 1987

George C. Marshall Month, June 1987

By the President of the United States of America

A Proclamation

Forty years ago this June 5, Secretary of State George Catlett Marshall, Jr., in a commencement address at Harvard University, proposed a plan for the reconstruction of war-shattered Europe. It is truly fitting that we commemorate the 40th anniversary of what became known as the Marshall Plan, because it was the foundation for the most remarkable period of peace and prosperity in history. Highly symbolic of American commitment to peace and freedom in Europe, the Plan most appropriately bore George Marshall's name. As Chief of Staff of the Army during World War II, he had been instrumental in the liberation of Europe; after peace had come, he worked with equal vigor as Secretary of State to see Europe restored to a new level of strength and vitality.

The Marshall Plan is a proud monument in the history of our Nation, because it derives from our large and generous spirit and our commitment to the principles of interdependence, self-determination, and openness to positive cooperation. The plan succeeded beyond greatest expectations and remains an inspiration today because it demonstrates what is possible when nations lay aside differences to meet a common challenge.

We also take this opportunity to honor George C. Marshall for his lifetime of devotion to the United States of America. He led the Army during our greatest test of arms, served as Secretary of State and Secretary of Defense, and became the first professional soldier to receive the Nobel Peace Prize. He will be remembered forever as the epitome of the citizen soldier.

The Congress, by Senate Joint Resolution 70, has designated the month of June as "George C. Marshall Month" and authorized and requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim June 1987 as George C. Marshall Month. I urge all Americans to join in observance of this month with appropriate programs, ceremonies, and activities.

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

Ronald Reagan

[FR Doc. 87-12801
Filed 6-2-87; 10:45 am]
Billing code 3195-01-M

Editorial note: For the President's remarks of June 1 on signing Proclamation 5663, see the *Weekly Compilation of Presidential Documents* (vol. 23, no. 22).

Rules and Regulations

Federal Register
Vol. 52, No. 106
Wednesday, June 3, 1987

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1930

Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations governing the management and supervision of Farmers Home Administration (FmHA) Multiple Family Housing Loan and Grant Recipients. This action is taken to incorporate editorial changes. The intended effect of this action is to remove typographical errors and to make corrections and clarifications to the final rule of August 1, 1986 (51 FR 27636), with effective date of October 1, 1986.

EFFECTIVE DATE: June 3, 1987.

FOR FURTHER INFORMATION CONTACT: William F. Daniel, Senior Loan Specialist, Multiple Family Housing Servicing and Property Management (MHSPM) Division, Room 5321-S, Farmers Home Administration, USDA, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone: (202) 382-1619.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Department Regulation 1512-1 which implements Executive Order 12291, and has been determined to be exempt from those requirements because it involves only internal Agency management. It is the policy of this Department to publish for comment rules relating to public property, loans, grants, benefits, or contracts notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This action, however, is not published for proposed rulemaking, since it involves only editorial corrective items and an item inadvertently left out of the final rule for which public comments had been solicited.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment. According to the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Intergovernmental Review

This program/activity is listed in the Catalog of Federal Domestic Assistance under numbers 10.405, 10.411, 10.415 and 10.427 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 24, 1983).

General Information

Background

On August 1, 1986, final rulemaking was published in the **Federal Register** to implement provisions of the Housing and Urban-Rural Recovery Act (Pub. L. 98-181), enacted November 30, 1983. During ensuing training of Farmers Home Administration staff nationwide and review by program recipients, certain editorial errors in the rulemaking were reported. This action removes the reported errors.

This rulemaking includes a rent preemption clause in Exhibit C to Subpart C of Part 1930, 7 CFR. The clause was described in the preamble of the prior rule published in the **Federal Register** on July 16, 1985 (50 FR 28782). Public comment was requested; no response was received on this specific item. Farmers Home Administration intended to include the rent preemption clause or a clause of similar wording in the final rule that was published in the **Federal Register** on August 1, 1986 (51 FR 27636); however, it was inadvertently omitted. This action establishes the rent preemption clause omitted in the August 1, 1986, final rulemaking action.

List of Subjects in 7 CFR Part 1930

Accounting, Administrative practice and procedure, Grant programs—Housing and community development, Loan programs—Housing and community development, Low and moderate income housing—Rental, Reporting and recordkeeping requirements.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1930—GENERAL

1. The authority citation for Part 1930 continues to read as follows:

Authority: 42 USC 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart C—Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients

§ 1930.110 [Amended]

2. In § 1930.110, paragraph (c) introductory text is amended in the first sentence by changing the word "biennial" to read "triennial."

§ 1930.119 [Amended]

3. In § 1930.119, paragraph (b) is amended in the second and seventh sentence by changing the word "two" to read "three."

§ 1930.124 [Amended]

4. In § 1930.124, paragraphs (a)(3)(ii) and (v) are amended by changing the semicolon to a comma and adding the phrase "except during the first fiscal year of operation;" after the comma.

5. Exhibit B of Subpart C is amended by redesignating paragraph II A 4 as paragraph II A 5, by revising paragraphs II A 3 d and XV A 12, and by adding a new paragraph II A 4 to read as follows:

Exhibit B of Subpart C—Multiple Housing Management Handbook

* * * * *

II. * * *
A. * * *
3. * * *

d. Reasonable attendant care and auxiliary apparatus expenses described in paragraphs II 4 a and II 4 b of this exhibit for each handicapped member of the family to the extent needed to enable any family member (including such handicapped member) to be employed.

4. Total handicap assistance expense in excess of 3 percent of annual family income may be deducted for any nonelderly family following the same guidelines in paragraphs II 3 a and II 3 b of this exhibit to the extent needed to enable any family member (including the handicapped or disabled family member) to be employed. Handicap assistance expense includes:

a. That portion of attendant care attributable to specialized medical reasons (the portion attributable to companionship is not counted).

b. Auxiliary apparatus including but not limited to wheelchairs, oxygen equipment, reading devices for the visually handicapped and the cost of equipment added to cars and vans to permit their use by the handicapped or disabled family member proportionate to the amount of use by such persons.

* * * * *

XV. * * *

A. * * *

12. A fidelity bond may have a deductible figure not in excess of an amount equivalent to 2 tenths of 1 percent (.002) of the project loan amount but not in excess of $2,000.

* * * * *

6. In Exhibit B, paragraph II C 1 h is amended in the fourth line by changing the words "available for subsistence after deducting" to read "that exceeds".

7. In Exhibit B, paragraph II C 1 i is amended in the first line by inserting the words "hazard duty pay" between the words "except" and "for".

8. In Exhibit B, paragraph II I is amended in the fourth line by changing the word "handicapped" to read "handicaps".

9. In Exhibit B, paragraphs II I 2 a, b, and c are amended by adding the word "and" at the end of each paragraph, and in paragraph II I 2 b, by changing the word "is" to read "was" and removing the words "the person attains".

10. In Exhibit B, paragraph II K is amended in the second line by changing the word "gross" to read "annual".

11. In Exhibit B, paragraph II W 3 a and the introductory text of paragraph b are amended by correcting the spelling of the words "equals" and "exceeds" to "equal" and exceed," respectively.

12. In Exhibit B, paragraph II DD is amended at the end of the third sentence by changing the words "other than FmHA" to read "outside the project".

13. In Exhibit B, the introductory text of paragraph V D 1 is amended at the end of the third sentence by removing the words "for each occupied unit".

14. In Exhibit B, Introductory text of paragraph VI B 1 a is amended by inserting the words "income from" between the words "include" and "net".

15. In Exhibit B, paragraph VI B 2 d is amended in the first sentence by inserting the words "and designated" between the words "built" and "for".

16. In Exhibit B, the introductory text of paragraph VI B 2 h is amended by changing the word "built" to "designated".

17. In Exhibit B, paragraph VI B 6 a(5) is amended in the last sentence by correcting the spelling of the word "surchage" to read "surcharge."

18. In Exhibit B, the introductory text of paragraph VI B 6 b is amended by changing the word "returned" to read "rented".

19. In Exhibit B, the introductory text of paragraph VI C 3 is amended by adding the following sentence at the end of the paragraph: "Separate lists may be maintained for: "; introductory paragraph VI C 3 a and paragraph VI C 3 b are removed, and paragraphs VI C 3 a (1) through (6) are redesignated as paragraphs VI C 3 a through f, respectively.

20. In Exhibit B, paragraph VI D 2 b is amended by removing the words "and eligibility income" and inserting between the word "information" and the comma the words "as defined in paragraph II C 1 of this exhibit" and by inserting the word "and" between the comma and the word "verified".

21. In Exhibit B, the introductory text of paragraph VIII F 6 is amended in the first sentence by changing the word "built" to read "designated".

22. In Exhibit B, paragraph XIV A 4 is amended in the first sentence by changing the reference "paragraphs IV A c (1) or (2) or (3) of this Exhibit" to read "paragraphs IV A 2 c (1) or (2) or (3) of this exhibit".

23. In Exhibit C of Subpart C, paragraph III A 1 is amended by correcting the spelling of the word "ensuring" to read "ensuing".

24. In Exhibit C, paragraph IV B is amended by changing the reference from "Form FmHA 444–8" to "Form FmHA 1944–8".

25. In Exhibit C, paragraph IV D is amended in the first sentence by changing the word "an" to read "a".

26. In Exhibit C, paragraph VIII is amended by removing the word "automatic" in the title and in the first sentence.

27. Exhibit C is amended by redesignating paragraph IX as paragraph X and by adding a new paragraph IX to read as follows:

Exhibit C of Subpart C—Rent Changes

* * * * *

IX Rent Control Preemption Policy.

In order to carry out the provisions of this subpart and to protect (1) a housing source in rural areas for very low-, low- and moderate-income families; (2) the financial obligations of borrowers; and (3) the financial interest of the Government in such housing, the entire field of rent control that may be exercised by any local rent control board or other authority pursuant to state or local law, as it affects housing covered by this subpart, is hereby preempted.

Exhibit C–2 of Subpart C—[Amended]

28. Exhibit C–2 of Subpart C is amended in the paragraph starting with the words "You may" and ending with the words "this chapter" by changing the single asterisk to a double asterisk preceding the paragraph.

Exhibit E of Subpart C—[Amended]

29. In Exhibit E of Subpart C, paragraph II D is amended by inserting the phrase "new construction RA" between the words "for" and "purposes".

30. In Exhibit E, paragraph II F is amended in the last sentence to change the reference "Exhibit F" to read "Exhibit C."

31. In Exhibit E, paragraph XI B 1 b is amended in the second sentence by correcting the word "waitiing" to read "waiting."

Dated: April 22, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87–12505 Filed 6–2–87; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86–NM–210–AD; Amdt. 39–5634]

Airworthiness Directives; British Aerospace Aircraft Group Model BAC 1–11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to BAC 1–11 200 and 400 series airplanes, which requires a change to the Airplane Flight Manual (AFM) limiting operation of the aircraft when only one air conditioning system is serviceable. This action is necessary because, in switching electrical power as defined in the AFM, electrical smoke and fire procedures can cause shutdown of the remaining air conditioning system. This condition, if not corrected, could cause loss of airplane pressurization.

EFFECTIVE DATE: July 6, 1987.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, which requires a change to the Model BACF 1-11 Airplane Flight Manual (AFM) limiting operation when only one air conditioning system is serviceable, was published in the **Federal Register** on January 14, 1987 (52 FR 1468).

Interested parties have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to the only comment received. The commentor expressed no objection to the NPRM.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

It is estimated that 67 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost will be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators it estimated to be $2,680.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities because of the minimal cost of compliance per airplane ($40). A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

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

2. By adding the following new airworthiness directive:

BRITISH AEROSPACE: Applies to BAC Model 1-11 Series 200 and 400 airplanes, certificated in any category. Compliance is required within 90 days after the effective date of this AD.

To prevent loss of pressurization as a result of conducting the procedures for electrical smoke or fire, accomplish the following unless previously accomplished.

A. Modify the Airplane Flight Manual and notify flight crews as follows. This may be accomplished by inserting a copy of this AD in the Airplane Flight Manual.

1. In Section 3, Page 12A, add:

"In the event that the procedure for electrical smoke or fire has to be carried out when both pneumatic and both air conditioning systems are operative, the subsequent busbar switching actions will result in the loss of one air conditioning system. Therefore, reduce aircraft altitude to 25,000 feet or below, as soon as practicable."

2. In Section 3, Page 12A, add:

"In the event that the procedure for electrical smoke or fire has to be carried out with either pneumatic or either air conditioning system inoperative, reduce aircraft altitude to 15,000 feet or below, as soon as practicable, and open the ram air valve."

3. In Section 4, Page 49, add:

"Should a pneumatic or an air conditioning system fail above 25,000 feet, reduce aircraft altitude to 25,000 feet or below, as soon as practicable."

B. The limitation defined in paragraph A.2., above, may be removed after BAe Modification 21-PM5930 to the electrical system is incorporated.

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

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

All persons affected by this directive who have not already received the appropriate service document from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This document may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 6, 1987.

Issued in Seattle, Washington, on May 21, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-12525 Filed 6-2-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 87-NM-51-AD; Amdt. 39-5633]

Airworthiness Directives; McDonnell Douglas Model DC-10 and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to DC-10 and KC-10A (Military) series airplanes, which requires inspections of the pylon aft clevis fitting attach bolts, and replacement, if necessary. This amendment is prompted by a report of a failed H-11 bolt. This action is necessary to detect broken H-11 bolts that have failed due to stress-corrosion. Failure of two or more bolts, in combination with maximum limit load conditions, could lead to separation of the engine from the wing.

EFFECTIVE DATE: June 15, 1987.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Kyle L. Olsen, Aerospace Engineer, Airframe Branch, ANM-121L, FAA Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: The McDonnell Douglas DC-10 wing pylon aft clevis fitting attach bolts are fabricated from H-11 steel. An operator

discovered one broken bolt on an airplane that had accumulated 42,261 hours time in service. Investigation of the cracked bolt showed that a corrosion pit in the shank led to stress-corrosion cracking.

Each pylon has four bolts at the clevis fitting. Stress analysis shows that the clevis fitting has ultimate strength with one broken bolt, and except for a limit gust condition, limit strength with two broken bolts in the same fitting. Failure of the two primary fitting attach bolts, combined with the certification limit gust loans, could result in separation of the engine and pylon from the wing.

The FAA reviewed and approved McDonnell Douglas Service Bulletin A57-106, dated March 23, 1987, which describes inspection procedures and replacement instructions, of the pylon aft clevis fitting attach bolts.

Since this condition is likely to exist or develop on other airplanes of the same type design, this AD requires inspection and replacement of broken wing pylon aft clevis fitting attach bolts, in accordance with the service bulletin previously mentioned.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The FAA has determined that his regulation is an emergency regulation that is not considered to the major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

2. By adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10, -10F, -15, -30, -30F, -40 and KC-10A (Military) series airplanes, certificated in any category. Compliance required as indicated unless previously accomplished.

To prevent pylon separation due to broken pylon aft clevis fitting attach bolts, accomplish the following:

A. Within 30 days after the effective date of this AD, and thereafter at intervals not to exceed 180 days, accomplish the following:

1. Inspect the pylon aft clevis fitting attach bolts in accordance with the Accomplishment Instructions in McDonnell Douglas Service Bulletin A57-106, dated March 23, 1987, or later FAA-approved revision.

2. If broken bolts are found, before further flight replace all four bolts with new bolts in accordance with the Accomplishment Instructions in McDonnell Douglas Service Bulletin A57-106, dated March 23, 1987, or later FAA-approved revision.

B. Replacement of all four of the aft clevis fitting H-11 steel attach bolts in a pylon with stress-corrosion resistant Inconel and/or multi-phase bolts in accordance with the Accomplishment Instructions in McDonnell Douglas Service Bulletin A57-106, dated March 23, 1987, or later FAA-approved revision, constitutents terminating action for the inspections required by paragraph A., above.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment becomes effective June 15, 1987.

Issued in Seattle, Washington, on May 21, 1987.

Wayne J. Barlow,
Director, Northwest Mountain Region.

[FR Doc. 87-12526 Filed 6-2-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 86-NM-208-AD; Amdt. 39-5632]

Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, -50, and C-9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, which currently requires ultrasonic inspections of the wing flap hinge fitting attachment studs in accordance with a referenced service bulletin. This amendment revises the AD to permit the use of later FAA-approved revisions to the applicable service bulletin.

EFFECTIVE DATES: June 12, 1987.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at 4344 Donald Douglas Drive, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. John Cecil, Aerospace Engineer, Airframe Branch, ANM-122L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California 90808; telephone (213) 514-6319.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 79-03-01, Amendment 39-3403 (44 FR 5644), to permit the use of later revisions of the referenced service bulletin in accomplishing inspections of certain wing flap hinge fitting studs, was published in the **Federal Register** on November 20, 1986 (51 FR 41981).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association stated that they had no objection to the contents of the proposed amendment.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

This rule relieves a restriction in that it permits compliance with a previously adopted AD by a means other than that permitted by that AD. Therefore, this amendment may be made effective in less than 30 days.

For the reasons discussed above, the FAA has determined that this regulation is not considered to be major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this rule will not have a significant economic effect on a substantial number of small entities, because few, if any, Model DC-9 airplanes are operated by small entities. A final evaluation has been prepared for this regulation and has been placed in the docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) as follows:

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

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

2. By revising AD 79-03-01, Amendment 39-3403 (44 FR 5644), as follows:

A. Change the words "... Douglas DC-9 Service Bulletin 57-118 dated November 4, 1977," found in paragraphs (a), (b)2, and (b)4, to read: "... McDonnell Douglas DC-9 Service Bulletin 57-118, Revision N.C., dated November 4, 1977, or later FAA-approved revision."

B. Delete the note found in section (a), which reads: "Note: Service Bulletin 57-118, dated November 4, 1977, is the only version of this Service Bulletin suitable for compliance with paragraph (a) and (b) of this AD."

C. Change the words "... Chief, Aircraft Engineering Division, FAA Western Region," found in paragraphs (d) and (e), to read: "... Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region."

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington or the Los Angeles Aircraft Certification Office, 4344 Donald Douglas Drive, Long Beach, California.

This Amendment revises Amendment 39-3403.

This Amendment becomes effective June 12, 1987.

Issued in Seattle, Washington, on May 19, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-12524 Filed 6-2-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 87-CE-03-AD; Amendment 39-5629]

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd., Models MU-2B-25, MU-2B-26 and MU-2B-35 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to certain Mitsubishi Heavy Industries, Ltd., (MHI) Models MU-2B-25, -26 and -35 airplanes (TC No. A2PC), which requires inspections, repair as necessary, and removal of shield jumper wires that together form a ground circuit that parallels the generator ground cable. This action is prompted by the report of one shield jumper that burned from overcurrent. The actions required by this AD would preclude the possibility of an electrical fire.

EFFECTIVE DATE: July 3, 1987.

Compliance: Required as prescribed in the body of the AD.

ADDRESSES: MHI MU-2 Service Bulletin (S/B) No. 201 dated December 27, 1985, and Amended dated April 25, 1986, applicable to this AD may be obtained from Mitsubishi Heavy Industries, Ltd., 10, Oye-Cho, Minato-ku, Nagoya, Japan; or Beech Aircraft Corporation (Licensee to Mitsubishi Heavy Industries, Ltd.), 9709 East Central, P.O. Box 85, Wichita, Kansas 67201. This information may be examined at the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Herb Peters, Aerospace Engineer, Western Aircraft Certification Office, Systems & Equipment Section, ANM-173W, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009-2007; Telephone (213) 297-1367.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Regulations to include an AD applicable on certain Mitsubishi Heavy Industries, Ltd., Models MU-2B-25, -26 and -35 airplanes, requiring inspections, repair as necessary, and removal of shield jumper wires, was published in the **Federal Register** on February 18, 1987 (52 FR 4915). The proposal resulted from a report that a generator shield jumper wire was found burned. Consequently, MHI has issued MU-2 S/B No. 201 dated December 27, 1985, with Amendment dated April 25, 1986, which indicates inspections, repair, and modification which will correct the problem circuit. The JCAB, who has responsibility and authority to maintain the continuing airworthiness of these airplanes in Japan, has classified this MHI S/B, as amended, and the actions recommended therein by the manufacturer, as mandatory to assure the continued airworthiness of the affected airplanes. Mitsubishi Aircraft International (U.S-built) airplanes are not affected. On airplanes operated under Japanese registration, this action has the same effect as an AD on airplanes certificated for operation in the United States. The FAA relies upon the certification of the JACB combined with FAA review of pertinent documentation in finding compliance of the design of these airplanes with the applicable United States airworthiness requirements and the airworthiness and conformity of products of this design certificated for operation in the United States.

The FAA examined the available information related to the issuance of the aforementioned S/B and the mandatory classification by the JCAB, and concluded the condition addressed by MHI MU-2 S/B No. 201 dated December 27, 1985, with Amendment dated April 25, 1986, was an unsafe condition that may exist on other airplanes of this type certificated for operation in the United States. Accordingly, the FAA proposed an amendment to Part 39 of the FAR to include an AD on this subject.

Interested persons have been afforded the opportunity to comment on the proposal. No comments were received in response to the NPRM. No objections were received on the FAA determination of the related cost to the

public. The FAA has determined that this regulation involves approximately 123 airplanes at an approximate one-time cost of $160 for each airplane. Accordingly, the proposal is adopted with only minor editorial changes.

Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aviation safety, Aircraft safety.

Adoption of the Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

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

2. By adding the following new AD:

Mitsubishi Heavy Industries, Ltd. (MHI): Applies to MHI Models MU–2B–25, MU–2B–26, and MU–2B–35 (TC No. A2PC) (Serial Numbers 264 through 312, 314 through 320, 586 through 651, and 653), airplanes certificated in any category. Compliance: Required within the next 100 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent burning of generator shield jumper wires, accomplish the following:

(a) Inspect, repair (as necessary) and modify the generator circuit shield jumper wires in accordance with instructions contained in paragraphs 1. and 2. of the "Instructions" portion of MHI MU–2 Service Bulletin (S/B) No. 201 dated December 27, 1985, as amended April 25, 1986.

(b) Aircraft may be flown in accordance with FAR 21.197 to a location where the AD may be accomplished.

(c) An equivalent means of compliance with this AD may be used if approved by the Manager, Western Aircraft Certification Office, ANM–170W, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007.

All persons affected by this directive may obtain copies of the documents referred to herein upon request to Mitsubishi Heavy Industries, Ltd., 10, Oye-Cho, Minato-ku, Nagoya, Japan; or Beech Aircraft Corporation, 9709 East Central, P.O. Box 85, Wichita, Kansas 67201; or FAA, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106.

This amendment becomes effective July 3, 1987.

Issued in Kansas City, Missouri, on May 19, 1987.

Paul K. Bohr,

Director, Central Region.

[FR Doc. 87–12523 Filed 6–2–87; 8:45 am]

BILLING CODE 4910–13–M

---

14 CFR Part 71

[Airspace Docket No. 87–ASW–5]

Revision of Transition Area; Graham, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area at Graham, TX. The intended effect of the amendment is to provide necessary controlled airspace for aircraft executing a new standard instrument approach procedure (SIAP) to the Graham Municipal Airport, Graham, TX. This amendment is necessary since the nondirectional radio beacon (NDB) is being relocated and additional airspace is needed to encompass the new SIAP.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: David J. Souder, Department of Transportation, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX 76193–0530, telephone (817) 624–5535.

SUPPLEMENTARY INFORMATION:

History

On March 17, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the transition area at Graham, TX (51 FR 10115).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the transition area at Graham, TX. To enhance airport usage, a new SIAP is being developed for the Graham Municipal Airport, utilizing the relocated Graham NDB as a navigational aid. The development of a new SIAP, based on this relocated navigational aid, entails revision of the existing transition area at Graham, TX, at and above 700 feet above ground level within which aircraft are provided air traffic control services. Transition areas are designed to contain IFR operations in controlled airspace during portions of the terminal operation and while transiting between the terminal and en route environment. The intended effect of this action is to ensure segregation of aircraft using the approach procedure under instrument flight rules (IFR) and other aircraft operating under visual flight rules (VFR).

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

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

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Graham, TX Revised

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Graham Municipal Airport, (latitude 33°06'38" N., longitude 98°33'16" W.).

Issued in Fort Worth, TX, on May 20, 1987.

Larry L. Craig,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-12529 Filed 6-2-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 71

[Airspace Docket No. 86-ANM-24]

Establish Pinedale, WY, Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes transition areas to accommodate arrival and departure procedures to Wenz Airport, Pinedale, Wyoming.

EFFECTIVE DATE: 0901 UTC, July 30, 1987.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM-535, Federal Aviation Administration, Docket No. 86-ANM-24, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168, Telephone: (206) 431-2535.

SUPPLEMENTARY INFORMATION:

History

On March 23, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish transition airspace at Pinedale, Wyoming (51 FR 9184). This action is needed to provide controlled airspace to accommodate arrival and departure procedures to Wenz Airport, Pinedale, Wyoming.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Handbook 7400.6C dated January 2, 1987.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations provides controlled airspace to accommodate arrival and departure procedures to Wenz Airport, Pinedale, Wyoming.

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

List of Subjects in CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

PART 71—[AMENDED]

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

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

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

2. Section 71.181 is amended as follows:

Pinedale, Wyoming, Transition Area (New)

The airspace extending upward from 700 feet above the surface within 5 miles either side of a direct line between the Big Piney, Wyoming, VOR/DME and the Wenz NDB extending from the VOR/DME to a point 5 miles northeast of the NDB, and within 3.5 miles either side of the 323° bearing to the Wenz NDB, extending to 11.5 miles southeast of the NDB, excluding the Big Piney, Wyoming, 700 foot transition area. That airspace extending upward from 1,200 feet above the surface within 7.5 miles northeast and 11.5 miles southwest of the 323° bearing to the Wenz NDB, extending from a point 22 miles southeast of the NDB to a point 9.5 miles northwest of the NDB, excluding the Big Piney, Wyoming, 1,200 foot transition area.

Issued in Seattle, Washington, on May 21, 1987.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 87-12530 Filed 6-2-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 171

FAA Microwave Landing System (MLS) Transition Policy

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Announcement of issuance of policy statement.

SUMMARY: Approval of the FAA Microwave Landing System (MLS) Transition Policy, by the Federal Aviation Administrator, permits the establishment of Instrument Landing Systems (ILS), on a limited basis, at medium and large hub airports, and their associated reliever airports to solve certain capacity problems until sufficient MLS ground stations are deployed. The policy outlines three options, listed in the order of availability to the user, in which ILS's may be acquired, operated, and maintained.

EFFECTIVE DATE: May 16, 1987.

ADDRESS: Inquires may be mailed to Federal Aviation Administration, Office of Program and Regulations, 800 Independence Avenue, SW, Washington, DC 20591, Attention: APR-120.

FOR FURTHER INFORMATION CONTACT: Stephen R. Horwat, 202-267-9672.

The following Microwave Landing System (MLS) Transition Policy was approved by the Administrator on May 16, 1987:

Microwave Landing Systems (MLS) will be the primary precision approach system in the National Airspace System (NAS) well beyond the year 2000. These systems will achieve effectiveness in the decade of the 1990s and will provide the operational flexibility and improved safety required to meet forecast aviation growth. The results will be major capacity, noise abatement, and safety benefits which will begin to accrue during the middle of that decade.

In the interim, there is an immediate need for precision approach systems at medium and large hub airports and their associated reliever airports to solve certain capacity problems. These needs may be attained by the establishment of Instrument Landing Systems (ILS) on a limited basis.

ILS Acquisition

ILS's may be acquired, operated, and maintained under the following options, listed in order of availability to the user:

Systems acquired by the airport sponsor in accordance with Part 171 of of Federal Aviation Regulations (14 CFR 171). System acquisition is the sole responsibility of the sponsor and will not involve any Federal funds.

Systems acquired by the sponsors with Federal grant funds under the Airport Improvement Program (AIP).

Systems acquired by the FAA under the Facilities and Equipment (F&E)

Appropriation. The cost of operating and maintaining these systems will be borne by the FAA.

Federal Assumption of Ownership, Maintenance and Operation

Sponsors may request FAA assumption of ownership, maintenance and operation of systems acquired under Part 171 or system maintenance under the AIP program. Systems must be identical to those currently specified and purchased by the FAA and have Remote Maintenance Monitoring (RMM) capability, or be capable of being retrofitted with RMM.

For Part 171 Systems, FAA will assume responsibility only if the systems meet eligibility criteria required for Federal Systems.

For AIP Systems, a sponsor may request FAA to maintain the facility but the sponsor shall retain ownership and operational responsibility. This option will be considered only after it has been shown that acceptable maintenance support is not available in the commercial sector and FAA-provided maintenance, on a reimbursable basis, is in the best interest of the Federal government and the public.

Eligibility Criteria

Category I, II, or III systems to be acquired under this policy shall meet all of the following eligibility criteria:

Meet MLS establishment criteria contained in Airway Planning Standard Number One and must have a current benefit/cost ratio of 1.0 or better.

Be located at a medium or large hub airport, or an associated reliever airport as defined in the National Plan of Integrated Airport Systems or meet a documented critical safety requirement.

Have an immediate and critical requirement for precision approach that cannot be delayed until MLS becomes available; e.g., storm damaged systems, immediate capacity needs, new runways, etc.

Be documented by a complete staff study.

Have their operational need validated by the Associate Administrator for Aviation Standards and be approved by the Administrator.

Selection Process

ILS's eligible for Federal funding under the above-stated options will be prioritized for selection on the basis of their potential to enhance capacity in the National Airspace System. Special situations involving critical safety issues or unique need will be handled on a case-by-case basis.

Limitations of This Policy

The above options do not provide for operational and/or maintenance of ILS's procured prior to or outside the provisions of this policy. It should be noted that the elapsed time between identification of a user's need and the start of ILS operation can vary significantly depending on the option. In addition, funds for ILS acquisitions through the FAA's F&E Appropriation or AIP grant options will only provide for a limited number of systems.

Each new ILS will be in use for a finite period because of eventual replacement by MLS. Therefore, only those locations with an immediate and critical requirement for precision approach guidance will be eligible under this policy. For the purpose of amortization, ILS's under this policy will be operated and maintained for a minimum of 10 years from the date of commissioning.

SUPPLEMENTARY INFORMATION:

Application for ILS Under the Airport Improvement Program (AIP)

House Report 99–696 on the Department of Transportation and Related Agencies Appropriation Act, 1987, includes a provision directing the FAA to allocate up to $5 million for the Airport Improvement Program (AIP) for purchase and installation of ILS's and approach lighting for those airports that meet the agency's qualifying criteria.

Eligible sponsors interested in being considered for an ILS should submit an AIP grant preapplication (SF–424 and FAA Form 5100–30) to the appropriate FAA Airports District Office or Regional Airports Division no later than June 30, 1987. The following information and guidelines are provided for sponsors who wish to apply:

Depending on the varying cost of selected projects (equipment, site preparation, and installation) an estimated four to eight ILS installations may be funded.

All applicants will be evaluated on a nationwide basis using the criteria and selection procedures contained in this FAA MLS Transition Policy.

Sponsors should be prepared to assist the FAA in developing any data needed to establish site eligibility under the policy.

Any sponsor of an airport which is not a medium or large hub or a reliever to a medium or large hub, but who believes their airport would qualify for an ILS as a critical safety or unique aeronautical need should contact the appropriate FAA regional director before beginning the application process.

Applications will also be accepted for partial ILS (localizer/marker) or for adding glide slopes to sponsor-owned localizer/marker/distance measuring equipment.

Final selection of these sites for ILS under the AIP will be made by July 31, 1987, and all applicants will be notified. Since authorization for AIP expires at the end of Fiscal Year 1987, the acquisition of ILS under any newly authorized grant program will be reexamined once new legislation is enacted.

Issued in Washington, DC, on May 27, 1987.

Anthony J. Broderick,

Associate Administrator for Aviation Standards.

[FR Doc. 87–12531 Filed 6–2–87; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 300

[Docket No. RM82–6–002; Order No. 323–B]

Confirmation and Approval of the Rates of the Bonneville Power Administration

Issued May 27, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is adopting a final rule that amends Part 300 of its regulations regarding approval of rates submitted to the Commission by the Federal power marketing administration (PMAs).

The Commission originally adopted Part 300 of its regulations in Order No. 323, which established procedures for interim and final approval of rates submitted pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act) by the Bonneville Power Administration (BPA). Part 300 was subsequently revised to apply generally to all PMAs, as well as BPA. The revisions in this final rule address portions of Order No. 323 that were reversed and remanded by the U.S. Circuit Court of Appeals for the Ninth Circuit.

The final rule deletes from the regulations the exception for BPA and the other PMAs from *ex parte* communications restrictions. The rule adds a requirement that rates filed by BPA under section 7(k) of the Regional

Act comply with the abbreviated filing requirements for coordination sales under Part 35 as well as with the filing requirements of Subpart B of Part 300. In addition, the rule makes a technical correction to clarify the standard of review by the Commission for BPA section 7(k) filings.

EFFECTIVE DATE: July 6, 1987.

FOR INFORMATION CONTACT: Richard Faubel, Federal Energy Regulatory Commission, Office of Electric Power Regulation, 825 North Capitol Street NE., Washington, DC 20426, (202) 376-9347.

SUPPLEMENTARY INFORMATION:

Before Commissioners Martha O. Hesse, Chairman; Anthony G. Sousa, Charles G. Stalon, Charles A. Trabandt and C.M. Naeve.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending Part 300 of its regulations[1] regarding approval of rates submitted to the Commission by the Federal power marketing administrations (PMAs).

The Commission originally adopted Part 300 of its regulations in Order No. 323, which established procedures for interim and final approval of rates submitted pursuant to the Pacific Northwest Electric Power Planning and Conservation Act (Regional Act)[2] by the Bonneville Power Administration (BPA).[3] Order No. 323 was appealed by Southern California Edison Company and Pacific Gas and Electric Company to the United States Court of Appeals for the Ninth Circuit (Ninth Circuit). On September 3, 1985, the court affirmed in part, and reversed and remanded in part, the final rule.[4] These revisions address the reversed and remanded portions of that final rule.

II. Background

Under the Department of Energy Organization Act (DOE Act),[5] enacted in 1978, the primary responsibility for reviewing the rates of BPA and the other PMAs was vested in the Department of Energy (DOE). In 1980, the Regional Act transferred authority over reivew of BPA rates to this Commission.[6] The Secretary of DOE has delegated rate review responsibilities over the other PMAs to this Commission.[7]

The Commission promulgated its final rule establishing procedures and filing requirements for BPA on August 10, 1983. On appeal of the rule to the Ninth Circuit, the court found that: (1) The rule was ripe for judicial review; (2) the Commission had correctly concluded that the rule was not subject to the notice and comment provisions of the Administrative Procedure Act (APA);[8] and (3) the Commission had improperly concluded that rate filings under section 7(k) of the Regional Act[9] *(i.e.*, those for nonfirm, nonregional rates) were not required to comply strictly with Federal Power Act[10] procedures, and therefore the rule's exemption for such filings from Commission's *ex parte* communications regulation, and the rule's filing reguirements that failed to include BPA's case-in-chief, were void. In addition, the court granted the Commission's request that one issue of the appeal, relating to the standards of review for section 7(k) rates, be remanded to the Commission.[11]

III. Discussion

A. Summary of the Rule

In this order the Commission is revising § 300.1(a)[12] of its regulations to delete the provision exempting BPA and other PMA rate proceedings from the applicability of Rule 2201 *(Ex Parte* Communications) of the Commission's regulations.[13] This revision removes the only exception ot the comprehensive applicability of the Commission's General Rules of Practice and Procedures[14] to PMA rate filings and therefore fully complies with the Regional Act's requirements for section 7(k) rate proceedings.

The Commission is also amending Subpart B of Part 300[15] to add a new section requiring that rates filed under section 7(k) of the Regional Act comply with the abbreviated filing requirements for coordination sales under Part 35 of the Commission's regulations[16] as well as with the filing requirements of Subpart B. The coordination nature of sales under section 7(k) is explained below. This amendment, making the filing requirements of Part 35 for coordination sales applicable to section 7(k) sales, brings the revised PMA filing regulations into compliance with the requirement of section 7(k) that rates approved under that section be in accord with the Commission's Federal Power Act ratemaking procedures.

In addition, the Commission is revising § 300.21(c)(2)[17] to delete the reference to paragraph (c)(1) of that section from the standards for approval of section 7(k) rates for nonfirm, nonregional sales. This revision reconciles the nonfirm, nonregional rate review standards in the Commission's regulations with section 7(k) of the Regional Act as well as with other Commission decisions and opinions of the Ninth Circuit.

The provisions of Order No. 323 remanded by the court were in error because of the Regional Act's unique requirements for rate filings under section 7(k). The court did not find any deficiencies in the regulations as they apply to rate filings other than those under section 7(k). Therefore, the Commission considers that the remanded provisions of Order No. 323 were voided only to the extent of their applicability to section 7(k) filings, and that all portions of Part 300 have remained in effect for BPA rate filings other than section 7(k) filings and for all rate filings of the other PMAs.

The changes promulgated in this final rule are discussed individually below.

B. Ex Parte Communications Rule

As a part of the final rule issued in Order No. 323, the Commission promulgated § 300.1(a), which stated that the Commission's General Rules of Practice and Procedure under Part 385 of the Commission's regulations will be applicable to BPA proceedings before the Commission except as provided by rule or order.[18] However, the Commission found an exception to the general application of these procedures, and exempted the applicability of Rule 2201[19] *(Ex Parte* Communications) from

---

[1] 18 CFR. Part 300 (1986).

[2] 16 U.S.C. 839-839g (1982).

[3] Order No. 323, FERC Stat. and Reg., Regulations Preambles 1982-1985, ¶ 30,483, *reconsideration granted in part and denied in part*, Regulations Preambles 1982-1985, ¶ 30,527 (1983). Part 300 was subsequently revised to apply generally to all PMAs, including BPA. *See* Order No. 382, FERC Stat. and Reg., Regulations Preambles 1982-1985, ¶ 30,575 (1984), 49 FR 25230 (June 20, 1984).

[4] Southern California Edison Company v. FERC, 770 F.2d 779 (9th Cir. 1985) (*Edison*).

[5] 42 U.S.C. 7101-7352 (1982).

[6] *See* section 7(a), 16 U.S.C. 839e(a) (1982).

[7] Delegation Order No. 0204-33 To the Assist. Sec. of Resource Applications and the Fed. Energy Regulatory Comm., FERC Stat. and Reg. (Delegation Orders) ¶ 9907, 43 FR 60636 (Dec. 28, 1978), *superceded by* Delegation Order No. 0204-108 to the Dep. Sec., the Administrators of the Alaska, Southeastern, Southwestern and Western Area Power Administrations and the Fed. Energy Regulatory Comm., FERC Stat. and Reg. (Delegation Orders) ¶ 9910, 48 FR 55664 (Dec. 14, 1983).

[8] 5 U.S.C. 550-576 (1982).

[9] 16 U.S.C. 839e(k) (1982).

[10] 16 U.S.C. 791a-825r (1982).

[11] 770 F.2d at 784.

[12] 18 C.F.R. 300.1(a) (1986).

[13] 18 C.F.R. 385.2201 (1986).

[14] 18 C.F.R. Part 385 (1986).

[15] 18 C.F.R. 300.10-300.13 (1986).

[16] 18 C.F.R. 35.13(a)(2) (1986).

[17] 18 C.F.R. 300.21(c)(2) (1986).

[18] As noted above, Order No. 382 extended the applicability of § 300.1(a) to all PMA rate review proceedings.

[19] 18 C.F.R. 385.2201 (1986).

the Part 300 procedures. The rule stated that the *ex parte* communications rule "will apply only as the Commission determines is appropriate under law." In the preamble to the final rule, the Commission said that the *ex parte* communications exemption was crafted to "acknowledge the difficulty of applying the *ex parte* restrictions used in public utility rate cases to the rate cases of a fellow federal agency." [20]

In *Edison*, the Ninth Circuit found that the plain language of section 7(k) of the Regional Act directs the Commission to apply the Federal Power Act procedures regardless of differences between nonregional rate proceedings and proceedings pursuant to the Federal Power Act.[21] The court found that the statutory scheme of section 7(k) must have been intended by Congress as a protection for BPA's nonregional customers.[22]

The court, citing Rule 2201, noted that the Commission procedures prohibit *ex parte* communications except under limited circumstances not presented in this case.[23] The court furher noted that Congress made no attempt to modify the applicability of the rule toward BPA, and that the court was shown no precedent supporting such an exemption.[24] Accordingly, the Ninth Circuit voided the *ex parte* exemption as contrary to Federal Power Act procedural rules.

In compliance with the court's decision, the Commission is removing the exemption from Rule 2201 for BPA and the other PMAs.

C. Case-In-Chief Filing Requirements

The Commission is adding a new section, § 300.14, to Subpart B to require that rates submitted for its review pursuant to section 7(k) of the Regional Act comply with the filing requirements for the same type of sales by public utilities under the Federal Power Act. Section 7(k) rate filings will also be subject to the filing requirements of Subpart B.

The Ninth Circuit voided the filing requirements for BPA that were promulgated in Order No. 323 and codified at Subpart B of Part 300 of the Commission's regulations.[25] The court found that, because the filing requirements did not require BPA to file its case-in-chief, they were not in accord with the Commission's regulations for Federal Power Act proceedings, and therefore did not comply with the directive of section 7(k) of the Regional Act.

The court noted that § 35.13 of the Commission's regulations [26] requires a utility filing under the Federal Power Act to submit its case-in-chief with its rate application.[27] The Commission argued that the nature of a rate filing under the Regional Act is critically distinct from a rate filing pursuant to the Federal Power Act.[28] While the court agreed that the proceedings are distinct,[29] it disagreed that the differences allow deviation from Federal Power Act procedures.[30]

Section 205(c) of the Federal Power Act [31] directs that, under regulations established by the Commission, each public utility must file "schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services."

When the Commission adopted the current filing requirements in Part 35, [32] applicable to public utilities filing under the Federal Power Act, it required a complete cost of service analysis for utilities making significant rate change filings.[33] An exemption from the comprehensive filing requirements was provided for certain categories of filings, for which abbreviated filing requirements were established.[34] One of the categories of filings that were exempted from the comprehensive cost analysis requirements was for rates which were integral parts of a coordination or interchange arrangement for nonfirm service.[35]

A coordination transaction is defined as a sale or exchange of specialized electricity services that allows the buyer to realize cost savings or reliability gains that are not attainable if it relied solely only on its own resources.[36] For the seller, a coordination transaction is further characterized by the limited obligation on the seller and the voluntary nature of the relationship between buyer and seller. Such a transaction provides an opportunity for the seller to earn additional revenues and to lower rates of territorial firm load customers by selling energy that is temporarily excess to the load requirements of those customers.[37]

Nonfirm, nonregional sales of energy by BPA are coordination transactions. The customers in these transactions are not part of BPA's native load. They are off-system customers with internal generation sources upon which they primarily rely for power and energy. Energy from BPA under section 7(k) is available to them on a nonfirm basis, if and when BPA has surplus energy which it cannot sell to its regional, native firm and nonfirm load customers.

The revision to Subpart B in this final rule therefore requires BPA to comply with the Part 35 filing requirements for coordination transactions—the submission of policies and understandings [38] required by § 35.1 and the abbreviated requirements specified in § 35.13(a)(2)—When submitting rates under section 7(k) for Commission review. This revision brings the Commission's regulations for section 7(k) rates into compliance with Federal Power Act ratemaking procedures.

The Commission notes that the new filing requirements are procedural. They are not intended to expand the scope or standard of review of BPA's nonfirm, nonregional rates. While the new requirements track the procedural filing requirements of the Federal Power Act, they do not subject the rates to any substantive considerations of the Federal Power Act.[39] The policies and

[20] FERC Stat. and Reg., Regulations Preambles 1982–1985, ¶ 30,483 at 30,636 (1983), 48 FR 37006 (August 16, 1983). The exemption from Rule 2201 was extended to the other PMAs in Order No. 382. *See* FERC Stat. and Reg., Regulations Preambles 1982–1985 at 31,009, 49 FR at 25233, n.9.

[21] 770 F.2d at 784.

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] 18 C.F.R. 300.10–300.13 (1986). Order No. 382 made these requirements applicable to all PMAs.

[26] *See* 18 C.F.R. 35.13(e)(2) (1986).

[27] 770 F.2d at 783–84.

[28] Brief of the Federal Energy Regulatory Commission, Southern California Edison Co. v. FERC, 9th Cir., No. 83–7841, Sept. 21, 1984

[29] 770 F.2d at 784, n.3

[30] *Id.* at 784.

[31] 16 U.S.C. 824d(c) (1982).

[32] 18 CFR Part 5 (1986).

[33] *See* Revised Requirements for Filing Changes in Electric Rate Schedules, FERC Stat. and Reg., Regulations Preambles 1977–1981, ¶ 30,170 (1980), 45 FR 46352 (July 10, 1980).

[34] *Id.* at 31,140, 31,153.

[35] 18 CFR § 35.13(a)(2)(D) (1986).

[36] Regulation of Electricity Sales-for-Resale and Transmission Service (Phase 1), Notice of Inquiry, FERC Stat. and Reg., ¶ 35,518 (1985), 50 FR 23446 (June 4, 1985).

[37] *Id.*

[38] *I.e.*, classifications, practices, rules and regulations affecting rates and charges and all contracts which affect or relate to rates, charges, classifications, services, rules, regulations or practices.

[39] This is consistent with the Ninth Circuit's opinion in Central Lincoln Peoples' Utility District v. FERC *(Central Lincoln)*, 735 F.2d 1101 (1984). In rejecting a contention that the substantive provisions of the Federal Power Act are meant to govern review under section 7(k), the court observed, "This is not borne out by the language of

Continued

understandings filed pursuant to § 300.14 will not themselves be subject to Commission approval.[40]

Except for the filing of understandings and policies that affect section 7(k) rates, the Commission does not anticipate that this additional compliance requirement will result in significant, if any, changes to BPA section 7(k) applications. In effect, the abbreviated filing requirements are comprehensively subsumed under Part 300. In practice, therefore, with the exception of the submission of understandings and policies, filings under Subpart B have included all elements required of a public utility under § 35.13(a)(2).

Rates submitted pursuant to section 7(k) will continue to be subject to the filing requirements of Subpart B of Part 300. There are elements required in a filing under Subpart B which are not required under the abbreviated requirements of Part 35.[41] These additional elements relate to the distinct characteristics of PMA sales and are essential for the Commission to evaluate rate filings under the unique standards of review required by section 7(k). Therefore, to facilitate the Commission's review of these rates, the final rule provides for compliance with both sets of filing requirements for filings under section 7(k).

D. Section 7(k) Standard of Review

The revision to § 300.21(c)(2) of the Commission's regulations is primarily a technical correction. The last clause of subparagraph (c)(2) was inappropriately included in the final rule promulgated in Order No. 323, and is being deleted in order to clarify the standard of review for BPA section 7(k) rate filings at the Commission.

The Commission requested that the court remand this portion of the final rule in order to give the Commission an additional opportunity to study and reconsider the language in § 300.21(c)(2).[42] The Commission's request was granted.[43]

Both the Commission and the court have said that rates under section 7(k) for nonfirm, nonregional sales were to be reviewed by the Commission under different standards from rates established under section 7(a).[44] In the final rule in Order No. 323, the standard for review of section 7(a) rate filings was codified in § 300.21(c)(1). This codification of the standard mirrors section 7(a)(2) of the Regional Act. The standard for review of section 7(k) rate filings, for nonfirm, nonregional sales, was codified in § 300.21(c)(2). Paragraph (c)(2) provides that the Commission will review rate filings under section 7(k) for compliance not only with the three statutes set out in section 7(k) of the Regional Act, but also with the three specific findings required under paragraph (c)(1). Paragraph (c)(2) thus presently reads as follows:

(2) *Rates under section 7(k).* The Commission will review any rate established by the Administrator under section 7(k) of the Northwest Power Act for compliance with the requirements of the Bonneville Project Act, the Flood Control Act of 1944, the Federal Columbia River Transmission System Act, *and the standards set forth in paragraph (c)(1) of this section.*[45]

By including a reference to paragraph (c)(1) in paragraph (c)(2), the Commission inadvertently subjected rate filings under section 7(k) of the Regional Act to two sets of standards, including the standards for regional sales under section 7(a) which Congress did not intend to apply to review of rates for nonregional sales.[46] Deleting the last clause of paragraph (c)(2) from the regulation assures that the regulation parallels the statutory guidelines for Commission review of section 7(k) rates.[47]

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) [48] requires agencies to prepare certain statements, descriptions, and analyses of rules that would have "a significant economic impact on a substantial number of small entities." [49] The Commission is not required to make such analyses if a rule would not have such an impact.[50]

This final rule imposes requirements only on PMAs, which do not fall within the RFA's definition of "small entities." [51] Furthermore, the changes promulgated by the rule are primarily procedural in nature and therefore will not have a significant impact. Pursuant to the RFA, therefore, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act Statement

The Paperwork Reduction Act, 44 U.S.C. 3501–3520 (1982), requires that certain information collection requirements be approved by the Office of Management and Budget (OMB) or, for requests imposed on other agencies, by the General Services Administration (GSA). OMB regulations, 5 CFR 1320.16 (1986), state that approval and clearance for interagency reporting is to be provided by GSA.

Prior to the original promulgation of the filing requirements of Part 300, the Commission was notified by GSA that clearance of the filing requirements in the rule was not required. GSA stated that submissions by PMAs as part of the rate establishment process are

---

section 7(k) itself, which carefully provides the statutory standards that are to govern review, and refers to the (Federal Power Act) in the context of 'procedures established for ratemaking.'" 735 F.2d at 1113 n.6.

[40] For example, these procedural filing requirements would not alter the Commission's decision in Public Utilities Commission of the State of California, *et al.* v. U.S. Dept. of Energy, Bonneville Power Adminsitration, 39 FERC ¶ 61,088 (1987).

[41] *See, e.g.*, § 300.10(f) (requiring the filing of the Administrator's Record of Decision, if one is made); § 300.11(b) requiring the filing of historical data for the preceding five years, as well as for the test year, for sales and revenues, capacity and energy resources, and expenses; and requiring a summary of the allocation of total investment, operation and maintenance costs among the various authorized purposes of a multi-purpose reservoir project; and § 300.12(b)(1) (requiring a statement of how the rates and charges meet the objective of recovering the revenue necessary to repay the Federal investment).

[42] *See* brief of the Federal Energy Regulatory Commission, Southern California Edison Co. v. FERC, 9th Cir., No. 83–7841, Sept. 21, 1984.

[43] 770 F.2d at 786.

[44] *See Edison*, 770 F.2d at 785–86, *citing Central Lincoln*, 735 F.2d at 1113–14 (1984); *Central Lincoln*, 735 F.2d at 1115; U.S. Secretary of Energy, Bonneville Power Administration, Order Resolving Scope of Commission's Jurisdiction, Granting Intervention, and Establishing Further Procedures, 20 FERC ¶ 61,291 (1982).

[45] 18 CFR 300.21(c)(2) (1986) (emphasis added).

[46] *See Central Lincoln*, 735 F.2d at 1113–15.

[47] The Commission has held that, for BPA rates to comply with the statutes by which section 7(k) rates are to be reviewed, they must be developed (1) with regard to the recovery of costs from the generation and transmission of electric energy, (2) to encourage the most widespread use of Bonneville power, (3) to provide the lowest possible rates to consumers consistent with sound business principles, and (4) to protect the interests of the United States in amortizing its investments in the projects within a reasonable period. *See, e.g.*, U.S. Dept. of Energy—Bonneville Power Administration, Opinion No. 250, 36 FERC ¶ 61,335, 61,798 (1986), *aff'd on reh'g*, Opinion No. 250–A, 39 FERC ¶ 61,033 (1987); U.S. Dept. of Energy—Bonneville Power Administration, 27 FERC ¶ 61,251, 61,475–76 (1984); Bonneville Power Administration, 23 FERC ¶ 61,342, 61,738 (1983); U.S. Secretary of Energy, Bonneville Power Administration, 13 FERC ¶ 61,157, 61,338 (1980); U.S. Dept. of Energy, Bonneville Power Administration, Opinion No. 482, 34 FPC 1462 (1965).

Furthermore, the Commission has stated that, in compliance with the Flood Control Act, part of its inquiry in reviewing nonregional rates is whether BPA has made power available to nonregional customers on fair and reasonable terms and conditions. 27 FERC at 61,476. *See also*, California Energy Commission v. Johnson, 767 F.2d 631, 635 (9th Cir. 1985).

[48] 5 U.S.C. 601–612 (1982).

[49] 5 U.S.C. 605(a).

[50] 5 U.S.C. 605(b).

[51] 5 U.S.C. 601(3), *citing* to section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

operational in nature and are not considered to be reporting requirements. There have been no subsequent changes in the Paperwork Reduction Act or in OMB or GSA regulations relating to that conclusion by GSA. The filing requirements in this final rule are part of the rate establishment process and are not, therefore, reporting requirements necessitating GSA approval and clearance.

VI. Administrative Procedure Act Requirements and Effective Date

Generally, section 553 of the Administrative Procedure Act (APA) [52] requires that notice and an opportunity for comment be afforded when an agency proposes a rule. This requirement does not apply, however, to rules that are rules of agency organization, procedure, or practice or when notice and comment are unnecessary.[53]

This final rule is the culmination of a rulemaking that was initiated in 1981 when the Commission issued an interim rule governing interim approval of BPA rates.[54] The comments received in response to the interim rule were considered in the 1983 promulgation of the final rule in Order No. 323, which adopted the major aspects of the interim rule. The final rule in Order No. 323 incorporated new procedures in § 300.21 that had not been included in the interim rule. Primarily for this reason, a special solicitation of comment was extended upon adoption of the final rule. This additional, post-promulgation opportunity to comment, in the form of petitions for reconsideration, was not limited to comments on the provisions of § 300.21.[55]

The court rejected arguments that the Commission violated the APA by not providing opportunity for additional comment before adopting the final rule that included the new § 300.21 provisions.[56] The court found that § 300.21 pertained to procedural aspects of the approval of BPA rates and therefore fell under the APA exemption in section 553(b)(3)(A) for procedural rules.[57] The court noted that the substantive impact a procedural rule may have does not subject it to notice and comment requirements.[58]

Opportunity for comment was provided prior to issuance of the final rule in Order No. 323 on all issues except the provisions of § 300.21, and the court found the provisions of § 300.21 to fall within the APA exemption from comment requirements for procedural rules. Two of the changes made in this final rule are purely procedural. The removal of the *ex parte* communications rule exemption in § 300.1 is a revision to the Commission's procedural rules and is, therefore, clearly procedural in nature. The deletion of subparagraph (c)(2) from § 300.21 is a revision to provisions that the court has agreed are procedural. These two changes therefore are exempt from section 553 because they are rules of agency organization, procedure or practice.

Moreover, interested persons have had ample opportunity to comment on the issues incorporated within the scope of these changes. The *ex parte* communications provision and the filing requirements were both within the scope of the interim rule for which an opportunity for comment was provided. Although the provisions of § 300.21 were new to the final rule in Order No. 323, and therefore the revision to the § 300.21(c)(2) was not within the scope of issues upon which comment might be expected, it was within the scope of issues in Order No. 323 for which special solicitation of comment was extended upon promulgation. Since that post-promulgation opportunity to comment was not limited to § 300.21, there thus was a second opportunity for comment on the issues involved in the other two changes in ths final rule.

This rule will be effective July 6, 1987.

List of Subjects in 18 CFR Part 300

Administrative practice and procedure, Electric power rates, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 300, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission. Commissioner Sousa dissented in part with a separate statement attached.

Kenneth F. Plumb,

Secretary.

Confirmation and Approval of the Rates of the Bonneville Power Administration

[Docket No. RM82-6-002]

Issued May 27, 1987

SOUSA, ANTHONY G., Commissioner, *dissenting in part*:

I respectfully dissent to that portion of the order which holds that the filing requirements for Bonneville Power Administration's (BPA) nonfirm, nonregional rates pursuant to section 7(k) of the Northwest Electric Power Planning and Conservation Act (Regional Act) reflect Federal Power Act (FPA) procedural protections only. I do not object to this holding *per se*, but wish to again point out that the FPA procedural protections afforded to the nonfirm, nonregional customers are meaningless in light of the majority's recent holdings that BPA may charge rates which unduly discriminate against those customers.[1]

I am concerned as well with the discussion pertaining to the requirement that BPA submit to the Commission its classifications, practices and regulations affecting [BPA's 7(k) rates] together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services" (policies and practices). The order holds that these policies and practices will not be subject to Commission approval.[2]

The Commission has in the past construed its statutory mandate in this regard so narrowly that it has permitted BPA to apply policies and practices in a manner that permits BPA to effect changes in rates without prior Commission authorization, contrary to section 7(k).[3] As I have in the past, I will continue to oppose any further erosion of our jurisdiction over BPA in this regard. In my view, the Commission's responsibility to review BPA's 7(k) rates necessarily requires the Commission to reject BPA rates that do not meet the section 7(k) standards, even if the rates are based on BPA policies or practices that may not be subject to Commission review or approval.

Anthony G. Sousa,

Commissioner.

1. The authority citation for Part 300 continues to read as follows:

Authority: Pacific Northwest Electric Power Planning and Conservation Act, 16 U.S.C. 839–839h (1982); Bonneville Project Act, 16 U.S.C. 832–8321 (1982); Flood Control Act of 1944, 16 U.S.C. 825s (1982); Federal Columbia River Transmission System Act, 16 U.S.C. 838–838k (1982); Reclamation Project Act of 1939, 43 U.S.C. 485–485k (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR Part 142 (1978); Delegation Order No. 0204–33, 43 FR 60,636 (1978).

PART 300—[AMENDED]

2. Part 300 is amended by revising § 300.1(a) of Subpart A, by adding a new § 300.14 to Subpart B, and by revising § 300.21(c)(2) of Subpart C, to read as follows:

---

[52] 5 U.S.C. 533 (1982).

[53] 5 U.S.C. 553(b).

[54] *See* FERC Stat. and Reg., ¶ 30,321, 46 FR 60813 (December 14, 1981).

[55] *See* FERC Stat. and Reg., Regulations Preambles, ¶ 30,483 at 30,640–41.

[56] 770 F.2d at 783.

[57] *Id.*

[58] *Id., citing*, Rivera v. Becerra, 714 F.2d 887, 890–91 (9th Cir. 1983).

[1] Public Utilities Commission of the State of California, *et al.*, v. U.S. Dept. of Energy, Bonneville Power Administration, 39 FERC ¶ 61,088 (1987); United States Dept. of Energy, Bonneville Power Administration, 39 FERC ¶ 6,069 (1987).

[2] Confirmation and Approval of the Rates of the Bonneville Power Administration, 39 FERC ¶ _____ (1987), *Mimeo* at 11–12.

[3] *See*, Public Utilities Commission of the State of California, *et al.* v. United States Dept. of Energy—Bonneville Power Administration, 33 FERC ¶ 61,489 (1985).

Subpart A—General Provisions

§ 300.1 Applicability and definitions.

(a) *Applicability.* This part sets forth procedures governing the filing, review and disposition of the rate schedules for the sale or transmission of power and energy established by the Alaska, Bonneville, Southeastern, Southwestern and Western Area Power Administrations. Except as otherwise provided by rule or order, the Commission's general rules of practice and procedure (Part 385 of this chapter) will apply to any filings, hearings or other procedures under this part, as applicable.

* * * * *

Subpart B—Filing Requirements

* * * * *

§ 300.14 Filings under section 7(k).

Any application for Commission review and approval of a rate or rate schedules established by the Administrator of the Bonneville Power Administration pursuant to section 7(k) of the Pacific Northwest Electric Power Planning and Conservation Act must be filed in compliance with the provisions of § 35.13(a)(2) of Part 35 of this chapter and with the provisions of this part, and must include the classifications, practices, rules and regulations affecting the rate and charges and all contracts which in any manner affect or relate to such rate, charges, classifications, services, rules, regulations, or practices. However, such classifications, practices, rules, regulations or contracts which may affect or relate to rates will not be subject to Commission approval unless they are determined to be rates or rate schedules.

Subpart C—Commission Rate Review and Approval

* * * * *

§ 300.21 Final confirmation and approval.

* * *

(c) *Standards of review for the Bonneville Power Administration.*

* * *

(2) *Rates under section 7(k).* The Commission will review any rate established by the Administrator under section 7(k) of the Pacific Northwest Electric Power Planning and Conservation Act for compliance with the requirements of the Bonneville Project Act, the Flood Control Act of 1944, and the Federal Columbia River Transmission System Act.

* * * * *

[FR Doc. 87-12611 Filed 6-2-87; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 442

[Docket No. 87N-0149]

Antibiotic Drugs; Cephalexin Monohydrate Tablets

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the antibiotic drug regulations to provide for the inclusion of accepted standards for a new strength of cephalexin monohydrate tablet. The manufacturer has supplied sufficient data and information to establish the safety and efficacy of the new strength.

DATES: Effective June 3, 1987; comments, notice of participation, and request for hearing by July 6, 1987; data, information, and analyses to justify a hearing by August 3, 1987.

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

FOR FURTHER INFORMATION CONTACT: Peter Dionne, Center For Drugs and Biologics (HFN-815), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: FDA has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to a request for approval of a new strength (250 milligrams) of cephalexin monohydrate tablet. The agency has concluded that the data supplied by the manufacturer concerning this antibiotic drug are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulation should be amended in 21 CFR 442.127a(a)(1) to provide for the inclusion of accepted standards for the product.

Environmental Impact

The agency has determined under 21 CFR 25.24(c)(6) 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.

Submitting Comments and Filing Objections

This final rule announces standards that FDA has accepted in a request for approval of an antibiotic drug. Because this final rule is not controversial and because when effective it provides notice of accepted standards, notice and comment procedure and delayed effective date are found to be unnecessary and not in the public interest. This final rule, therefore, is effective June 3, 1987. However, interested persons may, on or before July 6, 1987, submit written comments to the Dockets Management Branch (address above). 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 Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this final rule may file objections to it and request a hearing. Reasonable grounds for the hearing must be shown. Any person who decides to seek a hearing must file (1) on or before July 6, 1987, a written notice of participation and request for hearing, and (2) on or before August 3, 1987, the data, information, and analyses on which the person relies to justify a hearing, as specified in 21 CFR 314.300. A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the data, information, and factual analyses in the request for hearing that no genuine and substantial issue of fact precludes the action taken by this order, or if a request for a hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the person(s) who request(s) the hearing, making findings and conclusions and denying a hearing. All submissions must be filed in three copies, identified with the docket number appearing in the heading of this order and filed with the Dockets Management Branch.

The procedures and requirements governing this order, a notice of participation and request for hearing, a submission of data, information, and analyses to justify a hearing, other comments, and grant or denial of a hearing are contained in 21 CFR 314.300.

All submissions under this order, except for data and information

prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 442

Antibiotics.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 442 is amended as follows:

PART 442—CEPHA ANTIBIOTIC DRUGS

1. The authority citation for 21 CFR Part 442 continues to read as follows:

Authority: Sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357); 21 CFR 5.10.

2. Section 442.127a is amended by revising the second sentence in paragraph (a)(1) to read as follows:

§ 442.127a Cephalexin monohydrate tablets.

(a) * * *

(1) * * * Each tablet contains cephalexin monohydrate equivalent to 250, 500, or 1,000 milligrams of cephalexin. * * *

* * * * *

Dated: May 26, 1987.

Sammie R. Young,

Deputy Director, Office of Compliance.

[FR Doc. 87-12607 Filed 6-2-87; 8:45 am]

BILLING CODE 4160-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42031C; FRL-3212-4]

Biphenyl; Test Standards and Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule announces EPA's adoption of the study plans and schedule submitted by the Biphenyl Work Group for the testing of biphenyl (CAS No. 92-52-4). The tests for environmental effects and chemical fate, consisting of chronic testing on *Daphnia magna*, early life stage testing on rainbow trout, oyster toxicity, oyster bioconcentration, and aerobic and anaerobic biodegradation are required of manufacturers and processors of biphenyl under section 4(a) of the Toxic Substances Control Act (TSCA).

DATES: In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern ["daylight" or "standard" as appropriate] time on June 17, 1987. This rule shall become effective on July 17, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Rm., E-543, 401 M St., SW., Washington, DC 20460, (202) 554-1404.

SUPPLEMENTARY INFORMATION: EPA is issuing a final rule under section 4(a) of TSCA to require specific test standards and reporting deadlines be used in testing biphenyl.

I. Introduction

Test Rule Development Under TSCA

This notice is in implementation of section 4 of TSCA (Pub. L. 94-469, 90 Stat. 2003 *et seq.*, 15 U.S.C. 2601 *et seq.*) which contains authority for EPA to require the development of data relevant to assessing the risk to health and the environment posed by exposure to particular chemical substances or mixtures.

Biphenyl (CAS No. 92-52-4) was designated by the Interagency Testing Committee (ITC) for priority testing consideration (47 FR 22585; May 25, 1982). EPA issued a proposed rule, published in the **Federal Register** of May 23, 1983 (48 FR 23080) in response to the testing recommendations by the ITC on biphenyl. EPA issued, under two-phase rulemaking, a final Phase I rule requiring testing of biphenyl published in the **Federal Register** of September 12, 1985 (50 FR 37182). For a detailed discussion of EPA's findings and testing requirements for all tests, refer to the final Phase I rule. In accordance with the Test Rule Development and Exemption Procedures for two-phase rulemaking in 40 CFR Part 790, persons subject to this rule were required to submit letters of intent to perform the testing or exemption applications. Those submitting letters of intent were required to submit proposed study plans and schedules for the testing required in the final Phase I rule.

On December 19, 1985, the Biphenyl Ad Hoc Group, now the Biphenyl Work Group (BWG), under the auspices of the Synthetic Organic Chemical Manufacturers Association, Inc. (SOCMA), notified EPA of certain companies' intent to sponsor the testing required in the final Phase I test rule and submitted proposed study plans and schedules for all required testing. The BWG includes Monsanto Co., Dow Chemical Co., Cheveron, Chemol, Coastal States Marketing, Koch Chemical, and Sybron Chemical Co.

After review and evaluation of these study plans, the Agency requested on January 3, 1986, that the BWG make certain revisions. On January 24, 1986, the Agency received from the BWG a complete set of study plans for all of the testing required for biphenyl. These study plans either contained revisions in response to the Agency's request or justifications, contained in cover letters, as to why certain suggested revisions were not made.

After review of the study plans, the EPA concluded that certain revisions were still necessary to transform these plans into acceptable test standards for the testing required for biphenyl. These revisions were incorporated into a document entitled "Revision of Study Plans for Biphenyl" which, together with the attached submitted study plans, are referred to as the EPA-modified study plans for biphenyl (Ref. 1). On July 15, 1986, the Agency proposed that these study plans be the required test standards and time schedules for the testing of biphenyl and solicited public comments on this proposal (51 FR 25577). After review of public comments, EPA is now promulgating a final Phase II rule requiring the sponsors of each test to conduct this testing in accordance with the revised EPA-approved modified study plans for biphenyl (Ref. 2). These study plans also incorporate revisions in response to public comments. These study plans shall become the test standards and reporting requirements for this substance.

II. Proposed Test Standards

The BWG notified EPA of their members' intent to sponsor the testing required in the final Phase I rule for biphenyl in 40 FR 799.925. The BWG members have also submitted proposed study plans for the required testing, which, after evaluation, the EPA revised resulting in the EPA-modified study plans for biphenyl. The BWG members proposed to sponsor the following studies: Flow-Through Chronic Toxicity with *Daphnia magna* Straus and Embryo-Larval Toxicity Test with Rainbow Trout, *Salmo gairdneri* Richardson (Dow Chemcial Co.), Oyster Shell Deposition Bioassay and Range-Finding Study, and Flow-Through Oyster Bioconcentration Study (Chevron Chemical Co.), Partitioning Water/Sediment Study, Aerobic Biodegradation Study, and Anaerobic Biodegradation Study (Monsanto Co.). As proposed by Monsanto in its protocol submissions, the partitioning water/sediment study was a separate but integral part of the aerobic and anaerobic biodegradation

testing for biphenyl. In order to avoid ambiguity in the comment and reporting for this testing, the partitioning water/sediment study was proposed separately in the proposed test rule.

The EPA-modified study plans for all of these tests are available for inspection in the public record for the rulemaking. The Agency is now adopting these plans, which have been further modified as a result of public comments on the proposed rule, as the test standards for conducting the testing of biphenyl required under 40 CFR 799.925. All of the testing conducted according to the revised EPA-approved modified study plans for biphenyl shall be conducted in accordance with EPA's TSCA Good Laboratory Practice Standards as set forth in 40 CFR Part 792.

III. Response to Public Comments

On August 29, 1986, EPA received from the BWG their comments on the proposed Phase II rule for biphenyl. A public meeting was held on October 30, 1986, to discuss certain aspects of the early life stage testing of rainbow trout required for biphenyl. These comments are available in the public record for this rulemaking. The major issues identified during the comment period are discussed in Unit III., A. through D.

A. Anaerobic Biodegradation Study

The BWG noted that because of the problem of high adsorption of biphenyl, a number of study plan modifications are necessary for the anaerobic biodegradation study. Specifically, BWG stated that rubber septa and core tubes with septum seal parts cannot be used and that modified test vessels and modifications to the analytical methodology are needed to overcome this problem. The Agency agrees with this comment and, thus, has incorporated the suggested changes as part of the final study plans for the test (Ref. 3).

B. Partitioning Study

The BWG noted that the ratio of undisturbed sediment to water was mistakenly given as 3:1 in the proposed test standard; this should instead be a requirement of undisturbed sediment to water of 1:3 in order to yield enough water for biphenyl analysis and also in keeping with EPA's guidelines. EPA agrees that the original ratio was a transcription error and that the 1:3 ratio shall be the test requirement.

C. Oyster Bioconcentration

There was some concern by the BWG over language in the preamble which could be inferred to mean that more than one dose level was required in the oyster bioconcentration study, inconsistent with the proposed study plan. This notice clarifies the fact that only one dose level is required for this test for biphenyl, as is standard practice.

D. Rainbow Trout Embryo-Larval Test

The BWG and the sponsor of the rainbow trout embryo-larval test, Dow Chemical Co. (Dow), had two major concerns with this test as presented in the proposal. Their concerns were based on EPA's requiring that the test be performed starting with "green" eggs (fish embryos less than 96 hours old). The BWG and Dow stated in their comments that starting the test with "green" eggs was unnecessary. They believed that satisfactory results could more easily be obtained by starting the test with "eyed" eggs (embryos about 14 days old). The BWG also believed that starting the test with "green" eggs frequently results in excessive (control) mortality, invalidating the test. Furthermore, the test protocol as given in the proposal was inappropriate as written, if the requirement for starting the test with "green" eggs was adhered to.

The Agency disagrees that starting the test with "eyed" eggs will necessarily yield results equivalent to those when the test is started with "green" eggs. While there is some suggestive evidence that this may be the case (Refs. 5 and 6), the current data are not conclusive on this issue. At the present time, the Agency believes that the embryo-larval test, which is an already shortened chronic test, should not be further shortened unless more data become available which would support that particular change in protocol. The Agency recognizes that the successful performance of the early life stage test is more difficult when "green" eggs are used. The Agency also agrees that the protocol for the early life stage test as originally given in the proposed rule is deficient, and that there are procedures, pointed out by Dow in its public comments, that can be used to help ensure a successful test. Dow's newly submitted early life stage protocol (Ref. 4), reflecting these additional procedures, was therefore incorporated into the required testing standard for biphenyl for this study.

IV. Final Phase II Test Rule

A. Test Standards

In response to EPA's final Phase I rule for biphenyl, the BWG submitted study plans to conduct the testing required in the rule. The Agency, upon its evaluation of these study plans, believed that certain modifications were necessary and proposed the study plans, with modifications, as the EPA-modified study plans for biphenyl (Ref. 1). As a result of public comment on the proposed Phase II rule, EPA believed that further revision to the study plan was necessary. In the case of the study plan "Anaerobic and Aerobic Biodegradation of Biphenyl in Natural Sediment/Water Systems" and the study plan "Biphenyl: Embryo-Larval Toxicity Test with Rainbow Trout, *Salmo gairdneri* Richardson", the test sponsors resubmitted study plans (Ref. 3 and 4). These two sets of study plans are substituted into the original EPA-modified study plans for biphenyl for their corresponding earlier submissions along with EPA's revisions under this final rulemaking. Therefore, the study plans together with the final EPA revisions, are referred to as the "revised EPA-approved modified study plans for biphenyl" and shall constitute the test standards and reporting requirements for biphenyl as required under 40 CFR 799.925 (Ref. 2). The Agency believes that the conduct of the required tests in accordance with the revised EPA-approved modified study plans for biphenyl will ensure that the resulting data are reliable and adequate.

B. Reporting Requirements

The Agency is requiring that all data developed under this rule be reported in accordance with the TSCA Good Laboratory Practice (GLP) standards (40 CFR Part 792).

The Agency is required by TSCA section 4(b)(1)(c) to specify the time periods during which persons subject to a test rule must submit test data. EPA is specifying the schedules contained in the revised EPA-approved modified study plans for biphenyl as the reporting requirements. The reporting requirements for the final reports are summarized in the following table.

REPORTING DEADLINES FOR BIPHENYL

Test	Reporting deadline for final report (weeks after the effective date of final phase II rule)
Chronic Daphnid Toxicity [1]	30
Rainbow Trout Early Life Stage [1]	[2] 72 [3] (30)
Oyster Shell Deposition	65
Oyster Bioconcentration	[2] 87 [3] (35)
Partitioning Water/Sediment	39
Aerobic Degradation	52

REPORTING DEADLINES FOR BIPHENYL—Continued

Test	Reporting deadline for final report (weeks after the effective date of final phase II rule)
Anaerobic Degradation	56

[1] The order of these two tests may be reversed.
[2] Figure includes the time period required for previous required testing.
[3] Figure in parenthesis indicates the time period allowed for completion of the test itself, not including the time periods for previous required testing.

In addition, for each required test, EPA is requiring that progress reports be submitted at 6-month intervals, beginning 6 months after the effective date of the final rule.

C. Conditional Exemptions Granted

The final rule for test rule development and exemption procedures (40 CFR Part 790) indicates that, when certain conditions are met, exemption applicants will be notified by certified mail or in the final Phase II test rule for a given substance that they have received conditional exemptions from test rule requirements. The exemptions granted are conditional because they will be given based on the assumption that the test sponsors will complete the required testing according to the test standards and reporting requirements established in the final Phase II test rule for the given substance. TSCA section 4(c)(4)(B) provides that if an exemption is granted prospectively (that is, on the basis that one or more persons are developing test data, rather than on the basis of prior test data submissions), the Agency must terminate the exemption if the test sponsors have not complied with the test rule.

Since sponsors have indicated to EPA by letter of intent (Ref. 1) their agreement to sponsor all of the tests required for biphenyl in the final Phase I test rule for this substance (50 FR 37182; September 12, 1985), and EPA is adopting test standards and reporting requirements in this final Phase II rule, the Agency is hereby granting conditional exemptions to all exemption applicants for all of the testing required for biphenyl in 40 CFR 799.925.

Furthermore, while EPA has not identified manufacturers of biphenyl as a byproduct, such persons are covered by the requirements of this test rule and must apply for exemption from these testing requirements as set forth in 40 CFR Part 790.

D. Judicial Review

The promulgation date for the final Phase I test rule for biphenyl was established as 1 p.m. eastern daylight time on September 26, 1985 (50 FR 37182; September 12, 1985). To EPA's knowledge, no petitions for judicial review of that Phase I final rule were filed. Any petition for judicial review of this Phase II test rule for biphenyl will be limited to a review of the test standards and reporting requirements for this substance which are established in this notice.

E. Other Provisions

TSCA section 4 findings, required testing, test substance specifications, persons required to test, enforcement provisions, and the economic analysis are presented in the final Phase I test rule for biphenyl (50 FR 37182; September 12, 1985).

V. Rulemaking

EPA has established a record for this rulemaking [docket number OPTS-42031C)]. This record includes basic information considered by the Agency in developing this rule and appropriate **Federal Register** notices.

This record currently includes the following information:

A. Supporting Documentation

(1) Final Phase I rule on biphenyl (50 FR 37182; September 12, 1985).

(2) Proposed Phase II rule on biphenyl (50 FR 25577; July 15, 1986).

(3) Contact reports of telephone conversations.

(4) Letters and memoranda related to this rulemaking.

(5) Public comment on the proposed Phase II rule on biphenyl.

(6) Transcript of public meeting of October 17, 1986 on the proposed Phase II rule on biphenyl.

B. References

(1) Synthetic Organic Chemical Manufacturers Assocation (SOCMA). Letter from Alan W. Rautio (and attached study plans and associated cover letter) to TSCA Public Information Office. (January 24, 1986). [And attached Confirmation of EPA's Receipt, Evaluation, and Revisions. (July 8, 1986).]

(2) Synthetic Organic Chemical Manufacturers Association (SOCMA). Letter from Alan W. Rautio (and attached study plans and associated cover letter) to TSCA Public Information Office. (January 24, 1986). [And attached Final EPA Revisions of Study Plans for Biphenyl. (March 31, 1987).]

(3) Synthetic Organic Chemical Manufacturers Association (SOCMA). Letter from Alan W. Rautio (and attached study plans and associated cover letter) to Mr. J. Shaffer. (January 15, 1987).

(4) Synthetic Organic Chemical Manufacturers Association (SOCMA). Letter from Alan W. Rautio (and attached study plans and associated cover letter) to Mr. J. Schaffer. (December 5, 1986).

(5) Eaton, J.G., J.M. McKim, and G.W. Holcombe. "Metal toxicity to embryos and larvae of seven freshwater fish species—I. Cadmium". *Bulletin of Environmental Contamination and Toxicology* 19:95–103. (1978).

(6) McKin, J.A. "Evaluation of tests with early life stages of fish for predicting long-term toxicity." *Journal of the Fisheries Research Board of Canada* 34(8):1148–1154. (1977).

The record is available for inspection from 8 a.m. to 4 p.m. Monday through Friday except legal holidays, in Rm. G-004, Northeast Mall, 401 M Street, SW., Washington, DC 20460.

VI. Other Regulatory Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. This test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order. The economic analysis of the testing of biphenyl is discussed in the Phase I test rule (50 FR 37182; September 12, 1985).

This final Phase II test rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments received from OMB, together with any EPA response to these comments, are included in the public record for this rulemaking.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (15 U.S.C. 601 *et seq.*, Pub. L. 96-354, September 19, 1980), EPA is certifying that this test rule will not have a significant impact on a substantial number of small businesses for the following reasons:

(1) There is not a significant number of small businesses manufacturing biphenyl.

(2) Small manufacturers and small processors of bipehnyl are not expected to perform testing themselves, or to participate in the organization of the testing effort.

(3) Small manufacturers and small processors of biphenyl should experience no costs, as they have been granted conditional exemption from the testing requirements of this rule.

(4) Small manufacturers and small processors are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2070–0033. No public comments on these requirements contained in the proposed Phase II rule for biphenyl (51 FR 25577; July 15, 1986) were submitted to the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 40 CFR Part 799

Testing, Environmental protection, Hazardous substances, Chemicals, Reporting and recordkeeping requirements.

Dated: May 22, 1987.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR Part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By amending § 799.925 by revising paragraphs (c)(1)(ii), (2)(ii), (3)(ii) and (4)(ii) and (d)(1)(ii) and (2)(ii); adding paragraphs (c)(1)(iii), (2)(iii), (3)(iii), (4)(iii), and (d)(1)(iii), and (2)(iii), (d)(3), and (e) to read as follows:

§ 799.925 Biphenyl

* * * * *

(c) * * *

(1) * * *

(ii) *Test standard.* The test shall be conducted in accordance with the revised EPA-approved modified study plan submitted to EPA by the Biphenyl Work Group: "Embryo-Larval Toxicity Test with Rainbow Trout, *Salmo gairdneri* Richardson". This revised EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M Street, SW., Washington, DC 20460; copies of this study plan are available for distribution to the public in the OPTS Reading Room.

(iii) *Reporting requirements.* The embryo-larval toxicity test of biphenyl with rainbow trout shall be completed and a final report submitted to the Agency within 72 weeks of the effective date of the final Phase II rule. However, if this study is performed before the flow-through chronic toxicity test with *Daphnia magna* described in paragraph (c)(2) of this section, then the final report for this rainbow trout early-life-stage shall be completed and a final report submitted to the Agency within 42 weeks from the effective date of the final Phase II rule. Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final Phase II rule.

(2) * * *

(ii) *Test standard.* The testing shall be conducted in accordance with the revised EPA-approved modified study plan submitted to EPA by the Biphenyl Work Group: "Flow-Through Chronic Toxicity Test with *Daphnia magna* Straus." This revised EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M Street, SW., Washington, DC 20460; copies of this study plan are available for distribution to the public in the OPTS Reading Room.

(iii) *Reporting requirements.* The flow-through chronic toxicity test of biphenyl with *Daphnia magna* shall be completed and a final report submitted to the Agency within 30 weeks from the effective date of the final Phase II rule. However, if the embryo-larval toxicity test with rainbow trout described in paragraph (c)(1) of this section is performed before this study, then the final report for this chronic *Daphnia magna* study shall be completed and a final report submitted to the Agency within 72 weeks from the effective date of the final Phase II rule. Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final Phase II rule.

(3) * * *

(ii) *Test standard.* The testing shall be conducted in accordance with the revised EPA-approved modified study plan submitted to EPA by the Biphenyl Work Group: "Oyster Shell Deposition Bioassay and Range-finding Study". This revised EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M Street, SW., Washington, DC 20460; copies of this study plan are available for distribution to the public in the OPTS Reading Room.

(iii) *Reporting requirements.* The oyster shell deposition and range-finding study with biphenyl shall be completed and a final report submitted to the Agency within 65 weeks from the effective date of the final Phase II rule. Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final Phase II rule.

(4) * * *

(ii) *Test standard.* The testing shall be conducted in accordance with the revised EPA-approved modified study plan submitted to EPA by the Biphenyl Work Group: "Flow-Through Oyster Bioconcentration Study". This revised EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M Street, SW., Washington, DC 20460; copies of this study plan are available for distribution to the public in the OPTS Reading Room.

(iii) *Reporting requirements.* The oyster bioconcentration study shall be completed and a final report submitted to the Agency within 87 weeks from the effective date of the final Phase II rule. Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final Phase II rule.

(d) * * *

(1) * * *

(ii) *Test standard.* The testing shall be conducted in accordance with the revised EPA-approved modified study plan submitted to EPA by the Biphenyl Work Group: "Aerobic Biodegradation Study". This revised EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M Street, SW., Washington, DC 20460; copies of this study plan are available for distribution to the public in the OPTS Reading Room.

(iii) *Reporting requirements.* The aerobic biodegradation study with biphenyl shall be completed and a final report submitted to the Agency within 52 weeks of the effective date of the final Phase II rule. Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final Phase II rule.

(2) * * *

(ii) *Test standard.* The testing shall be conducted in accordance with the revised EPA-modified study plan submitted to EPA by the Biphenyl Work Group: "Anaerobic Biodegradation Study". This revised EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE–G004, 401 M Street, SW., Washington, DC 20460; copies of this study plan are available for distribution to the public in the OPTS Reading Room.

(iii) *Reporting requirements.* The anaerobic biodegradation study with biphenyl shall be completed and a final report submitted to the agency within 56 weeks of the effective date of the final Phase II rule. Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final Phase II rule.

(3) *Partitioning water/sediment study*—(i) *Required testing.* Testing using systems that control for and

quantify biphenyl evaporation that use a ratio of undisturbed sediment to water of 1:3 shall be conducted with biphenyl to develop data on the partitioning of biphenyl to water and sediment.

(ii) *Test standard.* The testing shall be conducted in accordance with the revised EPA-approved modified study plan submitted to EPA by the Biphenyl Work Group: "Partitioning Water/Sediment Study". This revised EPA-approved modified study plan is available for inspection in EPA's OPTS Reading Room, Rm. NE-G004, 401 M Street, SW., Washington, DC 20460; copies of this study plan are available for distribution to the public in the OPTS Reading Room.

(iii) *Reporting requirements.* The partitioning water/sediment testing shall be completed and a final report submitted to the Agency within 39 weeks from the effective date of the final Phase II rule. Progress reports shall be submitted at 6-month intervals beginning 6 months after the effective date of the final Phase II rule.

(e) *Effective date.* The effective date of the final Phase II rule for biphenyl is July 17, 1987.

[FR Doc. 87-12563 Filed 6-2-87; 8:45 am]

BILLING CODE 6560-50-M

ACTION

45 CFR Part 1204

Official Seal

AGENCY: ACTION.

ACTION: Final rule.

SUMMARY: The ACTION Agency has revised its official seal. The Domestic Volunteer Service Act Amendments of 1986 changed the ACTION name from "The National Volunteer Agency" to the "Federal Domestic Volunteer Agency" and the seal has been changed accordingly. In addition, stylistic changes in the new seal will promote greater name recognition of the ACTION Agency. This final rule replaces the old seal with the new seal.

EFFECTIVE DATE: July 20, 1987.

FOR FURTHER INFORMATION CONTACT: Gregory C. La Rosa, Office of the General Counsel, ACTION, Suite 607, 806 Connecticut Avenue, Washington, DC 20525, (202) 634-9333.

SUPPLEMENTARY INFORMATION: The Domestic Volunteer Service Act Amendments of 1986, Pub. L. 99-551, renamed ACTION as the "Federal Domestic Volunteer Agency." Pursuant to section 402(9) of the Domestic Volunteer Service Act of 1973, as amended, Pub. L. 93-113, the Director is authorized to adopt an official seal. Accordingly, the seal has been redesigned to accommodate the change in nomenclature as well as to introduce a new ACTION logo, and this final rule revises 45 CFR 1204.1-2.

Notice of proposed rulemaking was published on pages 9901 and 9902 of the **Federal Register** on March 27, 1987, and comments were invited for 30 days ending April 27, 1987. No significant comments were received.

No changes have been made in this regulation since its initial publication as a proposed rule.

ACTION has determined that this regulation is not a major rule, as defined by Executive Order 12291, as it is related solely to agency organization and management. The regulation will not have a significant economic impact on a substantial number of small entities as prescribed by section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.).*

List of Subjects in 45 CFR Part 1204

Seals and Insignia, Volunteers.

For the reasons set out in the preamble, 45 CFR Part 1204 is amended as follows:

PART 1204—[AMENDED]

1. The authority citation for Part 1204 is revised to read as follows:

Authority: Sec. 402, Pub. L. 93-113, 87 Stat. 407 (42 U.S.C. 5042).

2. In Part 1204, §§ 1204.1 and 1204.2 are revised to read as follows:

§ 1204.1 Authority.

Pursuant to section 402(9) of Pub. L. 93-113, the ACTION official seal and design thereof which accompanies and is made part of this document, is hereby adopted and approved, and shall be judicially noticed.

§ 1204.2 Description.

The official seal of ACTION is described as follows:

(a) The words "The Federal Domestic Volunteer Agency USA" are in blue capital letters and form the outer circle of the seal.

(b) Within the circle of letters, on a field of white, appears the logotype word "ACTION" in blue, capital letters and in Italic type.

(c) The logotype word "ACTION" is split; "ACT" on a higher level and "ION" drops down to a slightly lower level.

(d) Two red bars, also split on two levels, underline the logotype word "ACTION."

The official seal of ACTION is modified when reproduced in black and white and when embossed, as it appears below.

Signed at Washington, DC, this 27th day of May, 1987.

Donna M. Alvarado,

Director.

[FR Doc. 87-12554 Filed 6-2-87; 8:45 am]

BILLING CODE 6050-28-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 85-229; FCC 87-103]

Common Carrier Services; Replacing Structural Separation With Nonstructural Safeguards for the Provision of Enhanced Services

AGENCY: Federal Communications Commission.

ACTION: Report and order.

SUMMARY: The Commission resolved five outstanding issues that were presented in the Third Computer Inquiry Supplemental Notice of Proposed Rulemaking in June 1986: The regulatory treatment of protocol processing; adjustments to certain nonstructural safeguards imposed on AT&T and the BOCs; the regulatory treatment of the enhanced service operations of independent telephone companies; the regulatory treatment of network channel terminating equipment; and the international applicability of the Computer III policies. Resolution of these issues was necessary to clarify the Commissions regulatory treatment of basic and enhanced telecommunications services and is intended to promote the efficient provision of these services.

EFFECTIVE DATE: June 3, 1987.

FOR FURTHER INFORMATION CONTACT: William F. Maher, Policy and Program Planning Division, Common Carrier Bureau (202) 632-4047.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Third Computer Inquiry Report and Order (Phase II), CC Docket 85-229, adopted March 26, 1987, and released May 22, 1987. The initiating document for this Report and Order is Third Computer Inquiry Supplemental Notice of Proposed Rulemaking, CC Docket 85-229, FCC No. 86-253, released June 16, 1986.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision also may be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Report and Order

On June 16, 1986, the Federal Communications Commission (the Commission) released a Report and Order (the Phase I Order) in the Third Computer Inquiry (Computer III) (104 FCC 2d 958) that replaced structural separation for the provision of enhanced services by AT&T and the Bell Operating Companies (BOCs) with certain nonstructural safeguards, including Comparably Efficient Interconnection (CEI) and Open Network Architecture (ONA). On the same date, the Commission released a Supplemental Notice of Proposed Rulemaking requesting public comment on issues in five areas. On May 22, 1987, the Commission released a Report and Order (Phase II Order) as part of the same proceeding, that addressed these issues.

In the Phase II Order, the Commission concluded that it will continue to treat all protocol processing functions as unregulated enhanced services, which, when offered by AT&T and the BOCs, will be subject to the nonstructural safeguards established in the Phase I Order for the provision of enhanced services by these companies. The Commission clarified the CEI principles of the Phase I Order for protocol processing by requiring that the BOCs satisfy an application of the general CEI requirements for their protocol processing offerings based on the conditions of the Asynchronous/X.25 Waiver Order (100 FCC 2d 1057) and the CEI pricing requirements of the Phase I Order. The Commission determined that AT&T's CEI requirement for protocol processing will consist of the nondiscriminatory provision of the digital transmission services and facilities that underlie its enhanced services using protocol processing. Moreover, AT&T is required to take such transmission services at the tariffed rates in charges others.

With respect to the other nonstructural safeguards addressed in the Supplemental Notice, the Commission required the BOCs to describe in their CEI plans the procedures they will use to ensure the nondiscriminatory provision of basic services, including the installation, maintenance, and quality of such services, to competitive enhanced service providers and their customers. However, the use of Centralized Operations Groups for such purposes is not required. AT&T and the BOCs will be required in their quarterly CEI reports to submit data on the timing of installation and maintenance and the quality and reliability of the basic services offered as part of any CEI or ONA tariff, but otherwise will be permitted to formulate the details of their CEI reporting requirements in their CEI plans. In addition, the Commission permitted the BOCs to require the execution of nondisclosure agreements when they disclose technical network information at the "make/buy" point. The BOCs also must provide their customers with the right to direct that their Customer Proprietary Network Information (CPNI) be withheld from BOC enhanced service personnel and/or be released to other enhanced service vendors. In addition, AT&T and the BOCs must notify their multiline business customers of their CPNI rights on an annual basis. The Commission also provided that the Computer II capitalization plan requirements will end when AT&T or a BOC implements an approved cost allocation manual.

The Commission declined to apply the Computer III nonstructural safeguards to the enhanced service operations of GTE and the other independent telephone companies (ITCs), finding that the potential costs of applying them outweighed the corresponding benefits. It stated, however, that it may reexamine whether CEI/ONA requirements should apply to the ITCs once the BOCs have implemented their versions of CEI/ONA. In a related matter, the Commission preempted the states from applying structural separation requirements to the ITCs, but permitted the states to apply nonstructural safeguards that are no stricter than those applied by the Commission to the BOCs.

With respect to the provision of network channel terminating equipment (NCTE) functions on the network side of the demarcation point, the Commission permitted the BOCs to offer loopback testing from the demarcation point as part of their basic services and to apply for waivers for similar provision of additional specific NCTE functions. The Commission retained the existing limited "multiplexer exception" for carrier-owned multiplexers located on customer premises.

The Commission found that its Computer III policies further its pro-liberalization international goals and thus apply internationally.

The Commission concluded that AT&T and the BOCs are not small business entities for purposes of the Regulatory Flexibility Act.

Ordering Clauses

Accordingly, *It Is Ordered*, that pursuant to sections 1, 4(i), 4(j), 201-205, 218, 220, 303(g), 303(r), 403, and 404 of the Communications Act of 1934, 47 U.S.C. 151, 154(i), 154(j), 201-205, 218, 220, 303(g), 303(r), 403, and 404, the policies, rules, and requirements set forth herein *Are Adopted*.

William J. Tricarico,

Secretary.

[FR Doc. 87-12334 Filed 6-2-87; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Threatened Status for the Florida Scrub Jay

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Florida scrub jay (*Aphelocoma coerulescens coerulescens*) is exclusively confined to scrub habitat in peninsular Florida. Much of the coastal scrub formerly inhabited by the bird has been cleared for beachfront hotels, houses, and condominiums. Many areas in the interior of Florida are presently being developed for citrus groves and housing. Clearly, the major cause of decline has been habitat destruction. Other threasts to the Florida scrub jay are malicious shooting of the birds by vandals, accidents with motor vehicles, and unfavorable habitat succession

problems in some areas. This rule implements the protection and recovery provisions of the Endangered Species Act of 1973, as amended, for the Florida scrub jay.

DATES: The effective date of this rule is July 6, 1987.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Wesley, Field Supervisor, at the above address (telephone 904/791-2580 or FTS 946-2580).

SUPPLEMENTARY INFORMATION:

Background

The Florida scrub jay (*Aphelocoma coerulescens coerulescens*) was originally named by Bosc, 1795, as *Corvus coerulescens*. The species *Aphelocoma coerulescens* is widely distributed in the western United States, but the Florida subspecies, *Aphelocoma coerulescens coerulescens*, an isolated form of the species, is restricted to scrub habitat areas of peninsular Florida. The Florida scrub jay is a 30 centimeter (12 inch), bluish-colored, crestless jay totally lacking the white-tipped wings and tail feathers of the more common and widespread blue jay (*Cyanocitta cristata*). A necklace of blue feathers separates the white throat from the grayer underparts, and a white line over the eye often blends into a whitish forehead. The tail is long and loose in appearance (Woolfenden *in* Kale 1978). The subspecies has been recorded only once from outside of peninsular Florida, on Jekyll Island, Georgia (Moore 1975).

The following information on the biology of the Florida scrub jay is abstracted from Cox (1984) and Woolfenden and Fitzpatrick (1984). Scrub jays are long-lived (10 years or more), sedentary, permanently monogamous inhabitants of oak scrub. They typically nest at the edge of an oak thicket, near an open area. Scrub jays rarely breed at one year of age, even though they are then physiologically mature; instead they may remain on their natal territories for a number of years and assist their parents in raising further broods. Scrub jay breeding pairs with helpers have significantly greater reproductive success than pairs without helpers. Males may remain with their parents as helpers for longer periods (up to six years) than females. As the group's size increases, the territory grows. Eventually, a male helper may be able to claim part of the enlarged territory for his own breeding territory. Females rarely help for more than two years, and disperse within the local population as breeding vacancies arise. Scrub jays are omnivorous, eating almost anything they can catch, but they concentrate on lizards and arthropods in spring and summer, and acorns in fall and winter. Surplus acorns are frequently cached in the ground.

The Florida scrub jay lives only in the Florida scrub habitat, which occurs on fine, white, well drained sands. This type of sand occurs along the present coastline of Florida, and on inland dunes deposited during the past when sea levels were much higher than at present. The most important of these dune systems include the Atlantic coastal ridge along the Atlantic coast of Florida, the Lake Wales Ridge in Polk and Highlands Counties, and the extensive sand dunes of Ocala National Forest. Cox (1984) stated that the most commonly occupied jay habitat is "oak scrub." Oak scrub consists of a single layer of evergreen shrubs, usually dominated by three species of oaks—myrtle oak (*Quercus myrtifolia*), sand live oak (*Quercus geminata*), and Chapman oak (*Quercus chapmanii*). Scrub jays are rarely found as residents in habitat with more than 50% canopy cover that is over 3 meters (10 feet tall). In summary, scrub jay habitat consists of dense thickets of scrub oaks less than 3 meters in height, interspersed with bare sand for foraging and storing acorns.

Scrub jays have been reported in the past from scrub habitat in each of the following Florida Counties: Alachua, Brevard, Broward, Charlotte, Citrus, Clay, Collier, Dade, De Soto, Dixie, Duval, Flagler, Gilchrist, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Levy, Manatee, Marion, Martin, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, St. Johns, St. Lucie, Sarasota, Seminole, Sumter, and Volusia. Today, scrub jays have been completely eliminated from Broward, Dade, Duval, Pinellas, and St. Johns Counties, and their numbers have decreased drastically in Brevard, Highlands, Orange, Palm Beach, and Seminole Counties. In virtually every county where the species occurs, it is known to have declined in numbers. It has disappeared from fully 40% of the locations from which it was known historically, and the total population has probably dropped by half in the past century (Cox 1984). The major cause of the jay's population decline and its disappearance from specific sites is habitat destruction. The total number of Florida scrub jays estimated by Cox to survive in Florida today is between 15,000 and 22,000 birds, of which about 13,000 to 20,000 are on public lands, and about 2,000 on private property.

On March 16, 1984, Jeffrey A. Cox, Florida State Museum, University of Florida, Gainesville, Florida, petitioned the Service to list the Florida scrub jay as a threatened species. Dr. Cox provided a comprehensive report on the status of this species in support of the petition. The Service found on May 4, 1984, that the petitioned action may be warranted and published the finding on July 13, 1984 (49 FR 28584). A 12-month finding was made on March 18, 1985, and published on July 18, 1985 (50 FR 24238), that the action requested was warranted but precluded by work on other pending proposals. Publication of the proposed rule to list the Florida scrub jay as threatened, published in the **Federal Register** (51 FR 18627) on May 21, 1986, constituted the next and final 12-month finding for the Florida scrub jay, as required under section 4(b)(3)(c)(i) of the Act, that the petitioned action is warranted.

Summary of Comments and Recommendations

In the May 1986, proposed rule, and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Orlando Sentinel* on June 15, 1986, and the *Palm Beach Post* on June 14, 1986, which invited general public comment. Twenty-one comments were received, none of which opposed the action. A summary of substantive comments is presented below.

Tom Webber, Biologist, the Florida State Museum, Gainesville, wrote that he resurveyed some of the scrub jay populations that Jeffey A. Cox censused in 1981. He found that the picture of overall decline remains; of the five northernmost populations (in Clay and Putnam Counties), four have disappeared since 1981, and the fifth has been reduced to one bird. Other populations that have held out since 1981 are often in places where their habitat will probably be destroyed soon and irreversibly.

Theodore O. Hendrickson urged the Service to perhaps consider a category "more urgent" than "threatened" for this bird. Because the scrub jay is still fairly widespread in distribution in Florida,

and occurs in large part on protected Federal and State lands, the Service feels a threatened category, rather than endangered, is more appropriate for the species.

The Florida Department of Community Affairs provided the following comment: "As Florida is one of the fastest growing States in the nation, and remaining coastal and inland xeric scrub habitats are among the most desirable sites for development, it is certain that Florida scrub jay populations will continue to decrease as the species' required scrub habitat continues to be destroyed by land development activities." Other comments reported the continued loss of jay habitat in Florida or the locations of recent observations of jays.

The Avon Park Air Force Range expressed concern that, should the bird be listed, the operation of the bombing range might be restricted. The Service does not anticipate any significant restrictions, if any, upon Avon Park Air Force Range by the listing of this species. A significant amount of jay habitat occurs outside the drop zones and can be managed by the Range for the jay.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the Florida scrub jay should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated (50 CFR Part 424) to implement the listing provision of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Florida scrub jay, *Aphelocoma coerulescens coerulescens*, are as follows (abstracted from Cox 1984 and data and comments received):

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The future of the Florida scrub jay depends on the continued existence of its scrub habitat. Unfortunately most scrub lands are in areas that have high real estate interest. Much of the coastal scrub has been cleared for beachfront hotels, houses, and condominiums. Scrub habitats in the interior of the Florida peninsula are subject to development for citrus groves and housing developments. Scrub jays have disappeared from 40% of the locations where they formerly occurred, and the total population has declined by half in the past 100 years. The major cause of the declines and disappearances is habitat destruction.

Although housing and agricultural development have been occurring in Florida for many years, the pace of this development has accelerated since the 1960's. The human population of Florida nearly doubled from 1960 to 1980, from 4.95 million to 9.75 million (Terhune 1982). This trend will continue into the foreseeable future, placing even more pressures on natural habitats. Most of the housing developments that are located in scrub habitats are less than 20 years old. In many developments, scrub jays are barely hanging on, and they will probably disappear in a few years as land-clearing continues. The sites most likely to be destroyed by development in the near future are concentrated in Brevard, Highlands, and Palm Beach Counties. In Palm Beach County, most of the originally existing xeric scrub habitat has already been effectively lost to land development (Florida Department of Community Affairs, pers. comm. 1986), and it is possible that no scrub jays will remain by 1990 (Cox 1984).

Of the 15,000 to 22,000 scrub jays that may survive in Florida at the present time, over 80% occur in only two general areas: Merritt Island/Cape Canaveral (Brevard County) and Ocala National Forest (Lake, Marion, and Putnam Counties). Elsewhere, only small populations are scattered locally throughout peninsular Florida.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* By far, habitat destruction has played the major role in the decline of the Florida scrub jay. Nevertheless, there is evidence that, in St. Johns County at least, some scrub jays have been shot by vandals. People have been seen with guns in the area along SR A1A, and a tame scrub jay would present a tempting target to vandals. In addition, the tameness and beauty of the bird make it desirable (although illegal) as a pet, and it is known to have been used for such purposes in the recent past.

C. *Disease or predation.* Disease and predation are not thought to be factors that have led to the scrub jay's decline.

D. *The inadequacy of existing regulatory mechanisms.* The Florida scrub jay is protected by the Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) and by Florida State law (Chapter 39-27, Florida Administrative Code). These laws, however, do not protect the birds from habitat destruction, the major cause of the species' decline in Florida.

E. *Other natural or manmade factors affecting its continued existence.* Human interference with the natural functioning and development of an ecosystem has played an important part in the decline of the scrub jay in certain areas. Historically, fires caused by lightning were major factors in maintaining the sparse, low scrub vegetation preferred by the scrub jay. In some parts of the range of this species, human efforts to prevent and/or control natural fires have allowed the scrub to become too dense and tall to support populations of scrub jays. An example of such a situation is found in the miles of coastal barrier scrub in St. Johns County. Scrub jays were known to be resident in this area in the past, but none currently occurs there. Fire suppression to protect human interests has allowed the scrub to become too dense for the scrub jays. Thus, a large area of coastal St. Johns County, which used to support a healthy population of the species, no longer contains suitable habitat.

Cox (1984) believed that, in St. Johns County at least, one of the factors in the extirpation of the scrub jay may have been accidental road kills from passing trucks and cars. Scrub jays frequently forage along roadsides and other openings in the scrub, and, since SR A1A runs directly down the middle of the scrub on the long, narrow, barrier island, there was a high potential for birds to be killed in this manner.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in making this final rule. Based on this evaluation, the preferred action is to list the Florida scrub jay as a threatened species. Threatened rather than endangered status was chosen for the following reasons. A high percentage of scrub jays occur on Federal lands that can be managed to benefit the birds. On the other hand, the facts that the bird no longer occurs at 40% of the localities where it once was found and has decreased in numbers by at least 50% in the past century, indicate that it is extremely vulnerable, and could become an endangered species unless surviving populations are protected and managed. Critical habitat has not been determined for the Florida scrub jay for reasons discussed in the next section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not

prudent for the Florida scrub jay at this time. All concerned Federal agencies already know of the presence of the scrub jay on lands they manage, and are aware of the habitat needs of the bird. In addition, the Federal lands involved cover extensive areas, not all of which will be, or will remain, critical over extended periods of time. As scrub habitat is burned or clear-cut in some areas, scrub jay populations may move into other areas with more suitable habitat. As the burned or clear-cut areas grow back, jays may reinvade them. Thus, there is and will continue to be a periodic change in localities within the Federal lands occupied by the birds.

The rest of the populations of scrub jays (20% of the estimated total number of birds) are widely and thinly scattered over peninsular Florida in many small localities which would be nearly impossible to delineate in a meaningful or productive fashion. Finally, the tameness and trusting nature of this species make it particularly vulnerable to malicious or random shooting. To point out precisely where the few remaining birds on private land occur, through a delineation of critical habitat and publication of locality maps, could enhance the possibility of such vandalism, and thus actually increase the threat to the species. For all of the above reasons, a determination of critical habitat would not benefit the species or its conservation and is not prudent for the Florida scrub jay.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

At the present time, the Service knows of four Federal agencies that may be affected by this listing action. These are: (1) The U.S. Fish and Wildlife Service (Merritt Island National Wildlife Refuge), (2) the National Aeronautics and Space Administration (Kennedy Space Center), (3) the U.S. Air Force (Cape Canaveral Air Force Station and Avon Park Air Force Range), and (4) the U.S. Forest Service (Ocala National Forest). Impacts on these agencies, however, are expected to be minimal, and may be summarized as follows:

Merritt Island National Wildlife Refuge/Kennedy Space Center—The largest population of scrub jays occurs in this area; the Refuge includes the lands of the Kennedy Space Center. The Refuge has begun a program of controlled burning of all scrub on land under its jurisdiction. Unless the burning occurs too often, it should help to maintain the suitability of habitat for scrub jays. The Refuge will now need to take the interests of the scrub jay into consideration in its program of controlled burning of scrub. In addition, any expansion of Kennedy Space Center facilities will also need to consider the needs of the scrub jay before being undertaken.

Cape Canaveral Air Force Station—The scrub at this Station has suffered more clearing than at the Merritt Island National Wildlife Refuge. Aerial photos disclose that about 20% of the land on the Station has been cleared in the past several decades. Habitat clearing for construction in the future will need to consider the effect of such clearing on scrub jay populations before being undertaken. Also, it may be necessary to cut or burn existing scrub periodically to maintain its suitability as habitat for the scrub jay.

Avon Park Air Force Range—The U.S. Air Force's Avon Park Air Force Range, in Polk and Highlands Counties, contains several thousand acres of scrub which do, or may, support scrub jays. There is an undetermined amount of this habitat within the confines of the bombing range impact areas. Fires in impact areas, from exploding ordinance or other causes, are not controlled, and for many years the impact areas have been subject to continuous disturbance from mission activities. Since these areas cannot be entered, it is not possible to determine if scrub jays are present, but under the continuous disturbance to which they have been subjected, if seems unlikely that there would be a large number of birds. The continued use of the impact zone does not jeopardize the continued existence of the jay, if any birds are present. In areas outside impact areas, the Avon Park Air Force Range now plans to manage the habitat for the scrub jay through continued protection and perhaps through controlled burning and/or mechanical chopping.

Ocala National Forest—The scrub jay population is scattered throughout the scrub portions of the Forest. The Forest Service clear-cuts on a rotational basis. This may have a beneficial effect on the scrub jays because it may provide a continually changing mosaic of habitat within the forest. When scrub in one area becomes too old and dense, scrub jays may move to colonize another more recently cleared site. Therefore, present Forest Service management practices may be compatible with the well-being of the scrub jay, and only minimal effect on this agency is presently anticipated.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commerical activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enchance the propagation or survival of the species, for incidental take in connection with otherwise lawful activities, and for zoological exhibition or educational or special purposes consistent with the purposes of the Act. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. Since the jay is already

protected under the Migratory Bird Treaty Act, no economic hardship applications are expected.

National Environmental Policy Act

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

References Cited

Cox, J.A. 1984. Conservation and ecology of the Florida scrub jay. Doctoral Dissertation. Department of Zoology, University of Florida. 185 pp.

Kale, H.W., II. 1978. Rare and endangered biota of Florida. Vol. II. Birds, University of Florida Presses, Gainesville. 121 pp.

Moore, T.S. 1975. First modern record of the scrub jay in Georgia. Oriole, 40:1–2.

Terhune, F.W., ed. 1982. Florida statistical abstract. University of Florida Presses, Gainesville.

Woolfenden, G.E., and J.W. Fitzpatrick. 1984. The Florida scrub jay. Monographs in Population Biology No. 30, Princeton University Press, 406 pp.

Author

The primary author of this final rule is John L. Paradiso, Endangered Species Field Station, U.S. Fish and Wildlife Service, 2747 Art Museum Drive, Jacksonville, Florida 32207 (telephone 904/791–2580 or FTS 946–2580).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

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

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

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

2. Amend § 17.11(h) by adding the following, in alphabetical order under BIRDS, to the List of Endangered and Threatened Wildlife.

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
Jay, Florida scrub	*Aphelocoma coerulescens coerulescens.*	U.S.A. (FL)	Entire	T	267	NA	NA

Dated: May 27, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–12634 Filed 6–2–87; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[Docket No. 50329–5115]

Atlantic Tuna Fisheries; Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA issues this notice to close the fishery for Atlantic bluefin tuna conducted by vessels permitted in the Incidental longline category in the regulatory area. Closure of this fishery is necessary because the annual catch quota of 145 short tons (st) will be attained by the effective date. The intent of this action is to prevent exceeding the annual quota established for this segment of the fishery and thereby maintain the United States, obligations under the International Commission for the Conservation of Atlantic Tunas.

EFFECTIVE DATES: 0001 hours Eastern Daylight Time (EDT) June 6, 1987, through December 31, 1987.

FOR FURTHER INFORMATION CONTACT: William C. Jerome, Jr., 617–281–3600, ext. 262, or David S. Crestin, 617–281–3600, ext. 253.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971–971h) regulating the take of Atlantic bulefin tuna by persons and vessels subject to U.S. jurisdiction were published in the **Federal Register** on October 25, 1985 (50 FR 43396).

Section 285.22(f)(1) of the regulations provides for an annual quota of 145 st of Atlantic bluefin tuna to be taken by vessels permitted in the Incidental longline category in the regulatory area. The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), is required under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the total catch of Atlantic bluefin tuna will equal any quota under § 285.22. The Assistant Administrator, further, is required under § 285.20(b)(1) to prohibit the fishing for, or retention of, Atlantic bluefin tuna by the type of vessels subject to the quotas. The Assistant Administrator has determined, based on the reported catch of Atlantic bluefin tuna of 142 st and the recent catch rate, that the annual quota of Atlantic bluefin tuna allocated to vessels permitted in the Incidental longline category will be attained by the effective date. Fishing for and retention of any Atlantic bluefin tuna by longline vessels must cease at 0001 hours EDT on June 6, 1987.

NOAA closed the fishery for Atlantic bluefin tuna conducted by vessels permitted in the Incidental longline category in the area south of 36°00′ N. latitude on March 23, 1987 (52 FR 9170, March 23, 1987). This action completes the closure of the total regulatory area for vessels permitted in the Incidental longline fishery.

Notice of this action has been mailed to all Atlantic Bluefin tuna dealers and vessels owners holding a valid vessel permit for this fishery.

Other Matters

This action is taken under the authority of 50 CFR 285.20, and is taken in compliance with Executive Order 12291.

List of Subjects in 50 CFR Parts 285

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

(16 U.S.C. 971 *et seq.*)

Dated: May 28, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87-12557 Filed 6-12-87; 8:45 am]

BILLING CODE 3510-22-M

---

50 CFR Part 672

[Docket No. 61220-7033]

Groundfish of the Gulf of Alaska; Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the share of the sablefish target quota (TQ) allocated to hook-and-line gear in the Central Regulatory Area of the Gulf of Alaska will be achieved on May 29, 1987. The Secretary of Commerce is prohibiting retention of sablefish in this area by persons using hook-and-line gear after 12:00 noon on May 29, 1987 through December 31, 1987.

DATES: Effective from 12:00 noon May 29, 1987, Alaska Daylight Time (ADT), until midnight, Alaska Standard Time (AST), December 31, 1987. Public comments may be submitted to the Regional Director until June 18, 1987.

ADDRESS: Comments should be addressed to Robert W. McVey, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 021668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg, Fishery Management Biologist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act (Magnuson Act). Regulations implementing the FMP are at 50 CFR Part 672.

Paragraph 672.20(a) of the regulations establishes an optimum yield range of 116,000—800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska, which is further divided annually into TQs for each groundfish species. For 1987, TQs were established for each of the groundfish species and apportioned among the regulatory areas and districts.

Section 672.2 of the regulations defines the Central Regulatory Area in the Gulf of Alaska. The TQ for sablefish is 8,800 mt in this Area (52 FR 785, January 9, 1987). Paragraph 672.24(b)(1) of current regulations provides a share of the TQ for hook-and-line gear in the Central Regulatory Area equal to 80 percent of the TQ, or 7, 040 mt. When the share of the TQ is taken, further catches of sablefish by hook-and-line vessels must be treated as prohibited species and discarded at sea.

NMFS conducted an area registration program to estimate the number of vessels participating in the sablefish hook-and-line fishery in each area throughout the Gulf of Alaska. A total of 385 hook-and-line vessels registered to fish for sablefish in the Central Regulatory Area. Many of these vessels have quit the sablefish fishery and some are now targeting on other species. On the basis of processor surveys, NMFS estimates about 100 vessels remain fishing for sablefish in the Central Area. Through May 20, at least 5,700 mt of sablefish have been landed. Based on average catch rates during the last two weeks of April, NMFS estimates that the balance of the quota, or 1,340 mt, will be harvested by noon on May 29, 1987. Therefore, the Central Regulatory Area is closed to sablefish fishing by hook-and-line vessels at 12:00 noon, local time, on May 29, 1987.

Further catches of sable fish by hook-and-line vessels must be treated as prohibited species and discarded at sea. This closure will be effective upon filing for public inspection with the **Federal Register** and after it has been publicized for 48 hours through procedures of the Alaska Department of Fish and Game under § 672.22(b). Public comments on this notice may be submitted to the Regional Director at the address above for 15 days following its effective date.

Classification

Overharvesting of sablefish, which would increase the risk of overfishing of this species, will result unless this notice takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed. This action is under §§ 672.22 and 672.24 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Dated: May 28, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87-12556 Filed 5-29-87; 11:17 am]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 52, No. 106
Wednesday, June 3, 1987

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-54-AD]

Airworthiness Directives; Aerospatiale SN601 (Corvette) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to Aerospatiale Model SN601 Corvette series airplanes, that would require installation of modified low-pressure fuel filters. The proposed AD is prompted by a report of in-flight fuel filter icing. This condition, if not corrected, could result in fuel starvation to the engines and subsequent loss of power.

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

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-54-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-54-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Direction Générale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on Aerospatiale Model SN601 Corvette airplanes. Low pressure fuel filters can become clogged due to icing caused by high concentrations of water in the fuel. Clogging may occur in a manner which prevents opening of by-pass valves, causing fuel starvation and loss of engine power.

Aerospatiale has issued Service Bulletin No. 28-10, dated April 25, 1986, which describes replacement of the low pressure fuel filters with modified filters. The DGAC has classified this service bulletin as mandatory.

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

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require replacement of the fuel filters in accordance with the previously mentioned service bulletin.

It is estimated that 2 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $240.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule prusuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($120). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration propose to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

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

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

2. By adding the following new airworthiness directive:

Aerospatiale: Applies to Model SN601 Corvette airplanes, certificated in any category, except those airplanes on which Modification No. 1390 (Service Bulletin 73-1, replacement of fuel anti-ice additive system by a fuel heating system), has been accomplished. Compliance is required as indicated, unless previously accomplished.

To prevent loss of power due to ice clogging of low pressure fuel filters, accomplish the following:

A. Within six months after the effective date of this AD, replace the low pressure fuel filters (P/N 433-E25-2) with modified filters (P/N 433-E25-21), in accordance with Aerospatiale Service Bulletin No. 28-10, dated April 25, 1986.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Aerospatiale, 316 Route de Bayonne, 31060 Toulouse Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 21, 1987.

Frederick, M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87-12528 Filed 6-2-87; 8:45 am]

BILLING CODE 4910-13-M

---

14 CFR Part 39

[Docket No. 87-NM-16-AD]

Airworthiness Directives; British Aerospace Model BAC 1-11 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemakng (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD), applicable to certain Model BAC 1-11 airplanes equipped with R.F.D. inflatable escape slides, which would require modification to the emergency escape slide deployment system. This action is necessary to correct problems which have resulted in deployment failure. Failure of a slide to properly deploy may prevent timely escape from an airplane in an emergency.

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

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-16-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, Inc., Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM-103), Attention: Airworthiness Rules Docket No. 87-NM-16-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The United Kingdom Civil Aviation Authority (CAA) has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of several unsafe conditions which may exist on British Aerospace Model BAS 1-11 airplanes equipped with R.F.D. inflatable escape slides.

There have been several incidents reported where slides have failed to deploy, due to the operating slug failing to pull clear from the bottle operating head. This condition, if not corrected, could lead to failure of the deployment of a passenger or service door escape slide during emergency evacuation procedures. British Aerospace has issued BAC 1-11 Service Bulletin 25-PM5906, Revision 2, dated November 9, 1984, which describes a modification of the airplane, the slides, and the inflation bottle assemblies that will prevent the unsafe condition from occurring. The CAA has classified this service bulletin as mandatory.

Another incident has been reported where it was found that if the passenger entrance door is pushed open slowly, it is possible for the slide to inflate before sufficient clearance between the door and doorway sill has been achieved. This condition, if not corrected, could result in improper slide deployment during emergency evacuation procedures. British Aerospace has issued BAC 1-11 Service Bulletin 25-PM-5943, dated November 24, 1986, which describes installation a longer inflation cable to prevent this from occurring. The CAA has classified this service bulletins as mandatory.

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

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the escape slide system in accordance with the previously mentioned service bulletins.

It is estimated that 6 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Estimated cost for parts is $100/aircraft. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $1,680.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($280). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

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

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

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

2. By adding the following new airworthiness directive:

British Aerospace (BAe): Applies to Model BAC 1–11 series airplanes equipped with R.F.D. inflatable escape slides, identified in BAe BAC 1–11 Service Bulletin 25–PM5906, Revision 2, dated November 9, 1984, and BAC 1–11 Service Bulletin 25–PM5943, dated November 24, 1986, certificated in any category. Compliance is required within 5 months after the effective date of this AD.

To prevent failure of the emergency escape slide deployment system, accomplish the following, unless previously accomplished:

A. Modify the R.F.D. emergency escape slide system in accordance with BAC 1–11 Service Bulletin 25–PM5906, Revision 2, dated November 9, 1984 and BAC 1–11 Service Bulletin 25–PM5943, dated November 24, 1986.

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

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the modification required by this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to British Aerospace, Inc., Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 21, 1987.

Frederick M. Isaac,

Acting Director, Northwest Mountain Region.

[FR Doc. 87–12527 Filed 6–2–87; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 852 3238]

Puritan-Bennett Aero Systems Co.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, an El Segundo, California seller of fire and smoke protection masks from claiming that any emergency escape mask or hood can absorb, remove or filter out any hazardous gas associated with fire, or that any mask or hood can protect users from any fire hazards, unless the claim is substantiated and supported by a scientific test. Respondent would be required to retain for three years all test reports or materials it uses as substantiation for claims and would also be required to make specified disclosures on its packaging and in advertisements.

DATE: Comments must be received on or before August 3, 1987.

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

FOR FURTHER INFORMATION CONTACT: FTC/S–4002, Joel Winston, Washington, DC 20580. (202) 326–3153.

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

List of Subjects in 16 CFR Part 13

Fire and smoke Protection masks, Trade practices.

United States of America Before Federal Trade Commission

In the Matter of Purtitan-Bennett Aero Systems Company, a corporation.

[File No. 8523238]

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Puritan-Bennett Aero Systems Company, a corporation, and it is now appearing that Puritan-Bennett Aero Systems Company, and its parent corporation, Puritan-Bennett Corporation, hereinafter sometimes referred to as the companies, are willing to enter into an agreement containing an order to cease and desist from the use of the Acts and practices being investigated;

It is hereby agreed by and between Puritan-Bennett Aero Systems Company and Puritan-Bennett Corporation, by their duly authorized officers, and counsel for the Federal Trade Commission that:

1. Proposed respondent, Puritan-Bennett Aero Systems Company, is a corporation organized, existing and doing business under and by virtue of the laws of the state of California, with its office and principal place of business located at 111 Penn Avenue, El Segundo, California. It is a wholy-owned subsidiary of Puritan-Bennett Corporation. Puritan-Bennett Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the state of Delaware, with its office and principal place of business located at 9401 Indian Creek Parkway, P.O. Box 25905, Overland Park, Kansas.

2. The companies admit all the jurisdictional facts set forth in the draft of the complaint attached hereto.

3. The companies waive:

(a) Any further procedural steps;

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

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

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

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

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

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

Order

I

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

(1) "The Escape Fire and Smoke Hood" shall mean the over-the-head transparent Kapton hood manufactured by Cybertronics, Ltd., a British company.

(2) "Competent and reliable scientific test" shall mean a test in which persons with skill and expert knowledge in the field to which the test pertains conduct the test and evaluate its results in an objective manner using testing, evaluation, and analytical procedures that ensure accurate and reliable results.

II

It Is Ordered that respondent Puritan Bennett Aero Systems Company, a corporation, its parent corporation, Puritan-Bennett Corporation, their successors and assigns, (hereinafter collectively "the companies"), and their offices, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of the Escape Fire and Smoke Hood or any other emergency escape mask or hood, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representating, directly or by implication:

a. That the mask or hood is capable of absorbing, removing, filtering out, or otherwise protecting the user from any hazardous gas associated with fire unless, at the time the representation is made, the representation is true and the companies possess and rely upon a reasonable basis consisting of a competent and reliable scientific test that substantiates the representation.

b. That the mask or hood can protect the user from any hazards associated with fire unless, at the time the representation is made, the representation is true and the companies possess and rely upon a reasonable basis consisting of a competent and reliable scientific test that substantiates the representation.

III

It is Further Ordered That the following notice shall be inlcuded in all advertising and promotional materials for the Escape Fire and Smoke Hood, or any other emergency mask or hood manufactured or sold by the companies that is incapable of absorbing, removing, filtering or otherwise providing significant protection from carbon monoxide, if that advertising or promotional material expressly or impliedly represents that the device protects the user from any hazard associated with fire:

Notice: This device does not filter carbon monoxide—a lethal gas associated with fire.

Nothing contrary to, inconsistent with, or in mitigation of the above required language shall be used in any such advertising or promotional material. In print advertising and promotional material, the above required language shall appear in at least ten-point bold type print, in close conjunction with the representation. In any television advertising, film, videotape or slide promotional material, the above required language shall be included both orally and visually in a manner designed to ensure clarity and prominence. In radio advertising, the above required language shall be read in a clear manner.

IV

It is Further Ordered That the following statement shall be included on all package labels for the Escape Fire and Smoke Hood, or any other emergency mask or hood manufactured or sold by the companies that is incapable of absorbing, removing, filtering or otherwise providing significant protection from carbon monoxide:

Warning: This device does not filter carbon monoxide—a lethal gas associated with fire.

The above required language shall be printed in at least ten-point bold type print. Nothing contrary to, inconsistent with or in mitigation of the above required language shall be used on any such package label.

V

It is Further Ordered that the companies shall deliver by certified mail or in person a copy of this Order to all present and future distributors and sub-distributions of the Escape Fire and Smoke Hood, or any other emergency mask or escape hood marketed by either of the companies, and instruct such distributors and sub-distributors in writing not to make any of the

representations, directly or by implication, prohibited by this Order. Delivery shall be made within thirty (30) days after the date of service on the companies of this Order to all such present distibutors and sub-distibutors. For all such future distributors and sub-distributors, delivery shall be made prior to the time said distributors begin distribution of the product.

VI

It is Further Ordered that, for three years from the date that the representations are last disseminated, each company shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials upon which the company relied to substantiate any claim or representation covered by this Order, and

2. All test reports, studies, surveys, or other materials in its possession or control or of which it has knowledge that contradict, qualify, or call into question such representation or the basis upon which the company relied for such representation.

VII

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

VIII

It is Further Ordered that the companies shall, within sixty (60) days after service of this Order upon them and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied or intend to comply with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to enter a proposed consent order from Puritan-Bennett Aero Systems Company.

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

This matter concerns the Escape Fire and Smoke Hood, a portable mask designed to protect the user from smoke and toxic gases in a fire, sold by Puritan-Bennett Aero Systems Company. Promotional materials for the Hood make several gas removal claims without disclosing that the device does not remove carbon monoxide, probably the most dangerous gas encountered in fires.

The Commission's complaint charges Puritan-Bennett Aero Systems with falsely representing in advertising for the Hood that the device will filter out all significant noxious or poisonous gases associated with fire, and that it will protect the user from all significant hazards associated with gasses in a fire for a reasonable amount of time. The complaint further charges that, in light of representations made by Puritan-Bennett Aero Systems regarding the capabilities of the Hood, the failure to disclose that the device does not filter carbon monoxide is a deceptive practice.

The consent order contains provisions designed to remedy the violations charged and to prevent both Puritan-Bennett Aero Systems and its parent corporation, Puritan-Bennett Corporation, from engaging in similar acts and practices in the future. Part II of the order prohibits direct or implied representations that the Hood is capable of filtering out any hazardous gases associated with fire or protecting the user from any significant hazards associated with fire unless the representations are true and the companies possess adequate substantiation.

Part III of the order provides that when such claims are made and the device does not provide significant protection against carbon monoxide the following disclosure must be made in close conjunction with the claim:

Notice: This device does not filter carbon monoxide—a lethal gas associated with fire.

Part IV of the order provides that if the device does not provide significant protection from carbon monoxide its package label must display the following disclosure:

Warning: This device does not filter carbon monoxide—a lethal gas associated with fire.

The order also contains provisions requiring dissemination of copies of the consent order to all present and future distributors and sub-distributors of the Escape Fire and Smoke Hood, or any similar device (Part V), retention of records supporting and advertising claims covered by this order (Part VI), notification to the Commission of changes in the companies' corporate structure (Part VII), and the submission of a report to the Commission on compliance with the terms of the order (Part VIII).

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

Emily H. Rock,

Secretary.

[FR Doc. 87-12555 Filed 6-2-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Doc. No. SD-208]

Application for Nonimmigrant Visas

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend Title 22, Part 41, § 41.110 to provide for the designation of a place at which an applicant for a nonimmigrant visa shall make the application. Under this proposed amendment an alien in Mexico seeking entry as a nonimmigrant temporary agricultural worker under section 101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, would be required to apply at a consular office in Mexico specifically designated for that purpose rather than at the consular office having jurisdiction over his or her place of residence. The proposed amendment is related to the Department's effort to establish procedures for the orderly and efficient processing of large numbers of such applications.

DATE: Comments must be submitted on or before June 12, 1987.

ADDRESS: Send comments to the Assistant Secretary of State for Consular Affairs, Room 6811, Department of State, Washington, DC, 20520.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully III, Director, Office

of Legislation, Regulations and Advisory Assistance, Visa Office, Department of State, Room 1330, SA-1, Department of State, Washington, DC 20520, (202) 663-1184.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986, Pub. L. 99-603, amended section 101(a)(15)(H)(ii) of the Immigration and Nationality Act to establish two separate subclassifications within that classification—temporary agricultural workers (H-2A) and other temporary workers (H-2B). In addition, Pub. L. 99-603 added a new section 216 to the Act which codifies in a modified and streamlined form the requirements and procedures for adjudication of application for the temporary labor certification required to support a petition to authorize the admission of temporary agricultural workers. The purpose of these amendments is to provide to agricultural employers a legal method to import needed foreign temporary agricultural workers to replace those workers whose employment was illegal on whom these employers had come to rely in the past. It is anticipated that large numbers may be admitted annually as temporary agricultural workers under the amended provisions and that the majority of them will be nationals and residents of Mexico. Each of those aliens will be required to apply for and obtain a nonimmigrant temporary worker visa. For many years the volume of applications by nationals of Mexico for nonimmigrant temporary agricultural workers visas has been very low, not exceeding 2,000 in any year. For this reason, the prospect of a sharp increase in the volume of such applications poses substantial administrative problems for consular offices in Mexico, and thus, for the Department of State generally.

In planning to meet this anticipated substantial increase in workload, the Department has taken into account the manner in which temporary agricultural workers are recruited and processed. It is the Department's understanding that an agricultural employer or an association of such employers seeks authorization to import a group of workers, possibly a group of several hundred. Once the necessary authorizations have been obtained and the workers recruited, representatives of the employer or the association pursue the final processing for admission also on a group basis. This understanding leads the Department to believe that these workers will be applying for temporary worker visas in groups organized by representatives of the petitioner for the purpose of assuring their orderly and timely arrival at the worksites in the United States.

On the basis the Department has examined the physical facilities of the Embassy at Mexico City and the consulates at various places in that country. The office with the most sizeable facilities for group processing of large numbers of applicants is the Consulate at Hermosillo. In addition, that office is located in an area convenient to the most likely entry points for the groups and to the areas from which the majority of the workers are likely to come. The Department's study indicates that the Consulate General at Ciudad Juarez and the Consulate at Nuevo Laredo are suitable back-up locations.

The Department's proposal amendmnent to § 41.110 would not, however, designate consular offices in Mexico by name, but would rather provide authority to designate these offices for this purpose from time to time. If the Department's expectations as to the size of the H-2A program are not realized or if other factors dictate modification of the designated offices, the necessary changes can be made more simply and more expeditiously.

This rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

For these reasons set out in the preamble, Title 22, Chapter I, Subchapter E-Visas, Part 41 of the Code of Federal Regulations, is proposed to be amended as indicated below.

List of Subjects in 22 CFR Part 41

Visas, Nonimmigrants, Aliens, Visa applications.

PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), Pub. L. 95-105, 91 Stat. 847.

§ 41.110 [Amended]

2. In § 41.110, paragraph (a), line five is amended by removing the comma after "§ 41.120," and adding immediately after "§ 41.120" the language "and aliens described in paragraph (c) of this section,".

3. Section 41.110 is further amended by adding paragraph (c) to read:

§ 41.110 Place of application.

* * * * *

(c) *Application by certain aliens in Mexico.* An alien in Mexico who is the beneficiary of a petition approved under section 216 of the Act to accord him or her a classification under section 101(a)(15)(H)(ii)(a) of the Act shall make application for a visa under such section to the consular officer in Mexico designated by the Department of State for such purpose.

Dated: May 12, 1987.

Joan M. Clark,

Assistant Secretary for Consular Affairs.

[FR Doc. 87-12546 Filed 6-2-87; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. 87-10, Notice No. 21]

National Bridge Inspection Standards; Frequency of Inspection and Inventory; Extension of Comment Period

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued a notice of proposed rulemaking (FHWA Docket No. 87-10, 52 FR 11092, April 7, 1987, FR Doc. 87-7469) which proposed to permit States to increase the maximum time interval between the inspections for certain types or groups of bridges, as opposed to retaining the mandatory 2-year interval as required under the current regulations. The proposed revisions would also require that States identify those bridges having fracture critical members or bridges which warrant underwater inspection or other special inspection consideration including more frequent inspection for certain types of bridges. Other proposed revisions would permit bridge inspection team leaders to be certified as competent if they have received Level III certification as bridge safety inspectors; would require that inventory data on newly load posted, as well as modified or newly completed bridges, be entered into a State's record within 90 days; and would provide State highway agencies greater flexibility with which to use available inspection resources in a cost-effective manner. All comments to the docket were to be received on or before June 8, 1987. The comment period is being extended to July 9, 1987. This extension will provide more time for the public to prepare responses to this docket.

DATE: Written, signed comments must be received on or before July 9, 1987.

ADDRESS: Submit written, signed comments, preferably in triplicate, to FHWA Docket No. 87-10, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.s.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Ahlskog, Chief, Bridge Management Branch, Bridge Division, Office of Engineering, (202) 366-4617, or Mr. Michael J. Laska, Office of Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.s.t. Monday through Friday, except legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: May 29, 1987.

R.A. Barnhart,

Federal Highway Administrator.

[FR Doc. 87-12632 Filed 6-2-87; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 76

Enrollment of Indians of the San Pasqual Band of Mission Indians in California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to revise the regulations contained in Part 76 governing the enrollment of Indians in the San Pasqual Band of Mission Indians in California. The Band was granted a judgment award by the United States Claims Court in Docket 80-A. In accordance with a judgment plan, effective April 27, 1985, which was prepared pursuant to the Indian Judgment Funds Distribution Act, as amended, a portion of the judgment funds is to be distributed on a per capita basis to all tribal members living on April 27, 1985. The proposed revision to the regulations will provide procedures, including a deadline for filing applications, to govern the preparation of a membership roll of the San Pasqual Band as of April 27, 1985, which will serve as the basis for the per capita distribution of judgment funds. This Part has been previously redesignated from 25 CFR Part 48 at 47 FR 13327, March 30, 1982.

DATE: Comments must be received on or before July 6, 1987.

ADDRESS: Written comments should be directed to the Branch of Tribal Enrollment Services, Division of Tribal Government Services, Room 1352 Main Interior Building, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Slover, Branch of Tribal Enrollment Services, Division of Tribal Government Services, Bureau of Indian Affairs, telephone number: (202) 343-3592 (FTS: 343-3592).

SUPPLEMENTARY INFORMATION: This proposed revision to a rule is published in exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8.

On November 21, 1983, the United States Claims Court granted, in a compromise settlement, an award originally filed with the Indian Claims Commission in Docket 80-A to the San Pasqual Band of Mission Indians. Funds to satisfy the award were appropriated by Congress on January 3, 1984.

A judgment plan for the use and distribution of the funds was prepared pursuant to the Judgment Funds Distribution Act of October 19, 1973, as amended, 25 U.S.C. 1401 *et seq.*, and became effective on April 27, 1985. The plan provides for eighty (80) per cent of the award, less attorney fees and litigation expenses and including all interest and investment income accrued, to be distributed in the form of per capita payments by the Secretary of the Interior in sums as equal as possible to all tribal members born on or prior to and living on the effective date of the plan. To distribute the judgment funds, the membership roll of the San Pasqual Band of Mission Indians will have to be brought current to April 27, 1985.

The regulations contained in Part 76 originally provided procedures for the preparation of a membership roll of the San Pasqual Band as of January 1, 1959, and the authority to maintain a current roll thereafter. No revision or amendment has been made to the regulations since they were promulgated in 1960. Subsequent to the preparation and the approval by the Secretary of the January 1, 1959, membership roll, a constitution and bylaws was adopted by the San Pasqual Band of Mission Indians and approved by the Secretary. The constitution provided that membership in the Band would be in accordance with the regulations contained in this Part 76. Although there were procedures for maintaining a current membership roll, no final enrollment actions have occurred since the completion of the 1959 roll. Consequently, the membership roll of the San Pasqual Band will have to be brought current from January 1, 1959.

The proposed revision to Part 76 is necessary to prepare a membership roll of the San Pasqual Band of Mission Indians as of April 27, 1985, both as a result of the fact that the primary purpose of the regulations as originally promulgated was to prepare a roll as of January 1, 1959, and as a result of the time that has elapsed since the rule was promulgated. The proposed revision is to update and make miscellaneous changes of an administrative nature, including the elimination of sex-based and gender specific terminology. With one exception the proposed revision is not intended to change the enrollment requirements now in effect, i.e., those requirements contained in § 76.14 Current membership roll. The exception is the inclusion of a provision for the enrollment of individuals who would have qualified for inclusion on the January 1, 1959, roll had they applied by the deadline for filing applications.

The qualification for inclusion on the Enrollment Committee needs to be changed as a result of the time that has elapsed since the promulgation of the rule. Originally individuals had to be named on the June 30, 1910, Census Roll of the San Pasqual Band of Mission Indians to be qualified to serve on the Enrollment Committee. The qualification has been changed in the proposed revision to provide that the indivdual's name appears on the January 1, 1959, membership roll. Also, the proposed revision provides that the newly elected Enrollment Committee will replace any Enrollment Committee previously elected under the regulations contained in this Part 76. This is to remove any question as to the status of the Enrollment Committee originally elected in the 1960's.

The stated purpose of the regulations has been changed. The purpose stated in the proposed revision to Part 76 is to provide procedures to bring current the membership roll of the San Pasqual Band to serve as the basis for the distribution of judgment funds awarded the Band by the United States Claims Court in Docket 80-A. The procedures are being characterized as making additions to and deletions from the

January 1, 1959, membership roll. Persons whose names appear on the January 1, 1959, membership roll do not need to reapply. However, verification forms will be mailed to them at their last known address to ascertain their current names and addresses, if they are still living and, if deceased, their dates of death.

The qualifications for enrollment are specified in § 76.4 of the proposed revision to the rule. The establish eligibility for enrollment individuals will have to file or have filed on their behalf applications on the prescribed form with the Superintendent of the Southern California Agency of the BIA by the deadline specified in § 76.4. Application forms filed after that date will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualifications for membership. Rejected applicants may still, however, be considered membership for future purposes.

To provide actual notice to as many potentially eligible beneficiaries as possible, the proposed revision provides that Superintendent shall mail notices of the preparation of the roll to all persons whose names appear on the January 1, 1959, membership roll at the last available address. Notices shall advise individuals of the preparation of the roll and the relevant procedures to be followed including the qualifications for enrollment and the deadline for filing application forms.

The constitution and bylaws for the San Pasqual Band refers to the regulations contained in Part 76, formerly Part 48. A draft, dated July 2, 1986, of the proposed revision to the regulations contained in Part 76 was, therefore, submitted to the Band for review. At a regular meeting of the General Council of the San Pasqual Band of Mission Indians held on July 13, 1986, at which a quorum was present, the draft of the revision was adopted by a vote of 33 "for" and 3 "against." With one exception the document which follows is the same as the draft, dated July 2, 1986, of the revision. The change is to § 76.9 Enrollment Committee election. Under paragraph (b) the proposed draft had provided that the term of office for the members of the Enrollment Committee would be two (2) years from the effective date of the revision or from the date of their election, whichever date was later. At the regular meeting of the General Council on July 13, 1986, the Enrollment Committee was elected. Therefore, the term of office for the Enrollment Committee will be two (2) years from the effective date of the revision. To avoid any question or uncertainly, especially after the proposed revision is codified, the reference to the date of election has been deleted and the revision will read that the term of office for the members of the Enrollment Committee will be two (2) years from the effective date of the revision.

The primary author of this document is Kathleen L. Slover, Branch of Tribal Enrollment Services, Division of Tribal Government Services, Bureau of Indian Affairs.

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding this proposed revision.

The Office of Management and Budget has informed the Department of the Interior that the information collection requirements contained in this Part 76 need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

The Department of the Interior has determined that this is not a major rule under E.O. 12291 because only a limited number of individuals will be affected and those individuals who are determined eligible will be participating in a per capita distribution made by the Secretary of a relatively small amount of funds.

The Department of the Interior has determined that this rule will not have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because of the limited applicability as stated above.

The Department of Interior has determined that this rule does not significantly affect the quality of the human environment and, therefore, does not require the preparation of an Environmental Impact Statement under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4334(2)(C).

List of Subjects in 25 CFR Part 76

Indians—claims, Indians—enrollment.

Accordingly, it is proposed that Part 76 of Subchapter F of Chapter 1 of Title 25 of the Code of Federal Regulations be revised to read as follows:

PART 76—ENROLLMENT OF INDIANS OF THE SAN PASQUAL BAND OF MISSION INDIANS IN CALIFORNIA

Sec.
76.1 Definitions.
76.2 Purpose.
76.3 Information collection.
76.4 Additions to and deletions from the membership roll and the deadline for filing application forms.
76.5 Notices.
76.6 Application forms.
76.7 Filing of application forms.
76.8 Verification forms.
76.9 Burden of proof.
76.10 Enrollment Committee election.
76.11 Review of applications by the Enrollment Committee.
76.12 Action by the Superintendent.
76.13 Appeals.
76.14 Decision of the Assistant Secretary on appeals.
76.15 Preparation, certification and approval of the roll.
76.16 Special instructions.

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; and 25 U.S.C. 1401 *et seq.*, as amended.

§ 76.1 Definitions.

As used in these regulations:

"Adopted person" means a person whose biological parents' parental rights have been given to others to exercise by court order.

"Assistant Secretary" means the Assistant Secretary of the Interior for Indian Affairs or an authorized representative acting under delegated authority.

"Band" means the San Pasqual Band of Mission Indians in California.

"Census Roll" means the June 30, 1910, Census Roll of the San Pasqual Band of Mission Indians.

"Commissioner" means the Commissioner of Indian Affairs or an authorized representative acting under delegated authority.

"Descendant(s)" means those persons who are the issue of the ancestor through whom enrollment rights are claimed; namely, the children, grandchildren, etc. It does not include collateral relatives such as brothers, sisters, nephews, nieces, cousins, etc., or adpoted children, grandchildren, etc.

"Director" means the Area Director, Sacramento Area Office, Bureau of Indian Affairs or an authorized representative acting under delegated authority.

"Enrollment Committee" means a committee of three (3) members whose names appear on the membership roll of the San Pasqual Band of Mission Indians prepared as of January 1, 1959, to assist in enrollment.

"General Council" means the governing body of the San Pasqual Band of Mission Indians which consists of all members of the Band 18 years of age or older.

"Living" means born on or before and alive on the date specified.

"Member(s)" means persons who names appear on the membership roll of the San Pasqual Band of Mission Indians prepared as of January 1, 1959.

"Membership Roll" means the membership roll of the San Pasqual Band of Mission Indians prepared as of January 1, 1959, and approved October 5, 1966.

"Plan" means the plan for the use and distribution of judgment funds awarded the San Pasqual Band of Mission Indians by the U.S. Court of Claims in Docket 80–A, prepared pursuant to the Act of October 19, 1973, 25 U.S.C. 1401 *et seq.*, as amended, and effective April 27, 1985.

"Secretary" means the Secretary of the Interior or an authorized representative acting under delegated authority.

"Sponsor" means any person who files an application for enrollment or appeal on behalf of another person.

"Staff Officer" means the Enrollment Officer or other person authorized to prepare the roll.

"Superintendent" means the Superintendent, Southern California Agency, Bureau of Indian Affairs, or an authorized representative acting under delegated authority.

§ 76.2 Purpose.

The regulations in the Part 76 are to provide procedures to bring current the membership roll of the San Pasqual Band of Mission Indians to serve as the basis for the distribution of judgment funds awarded the Band by the U.S. Court of Claims in Docket 80–A.

§ 76.3 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the information collection requirements contained in this Part need not be reviewed by them under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

§ 76.4 Additions to and deletions from the membership roll and the deadline for filing application forms.

(a) The membership roll of the Band shall be brought current to April 27, 1985, by:

(1) Adding the names of person living on April 27, 1985, who are not enrolled with some other tribe or band; and

(i) Who would have qualified for the inclusion of their names on the January 1, 1959, membership roll of the Band had they filed applications within the time prescribed, or

(ii) Who were born after January 1, 1959, and

(A) Are descendants of Indians whose names appear as members of the Band of the Census Roll, provided such descendants possess one-eight (⅛) or more degree of Indian blood of the Band, or

(B) Are Indians who can furnish sufficient proof to establish that they are ⅛ or more degree of Indian blood of the Band; and

(iii) Who file or have filed on their behalf application forms with the Superintendent, Southern California Agency, Bureau of Indian Affairs, 3600 Lime Street, Suite 722, Riverside, California 92501, by (90 Days from the date of publication of the Final Rule in the **Federal Register**). Application forms filed after that date will be rejected for failure to file on time regardless of whether the applicant otherwise meets the qualications for membership. Except that members whose names appear on the membership roll shall not be required to file applications in accordance with this paragraph.

(2) Deleting the names of members who have relinquished in writing their membership in the Band or who have died since January 1, 1959, but prior to April 27, 1985, for whom certified documentation has been submitted.

(b) Members whose names appear on the membership roll whose enrollment was based on information subsequently determined to be inaccurate may be deleted from the roll subject to the approval of the Assistant Secretary.

§ 76.5 Notices.

(a) The Director shall give notice to all Directors of the Bureau of Indian Affairs and all Superintendents within the jurisdiction of the Director, of the preparation of the roll for public display in Bureau filed offices. Reasonable efforts shall be made to place notices for public display in community buildings, tribal buildings, and Indian Centers.

(b) The Superintendent shall, on the basis of available residence data, publish and republish when advisable, notices of the preparation of the roll in appropriate locales utilizing media suitable to the circumstances.

(c) The Superintendent shall mail notices of the preparation of the roll to enrollees at the last address available.

(d) Notices shall advise of the preparation of the roll and the relevant procedures to be followed including the qualifications for enrollment and the deadline for filing application forms to be eligible for enrollment. The notices shall also state how and where application forms may be obtained as well as the name, address, and telephone number of a person who may be contacted for further inforamtion.

§ 76.6 Application forms.

(a) Application forms to be filed by or for applicants for enrollment will be furnished by the Director, Superintendent, or other designated persons, upon written or oral request. Each person furnishing application forms shall keep a record of the names of individuals to whom forms are given, as well as the control numbers of the forms and the date furnished. Instruction for completing and filing applications shall be furnished with each form. The form shall indicate prominently the deadline for filing application forms.

(b) Among other information, each application form shall contain:

(1) Certifcation as to whether application form is for a biological child or adopted child of the parent through whom eligibility is claimed.

(2) If the application form is filed by a sponsor, the name and address of sponsor and relationship to applicant.

(3) A control number for the purpose of keeping a record of forms furnished interested individuals.

(4) Certification that the Information given on the application form is true to the best of the knowledge and belief of the person filing the application form. Criminal penalties are provided by statute for knowingly filing false information in such applications (18 U.S.C. 1001).

(c) Application forms may be filed by sponsors on behalf of other persons.

(d) Every applicant or sponsor shall furnish the applicant's mailing address on the application form. Thereafter, the applicant or sponsor shall promptly notify the Superintendent of any change in adddress, giving appropriate identification of the application, otherwise the mailing address as stated on the from shall be acceptable as the address of record for all purposes under the regulations in this Part 76.

§ 76.7 Filing of application forms.

(a) Application forms filed by mail must be postmarked no later than midnight on the deadline specified. Where there is no postmark date showing on the envelope or the postmark date in illegible, application forms mailed from within the United States, including Alaska and Hawaii, received more that 15 days and application forms mailed from outside of the United States received more than 30 days after the deadline specified in the office of the Superintendent, will be denied for failure to file in time.

(b) Application forms filed by personal delivery must be received in the office of the Superintendent no later

than close of business on the deadline specified.

(c) If the deadline for filing application forms falls on Saturday, Sunday, legal holiday, or other nonbusiness day, the deadline will be the next working day thereafter

§ 76.8 Verification forms.

The Superintendent shall mail a verification form to each member at the last available address to be completed and returned. The verification form will be used to ascertain the member's current name and address and that the member is still living, or if deceased, the member's date of death. Name and/or address changes will only be made if the verification form is signed by an adult member, if living, or the parent or guardian having legal custody of a minor member, or an authorized sponsor. The verification form may be used by any sponsor to notify the Superintendent of the date of death of a member.

§ 76.9 Burden of proof.

The burden of proof rests upon the applicant to establish eligibility for enrollment. Documentary evidence such as birth certificates, death certificates, baptismal records, copies of probate findings, or affidavits, may be used to support claims of eligibility for enrollment. Records of the Bureau of Indian Affairs may be used to establish eligibility. Except that where the Enrollment Committee recommends the deletion of the name of a member from the membership roll, the burden of proof is on the Enrollment Committee.

§ 76.10 Enrollment Committee election.

(a) At a regular or special meeting at which there is a quorum, the General Council shall elect (3) persons whose names appear on the membership roll to serve as members of the Enrollment Committee and two (2) persons to act as alternates to the Committee. The three (3) persons receiving the highest number of votes shall constitute the Enrollment Committee of the Band and the persons receiving the fourth and fifth highest number of votes shall serve as alternate members of the Enrollment Committee. The person receiving the highest number of votes shall serve as chairman of the Enrollment Committee.

(b) The Band may elect the Enrollment Committee prior to (the effective date of the Final rule revising this Part 76). The term of office for the members of the Enrollment Committee shall be two (2) years from (the effective date of the Final rule revising this Part 76). The Enrollment Committee, so elected, shall replace any Enrollment Committee previously elected under the regulations contained in this Part 76.

§ 76.11 Review of applications by the Enrollment Committee.

(a) The Superintendent shall submit all applications to the Enrollment Committee for review and recommendations; except that, in the cases of adopted persons where the Bureau of Indian Affairs has assured confidentiality to obtain the information necessary to determine the eligibility for enrollment or the individual or has the statutory obligation to maintain the confidentiality of the information, the confidential information may not be released to the Enrollment Committee, but the Superintendent shall certify as to the eligibility for enrollment of the applicant to the Enrollment Committee.

(b) The Enrollment Committee shall review all applications and make its recommendations in writing stating the reasons for acceptance or rejection for enrollment.

(c) The Enrollment Committee shall return the applications to the Superintendent with its recommendations and any additional evidence used in determining eligibility for enrollment within 30 days of receipt of the applications by the Enrollment Committee. The Superintendent may grant the Enrollment Committee additional time, upon request, for its review.

(d) The Enrollment Committee shall also submit the names of members it recommends be deleted from the membership roll to the Superintendent stating in writing the reasons for such deletions.

§ 76.12 Action by the Superintendent.

(a) The Superintendent shall accept the recommendations of the Enrollment Committee unless clearly erroneous.

(1) If the Superintendent does not accept the tribal recommendation, the Enrollment Committee shall be notified in writing, by certified mail, return receipt requested, or by personal delivery, of the action and the reasons therefor.

(2) The Enrollment Committee may appeal the decision of the Superintendent not to accept the tribal recommendation. Such appeal must be in writing and must be filed pursuant to Part 62 of this chapter.

(b) The Superintendent, upon determining an individual's eligibility, shall notify the individual, parent or guardian having legal custody of a minor, or sponsor, as applicable, in writing of the decision. If an individual files applications on behalf of more than one person, one notice of eligibility or adverse action may be addressed to the person who filed the applications. However, the notice must list the name of each person involved. Where an individual is represented by a sponsor, notification of the sponsor of eligibility or adverse action shall be considered to be notification of the individual.

(1) If the Superintendent determines that the individual is eligible, the name of the individual shall be placed on the roll.

(2) If the Superintendent determines that the individual is not eligible, he/she shall notify the individual, parent or guardian having legal custody of a minor, or sponsor, as applicable, in writing by certified mail, to be received by the addressee only, return receipt requested, and shall explain fully the reasons for the adverse action and the right to appeal to the Secretary. If correspondence is sent out of the United States, registered mail will be used. If a certified or registered notice is returned as "Unclaimed," the Superintendent shall remail the notice by regular mail together with an acknowledgment of receipt form to be completed by the addressee and returned to the Superintendent. If the acknowledgment of receipt is not returned, computation of the appeal period shall begin on the date the notice was remailed. Certified or registered notices returned for any reason other than "Unclaimed" need not be remailed.

(c) Exept as provided in paragraph (b)(2) of this section, a notice of adverse action is considered to have been made and computation of the appeal period shall begin on the earliest of the following dates:

(1) Of delivery indicated on the return receipt;

(2) Of acknowledgment of receipt;

(3) Of personal delivery; or

(4) Of the return by the post office of an undelivered certified or registered letter.

(d) In all cases where an applicant is represented by an attorney, the attorney shall be recognized as fully controlling the application on behalf of the applicant and service on the attorney of a document relating to the application shall be considered to be service on the applicant. Where an applicant is

represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(e) To avoid hardship or gross injustice, the Superintendent may waive technical deficiencies in applications or other submissions. Failure to file by the deadline does not constitute a technical deficiency.

§ 76.13 Appeals.

Appeals from or on behalf of applicants who have been denied enrollment must be in writing and must be filed pursuant to Part 62 of this chapter. When the appeal is on behalf of more than one person, the name of each person must be listed in the appeal. A copy of Part 62 of this chapter shall be furnished with each notice of adverse action.

§ 76.14 Decision of the Assistant Secretary on appeals.

The decision of the Assistant Secretary on an appeal shall be final and conclusive and written notice of the decision shall be given the individual, parent or guardian having legal custody of the minor, or sponsor, as applicable. The name of any person whose appeal has been sustained will be added to the roll.

§ 76.15 Preparation, certification and approval of the roll.

(a) The staff officer shall prepare a minimum of five (5) copies of the roll of those persons determined to be eligible for enrollment. The roll shall contain for each person a roll number, name, address, sex, date of birth, date of death, when applicable, degree of Indian blood and in the remarks column, name and relationship of ancestor on the census roll through whom eligibility was established.

(b) A certificate shall be attached to the roll by the Superintendent certifying that to the best of his/her knowledge and belief the roll contains only the names of those persons who were determined to meet the qualifications for enrollment.

(c) The Director shall approve the roll.

§ 76.16 Special instructions.

To facilitate the work of the Superintendent, the Assistant Secretary may issue special instructions not inconsistent with the regulations in this Part 76.

Ronal D. Eden,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 87-12552 Filed 6-2-87; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8-R]

Civilian Health and Medical Program of the Uniformed Services (CAMPUS); Implementation of a CHAMPUS DRG-Based Payment System

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed amendment of rule.

SUMMARY: This proposed amendment revises the comprehensive CHAMPUS regulation, DoD 6010.8-R (32 CFR Part 199), pertaining to payment for inpatient hospital services. This proposed amendment implements a DRG-based payment system, which is modeled on the Medicare Prospective Payment System, for CHAMPUS inpatient hospital admissions occurring on or after October 1, 1987. This proposed amendment also revises the cost-sharing requirements for beneficiaries other than dependents of active duty members. This cost-sharing change is necessary under a DRG-based payment system to ensure that cost-sharing amounts are equitable. This amendment also established an admission and quality review system for CHAMPUS inpatient hospital claims.

DATES: Written public comments must be received on or before July 6, 1987.

ADDRESS: Office of the Civilian Health and Medical Program of the Uniformed Services, (OCHAMPUS), Policy Branch, Aurora, CO 80045.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Policy Branch, OCHAMPUS, telephone (303) 361-4005.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. SYNOPSIS
A. Background
1. Congressional call for a CHAMPUS DRG system
2. Purpose of the proposed rule for a CHAMPUS DRG System
3. Relationship to the CHAMPUS Reform Initiative
B. Key Features of CHAMPUS DRUG System Modeled After Medicare's
1. Adjustments for different CHAMPUS population
2. Major factors built on actual CHAMPUS experience
3. Developing cost data comparable to Medicare's
4. Adjustments to the standardized amount for certain factors
5. Special treatment for outlier cases
6. Pass-throughs for capital costs and education expenses
7. Exclusion of certain hospitals and hospital services
8. Quality assurance monitoring
C. Impact of DRG System on Beneficiary Cost-Sharing
1. Reduced beneficiary cost-share based on reduced payments
2. Revised cost-share calculation method to assure fairness
D. Conclusion'
II. BACKGROUND
A. CHAMPUS Reimbursement—Current Procedures
B. Department of Defense Authorization Act, 1984
C. Consolidated Omnibus Budget Reconciliation Act, 1986
III. GENERAL DESCRIPTION OF CHAMPUS DRG-BASED PAYMENT SYSTEM
A. Scope
B. Modeled on Medicare's Prospective Payment System (PPS)
1. DRGs used
2. Assignment of discharges to DRGs
C. Beneficiary Eligibility
1. Change of eligibility status
2. Change of sponsor status
D. Basis of Payment
1. Hospital billing
2. Payment on a per discharge basis
3. Claims priced as of date of discharge
4. Payment in full
5. Inpatient operating costs
6. Discharges and transfers
a. Discharges
b. Transfers
c. Payment in full to the discharging hospital
d. Payment to a hospital transferring an inpatient to another hospital
e. Additional payments to transferring hospitals
7. Applicability of the DRG system
a. Areas affected
b. Services subject to the CHAMPUS DRG-based payment system
c. Services exempt from the CHAMPUS DRG-bassed payment system
d. Hospitals subject to the CHAMPUS DRG-based payment system
e. Hospitals and hospital units exempt from the CHAMPUS DRG-based payment system
i. Psychiatric hospitals
ii. Rehabilitation hospitals
iii. Alcohol/drug hospitals
iv. Psychiatric, rehabilitation and alcohol/drug units (distinct parts)
v. Long-term hospitals
vi. Sole community hospitals
vii. Christian Science sanitoriums
viii. Cancer hospitals
ix. Hospitals outside the 50 states, the District of Columbia, and Puerto Rico
f. Hospitals which do not participate in Medicare
IV. DETERMINATION OF PAYMENT AMOUNTS
A. Data Sources
B. Development of the Database
1. Records for exempt hospitals
2. Interim bills
3. Unallowable charges
4. Exempt services
5. Combined mother/newborn bills
6. Record errors
C. DRG Weighting Factors
1. Inapplicability of Medicare weights

2. Calculation of DRG weights
a. Grouping of charges
b. Remove DRGs 469 and 470
c. Indirect medical education standardization
d. Calculation of DRG average charges
e. Calculation of national average charge per discharge
f. DRG relative weights
3. Procedures for DRGs for which a weight cannot be calculated
4. Updating DRG weights
D. Calculation of the Adjusted Standardized Amount
1. Apply the cost to charge ratio
2. Increase for bad debts
3. Update for inflation
4. Preliminary non-teaching standardized amount
5. Preliminary teaching standardized amoutns
6. System standardization
7. Updating the standardized amounts
E. Adjustments to the DRG-Based Payment Amounts
1. Capital costs
a. Capital costs generally included
b. Services, facilities, or supplies provided by supplying organizations
2. Direct medical education costs
3. Information necessary for payment of capital and direct medical education costs
4. Outliers
a. Length-of-stay outliers
i. Short-stay outliers
ii. Long-stay outliers
b. Cost outliers
F. Examples of DRG Weights and Adjusted Standardized Amount
V. CHARGES TO BENEFICIARIES
A. Cost-Shares
1. Purpose of cost-share
2. Calculation of cost-share amounts for beneficiaries other than dependents or active duty members
3. Cost-shares for dependents of active duty members
B. Services or Supplies Specifically Excluded from Payment
C. Hospital Days Beyond that Deemed Medically Necessary
VI. ADMISSION AND QUALITY REVIEW
A. Objectives of Review System
B. Responsibility for Review
C. Hospital Cooperation
D. Areas of Review
1. Admissions
2. Admission pattern monitoring
3. DRG validation
4. Outlier review
5. Procedure review
E. Fiscal Intermediary Actions as a Result of Review
1. Findings related to individual claims
2. Findings related to a pattern of inappropriate practices
VII. APPLICATION OF DOUBLE COVERAGE RULES
VIII. APPEALS
IX. OTHER REQUIRED INFORMATION
A. Effective Date
B. Paperwork Reduction Act
C. Coordination of Proposed Rule
X. IMPACT ANALYSIS
A. E.O. 12291 and the Regulatory Flexibility Act
B. The Problem of Increased CHAMPUS Costs
C. A DRG-Based Payment System Represents the Best Resolution of the Problem of Increasing Costs
D. Economic Impacts
1. Hospital impact
a. Use of Medicare cost to charge ratio
b. Bad debts
c. Use of CHAMPUS-specific weights
d. Capital and direct medical education costs
e. Psychiatric services
f. Substance abuse services
2. Beneficiary impact
a. Cost-sharing amounts
b. Calculation of cost-shares for beneficiaries other than dependents of activie duty members
3. Operational impact
E. Conclusion
REGULATIONS TEXT
32 CFR Part 199
Table 1—Examples of DRG Weights and Adjusted Standardized Amount
Addendum 1—Health Program Benefit Agreement

I. Synopsis

A. Background

1. Congressional call for a CHAMPUS DRG system

In 1983, Congress called on DoD to establish a new method to pay hospitals for inpatient care under CHAMPUS, to be modeled after the recently established prospective payment system for the Medicare program. Rather than just paying billed charges, the new method was to pay fixed rates for particular categories of medical care, grouped into diagnosis-related groups, or DRGs. This Congressional action was followed by a 1986 law giving CHAMPUS the practical ability to adopt a new payment method by linking hospital participation in Medicare with that in CHAMPUS.

2. Purpose of the proposed rule for a CHAMPUS DRG system

Paying on the basis of a fixed rate, appropriate to the particular diagnosis involved, has been shown to be an equitable method of paying for hospital care. The need for a system of this kind is indicated by the rapidly increasing CHAMPUS hospital costs, which have been rising 50 percent faster than hospital costs generally. CHAMPUS has likely also suffered from the shifting of costs to CHAMPUS from other third-party payers that have implemented cost controls. The CHAMPUS DRG system described here is a proposed system on which public comments are being solicited. Following review of all public comments, a final regulation will be issued to implement the system scheduled to become effective October 1, 1987.

3. Relationship to the CHAMPUS Reform Initiative

This proposed rule to establish a DRG-based payment system for CHAMPUS is separate from, but compatible with, the CHAMPUS Reform Initiative, for which a contract acquisition is now proceeding. When implemented, the DRG rule will be applicable to the six CHAMPUS Reform demonstration states as well as the rest of the United States.

B. Key Features of CHAMPUS DRG System Modeled After Medicare's

1. Adjustments for different CHAMPUS population

Consistent with the Congressional intent, the proposed CHAMPUS system is modeled closely on the Medicare system. Although many of the procedures for CHAMPUS are quite similar to those in the Medicare system, actual payment amounts and other specifics are different. This is because of important differences between the two beneficiary populations. Medicare's population is elderly, whereas CHAMPUS beneficiaries are younger and typically healthier.

2. Major Factors Built on Actual CHAMPUS Experience

To account for major population differences, it was necessary to develop DRG-based financial information specifically relating to CHAMPUS patients . Actual payment amounts will be calculated on the basis of actual CHAMPUS hospital claims during a 12-month period (July 1, 1986, through June 30, 1987), with adjustments for a number of other factors. Based on hospital claims, a standardized amount will be calculated to represent the average operating cost for treating all CHAMPUS beneficiaries in all aproximately 470 DRGs. Then, for each DRG, a specific weighting factor will be calculated to represent a comparison of the cost of that DRG with the overall average. The resulting set of specific weighting factors will be different from Medicare's, because the CHAMPUS set will be based on actual experience treating CHAMPUS patients.

3. Developing Cost Data Comparable to Medicare's

In order to model the CHAMPUS DRG system after Medicare's, CHAMPUS financial data, which is based on the current CHAMPUS method of paying billed charges, had to be converted to something comparable to data under Medicare, which is based on paying only the costs of caring for Medicare

patients. This conversion is achieved by applying an appropriate cost-to-charge ratio. The ratio to be used is the established Medicare cost-to-charge ratio (currently .66), which has been calculated on the basis of actual reported costs and charges from essentially the same hospitals subject to the CHAMPUS DRG system. Although this ratio applied to Medicare patients, it is reasonable to apply it to CHAMPUS patients because the hospitals and their respective charge structures are the same. If anything, costs for younger and healthier CHAMPUS patients are likely lower. The reasonableness of applying this cost-to-charge ratio to CHAMPUS charge data is demonstrated by its product: a standardized amount nearly identical to that used by Medicare.

4. Adjustments to the Standardized Amount for Certain Factors

Like Medicare's system, the proposed CHAMPUS DRG system will adjust the standard amount to take account of several other cost factors: The indirect costs of medical education in teaching hospitals, compensation for bad debts attributable to CHAMPUS patients, and an inflation factor to update the base year data to FY 1988. Inflation adjustments will also be made in the future, as they are for Medicare, to update payment amounts. Unlike Medicare, however, CHAMPUS will not include adjustments based on an urban versus rural hospital distinction, because recent evidence indicates there is no substantial basis for such a distinction. Nor will CHAMPUS follow Medicare's original phased implementation approach of regional and hospital-specific adjustments. Phasing is unnecessary because hospital operations have adjusted to the DRG payment method (now fully implemented under Medicare), and CHAMPUS, unlike Medicare, is typically a very small portion of the hospital's income.

5. Special Treatment for Outlier Cases

Like Medicare's system, the CHAMPUS DRG system will recognize that there are certain cases which turn out to be so different from the normal experience that they should be handled separately for purposes of reimbursement. Thus, CHAMPUS will provide special reimbursement rules like Medicare's for long length-of-stay outliers and for cost outliers. For balance, CHAMPUS will also have a short-stay outlier provision.

6. Pass-Throughs for Capital Costs and Education Expenses

The proposed CHAMPUS DRG system, like Medicare's, will also have separate reimbursement provisions to take account of the relationship of certain hospital costs to treating CHAMPUS patients: Capital costs and, for teaching hospitals, the direct costs of medical education. Like for Medicare, these will be handled as pass-throughs, except that, because CHAMPUS lacks necessary data to do otherwise, these adjustments will be made on an annual basis.

7. Exclusion of Certain Hospitals and Hospital Services

In general, all hospitals in the United States are subject to the proposed CHAMPUS DRG payment method except for psychiatric, rehabilitation, alcohol/drug abuse, long-term care and several other very specialized hospitals. Similar specialized units that are part of other hospitals are also exempt. In addition, several specialized services in DRG-covered hospitals are also exempt from DRG-based payment, including all psychiatric and substance abuse services, kidney acquisition and heart and liver transplantation. Services of hospital-based physicians are also excluded.

8. Quality Assurance Monitoring

To assist in assuring the quality, reasonableness, and appropriateness of care provided CHAMPUS beneficiaries under the DRG-based payment system, an admission and quality review requirement will be established. CHAMPUS is pursuing appropriate arrangements with the Health Care Financing Administration to undertake this important activity in conjunction with current Professional Review Organization activities under Medicare. Among the matters that will receive priority attention is the establishment of effective methods to prevent premature hospital discharges.

C. Impact of DRG System on Beneficiary Cost-Sharing

1. Reduced Beneficiary Cost-Share Based on Reduced Payments

From the beneficiary's standpoint, the new CHAMPUS payment system will have a very positive impact. By reducing the payment amount for hospitals, the 25 percent cost-share retired members and their dependents must pay will now be applied to a much lower amount. As a result, the average cost-share per hospital stay will be reduced from about $1,000 to about $750.

2. Revised Cost-Share Calculation Method To Assure Fairness

From the hospital's standpoint the use of an average payment amount is fair because although some cases will actually cost more than the DRG payment, some will cost less and overall they will even out. This, however, does not fit individual beneficiaries who do not have repeated events that overall even out. Thus, without some special rule, where a particular case would have actual charges less than the DRG amount, the benficiary would have to pay 25 percent of the higher DRG amount, and would be worse off under the new system. Therefore, a special rule is being established to base the beneficiary's cost-share calculation on the average per diem amount rather than the DRG-based per admission amount. Under this method, a beneficiary whose care would have cost less than the DRG amount because his length-of-stay was less than the average will have a reduced cost-share that reflects the shorter stay. Thus, based on the reduced payment amounts to hospitals and the per diem calculation method, beneficiaries will pay much less under the DRG system.

D. Conclusion

In accord with Congressional intent, this proposed rule is modeled very closely on the Medicare system, with appropriate adjustments, particularly to account for the different CHAMPUS population. CHAMPUS payments will be fair and more in line with Medicare payment rates. The products of this proposed rule will be more reasonable CHAMPUS costs for both the government, which will save more than $200 million annually, and beneficiaries, who will have much lower cost-shares, and prudent incentives for hospitals to provide quality, cost-effective care.

II. Background

A. CHAMPUS Reimbursement—Current Procedures

In FR Doc. 77–7834, appearing in the **Federal Register** on April 4, 1977, (42 FR 17972), the Office of the Secretary of Defense published its regulation, DoD 6010.8–R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. DoD Regulation 6010.8–R was reissued in the **Federal Register** on July 1, 1986 (51 FR 24008).

Paragraph 199.6(e) of DoD 6010.8–R provides for reimbursement of hospitals and skilled nursing facilities on the basis of billed charges/set rates, cost-related reimbursement similar to that

used under title XVIII of the Social Security Act (Medicare), or prospective reimbursement. CHAMPUS has traditionally reimbursed these providers of care based on the providers' billed charges. Because of these procedures, CHAMPUS has been subject to rapidly increasing costs far in excess of the general rate of inflation. This resulted not only from increases in hospitals' charges, but also from the shifting of costs as other third-party payers implemented cost-controlling reimbursement procedures.

B. Department of Defense Authorization Act, 1984

The Department of Defense Authorization Act, 1984, amended title 10, chapter 55, section 1079(j)(2)(A) and provided CHAMPUS with the statutory authority to reimburse institutional providers based on diagnosis-related groups (DRGs). Specifically, it provides that payments "shall be determined to the extent practicable in accordance with the same reimbursement rules as apply to payments to providers of services of the same type under title XVIII of the Social Security Act."

C. Consolidated Omnibus Budget Reconciliation Act, 1986

On April 7, 1986, the President signed the Consolidated Omnibus Budget Reconciliation Act which contained a provision requiring hospitals which participate in Medicare also to participate in CHAMPUS for inpatient services. Because of questions regarding the effect of this provision, it was amended by Pub. L. 99–514, section 1895(B)(6), which was signed by the President on October 22, 1986. This amendment requires all providers participating in Medicare also to participate in CHAMPUS for inpatient hospital services provided pursuant to admissions to hospitals occurring on or after January 1, 1987.

III. General Description of Champus DRG-Based Payment System

A. Scope

Under the CHAMPUS DRG-based payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system (generally short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis using Diagnosis Related Groups (DRGs). DRG payments will include an allowance for indirect medical education costs. Additional payments will be made for capital costs, direct medical education costs and outlier cases. Under the CHAMPUS DRG-based payment system, a hospital may keep the difference between its prospective payment rate and its operating costs incurred in furnishing inpatient services, and is at risk for operating costs that exceed its payment rate.

B. Modeled on Medicare's Prospective Payment System (PPS)

The CHAMPUS DRG-based payment system is modeled on the Medicare PPS which was implemented October 1, 1983. The Medicare PPS is based on an interim final rule which was published in the **Federal Register** on September 1, 1983 (48 FR 39752) and updated periodically since then. Although many of the procedures in the CHAMPUS DRG-based payment system are similar or identical to the procedures in the Medicare PPS, the actual payment amounts, DRG weights, and certain procedures are different. This is necessary because of the differences in the two programs, especially in the beneficiary population. While the vast majority of Medicare beneficiaries are over age 65, CHAMPUS beneficiaries are considerably younger (almost exclusively under age 65) and generally healthier. Moreover, some services, notably obstetric and pediatric services, which are nearly absent from Medicare claims comprise a large part of CHAMPUS services.

1. DRGs Used

The CHAMPUS DRG-based payment system will use the same 472 DRGs used in the Medicare PPS (the DRGs are actually numbered through 473, but DRG 438 is no longer valid).

2. Assignment of Discharges to DRGs

OCHAMPUS will use the Health Care Financing Administration (HCFA) "Grouper" system to classify specific hospital discharges within DRGs so that each hospital discharge is appropriately assigned to a single DRG based on essential data abstracted from the inpatient bill for that discharge.

a. The classification of a particular discharge will be based on the patient's age, sex, principal diagnosis (that is, the diagnosis established, after study, to be chiefly responsible for causing the patient's admission to the hospital), secondary diagnoses, procedures performed and discharge status.

i. It is the hospital's responsibility to submit the information necessary for the FI to assign a discharge to a DRG.

ii. When the discharge data is inadequate (i.e., the FI is unable to assign a DRG based on the submitted data), the bill will be returned to the hospital for the additional information.

b. Each discharge will be assigned to only one DRG (related, except as provided in section III.B.2.c. of this preamble, to the patient's principal diagnosis) regardless of the number of conditions treated or services furnished during the patient's stay.

c. When the discharge data submitted by a hospital show a surgical procedure unrelated to a patient's principal diagnosis, the bill will be returned to the hospital for validation and verification. The DRG classification system will provide a DRG and an appropriate weighting factor, for the group of cases for which the unrelated diagnosis and procedure are confirmed.

C. Beneficiary Eligibility

1. Change of Eligibility Status

If a beneficiary is eligible for CHAMPUS coverage during any part of his/her inpatient confinement, the claim shall be processed as if the beneficiary was eligible for the entire stay. This applies if the beneficiary loses eligibility during the stay or gains eligibility during the stay. Day and cost outliers are to be paid except in those cases where a beneficiary loses eligibility during the confinement. In such cases, any additional costs which are incurred after loss of eligibility and which result from either a long-stay outlier or cost outlier will not be payable.

2. Change of Sponsor Status

The beneficiary's status is to be determined based on his/her sponsor's status at the time of admission, or the first day of actual eligibility during the confinement. A subsequent change in status is to be disregarded in the calculation of the cost-share for that particular hospital admission.

D. Basis of Payment

1. Hospital Billing

Under the CHAMPUS DRG-based payment system, hospitals are required to submit claims (including itemized charges) in accordance with paragraph 199.7(b) of the CHAMPUS regulation, DoD 6010.8–R. The CHAMPUS fiscal intermediary will assign the appropriate DRG to the claim based on the information contained on the claim.

2. Payment on a Per Dicharge Basis

Under the CHAMPUS DRG-based payment system, hospitals are paid a predetermined amount per discharge for inpatient hospital services furnished to CHAMPUS beneficiaries

3. Claims Priced as of Date of Discharge

All claims reimbursed under the CHAMPUS DRG-based payment system are to be priced as of the date of discharge, regardless of when the claim is submitted. Any adjustments to such claims will also be priced as of the date of discharge.

4. Payment in Full

The DRG-based amount paid for inpatient hospital services is the total CHAMPUS payment for the inpatient operating costs (as described in section III.D.5. of this preamble) incurred in furnishing services covered by the CHAMPUS. The full prospective payment amount is payable for each stay during which there is at least one covered day of care, except as provided in section IV.E.4.a.i. of this preamble. Thus, certain items related or incidental to the treatment of the patient, but which might not otherwise be covered, are included in the DRG-based payment.

5. Inpatient Operating Costs

The CHAMPUS DRG-based payment system provides a payment amount for inpatient operating costs, including:

a. Operating costs for routine services; such as the costs of room, board, and routine nursing services;

b. Operating costs for ancillary services, such as radiology and laboratory services furnished to hospital inpatients:

c. Special care unit operating costs, and

d. Malpractice insurance costs related to services furnished to inpatients.

6. Discharges and Transfers

A. Discharges. A hospital inpatient is discharged when:

i. The patient is formally released from the hospital (release of the patient to another hospital, or a leave of absence from the hospital, will not be recognized as a discharge for the purpose of determining payment under the CHAMPUS DRG-based payment system); or

ii. The patient dies in the hospital.

b. Transfers. Except as provided under section III.D.6.a. of this preamble, a discharge of a hospital inpatient is not counted for purposes of the CHAMPUS DRG-based payment system when the patient is transferred:

i. From one inpatient area or unit of the hospital to another area or unit of the hospital;

ii. From the care of a hospital included under the CHAMPUS DRG-based payment system to the care of another hospital paid under this system;

iii. From the care of a hospital included under the CHAMPUS DRG-based payment system to a hospital or unit that is excluded from the prospective payment system under the provisions of section III.D.7.e. of this preamble.

iv. From the care of a hospital included under the CHAMPUS DRG-based payment system to the care of another hospital or hospital unit not officially determined to be excluded from the CHAMPUS DRG-based payment system under section III.D.7.e. of this preamble.

c. Payment in full to the discharging hospital. The hospital discharging an inpatient under section III.D.6.a. of this preamble is paid in full, in accordance with section III.D.4. of this preamble.

d. Payment to a hospital transferring an inpatient to another hospital. If a hospital paid under the CHAMPUS DRG-based payment system transfers an inpatient to another such hospital, as described in section III.D.6.ii. through v. of this preamble, the transferring hospital is paid a per diem rate for each day of the patient's stay in that hospital, not to exceed the DRG-based payment amount that would have been paid if the patient had been discharged to another setting. The per diem rate is determined by dividing the appropriate prospective payment rate by the average length of stay for the specific DRG into which the case falls. However, if a discharge is classified into DRG No. 385 (Neonates, died or transferred) or DRG No. 456 (Burns, transferred to another acute care facility), the transferring hospital is paid full, in accordance with section III.D.4. of this preamble.

e. Additional payments to transferring hospitals. A transferring hospital may qualify for an additional payment (determined in accordance with section IV.E.4.b. of this preamble) for extraordinarily bigh-cost cases that meet the criteria for cost-outliers as described in section IV.E.4.b. of this preamble.

7. Applicability of the DRG system

a. Areas affected. The CHAMPUS DRG-based payment system will apply to hospitals' services in the fifty states, the District of Columbia, and Puerto Rico. In order to ensure continuity among CHAMPUS claims (and cost-shares), there are no provisions for exempting services in states which have implemented a separate DRG-based payment system or any other similar payment system designed to control the costs of hospital services. The DRG-based payment system shall not be used with regard to services rendered outside the fifty states, the District of Columbia, or Puerto Rico.

b. Services subject to the CHAMPUS DRG-based payment system. All normally covered inpatient hospital services furnished to CHAMPUS beneficiaries by hospitals in section III.D.7.d. of this preamble are subject to the CHAMPUS DRG-based payment system.

c. Services exempt from the CHAMPUS DRG-based payment system. The following hospital services, even when provided in a hospital subject to the CHAMPUS DRG-based payment system, are exempt from the CHAMPUS DRG-based payment system and shall be reimbursed under the procedures for billed charges/set rates.

i. Services provided by hospitals exempt from the DRG-based payment system as defined in section III.D.7.e. of this preamble.

ii. All services which would otherwise be paid under one of the psychiatric DRGs which are numbers 424–432.

iii. All services which would otherwise be paid under one of the substance abuse DRGs which are numbers 433–438.

iv. All services related to kidney acquisition by Renal Transplantation Centers.

v. All services related to a heart transplantation which would otherwise be paid under DRG 103.

vi. All services related to liver transplantation when the transplant is performed in a CHAMPUS-authorized liver transplantation center.

vii. All professional services provided by hospital-based physicians which, under normal CHAMPUS requirements, would be billed by the hospital. For radiology and pathology services provided by hospital-based physicians, any related non-professional (i.e., technical) component of these services is included in the DRG-based payment and cannot be billed separately. The professional services of hospital-based physicians must still be billed by the hospital, but they must be billed on either a HCFA 1500 or a CHAMPUS 501. Payment for these services will be determined under the allowable charge methodology used for other professional services.

d. Hospitals subject to the CHAMPUS DRG-based payment system. All hospitals within the fifty states, the District of Columbia, and Puerto Rico which are authorized to provide services to CHAMPUS beneficiaries are subject to the DRG-based payment system except for those in section III.D.7.e. of this preamble.

e. Hospitals and hospital units exempt from the CHAMPUS DRG-based payment system. The following types of

hospitals and hospital units are exempt. The CHAMPUS fiscal intermediary will be responsible for determining if a hospital or unit is exempt from the CHAMPUS DRG-based payment system.

i. Psychiatric hospitals. A psychiatric hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a psychiatric hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must be primarily engaged in providing, by or under the supervision of a psychiatrist, psychiatric services for the diagnosis and treatment of mentally ill persons (see paragraph 199.6(b)(4)(iv) of DoD 6010.8–R for specific criteria).

ii. Rehabilitation hospitals. A rehabilitation hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a rehabilitation hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria as required for Medicare in § 412.23 of Title 42 CFR.

iii. Alcohol/drug hospitals. An alcohol/drug hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for an alcohol/drug hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria as required for Medicare in 42 CFR 412.23.

iv. Psychiatric, rehabilitation and alcohol/drug units (distinct parts). A psychiatric, rehabilitation or alcohol/drug unit which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a distinct unit which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria as required for Medicare in 42 CFR 412.23.

v. Long-term hospitals. A long-term hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a long-term hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must have an average length of inpatient stay greater than 25 days:

(a) As computed by dividing the number of total inpatient days (less leave or pass days) by the total number of discharges for the hospital's most recent fiscal year; or

(b) As computed by the same method for the immediately proceding six-month period, if a change in the hospital's average length of stay is indicated.

vi. Sole community hospitals. Any hospital which has qualified for an exemption from the Medicare prospective payment system as a sole community hospital and has not given up that classification is exempt from the CHAMPUS DRG-based payment system.

vii. Christian Science sanitoriums. All Christian Science sanitoriums (as defined in paragraph 199.6(b)(4)(vii) of DoD 6010.8–R) are exempt from the CHAMPUS DRG-based payment system.

viii. Cancer hospitals. Any hospital which qualifies as a cancer hospital under the Medicare standards and has elected to be exempt from the Medicare prospective payment system is exempt from the CHAMPUS DRG-based payment system.

ix. Hospitals outside the 50 States, the District of Columbia, and Puerto Rico. A hospital is excluded from the CHAMPUS DRG-based payment system if it is not located in one of the fifty States, the District of Columbia, or Puerto Rico.

f. Hospitals which do not participate in Medicare. It is not required that a hospital be a Medicare-participating provider in order to be an authorized CHAMPUS provider. However, any hospital which is subject to the CHAMPUS DRG-based payment system and which otherwise meets CHAMPUS requirements but which is not a Medicare-participating provider (having completed a HCFA–1561, Health Insurance Benefit Agreement, and a HCFA–1514, Hospital Request for Certification in the Medicare/Medicaid Program) must complete a participation agreement with CHAMPUS. By completing the participation agreement, the hospital agrees to accept the CHAMPUS-determined allowable amount as payment in full for its services. The CHAMPUS-determined allowable amount will be based on the CHAMPUS DRG-based payment system for services subject to this system and on the hospital's billed charges (as described in the CHAMPUS regulation) for services exempt from the CHAMPUS DRG-based payment system. Any hospital which does not participate in Medicare and does not complete a participation agreement with OCHAMPUS will not be authorized to provide services to CHAMPUS beneficiaries. These participation agreements will be completed only upon request of the hospital to OCHAMPUS. A copy of the participation agreement is at Addendum 1 to this notice.

IV. Determination of Payment Amounts

The actual payment for an individual claim under the CHAMPUS DRG-based payment system is calculated by multiplying the adjusted standardized amount by a weighting factor specific to each DRG.

A. Data Sources

In order to calculate the DRG weights and the adjusted standardized amount for the CHAMPUS DRG-based payment system, we will use data collected for all CHAMPUS hospital claims for the 12-month period from July 1, 1986, through June 30, 1987.

B. Development of the Database

Before calculating the DRG weights and standardized amount, certain modifications to the database of hospital claims will be made.

1. Records for Exempt Hospitals

Since certain hospitals will be exempt from the CHAMPUS DRG-based payment system (see section III.D.7.e of this preamble), records from these hospitals will be deleted from the database.

2. Interim Bills

The DRG payment will be full payment for a complete hospital stay. Therefore, in those instances where a hospital has submitted one or more interim bills for a long length of stay, the interim bills will be deleted from the database and only final, total bills will be used.

3. Unallowable Charges

All charges relating to services which are not included in the DRG payment will be removed from the database. These services include emergency room, outpatient services, ambulance, home health visits, professional fees, and other similar services.

4. Exempt Services

All charges related to exempt services, primarily psychiatric and substance abuse DRGs, will be removed from the database.

5. Combined Mother/Newborn Bills

During at least part of the database period, hospitals were permitted to bill maternity services on a single claim. Since the CHAMPUS DRG-based payment system has separate DRGs for deliveries (the mother's care) and for newborn care, those claims for which

the services were combined into a single charge will be removed from the database.

6. Record Errors

All records which contain errors of any type (e.g., the record cannot positively be matched to a specific hospital because of an error in the provider name or number) will be removed from the database.

C. DRG Weighting Factors

The DRG weights reflect the relative resource consumption associated with each DRG. That is, the weight reflects the average resources required by all hospitals to treat a case classified as a specific DRG relative to the resources required to treat cases in each of the other DRGs. All weights have been standardized to a theoretical average weight of 1.0 which is the average weight of all CHAMPUS claims in the data base. (This is the relative weight of the national average charge per discharge in section IV.C.2.e. of this preamble.)

1. Inapplicability of Medicare Weights

Although the Health Care Financing Administration has developed DRG weights for use in the Medicare Prospective Payment System, we have elected not to use them. A comparison of preliminary weights developed from CHAMPUS data to the Medicare weights showed no consistent patterns between the two groups. Sometimes CHAMPUS values exceeded Medicare's while in other instances the reverse occurred. This was not unexpected, since our beneficiary population is so different from Medicare's.

2. Calculation of DRG Weights

The CHAMPUS weights are derived from charges. Although the Medicare weights were derived from costs, a HCFA study concluded that there is a strong correction between weights based on costs and weights based on charges. The CHAMPUS weights will not reflect standardization for capital or direct medical education expenses, since HCFA has concluded that it makes little difference whether charge data used for weighting are standardized for these two factors. However, the charges were standardized for indirect medical education differences.

The CHAMPUS DRG weights will be discharge-weighted. Specifically, the denominator used to calculated each weight represents the national average charge per discharge for the average patient. This differs from the current Medicare methodology under which the weights are hospital-weighted. We don't believe this will affect the payment amount since payment is calculated by multiplying the weight by the standardized amount which is also discharge-weighted. In order to calculate the DRG relative weights the following procedures will be followed.

a. Grouping of charges. All discharge records in the database will be grouped by DRG using the Medicare grouper program.

b. Remove DRGs 469 and 470. DRGs 469 and 470 represent discharges with invalid data or diagnoses insufficient for DRG assignment purposes. Therefore, we will remove these records from the database.

c. Indirect medical education standardization. To standardize the charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$2.0 \times \left[\left(1.0 + \frac{\text{number of interns + residents}}{\text{number of beds}}\right)^{.405} - 1.0\right]$$

Initially, the number of interns and residents will be derived from the most recently available HCFA cost-report data, and the number of beds will be those reported on the most recent AHA Annual Survey of Hospitals. In subsequent recalculations of weights, the data will be available on the annual reports submitted by hospitals to the fiscal intermediaries (see section IV.E.3. of this preamble).

d. Calculation of DRG average charges. After the standardization for indirect medical eduction, an average charge for each DRG category will be computed by summing charges in a DRG and dividing that sum by the number of records in the DRG.

e. Calculation of national average charge per discharge. A national average charge per discharge will be calculated by summing all charges and dividing that sum by the total number of records from all DRG categories.

f. DRG relative weights. DRG relative weights will be calculated for each DRG category by dividing each DRG average charge by the national average charge.

3. Procedures for DRGs for Which a Weight Cannot Be Calculated

If there are any DRGs which have no occurrences in the data base, we will use the Medicare weight until we are able to develop a weight based on CHAMPUS data. We do not expect this to be a problem, since a preliminary evaluation of a partial year's data revealed only two DRGs with no occurrences. Moreover, such DRGs would occur so infrequently that their impact would be negiligible.

4. Updating DRG Weights

Medicare is required to adjust the DRG relative weights under the Prospective Payment System annually to ensure that the weights reflect the use of new technologies and other practice pattern changes that affect the relative use of hospital resources among DRG categories. If Medicare merely adjusts existing DRG weights, CHAMPUS will update its weights by adjusting them according to the percentage change (positive or negative) in each Medicare weight. If, however, a new DRG is created, CHAMPUS will calculate a weight for it using a six-month charge sample (if available) and the methodology described above. In addition, at least every three years CHAMPUS will recalculate all DRG weights using CHAMPUS charge data and the methodology described above.

D. Calculation of the Adjusted Standardized Amont

The adjusted standardized amount represents the adjusted average operating cost for treating all CHAMPUS beneficiaries in all DRGs during the database period. This figure involves a number of adjustments which are described below. The CHAMPUS standardized amount does not include any regional or hospital-specific operating cost elements, because CHAMPUS charges generally represent a small percentage of each hospital's total revenues, and because hospitals have already adjusted their operating practices in response to the Medicare Prospective Payment System. Moreover, these distinctions will no longer be recognized by Medicare when the CHAMPUS DRG-based payment system

is implemented. There is no urban/rural distinction, because we believe the cost variations between urban and rural hospitals have narrowed considerably since the inception of the Medicare Prospective Payment System.

The following procedures will be followed in calculating the CHAMPUS adjusted standardized amount.

1. Apply the Cost to Charge Ratio

In this step each charge is reduced to a representative cost by using the Medicare cost to charge ratio. We believe use of this ratio to reduce CHAMPUS ratio. We believe use of this ratio to reduce CHAMPUS charges to costs is fully justified. First, the current charges being made to CHAMPUS include a number of costs which are not actually attributable to CHAMPUS beneficiaries, and the Medicare costs represent an identifiable, justifiable, and consistently-used standard for determining government payments for health care services. Second, the ratio has been derived by HCFA based on actual reported costs and charges in 5,573 hospitals which are almost exclusively the same hospitals subject to the CHAMPUS DRG-based payment system. Last, the ratio represents hospital's costs for providing services to Medicare beneficiaries. Since, by definition, our beneficiaries are younger and undoubtedly healthier, we believe our beneificiaries would actually use fewer hospital resources on average for the same diagnosis than Medicare beneficiaries. Thus, use of the Medicare cost to charge ratio actually has a built in buffer to ensure that our payments are reasonable.

The Medicare cost to charge ratio as published in the **Federal Register** on September 3, 1986 is .66.

2. Increase for Bad Debts

We recognize bad debts of our beneficiaries as a legitimate hospital expense, and we will increase the base standardized amount by .01 in order to reimburse hospitals for bad debt expenses attributable to CHAMPUS beneficiaries. We believe this .01 factor (which is a 1.5 percent increase) represents our share of hospitals' bad debts based on the Health Care Financing Administration's experience (as reported on hospitals' cost reports) that their bad debts equal slightly less than 5 percent of cost-shares. Since CHAMPUS cost-shares range up to 25 percent (depending on the category of beneficiary), 5 percent of that amount is approximately 1 percent of total allowable amounts. We believe this is a liberal estimate based on the worst-case assumptions that our bad debt experience would be as bad as Medicare's and that all beneficiaries are retirees or their dependents. Actually, a large percentage of our beneficiaries have other primary insurance or supplemental coverage and are not responsible for any out-of-pocket expenses.

3. Update for Inflation

Each record in the database will be updated to fiscal year 1988 using a factor equal to 1.07. Thereafter, any recalculation of the adjusted standardized amount will use an inflation factor equal to the hospital market basket index used by HCFA in their Prospective Payment System.

4. Preliminary Non-Teaching Standardized Amount

At this point indirect medical education costs have been removed through standardization in the weight methodology and direct medical education costs have been removed through the application of the Medicare cost-to-charge ratio which does not include direct medical education costs. Therefore, a non-teaching standardized amount will be computed by dividing aggregate costs by the number of discharges in the database.

5. Preliminary Teaching Standardized Amount

A separate standardized amount will be calculated for each teaching hospital to reimburse for indirect medical education expenses. This will be done by multiplying the non-teaching standardized amount by 1.0 plus each hospital's indirect medical education factor (see section IV.C.2.c. of this preamble). In order to conform to Medicare procedures, for FY 1989 the following formula will be used to determine each hospital's indirect medical education factor.

$$1.5 \times \left[\left(1.0 + \frac{\text{number of interns + residents}}{\text{number of beds}}\right)^{.5795} - 1.0\right]$$

6. System Standardization

The preliminary standardized amounts will be further standardized using a factor which equals total DRG payments using the preliminary standardized amounts divided by the sum of all costs in the database (updated for inflation). To achieve standardization, each preliminary standardized amount will be divided by this factor. This step is necessary so that total DRG system outlays, given the same distribution among hospitals and diagnoses, are equal whether based on DRGs or on charges reduced to costs.

7. Updating the Standardized Amounts

For years subsequent to the initial year, the standardized amounts will be updated by the Medicare annual update factor, unless the standardized amounts are recalculated.

E. Adjustments to the DRG-Based Payment Amounts

There are several adjustments to the basic DRG-based amounts (the weight multiplied by the adjusted standardized amount) which can be made.

1. Capital Costs

CHAMPUS will reimburse hospitals their actual capital costs as reported annually to the CHAMPUS fiscal intermediary (see section IV.E.3. of this preamble). Payment for capital costs will be made annually based on the ratio of CHAMPUS inpatient days to total inpatient days applied to the hospital's total allowable capital costs. Allowable capital costs are those specified in Medicare Regulation 42 CFR 413.130.

a. Capital costs include:

i. Net depreciation expense.

ii. Leases and rentals (including license and royalty fees) for the use of assets that would be depreciable if the provider owned them outright (except in certain cases).

iii. Betterments and improvements that extend the estimated useful life of an asset at least 2 years beyond its original estimated useful life or increase the productivity of an asset significantly over its original productivity.

iv. The cost of minor equipment that are capitalized rather than charged off to expense.

v. Interest expense incurred in acquiring land or depreciable assets (either through purchase or lease) used for patient care.

vi. Insurance on depreciable assets used for patient care or insurance that provides for the payment of capital-related costs during business.

vii. Taxes on land or depreciable assets used for patient care.

viii. For proprietary providers, a return on equity capital.

b. Servcies, facilities, or supplies provided by supplying organizations. If services, facilities, or supplies are provided to the hospital by a supplying organization related to the hospital within the meaning of Medicare Regulation 42 CFR 413.17, then the hospital must include in its capital-related costs, the capital-related costs of the supplying organization. However, if the supplying organization is not related to the provider within the meaning of § 413.17, no part of the charge to the provider may be considered a capital-related cost unless the services, facilities, or supplies are capital-related in nature and:

i. The capital-related equipment is leased or rented by the provider;

ii. The capital-related equipment is located on the provider's premises; and

iii. The capital-related portion of the charge is separately specified in the charge to the provider.

2. Direct Medical Education Costs

CHAMPUS will reimburse hospitals their actual direct medical education costs as reported annually to the CHAMPUS fiscal intermediary (see section IV.E.3. of this preamble). Such direct medical education costs must be for a teaching program approved under Medicare Regulation 42 CFR 413.85. Payment for direct medical education costs will be made annually based on the ratio of CHAMPUS inpatient days to total inpatient days applied to the hospital's total allowable direct medical education costs. Allowable direct medical education costs are those specified in Medicare Regulation 42 CFR 413.85.

a. Direct medical education costs generally include:

i. Formally organized or planned programs of study usually engaged in by providers in order enhance the quality of care in an institution.

ii. Nursing schools.

iii. Medical education of paraprofessionals (e.g., radiologic technicians).

b. Direct medical education costs do not include:

i. On-the-job training or other activities which do not involve the actual operation or support, except through tuition or similar payments, of an approved education program.

ii. Patient education or general health awareness program offered as a service to the community at large.

3. Information Necessary for Payment of Capital and Direct Medical Education Costs

Any hospital subject to the CHAMPUS DRG-based payment system which wishes to be reimbursed for allowed capital and direct medical education costs must submit a report to the CHAMPUS fiscal intermediary. Such report is to be submitted within three months of the end of the hospital's Medicare cost-reporting period and shall cover the one-year period corresponding to the hosapital's Medicare cost-reporting period. The first such report may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS fiscal intermediary must correspond to the costs reported on the hospital's Medicare cost-report. (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to the CHAMPUS fiscal intermediary within 30 days of the date the hospital is notified of the change.) The report must be signed by the hospital official responsible for verifying the amounts.

The following information must be reported to the CHAMPUS fiscal intermediary.

a. The hospital's name.

b. The hospital's address.

c. The hospital's CHAMPUS provider number.

d. The hospital's Medicare provider number.

e. The period covered—this must correspond to the hospital's Medicare cost-reporting period.

f. Total inpatient days provided.

g. Total CHAMPUS inpatient days provided.

h. Total allowable capital costs.

i. Total allowable direct medical education costs.

j. Total full-time equivalents for:

i. Residents.

ii. Interns

k. Total inpatient beds as of the end of the cost-reporting period. If this has changed during the reporting period, an explanation of the change must be provided.

l. Title of official signing the report.

m. Reporting date.

4. Outliers

CHAMPUS will adjust the DRG-based payment to a hospital for atypical cases. These outliers are those cases that have either an unusually short length-of-stay or extremely long length-of-stay or that involve extraordinarily high costs when compared to most discharges classified in the same DRG. Recognition of these outliers is particularly important, since the number of CHAMPUS cases in many hospitals is relatively small, and there may not be an opportunity to "average out" DRG-based payments over a number of claims.

a. Length-of-stay outliers. The CHAMPUS DRG-based payment system uses both short-stay and long-stay outliers, and both are reimbursed using a per diem amount. In calculating the per diem amount, we have used the geometric mean length-of-stay instead of the arithmetic mean because DRG length-of-stay data are highly skewed. In each DRG, the number of length-of-stay values at the high end of the distribution are not matched by the number at the low end. This results because there is no upper bound to possible length-of-stay values, yet there is a lower bound of zero. Therefore, the geometric mean serves as a more reliable measure of central tendency than the arithmetic mean which is disproportionately affected by unbounded values at the high end of the distribution. Of courses, the geometric mean will always be lower than the arithmetic mean, so this will serve to increase the per diem amounts paid for outliers.

All length-of-stay outliers will be identified by the fiscal intermediary when the claims are processed, and necessary adjustments to the payment amounts will be made automatically.

i. Short-stay outliers. (a) Any discharge with a length-of-stay (LOS) less than 1.94 standard deviations from the DRG's geometric LOS shall be classified as a short-stay outlier. In determining the actual short-stay cutoff, the calculation will be rounded down to the nearest whole number, and any stay equal to or less than the short-stay cutoff will be considered a short-stay outlier.

(b) Short-stay outliers will be reimbursed at 200 percent of the per diem rate for the DRG for each covered day of the hospital stay, not to exceed the DRG amount. The per diem rate shall equal the DRG amount divided by the geometric mean length-of-stay for the DRG. We have decided to use 200 percent of the per diem because hospital costs are proportionately higher during the initial days of a hospital stay.

ii. Long-stay outliers. (a) Any discharge with a length-of-stay (LOS) exceeding the lesser of 1.94 standard deviations or 17 days from the DRG's geometric LOS will be classified as a long-stay outlier. In determining the actual long-stay cutoff, the calculation will be rounded down to the nearest whole number, and any stay greater

than the long-stay cutoff will be considered a long-stay outlier.

(b) Long-stay outliers will be reimbursed the DRG-based amount plus 60 percent of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier cutoff. The per diem rate will equal the DRG amount divided by the geometric mean length-of-stay for the DRG.

b. *Cost outliers.* Any discharge which does not meet the length-of-stay outlier criteria and has standardized costs that exceed a threshold of the greater of two times the DRG-based amount or $13,500 will be classified as a cost outlier. The standardized costs will be calculated by multiplying the total charges by .66 and adjusting this amount for indirect medical education costs by using the procedures in section IV.C.2.c. of this preamble. Cost outliers will be reimbursed the DRG-based amount plus 60 percent of all costs exceeding the threshold. Additional payment for cost outliers will be made only upon request by the hospital.

F. Example DRG Weights and Adjusted Standardized Amount

For example purposes only, we have calculated sample DRG weights and the adjusted standardized rate from a database similar to that which will be used to calculate the final weights and rates. The database we used was for less than a full year and consisted of claims from 1986. While these sample DRG weights and adjusted standardized rate should approximate the final weights and rate, we expect some changes to occur. Table 1 at the end of this Notice of Proposed Rulemaking contains the sample weights for the top 25 DRGs (by frequency) along with the geometric mean length-of-stay for each. We have also provided the Medicare weight for each DRG for comparison purposes. Table 1 also provides the sample adjusted standardized amount.

V. Charges to Beneficiaries

A. Cost-Shares

1. Purpose of Cost-Share

CHAMPUS beneficiaries are required by law to make a contribution tro the cost of hospital services. It has always been the intent that the cost-sharing responsibility be less for dependents of active duty members than for other classes of beneficiaries. Thus, the inpatient cost-share for dependents of active duty members has been a relatively minor per diem amount, while other beneficiaries were required to pay 25 percent of the allowed amounts. Under DRG-based reimbursement, though, payment of a percentage of the allowed amount can result in vastly different cost-shares than under a reimbursement system based on billed charges. Under a test of DRG-based reimbursement which we conducted in South Carolina, we encountered instances where the cost-share calculated at 25 percent of the DRG-based amount exceeded the hospital's billed charge. We have, therefore, revised the cost-sharing requirements for beneficiaries other than dependents of active duty members for services subject to the CHAMPUS DRG-based payment system. There is no charge to the cost-sharing requirements for these beneficiaries for services which are exempt from the CHAMPUS DRG-based payment system or for services in exempt hospitals or in other institutional providers. The revised procedures are intended to:

a. Result in approximately the same total cost-sharing percentages as under the current procedures. Thus, while the percentage may be different in individual cases, on average the percentage will be essentially the same.

b. Eliminate or minimize instances in which the CHAMPUS beneficiary pays more under the CHAMPUS DRG-based payment system than under reimbursement based on billed charges.

c. Maintain the current distinction in cost-sharing between dependents of active duty members and other classes of beneficiaries.

d. Include incentives to control utilization.

e. Be easily understood by beneficiaries and easy for fiscal intermediaries to administer.

2. Calculation of Cost-Share Amounts for Beneficiaries Other Than Dependents of Active Duty Members

a. The cost-share will be a specific per diem amount. The per diem amount will be calculated as follows:

i. Determine the total charges for services subject to DRG-based payment for beneficiaries other than dependents of active duty members during the same database period used for determining the DRG weights and rates.

ii. Reduce the total charges to costs by using the Medicare cost to charge ratio (plus the .01 factor for bad debts) used in determining the adjusted standardized amount in section IV.D.1. of this preamble.

iii. Divide this amount by the total number of patient days for these beneficiaries. This amount will be the average cost per day for these beneficiaries.

iv. Multiply this amount by .25. In this way total cost-sharing amounts will continue to be 25 percent of the CHAMPUS-determined allowable amount. This is the per diem cost-share to be used for these beneficiaries.

b. The per diem amount will be required for each *actual* day of the beneficiary's hospital stay except for the day of discharge.

c. As we did for the DRG weights and adjusted standardized amount, we have calculated a sample per diem cost-share. The sample per diem amount is $128.45. We are providing this amount for information only, since we also expect it to change somewhat when we publish the final rule.

3. Cost-Shares for Dependents of Active Duty Members

No changes will be made to the cost-sharing requirements for dependents of active duty members.

B. Services or Supplies Specifically Excluded from Payment

Charges for services and supplies specifically excluded from CHAMPUS payment and which are not related to the treatment regimen (e.g., private room accommodation differential if the private room was not medically necessary and was requested by the beneficiary, or television charges) will be the responsibility of the beneficiary.

C. Hospital Days Beyond that Deemed Medically Necessary

Under the CHAMPUS DRG-based payment system, the DRG amount is considered full payment for any hospital stay up to the long-stay outlier cutoff as described in section IV.E.4.a.ii. of this preamble. Any charges for days beyond the long-stay outlier cutoff which are deemed not medically necessary will be the responsibility of the beneficiary.

VI. Admission and Quality Review

A. Objectives of Review System

1. To ensure that the services provided are reasonable and necessary for the care or treatment of the particular patient and are provided at an appropriate level of provider.

2. To determine whether patterns of inappropriate admissions or other practices exist which indicate abuse, including an intent to circumvent the CHAMPUS DRG-based payment system.

3. To enforce statutory exclusions which are medically related.

B. Responsibility for Review

The admission and quality review requirements under the CHAMPUS DRG-based payment system are based on and generally duplicate those under the Medicare prospective payment system. This function will be performed

under contract by professional organizations which are qualified to conduct admission and quality reviews.

C. Hospital Cooperation

All hospitals which particpate in CHAMPUS and submit claims to the fiscal intermediaries are required to provide all information necessary for the review activity to comply with its responsibilities. Therefore, hospitals are required to provide all the information needed to perform the review functions outlined in this section. A hospital which does not cooperate in this activity will be subject to termination as a CHAMPUS-certified provider.

D. Areas of Review

Reviews are required in the following areas:

1. Admissions

The following areas will be reviewed to determine whether inpatient care is medically necessary and whether services were delivered in the most appropriate setting.

a. All transfers of CHAMPUS beneficiaries from a hospital or hospital unit subject to the CHAMPUS DRG-based payment system to another hospital or hospital unit.

b. All CHAMPUS admissions to a hospital or hospital unit subject to the CHAMPUS DRG-based payment system which occur within seven calendar days of discharge from a hospital or hospital unit subject to the CHAMPUS DRG-based payment system

c. All CHAMPUS cases under review for any other reasons.

d. A 5 percent random sample of all other CHAMPUS admissions for each hospital subject to the CHAMPUS DRG-based payment system. If the number of unnecessary CHAMPUS admissions for a hospital is more than 2.5 percent of this sample or three cases (whichever is greater) for any quarter, all CHAMPUS admissions for that hospital must be reviewed during the following quarter.

e. All CHAMPUS admissions in any DRGs which have been specifically identified by OCHAMPUS. Review of these admissions must be performed on a prepayment basis.

2. Admission Pattern Monitoring

In order to ensure that discharges are appropriate, admissions will be reviewed for those hospitals identified as having significant increases in quarterly discharges.

3. DRG Validation

The review activity will be responsible for ensuring that the diagnostic and procedural information reported by hospitals on CHAMPUS claims which is used by the fiscal intermediary to assign claims to DRGs is correct and matches the information contained in the medical records. In order to accomplish this, the following review activities will be done.

a. Review 100 percent of all claim adjustments submitted by hospitals which result in the assignment of a higher weighted DRG.

b. Review 100 percent of all claims classified as DRG 468.

c. The requirements for physician certification as to the major diagnoses and procedures and the physician's acknowledgement of annual receipt of the penalty statement as contained in the Medicare Regulation 42 CFR 412.46 must be met for all CHAMPUS claims subject to the CHAMPUS DRG-based payment system.

d. Review a sample of claims each quarter for each hospital based on the following schedule.

Universe	Sample size
1-25	10
26-90	19
91-150	25
151-400	30
401-900	45
901-1700	50
1701 or more	3%

4. Outlier Review

Reviews will be performed on 50 percent of the claims which qualify for additional payment as a long-stay outlier or as a cost-outlier for each hospital subject to the CHAMPUS DRG-based payment system. The review must ensure that the additional days or costs were medically necessary and met all other requirements for CHAMPUS coverage. In addition, all claims which qualify as short-stay outliers will be reviewed to ensure that the admission was medically necesssary and that the discharge was not premature.

5. Procedure Review

All claims for procedures identified by OCHAMPUS as subject to a pattern of abuse will be reviewed.

E. Fiscal Intermediary Actions as a Result of Review

1. Findings Related to Individual Claims

When it is determined through the review process that a hospital has misrepresented admission, discharge, or billing information, or has taken an action that results in the unnecessary admission of an individual entitled to benefits, unnecessary multiple admissions of an individual, or other inappropriate medical or other practices with respect to beneficiaries, the fiscal intermediary shall as appropriate:

a. Recoup (in whole or in part) any amounts paid for the inpatient hospital services related to such an unnecessary admission or subsequent readmission and provide the hospital with a notice of appeal rights; or

b. Require the hospital to take other corrective action necessary to prevent or correct the inappropriate practice.

c. Notify OCHAMPUS, Office of Program Integrity, of all such actions.

2. Findings Related to a Pattern of Inappropriate Practices

In all cases where detection is made of a pattern of inappropriate admissions and billing practices that have the effect of circumventing the CHAMPUS DRG-based payment system, the OCHAMPUS, Office of Program Integrity, will be notified of the hospital and practice involved.

VII. Application of Double Coverage Rules

Normal double coverage procedures, as contained in section 199.8 of DoD 6010.8–R and in OCHAMPUS implementing instructions, are to be followed with the following modification. In all double coverage situations, payment shall be based on the DRG amount. Where the DRG amount is greater than the billed amount and the primary insurance has paid the full billed charge, CHAMPUS will pay the difference up to the DRG amount. Conversely, if the DRG amount is less than the billed charge, CHAMPUS shall make no payment if the primary insurance has paid an amount equal to or greater than the DRG amount.

VIII. Appeals

The procedures contained in section 199.10 of DoD 6010.8–R apply to appeals regarding the CHAMPUS DRG-based payment system. Since the following areas are established by regulation, appeals are not available for controversies regarding the establishment of:

A. Diagnosis related groups (DRGs);

B. The methodology for the classification of inpatient discharges within the DRGs; or

C. Appropriate weighting factors that reflect the relative hospital resources used with respect to discharges within each DRG.

IX. Other Required Information

A. Effective Date

The procedures contained in this proposed rule are to be applicable to all admissions occurring on or after October 1, 1987, except for claims for services provided in Hawaii. Implementation of these procedures in Hawaii will be delayed to coincide with the start-work date for the contractor for Hawaii under the CHAMPUS Reform Initiative. We estimate this will occur in April 1988.

B. Paperwork Reduction Act

Section IV.E.3. of this preamble describes a reporting requirement which is subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). As required by that Act, OCHAMPUS has requested Office of Management and Budget (OMB) approval of these requirements.

C. Coordination of Proposed Rule

This amendment is being published in the **Federal Register** for proposed rulemaking at the same time it is being coordinated within the Department of Defense and with other interested agencies so that consideration of both internal and external comments and publication of the final rule can be expedited.

IX. Impact Analysis

A. Executive Order 12291 and the Regulatory Flexibility Act

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would:

Result in annual effect on the national economy of $100 million or more;

Result in a major increase in costs of prices for consumers, any industries, any government agencies, or any geographic regions; or

Have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The Regulatory Flexibility Act requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulation which would have a significant impact on a substantial number of small entities. For purposes of the Regulatory Flexibility Act, we consider small entities to include all nonprofit and most for-profit hospitals.

Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, examine regulatory alternatives which minimize unnecessary burden or otherwise assure that regulations are cost-effective.

We are treating this proposed rule as a major rule under Executive Order 12291, since we anticipate that the changed reimbursement procedures required by this proposed rule will result in annual program savings exceeding $100 million. The Department of Defense Authorization Act, 1984, which provides the authority for CHAMPUS to use a DRG-based payment system, allows some administrative discretion in the implementation of such a reimbursement system. Therefore, this analysis examines the major features of the system and the rationale for each.

Because of the extensive changes this proposed rule will cause in our methods for paying for inpatient hospital services, we are providing the following discussion which, when combined with the rest of this preamble, constitutes a preliminary regulatory impact analysis and a preliminary and voluntary regulatory impact/flexibility analysis. We solicit comments and factual information that would enable us to describe and quantify in greater detail the effects of the rule in the final rule.

B. The Problem of Increased CHAMPUS Costs

The rapidly rising costs of health care have been the focus of numerous studies and have resulted in many efforts to curb the rise. Most notable of these efforts is the implementation of the Medicare Prospective Payment System (PPS) which was implemented in October 1983. Although the PPS was required to be "budget neutral," it has had a significant impact, not only on Medicare, but also on the delivery of health care services to the public as a whole. CHAMPUS has unquestionably benefitted from this in certain respects, but nevertheless our costs continue to rise at an unacceptable rate. For example, a comparison of CHAMPUS data for FY 1985 to FY 1983 shows that, while the number of admissions and the average length-of-stay have decreased, the cost per admission has increased 19.4 percent, the cost per inpatient day has increased 26.2 percent and total CHAMPUS expenditures for inpatient care increased 11.1 percent. This trend continued into FY 1986 with total hospital costs increasing 19.0 percent from FY 1985, although admissions during that year also increased by nine percent. Average length-of-stay remained the same.

We attribute these increases to several factors. The first is inflation, but since inflation in the economy as a whole has slowed considerably, its role in the increases is minor. A second contributing factor is the absence of traditional supply and demand forces operating to curb excessive expenditures, although, like inflation, this has been checked somewhat in recent years, particularly by the Medicare PPS and other similar programs. A third factor which is significant is CHAMPUS' practice or reimbursing hospitals based on their billed charges. This creates no incentive for hospitals to control costs, and, in fact, creates the opposite incentive. This ties into the fourth factor which is cost-shifting to billed charge payers such as CHAMPUS from other third-party payers which have placed limitations on payments.

C. A DRG-Based Payment System Represents the Best Resolution of the Problem of Increasing Costs

There can be no doubt that the Medicare PPS has significantly affected the delivery of hospital services in the United States. The CHAMPUS DRG-based payment system closely resembles the Medicare system and will benefit from the same advantages. Of particular importance, it will enable us to set out reimbursement levels to more closely equal hospitals' costs of providing services to our beneficiaries, and it will enable us to avoid the increases in charges resulting from cost-shifting which results in CHAMPUS subsidizing non-CHAMPUS patients. We fully intend to reimburse hospitals the costs of providing care to our beneficiaries, but in order to maintain the level of benefits offered by CHAMPUS under increasing budgetary constraints, it is incumbent upon us to implement steps to control our costs.

D. Economic Impacts

In this section we will discuss the impact on hospitals, on our beneficiaries, and on CHAMPUS operations.

1. Hospital Impact

Since the Medicare PPS has been in operation for well over three years, we believe hospitals have adjusted their operations to accommodate it. Therefore, we anticipate few, if any, changes in hospital operations as a result of our implementation of the CHAMPUS DRG-based payment system. There may be some hospitals which serve a large number of CHAMPUS beneficiaries and relatively few Medicare beneficiaries, and the impact on these hospitals' operations may be greater, but we expect such hospitals to be very few. Moreover, we

believe some of the distinctions used during the Medicare PPS transition period, such as rural/urban, hospital-specific, and regional differentiations, are not necessary for the CHAMPUS DRG-based payment system, because CHAMPUS charges generally represent a small percentage of each hospital's total revenues and because hospitals have already adjusted their operating practices in response to the Medicare PPS. Moreover, the end of Medicare's phase-in period which recognized the regional and hospital-specific distinctions will approximately coincide with the effective date of the CHAMPUS DRG-based payment system.

The primary impact of the CHAMPUS DRG-based payment system will be in the immediate reduction of total CHAMPUS payments to hospitals. It will also give us the ability to control increases in costs in the future. Because the CHAMPUS DRG-based payment system is modeled on the Medicare PPS, CHAMPUS payments for our beneficiaries will be more proportionate to Medicare payments for Medicare beneficiaries. In addition, CHAMPUS will no longer pay those amounts which have been shifted to charge payers because of payment limitations imposed by various states and other third-party payers. We have estimated as much as 14 percent of CHAMPUS payments are the result of such cost-shifting.

The CHAMPUS DRG-based payment system includes a number of provisions and procedures which we believe help to mitigate its impact on hospitals. These include:

a. Use of Medicare cost to charge ratio. The base from which the standardized amounts are calculated is 66 percent of charges. This is the Medicare cost to charge ratio which was published in the **Federal Register** on September 3, 1986. Since hospitals' charges to third-party payers are consistent, this provides us an excellent representation of CHAMPUS costs to hospitals. Moreover, it represents those costs which have been identified, through statute and regulation, as reimbursable under the major government program. At the same time, this ratio is derived from claims for Medicare beneficiaries. Since our beneficiaries are considerably younger and generally healthier on average, we believe that an average CHAMPUS beneficiary would use fewer hospital resources than an average Medicare beneficiary classified under the same DRG. Therefore, by using the Medicare cost-to-charge ratio, we are able to include a buffer amount to ensure that our payments are reasonable.

b. Bad debts. In order to recognize our share of hospitals' bad debts, we have increased the base amount for the standardized amounts from .66 to .67. This is an increase of about 1.5 percent which is actually more than our share of bad debts (see section III.D.2. of this preamble).

c. Use of CHAMPUS-specific weights. We recognize that, because of the differences between our beneficiaries and Medicare's beneficiaries, their relative resource consumption in the various DRGs will be different. The following table demonstrates these differences based on sample CHAMPUS weights which were calculated from a nine-month claims sample.

	Percent of CHAMPUS weight observations
CHAMPUS weight 50+ percent greater than Medicare weight	2.65
CHAMPUS weight 25–50 percent greater than Medicare weight	10.82
CHAMPUS weight within + or — 25 percent of Medicare weight	73.94
CHAMPUS weight 25–50 percent less than Medicare weight	10.82
CHAMPUS weight 50+ percent less than Medicare weight	1.77
	100.00

In order to ensure that the payment amounts used in the CHAMPUS DRG-based payment system are reasonable for our beneficiaries, we will calculate DRG weights from CHAMPUS claims data only.

d. Capital and direct medical education costs. In one CHAMPUS study of the largest inpatient CHAMPUS hospitals, we found that, as a percentage of total expenses, capital costs ranged from 2.4 percent to 20.5 percent. In the same study we found that direct medical education costs vary from 0 percent to 6.1 percent of total expenses. We recognize these are expenses which apply to our beneficiaries. Moreover, at present there is no equitable way to reimburse hospitals for these costs on a uniform basis which would not unduly penalize certain hospitals. The CHAMPUS DRG-based payment system, therefore, includes procedures for hospitals to report their total capital and direct medical education costs to CHAMPUS and be reimbursed CHAMPUS' share based on the ration of CHAMPUS inpatient days to total inpatient days.

e. Psychiatric services. We believe the application of DRG-based reimbursement to psychiatric services will prodice inequitable results. While a DRG-based payment for a particular psychiatric service would probably result in reasonable total reimbursement over an extended period and for a number of claims, we are concerned that there are too many variables to include them at this time. The length-of-stay for a single psychiatric DRG can vary widely, as can the resources used in treatment. As a result, individual hospitals may not be able to use the averaging effect which is basic to DRG-based reimbursement. The problems this can cause are particularly acute in CHAMPUS, because we have extensive psychiatric benefits—18.5 percent of total FY 1985 inpatient CHAMPUS costs were for mental health services. Based on the above, we have exempted all psychiatric services—DRGs 424 through 432—from the CHAMPUS DRG-based payment system.

f. Substance abuse services. For the same reasons as for psychiatric services, we have exempted all substance abuse services—DRGs 433 through 438—from the CHAMPUS DRG-based payment system.

2. Beneficiary Impact

The CHAMPUS DRG-based payment system will benefit our beneficiaries and the procedures in this proposed rule contain various provisions to protect them.

a. Cost-sharing amounts. The cost-sharing provisions under the CHAMPUS DRG-based payment system are structured so that beneficiaries are still responsible on average for the same proportion of allowed costs. There will be no effect on dependents of active duty members in this regard, but on average all other beneficiaries will be required to pay smaller cost-sharing amounts, since the allowed amounts will be reduced.

b. Calculation of cost-shares for beneficairies other than dependents of active duty members. We conducted a test of DRG-based reimbursement in South Carolina from September 1, 1984, through August 31, 1985. One of the most significant findings of that test was that the calculation of cost-shares for beneficiaries other than dependents of active duty members must be revised. Currently these beneficiaries' cost-share is 25 percent of the allowed amount which is generally nearly equal to the billed amount. During the test we found that under a DRG-based payment system the DRG-based amount sometimes greatly exceeded the hospital's billed charge, resulting in a cost-share equal to, and sometimes exceeding, the billed charge. In order to prevent this inequity, this proposed rule revises the cost-sharing procedures for

these beneficiaries to require a standard per diem amount for services provided by hospitals subject to the CHAMPUS DRG-based payment system (see section IV.A. of this preamble).

3. Operational Impact

Fiscal intermediaries will have to make significant changes to their existing claims processing systems in order to implement the CHAMPUS DRG-based payment system. An OCHAMPUS negotiation team will be established to negotiate reimbursement of costs with the fiscal intermediaries.

E. Conclusion

We believe that this proposed rule meets the objectives of the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, health insurance, Military personnel.

PART 199—[AMENDED]

Accordingly, 32 CFR Part 199 is amended as follows:

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.2 is amended by revising paragraph (b) to add the following definitions in alphabetical order:

§ 199.2 Definitions.

* * * * *

(b) * * *

CHAMPUS DRG-Based Payment System. A reimbursement system for hospitals which assigns prospectively-determined payment levels to each DRG based on the average cost of treating all patients in a given DRG.

* * * * *

Diagnosis-Related Groups (DRGs). Diagnosis-related groups (DRGs) are a method of dividing hospital patients into clinically coherent groups based on the consumption of resources. Patients are assigned to the groups based on their principal diagnosis (the reason for admission, determined after study), secondary diagnoses, procedures performed, and the patient's age, sex, and discharge status.

* * * * *

3. Section 199.4 is amended by revising paragraphs (d)(2), (f)(3)(ii), (f)(4)(ii), (f)(5), (g)(10), (g)(11), and by adding paragraph (f)(6) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(d) * * *

(2) *Billing practices.* To be considered for benefits under this paragraph (d), covered services and supplies must be provided and billed for by an authorized provider as set forth in section 199.6 of this part. Such billing must be itemized fully and described sufficiently, even when CHAMPUS payment is determined under the CHAMPUS DRG-based payment system, so that CHAMPUS can determine whether benefits are authorized by this part. Except for claims subject to the CHAMPUS DRG-based payment system, whenever continuing charges are involved, claims should be submitted to the appropriate CHAMPUS fiscal intermediary at least every 30 days (monthly) either by the beneficiary or sponsor or directly by the provider. For claims subject to the CHAMPUS DRG-based payment system, claims may be submitted only after the beneficiary has been discharged or transferred from the hospital.

* * * * *

(f) * * *

(3) * * *

(ii) *Inpatient cost-sharing.* Cost-sharing amounts for inpatient services shall be as follows:

(A) *Services subject to the CHAMPUS DRG-based payment system.* The cost-share shall be a per diem amount for each day of the hospital stay, except the day of discharge shall not be counted. The per diem amount shall be calculated so that total cost-sharing amounts for these beneficiaries is equivalent to 25 percent of the CHAMPUS-determined allowable costs for covered services or supplies provided on an inpatient basis by authorized providers. The per diem amount shall be published annually by OCHAMPUS.

(B) *Services exempt from the CHAMPUS DRG-based payment system and services provided by hospitals exempt from the CHAMPUS DRG-based payment system and by institutions other than hospitals.* The cost-share shall be 25 percent of the CHAMPUS-determined allowable costs or charges for otherwise covered services or supplies provided on an inpatient basis by an authorized provider.

* * * * *

(4) * * *

(ii) *Inpatient cost-sharing.* Eligible former spouses are responsible for the payment of cost-sharing amounts the same as those required for retirees, dependents of retirees, dependents of deceased active duty members, and dependents of deceased retirees.

* * * * *

(5) *Amounts over CHAMPUS-determined allowable costs or charges.* It is the responsibility of the CHAMPUS fiscal intermediary to determine allowable costs for services and supplies provided by hospitals and other institutions and allowable charges for services and supplies provided by physicians, other individual professional providers, and other providers. Such CHAMPUS-determined allowable costs or charges are made in accordance with the provisions of § 199.14. All CHAMPUS benefits, including calculation of the CHAMPUS or beneficiary cost-sharing amounts, are based on such CHAMPUS-determined allowable costs or charges. The effect on the beneficiary when the billed cost or charge is over the CHAMPUS-determined allowable amount is dependent upon whether or not the applicable claim was submitted on a participating basis on behalf of the beneficiary or submitted directly by the beneficiary on a nonparticipating basis and on whether the claim is for inpatient hospital services subject to the CHAMPUS DRG-based payment system. This provision applies to all classes of CHAMPUS beneficiaries.

Note.—When the provider "forgives" or "waives" any beneficiary liability, such as amounts applicable to the annual fiscal year deductible for outpatient services or supplies, or the inpatient or outpatient cost-sharing as previously set forth in this section, the CHAMPUS-determined allowable charge or cost allowance (whether payable to the CHAMPUS beneficiary or sponsor, or to a particiapting provider) shall be reduced by the same amount.

(i) *Participating provider.* Under CHAMPUS, authorized professional providers and institutional providers other than hospitals have the option of participating on a claim-by-claim basis. Participation is required for inpatient claims only for hospitals which are Medicare-participating providers. Hospitals which are not Medicare-participating providers but which are subject to the CHAMPUS DRG-based payment system in paragraph (a)(1) od § 199.14 must sign agreements to participate on all CHAMPUS inpatient claims in order to be authorized providers under CHAMPUS. All other hospitals may elect to participate on a claim-by-claim basis. Participating providers must indicate participation by signing the appropriate space on the applicable CHAMPUS claim form and submitting it to the appropriate CHAMPUS fiscal intermediary. In the case of an institution or medical supplier, the claim must be signed by an official having such authority. This signature certifies that the provider has agreed to accept the CHAMPUS-

determined allowable charge or cost as payment in full for the medical services and supplies listed on the specific claim form, and further has agreed to accept the amount paid by CHAMPUS or the CHAMPUS payment combined with the cost-sharing amount paid by or on behalf of the beneficiary as full payment for the covered medical services or supplies. Therefore, when costs or charges are submitted on a participating basis, the patient is not obligated to pay any amounts disallowed as being over the CHAMPUS-determined allowable costs or charge for authorized medical services or supplies.

(ii) *Nonparticipating providers.* Nonparticipating providers are those providers who do not agree on the CHAMPUS claim form to participate and thereby do not agree to accept the CHAMPUS-determined allowable costs or charges as the full charge. For otherwise covered services and supplies povided by such nonparticipating CHAMPUS providers, payment is made directly to the beneficiary or sponsor and the beneficiary is liable under applicable law for any amounts over the CHAMPUS-determined allowable costs or charges. CHAMPUS shall have no responsibility for any amounts over allowable costs or charges as determined by CHAMPUS.

(6) *Hospital days beyond that deemed medically necessary.* Under the CHAMPUS DRG-based payment system, the DRG amount is considered full payment for any hospital stay up to the long-stay outlier cutoff as described in paragraph (a)(1)(iv)(D)(*1*)(*ii*) of § 199.14. Any charges for days beyond the long-stay outlier cutoff which are deemed not medically necessary shall be the responsibility of the beneficiary.

* * * * *

(g) * * *

(10) *Amounts above allowable costs or charges.* Costs of services and supplies to the extent amounts billed are over the CHAMPUS determined allowable cost or charge, as povided for in § 199.14.

(11) *No legal obligation to pay, no charge would be made.* Services or supplies for which the beneficiary or sponsor has no legal obligation to pay; or for which no charge would be made if the beneficiary or sponsor was not eligible under CHAMPUS, except claims subject to the CHAMPUS DRG-based payment system where the DRG-based amount is greater than the hospital's billed charge which has been paid in full by a double coverage plan.

* * * * *

4. Section 199.6 is amended by revising paragraphs (a)(8) and (b)(1)(ii), by adding a new paragraph (b)(3)(v), and by removing paragraph (e) and redesignating paragraph (f) as paragraph (e) to read as follows:

§ 199.6 Authorized providers.

* * * * *

(a) * * *

(8) *Participating provider.* Under CHAMPUS, authorized professional providers and institutional providers other than hospitals have the option of participating on a claim-by-claim basis. Participation is required for inpatient claims only for hospitals which are Medicare-participating providers. Hospitals which are not Medicare-participating providers but which are subject to the CHAMPUS DRG-based payment system in paragraph (a)(1)(ii)(D) of § 199.14 must sign agreements to participate on all CHAMPUS inpatient claims in order to be authorized providers under CHAMPUS. All other hospitals may elect to participate on a claim-by-claim basis. Participating providers must indicate participation by signing the appropriate space on the applicable CHAMPUS claim form and submitting it to the appropriate CHAMPUS fiscal intermediary on behalf of the beneficiary. In the case of an institution or medical supplier, the claim must be signed by an official having such authority. This certifies that the provider has agreed to accept the CHAMPUS-determined allowable charge or cost as payment in full for the medical services and supplies listed on the specific claim form; and has agreed to accept the amount paid by CHAMPUS or the CHAMPUS payment combined with the cost-sharing amount paid by, or on behalf of, the beneficiary as full payment for the covered medical services and supplies.

* * * * *

(b) * * *

(1) * * *

(ii) *Billing practices.* Institutional billings must be itemized fully and sufficiently descriptive, even when CHAMPUS payment is determined under the CHAMPUS DRG-based payment system, so that CHAMPUS can make a determination of benefits. Except for claims subject to the CHAMPUS DRG-based payment system, whenever continuing charges are involved, claims should be submitted to the appropriate CHAMPUS fiscal intermediary at least every 30 days (monthly) either by the beneficiary or sponsor or directly by the provider on behalf of the beneficiary. For claims subject to the CHAMPUS DRG-based payment system, claims may be submitted only after the beneficiary has been discharged or transferred from the hospital.

* * * * *

(3) * * *

(v) *Participation agreements required for some hospitals which are not Medicare-participating.* Notwithstanding the provisions of this paragraph (b)(3), a hospital which is subject to the CHAMPUS DRG-based payment system but which is not a Medicare-participating hospital must request and sign an agreement with OCHAMPUS. By signing the agreement, the hospital agrees to participate on all CHAMPUS inpatient claims and accept the requirements for a participating provider as contained in paragraph (a)(8) of § 199.6. Failure to sign such an agreement shall disqualify such hospital as a CHAMPUS-approved institutional provider.

* * * * *

5. Section 199.7 is amended by revising paragraphs (b)(2)(i), (c)(2), (e)(1), and (g) and by adding a new paragraph (b)(2)(x)(C) to read as follows:

§ 199.7 Claims submissions, review, and payment.

* * * * *

(b) * * *

(2) * * *

(i) *Diagnosis.* All applicable diagnoses are required; standard nomenclature is acceptable. In the absence of a diagnosis, a narrative description of the definitive set of symptoms for which the medical care was rendered must be provided.

* * * * *

(x) * * *

(C) For hospitals subject to the CHAMPUS DRG-based payment system (see paragraph (a)(1)(ii)(D) of § 199.14), the following information is also required:

(*1*) The principal diagnosis (the diagnosis established, after study, to be chiefly responsible for causing the patient's admission to the hospital.

(*2*) All secondary diagnoses.

(*3*) All procedures performed.

(*4*) The discharge status of the beneficiary.

(*5*) The hospital's Medicare provider number.

(*6*) The source of the admission.

* * * * *

(c) * * *

(2) *Provider's signature.* A participating provider (see paragraph (a)(8) of § 199.6) is required to sign the CHAMPUS claim form.

* * * * *

(e) * * *

(1) *Continuing care.* Except for claims subject to the CHAMPUS DRG-based payment system, whenever medical services and supplies are being rendered on a continuing basis, an appropriate claim or claims should be submitted every 30 days (monthly) whether submitted directly by the beneficiary or sponsor or by the provider on behalf of the beneficiary. Such claims may be submitted more frequently if the beneficiary or provider so elects. The Director, OCHAMPUS, or a designee, also may require more frequent claims submission based on dollars. Examples of care that may be rendered on a continuing basis are outpatient physical therapy, duty (special) nursing, or inpatient stays. For claims subject to the CHAMPUS DRG-based payment system, claims may be submitted only after the beneficiary has been discharged or transferred from the hospital.

* * * * *

(g) *Claims review.* It is the responsibility of the CHAMPUS fiscal intermediary (or OCHAMPUS, including OCHAMPUSEUR) to review each CHAMPUS claim submitted for benefit consideration to ensure compliance with all applicable definitions, conditions, limitations, or exclusions specified or enumerated in this Regulation. It is also required that before any CHAMPUS benefits may be extended, claims for medical services and supplies will be subject to utilization review and quality assurance standards, norms, and criteria issued by the Director, OCHAMPUS, or a designee (see paragraph (a)(1)(v) of § 199.14 for review standards for claims subject to the CHAMPUS DRG-based payment system).

* * * * *

6. Section 199.10 is amended by redesignating paragraph (a)(5)(iii) as paragraph (a)(5)(iv) and adding a new paragraph (a)(5)(iii) to read as follows:

§ 199.10 Appeal and hearing procedures.

(a) * * *

(5) * * *

(iii) The establishment of diagnosis-related groups (DRGs), or the methodology for the classification of inpatient discharges within the DRGs, or the weighting factor that reflect the relative hospital resources used with respect to discharges within each DRG, since each of these is established by this part.

* * * * *

7. A new § 199.14 is added to read as follows:

§ 199.14 Provider reimbursement methods.

(a) *Hospitals.* The CHAMPUS-determined allowable cost for reimbursement of a hospital shall be determined on the basis of one of the following methodologies.

(1) *CHAMPUS DRG-based payment system.* Under the CHAMPUS DRG-based payment system, payment for the operating costs of inpatient hospital services furnished by hospitals subject to the system (generally short-term, acute-care hospitals) is made on the basis of prospectively determined rates and applied on a per discharge basis using Diagnosis Related Groups (DRGs). DRG payments will include an allowance for indirect medical education costs. Additional payments will be made for capital costs, direct medical education costs and outlier cases.

(i) *General.*—(A) *DRGs used.* The CHAMPUS DRG-based payment system, will use the same DRGs used in the Medicare Prospective Payment System.

(B) *Assignment of discharges to DRGs.* OCHAMPUS shall use the Health Care financing Administration "Grouper" program to classify specific hospital discharges within DRGs.

(*1*) The classification of a particular discharge shall be based on the patient's age, sex, principal diagnosis (that is, the diagnosis established, after study, to be chiefly responsible for causing the patient's admission to the hospital), secondary diagnoses, procedures performed and discharge status.

(*2*) Each discharge shall be assigned to only one DRG regardless of the number of conditions treated or services furnished during the patient's stay.

(C) *Basis of payment*—(*1*) *Hospital billing.* Under the CHAMPUS DRG-based payment system, hospitals are required to submit claims (including itemized charges) in accordance with paragraph (b) of § 199.7. The CHAMPUS fiscal intermediary will assign the appropriate DRG to the claim based on the information contained on the claim.

(*2*) *Payment on a per discharge basis.* Under the CHAMPUS DRG-based payment system, hospitals are paid a predetermined amount per discharge for inpatient hospital services furnished to CHAMPUS beneficiaries.

(*3*) *Claims priced as of date of discharge.* All claims reimbursed under the CHAMPUS DRG-based payment system are to be priced as of the date of discharge, regardless of when the claim is submitted.

(*4*) *Payment in full.* The DRG-based amount paid for inpatient hospital services is the total CHAMPUS payment for the inpatient operating costs (as described in paragraph (a)(1)(i)(C)(*5*) of this section) incurred in furnishing services covered by the CHAMPUS. The full prospective payment amount is payable for each stay during which there is at least one covered day of care, except as provided in paaragraph (a)(1)(iv)(D)(*1*)(*i*) of this section.

(*5*) *Inpatient operating costs.* The CHAMPUS DRG-based payment system provides a payment amount for inpatient operating costs, including:

(*i*) Operating costs for routine services; such as the costs of room, board, and routine nursing services;

(*ii*) Operating costs for ancillary services, such as radiology and laboratory services furnished to hospital inpatients:

(*iii*) Special care unit operating costs, and

(*iv*) Malpractice insurance costs related to services furnished to inpatients.

(*6*) *Discharges and transfers.*—(*i*) *Discharges.* A hospital inpatient is discharged when:

(*aa*) The patient is formally released from the hospital (release of the patient to another hospital, or a leave of absence from the hospital, will not be recognized as a discharge for the purpose of determining payment under the CHAMPUS DRG-based payment system); or

(*bb*) The patient dies in the hospital.

(*ii*) *Transfers.* Except as provided under paragraph (a)(1)(i)(C)(*6*)(*i*) of this section, a discharge of a hospital inpatient is not counted for purposes of the CHAMPUS DRG-based payment system when the patient is transferred:

(*aa*) From one inpatient area or unit of the hospital to another area or unit of the hospital;

(*bb*) From the care of a hospital included under the CHAMPUS DRG-based payment system to the care of another hospital paid under this system:

(*cc*) From the care of a hospital included under the CHAMPUS DRG-based payment system to a hospital or unit that is excluded from the prospective payment system.

(*dd*) From the care of a hospital included under the CHAMPUS DRG-based payment system to the care of another hospital or hospital unit not officially determined to be excluded from the CHAMPUS DRG-based payment system.

(*iii*) *Payment in full to the discharging hospital.* The hospital discharging an inpatient shall be paid in full under the CHAMPUS DRG-based payment system.

(*iv*) *Payment to a hospital transferring an inpatient to another hospital.* If a hospital paid under the CHAMPUS DRG-based payment system transfers an inpatient to another such hospital, the transferring hospital shall be paid a per diem rate, as determined under instructions issued by OCHAMPUS, for each day of the patient's stay in that hospital, not to exceed the DRG-based payment that would have been paid if the patient had been discharged to another setting. However, if a discharge is classified into DRG No. 385 (Neonates, died or transferred) or DRG No. 456 (Burns, transferred to another acute care facility), the transferring hospital shall be paid in full.

(*v*) *Additional payments to transferring hospitals.* A transferring hospital may qualify for an additional payment for extraordinarily high-cost cases that meet the criteria for cost-outliers.

(ii) *Applicability of the DRG system.*—(A) *Areas affected.* CHAMPUS DRG-based payment system shall apply to hospitals' services in the fifty states, the District of Columbia, and Puerto Rico. There are no exemptions for services in states which have implemented a separate DRG-based payment system or similar payment system in order to control costs.

(*B*) *Services subject to the DRG-based payment system.* All normally covered inpatient hospital services furnished to CHAMPUS beneficiaries by hospitals are subject to the CHAMPUS DRG-based payment system.

(*C*) *Services exempt from the DRG-based payments system.* The following hospital services, even when provided in a hospital subject to the CHAMPUS DRG-based payment system, are exempt from the CHAMPUS DRG-based payment system and shall be reimbursed under the procedures in paragraph (a)(2) of this section.

(*1*) Services provided by hospitals exempt from the DRG-based payment system.

(*2*) All services which would otherwise be paid under one of the psychiatric DRGs which are numbers 424–432.

(*3*) All services which would otherwise be paid under one of the substance abuse DRGs which are numbers 433–438.

(*4*) All services related to kidney acquisition by Renal Transplantation Centers.

(*5*) All services related to liver transplantation which would otherwise be paid under DRG 103

(*6*) All services related to liver transplantation when the transplant is performed in a CHAMPUS-authorized liver transplantion center.

(*7*) All professional services provided by hospital-based physicians.

(D) *Hospitals subject to the CHAMPUS DRG-based payment system.* All hospitals within the fifty states, the District of Columbia, and Puerto Rico which are certified to provide services to CHAMPUS beneficiaries are subject to the DRG-based payment system except for the following hospitals or hospital units which are exempt.

(*1*) *Psychiatric hospitals.* A psychiatric hospital which is exempt from the Medicare Prospective Payment System is also exempt from the CHAMPUS DRG-based payment system. In order for a psychiatric hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must be primarily engaged in providing, by or under the supervision of a psychiatrist, psychiatric services for the diagnosis and treatment of mentally ill persons. (See paragraph (b)(iii) of § 199.6 for specific criteria.)

(*2*) *Rehabilitation hospitals.* A rehabilitation hospital which is exempt from the Medicare Prospective Payment System is also exempt from the CHAMPUS DRG-based payment system. In order for a rehabilitation hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria as required for exemption from the Medicare Prospective Payment System as contained in 42 CFR 412.23.

(*3*) *Alcohol/Drug hospitals.* An alcohol/drug hospital which is exempt from the Medicare prospective payments system is also exempt from the CHAMPUS DRG-based payment system. In order for an alcohol/drug hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must meet the same criteria as required for exemption from the Medicare Prospective Payment System as contained in 42 CFR 412.23.

(*4*) *Psychiatric, rehabilitation and alcohol/drug units (distinct parts).* A psychiatric, rehabilitation or alcohol/drug unit which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a distinct unit which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must beet the same criteria as required for exemption from the Medicare Prospective Payment system as contained in 42 CFR 421.23.

(*5*) *Long-term hospitals.* A long-term hospital which is exempt from the Medicare prospective payment system is also exempt from the CHAMPUS DRG-based payment system. In order for a long-term hospital which does not participate in Medicare to be exempt from the CHAMPUS DRG-based payment system, it must have an average length of inpatient stay greater than 25 days:

(*i*) As computed by dividing the number of total inpatient days (less leave or pass days) by the total number of discharges for the hospital's most recent fiscal year; or

(*ii*) As computed by the same method for the immediately preceding six-month period, if a change in the hospital's average length of stay is indicated.

(*6*) *Sole community hospitals.* Any hospital which has qualified for an exemption from the Medicare prospective payment system as a sole community hospital and has not given up that classification is exempt from the CHAMPUS DRG-based payment system.

(*7*) *Christian Science sanitoriums.* All Christian Science sanitoriums (as defined in paragraph (b)(4)(vii) of § 199.6) are exempt from the CHAMPUS DRG-based payment system.

(*8*) *Cancer hospitals.* Any hospital which qualifies as a cancer hospital under the Medicare standards and has elected to be exempt from the Medicare prospective payment system is exempt from the CHAMPUS DRG-based payment system.

(*9*) *Hospitals outside the 50 states, the District of Columbia, and Puerto Rico.* A hospital is excluded from the CHAMPUS DRG-based payment system if it is not located in one of the fifty States, the District of Columbia, or Puerto Rico.

(E) *Hospitals which do not participate in Medicare.* It is not required that a hospital be a Medicare-participating provider in order to be an authorized CHAMPUS provider. However, any hospital which is subject to the CHAMPUS DRG-based payment system and which otherwise meets CHAMPUS requirements but which is not a Medicare-participating provider (having completed a HCFA–1561, Health Insurance Benefit Agreement, and a HCFA–1514, Hospital Request for Certification in the Medicare/Medicaid Program) must complete a participation agreement with OCHAMPUS. By completing the participation agreement, the hospital agrees to participate on all CHAMPUS inpatient claims and to accept the CHAMPUS-determined allowable amount as payment in full for

these claims. Any hospital which does not participate in Medicare and does not complete a participation agreement with OCHAMPUS will not be authorized to provide services to CHAMPUS beneficiaries.

(iii) *Determination of payment amounts.* The actual payment for an individual claim under the CHAMPUS DRG-based payment system is calculated by multiplying the adjusted standardized amount by a weighting factor specific to each DRG. The adjusted standardized amount and the DRG weights shall be calculated from a database of CHAMPUS claims covering at least twelve (12) months.

(A) *Calculation of DRG Weights*—(*1*) *Grouping of charges.* All discharge records in the database shall be grouped by DRG using the Health Care Financing Administration grouper program.

(*2*) *Remove DRGs 469 and 470.* Records from DRGs 469 and 470 shall be removed from the database.

(*3*) *Indirect medical education standardization.* To standardize the charges for the cost effects of indirect medical education factors, each teaching hospital's charges will be divided by 1.0 plus the following ratio on a hospital-specific basis:

$$2.0 \times \left[\left(1.0 + \frac{\text{number of interns + residents}}{\text{number of beds}}\right)^{.405} - 1.0\right]$$

(*4*) *Calculation of DRG average charge.* After the standardization for indirector medical education, an average charge for each DRG shall be computed by summing charges in a DRG and dividing that sum by the number of records in the DRG.

(*5*) *Calculation of national average charge per discharge.* A national average charge per discharge shall be calculated by summing all charges and dividing that sum by the total number of records from the DRG categories.

(*6*) *DRG relative weights.* DRG relative weights shall be calculated for each DRG category by dividing each DRG average charge by the national average charge.

(B) *Updating DRG weights.* The CHAMPUS DRG relative weights shall be updated annually according to the updates implemented by Medicare. If Medicare adjusts existing DRG weights, CHAMPUS shall update its weights by adjusting them according to the percentage change (positive or negative) in each Medicare weight. When a new DRG is created, CHAMPUS shall calculate a weight for it using a six-month charge sample (if available) and the methodology described above. In addition, at least every three years CHAMPUS shall recalculate all DRG weights using CHAMPUS charge data and the methodology described above.

(C) *Calculation of the adjusted standardized amount.* The following procedures shall be followed in calculating the CHAMPUS adjusted standardized amount.

(*1*) *Apply the cost to charge ratio.* Each charge is to be reduced to a representative cost by using the Medicare cost to charge ratio.

(*2*) *Increase for bad debts.* The base standardized amount shall be increased by .01 in order to reimburse hospitals for bad debt expenses attributable to CHAMPUS beneficiaries.

(*3*) *Update for inflation.* Each record in the database shall be updated to fiscal year 1988 using a factor equal to 1.07. Thereafter, any recalculation of the standardized amount will use an inflation factor equal to the hospital market basket index used by the Health Care Financing Administration in their Prospective Payment System.

(*4*) *Preliminary non-teaching standardized amount.* A non-teaching standardized amount shall be computed by dividing aggregate costs by the number of discharges in the database.

(*5*) *Preliminary teaching standardized amounts.* A separate standardized amount shall be calculated for each teaching hospital to reimburse for indirect medical education expenses. This will be done by using a hospital-specific indirect medical education factor calculated in accordance with Medicare procedures.

(*6*) *System standardization.* The preliminary standardized amounts shall be further standardized using a factor which equals total DRG payments using the preliminary standardized amounts divided by the sum of all costs in the database (updated for inflation). To achieve standardization, each preliminary standardized amount shall be divided by this factor.

(*7*) *Updating the adjusted standardized amount.* Beginning in FY 1989, the adjusted standardized amount will be updated by the Medicare annual update factor, unless the adjusted standardized amount is recalculated.

(iv) *Adjustments to the DRG-based payment amounts.* The following adjustments to the DRG-based amounts (the weight multiplied by the adjusted standardized amount) can be made.

(A) *Capital costs.* When requested in writing by a hospital, CHAMPUS shall reimburse the hospital its actual capital costs as reported annually to the CHAMPUS fiscal intermediary. Payment for capital costs shall be made annually based on the ratio of CHAMPUS inpatient days to total inpatient days applied to the hospital's total allowable capital costs.

(*1*) *Costs included as capital costs.* Allowable capital costs are those specified in Medicare Regulation, 42 CFR 413.130.

(*2*) *Services, facilities, or supplies provided by supplying organizations.* If services, facilities, or supplies are provided to the hospital by a supplying organization related to the hospital within the meaning of Medicare Regulation, 42 CFR 413.17, then the hospital must include in its capital-related costs, the capital-related costs of the supplying organization. However, if the supplying organization is not related to the provider within the meaning of 42 CFR 413.17, no part of the charge to the provider may be considered a capital-related cost unless the services, facilities, or supplies are capital-related in nature and:

(*i*) The capital-related equipment is leased or rented by the provider;

(*ii*) The capital-related equipment is located on the provider's premises; and

(*iii*) The capital-related portion of the charge is separately specified in the charge to the provider.

(B) *Direct medical education costs.* When requested in writing by a hospital, CHAMPUS shall reimburse the hospital its actual direct medical education costs as reported annually to the CHAMPUS fiscal intermediary. Such teaching costs must be for a teaching program approved under the Medicare Regulation 42 CFR 413.85. Payment for direct medical education costs shall be made annually based on the ratio of CHAMPUS inpatient days to total inpatient days applied to the hospital's total allowable direct medical education costs. Allowable direct medical education costs are those specified in the Medicare Regulation, 42 CFR 413.85.

(C) *Information necessary for payment of capital and direct medical education costs.* Any hospital subject to the CHAMPUS DRG-based payment system which wishes to be reimbursed for allowed capital and direct medical education costs must submit a report to the CHAMPUS fiscal intermediary. Such report is to be submitted within three months of the end of the hospital's Medicare cost-reporting period and shall cover the one-year period corresponding to the hospital's Medicare cost-reporting period. The first such report may cover a period of less than a full year—from the effective date of the CHAMPUS DRG-based payment system to the end of the hospital's Medicare cost-reporting period. All costs reported to the CHAMPUS fiscal intermediary must correspond to the costs reported on the hospital's Medicare cost-report. (If these costs change as a result of a subsequent audit by Medicare, the revised costs are to be reported to CHAMPUS within 30 days of the date the hospital is notified of the change.) The report must be signed by the hospital official responsible for verifying the amounts and shall contain the following information.

(*1*) The hospital's name.

(*2*) The hospital's address.

(*3*) The hospital's CHAMPUS provider number.

(*4*) The hospital's Medicare provider number.

(*5*) The period covered—this must correspond to the hospital's Medicare cost-reporting period.

(*6*) Total inpatient days provided.

(*7*) Total CHAMPUS inpatient days provided.

(*8*) Total allowable capital costs.

(*9*) Total allowable direct medical education costs.

(*10*) Total full-time equivalents for:

(*i*) Residents.

(*ii*) Interns

(*11*) Total inpatient beds as of the end of the cost-reporting period. If this has changed during the reporting period, an explanation of the change must be provided.

(*12*) Title of official signing the report.

(*13*) Reporting date.

(D) *Outliers.* CHAMPUS shall adjust the DRG-based payment to a hospital for atypical cases. These outliers are those cases that have either an unusually short length-of-stay or extremely long length-of-stay or that involve extraordinarily high costs when compared to most discharges classified in the same DRG.

(*1*) *Length-of-stay outliers.* Length-of-stay outliers shall be identified and paid by the fiscal intermediary when the claims processed.

(*i*) *Short-stay outliers.* Any discharge with a length-of-stay (LOS) less than 1.94 standard deviations from the DRG's geometric LOS shall be classified as a short-stay outlier. Short-stay outliers shall be reimbursed at 200 percent of the per diem rate for the DRG for each covered day of the hospital stay, not to exceed the DRG amount. The per diem rate shall equal the DRG amount divided by the geometric mean length-of-stay for the DRG.

(*ii*) *Long-stay outliers.* Any discharge with a length-of-stay (LOS) exceeding the lesser of 1.94 standard deviations of 17 days from the DRG's geometric LOS shall be classified as a long-stay outlier. Long-stay outliers shall be reimbursed the DRG-based amount plus 60 percent of the per diem rate for the DRG for each covered day of care beyond the long-stay outlier cutoff. The per diem rate shall equal the DRG amount divided by the geometric mean length-of-stay for the DRG.

(*2*) *Cost outliers.* Any discharge which does not meet the length-of-stay outlier criteria and has standardized costs that exceed a threshold of the greater of two times the DRG-based amount or $13,500 shall be classified as a cost outlier. The standardized costs shall be calculated by multiplying the total charges by .66 and adjusting this amount for indirect medical education costs. Cost outliers shall be reimbursed the DRG-based amount plus 60 percent of all costs exceeding the threshold. Additional payment for coast outliers can be made only upon request by the hospital.

(v) *Admission and quality review*—(A) *Objectives of review system.* (*1*) To ensure that the services provided are reasonable and necessary for the care or treatment of the particular patient and are provided at an appropriate level of provider.

(*2*) To determine whether patterns of inappropriate admissions or other practices exists which indicate abuse, including an intent to circumvent the CHAMPUS DRG-based payment system.

(*3*) To enforce statutory exclusions which are medically related.

(B) *Hospital cooperation.* All hospitals which participate in CHAMPUS and submit claims to the fiscal intermediaries are required to provide all information necessary for the fiscal intermediary to properly process the claims it receives. In order for fiscal intermediaries to be assurred that services for which claims are submitted are reasonable and proper, hospitals are required to provide this entity responsible for admission and quality review with all the information it needs to perform the review functions required by this paragraph. A hospital which does not cooperate in this activity shall be subject to termination was a CHAMPUS-certified provider.

(C) *Areas of review.* The following areas are required to be reviewed:

(*1*) *Admissions.* The following areas shall be reviewed to determine whether inpatient care is medically necessary and whether services were delivered in the most appropriate setting. This review may include preadmission review when appropriate.

(*i*) All transfers of CHAMPUS beneficiaries from a hospital or hospital unit subject to the CHAMPUS DRG-based payment system to another hospital or hospital unit.

(*ii*) All CHAMPUS admissions to a hospital or hospital unit subject to the CHAMPUS DRG-based payment system which occur within seven calendar days of discharge from a hospital or hospital unit subject to the CHAMPUS DRG-based payment system.

(*iii*) All CHAMPUS cases under review for any other reason.

(*iv*) A 5 percent random sample of all other CHAMPUS admissions for each hospital subject to the CHAMPUS DRG-based payment system. If the number of unnecessary CHAMPUS admissions for a hospital is more than 2.5 percent of this sample or three cases (whichever is greater) for any quarter, all CHAMPUS admissions for that hospital must be reviewed during the following quarter.

(*v*) All CHAMPUS admissions in any DRGs which have been specifically identified by OCHAMPUS. Review of these admissions must be performed on a prepayment basis.

(*2*) *Admission pattern monitoring.* In order to ensure that discharges are appropriate, admissions for those hospitals identified as having significant increases in quarterly discharges shall be reviewed.

(*3*) *DRG validation.* The entity responsible for admission and quality review shall be responsible for ensuring that the diagnostic and procedural information reported by hospitals on CHAMPUS claims which is used by the fiscal intermediary to assign claims to DRGs is correct and matches the information contained in the medical records. In order to accomplish this, the following review activities shall be done.

(*i*) Review 100 percent of all claim adjustments submitted by hospitals which result in the assignment of a higher weighted DRG.

(*ii*) Review 100 percent of all claims classified as DRG 468.

(*iii*) The requirements for physician certification as to the major diagnoses

and procedures and the physician's acknowledgement of annual receipt of the penalty statement as contained in the Medicare Regulation, 42 CFR 412.46, must be met for all CHAMPUS claims subject to the CHAMPUS DRG-based payment system.

(*iv*) Review a sample of claims each quarter for each hospital based on the following schedule.

Universe	Sample size
1-25	10
26-90	19
91-150	25
151-400	30
401-900	45
901-1700	50
1701 or more	3%

(*4*) *Outlier review.* The entity responsible for admission and quality review shall review 50 percent of the claims which qualify for additional payment as a long-stay oulier or as a cost-outlier for each hospital subject to the CHAMPUS DRG-based payment system. The review must ensure that the additional days or costs were medically necessary and met all other requirements for CHAMPUS coverage. In additions, all claims which qualify as short-stay outliers shall be reviewed to ensure that the admission was medically necessary and that the discharge was not premature.

(*5*) *Procedure review.* All claims for procedures identified by OCHAMPUS as subject to a pattern of abuse shall be reviewed.

(D) *Fiscal intermediary actions as a result of review—(1) Findings related to individual claims.* If it is determined, based upon information obtained during reviews, that a hospital has misrepresented admission, discharge, or billing information, or has taken an action that results in the unnecessary admission of an individual entitled to benefits, unnecessary multiple admissions of an individual, or other inappropriate medical or other practices with respect to beneficiaries or billing for services furnished to beneficiaries, the fiscal intermediary shall as appropriate:

(*i*) Recoup (in whole or in part) any amounts paid for the inpatient hospital services related to such an unnecessary admission or subsequent readmission and provide the hospital with a notice of appeal rights; or

(*ii*) Require the hospital to take other corrective action necessary to prevent or correct the inappropriate practice.

(*iii*) Notify OCHAMPUS of all such actions.

(*2*) *Findings related to a pattern of inappropriate practices.* In all cases where a pattern of inappropriate admissions and billing practices that have the effect of circumventing the CHAMPUS DRG-based payment system is identified, OCHAMPUS shall be notified of the hospital and practice involved.

(2) *Billed charges and set rates.* The allowable costs for authorized care in all hospitals not subject to the CHAMPUS DRG-based payment system shall be determined on the basis of billed charges or set rates. Under this procedure the allowable costs may not exceed the lower of:

(i) The actual charge for such service made to the general public, or

(ii) The allowed charge applicable to the policyholders or subscribers of the CHAMPUS fiscal intermediary for comparable services under comparable circumstances, when extended to CHAMPUS beneficiaries by consent or agreement; or

(iii) The allowed charge applicable to the citizens of the community or state as established by local or state regulatory authority, excluding title XIX of the Social Security Act or other welfare program, when extended to CHAMPUS beneficiaries by consent or agreement.

(b) *Skilled Nursing Facilities (SNFs).* The CHAMPUS-determined allowable cost for reimbursement of a SNF shall be determined on the same basis as for hospitals which are not subject to the CHAMPUS DRG-based payment system.

(c) *Reimbursement for Other Than Hospitals and SNFs.* The Director, OCHAMPUS, or a designee, shall establish such other methods of determining allowable cost or charge reimbursement for those institutions, other than hospitals and SNFs, as may be required.

(d) *Reimbursement of Freestanding Ambulatory Surgical Centers.* Authorized care furnished by freestanding ambulatory surgical centers shall be reimbursed on the basis of the CHAMPUS-determined reasonable cost.

(e) *Reimbursement of Individual Health-Care Professionals and Other Non-Institutional Health-Care Providers.* The CHAMPUS-determined reasonable charge (the amount allowed by CHAMPUS) for the services of an individual health-care professional or other noninstitutional health-care provider (even if employed by or under contract to an institutional provider) shall be determined by one of the following methodologies, that is, whichever is in effect in the specific geographic location at the time covered services and supplies are provided to a CHAMPUS beneficiary.

(1) *Allowable charge method.* The allowable charge method is the preferred and primary method for reimbursement of individual health-care professionals and other noninstitutional health-care providers.

(i) The allowable charge for authorized care shall be the lower of:

(A) The billed charge for the service;

(B) The prevailing charge level that does not exceed the amount equivalent to the 80th percentile of billed charges made for similar services in the same locality during the base period.

Note: Pub. L. 97–86 provides that prevailing charges are to be determined at the 90th percentile. However, DoD Appropriation Acts have limited this to the 80th percentile. Prevailing charges shall continue to be calculated in accordance with any limitations set forth in the DoD Appropriation Acts, as implemented in instructions issued by the Director, OCHAMPUS.

(*1*) The 80th percentile of charges shall be determined on the basis of statistical data and methodology acceptable to the Director, OCHAMPUS, or a designee.

(*2*) The base period shall be a period of 12 calendar months and shall be adjusted at least once a year.

(ii) A charge that exceeds the prevailing charge can be determined to be allowable only when unusual circumstances or medical complications justify the higher charge. The allowable charge may not exceed the billed charge under any circumstances.

(2) *Alternative method.* The Director, OCHAMPUS, or a designee, may, subject to the approval of the ASD(HA), establish an alternative method of reimbursement designed to produce reasonable control over health care costs and to ensure a high level of acceptance of the CHAMPUS-determined charge by the individual health-care professionals or other noninstitutional health-care providers furnishing services and supplies to CHAMPUS beneficiaries. Alternative methods may not result in reimbursement greater than the allowable charge method above.

(f) *Outside the United States.* The Director, OCHAMPUS, or a designee, shall determine the appropriate

reimbursement method or methods to be used in the extension of CHAMPUS benefits for otherwise covered medical services or supplies provided by hospitals or other institutional providers, physicians or other individual professional providers, or other providers outside the United States.

(g) *Implementing Instructions.* The Director, OCHAMPUS, or a designee, shall issue CHAMPUS policies, instructions, procedures, and guidelines, as may be necessary to implement the intent of this section.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 28, 1987.

TABLE 1.—EXAMPLES OF DRG WEIGHTS AND ADJUSTED STANDARDIZED AMOUNT

DRG No.	Description	Geometric mean LOS	CHAMPUS weight	Medicare weight
25	Seizure and headache, age 18–69, w/o C.C	4.2	0.5346	0.5520
60	Tonsillectomy and/or adenoidectomy only, age 0–17	2.2	0.3253	0.2616
82	Respiratory neoplasm	6.2	1.2804	1.1258
88	Chronic obstructive pulmonary disease	6.9	1.3072	1.0768
91	Simple pneumonia and pleurisy, age 0–17	4.7	0.6221	0.7914
96	Bronchitis and asthma, age >=70 and/or C.C	6.4	1.1094	0.8446
97	Bronchitis and asthma, age 18–69, w/o C.C	5.2	0.7352	0.7091
98	Bronchitis and asthma, age 0–17	4.2	0.5341	0.7201
122	Circulatory disorders with AMI w/o C.V. comp, discharged alive	6.5	1.4562	1.3267
125	Circulatory disorders exc AMI, with card cath w/o complex diag	3.5	0.9204	0.7265
127	Heart failure and shock	6.3	1.2300	1.0098
140	Angina pectoris	4.1	0.7704	0.6894
143	Chest pain	3.6	0.6042	0.5893
182	Esophagitis, gastorent. & misc. digest, dis, age >=70 and/or C.C	4.9	0.6692	0.6032
183	Esophagitis, gastroent. & misc. digest. dis, age 18–69, w/o C.C	4.1	0.5166	0.5104
184	Esophagitis, gastroent. & misc. digest. dis, age 0–17	3.6	0.3485	0.4828
198	Total cholesystectomy w/o C.D.E., age <70, w/o C.C	6.7	1.0562	1.1399
243	Medical back problems	5.6	0.7403	0.6840
324	Urinary stones, age <70, w/o C.C	2.9	0.4903	0.4096
359	Uterine and adhexa proc for non-malignancy, age <70, w/o C.C	6.1	0.9513	0.9462
373	Vaginal delivery w/o complicating diagnoses	3.2	0.4753	0.3538
383	Other antepartum diagnoses with medical complications	3.7	0.3820	0.4452
391	Normal newborn	3.3	0.1481	0.2218
410	Chemotherapy	3.4	0.6012	0.4284
468	Unrelated O.R. procedure	6.4	1.7728	2.4516

The sample adjusted standardized amount is $2,667.16.

These are Example Amounts Only and Are Not the Final DRG Weights and Adjusted Standardized Amount.

[NOTE.—Table 1 and Addendum 1 will not appear in the Code of Federal Regulations.]

Addendum 1—Health Program Benefit Agreement

In order to receive payment under the Civilian Health and Medical program of the Uniformed Services (CHAMPUS), _____ dba _____ as the provider of services agrees:

(a) to accept as payment for inpatient services provided to eligible beneficiaries, the CHAMPUS-determined allowable amount. This amount will be determined in accordance with the requirements of DoD 6010.8–R as published in the Federal Register on (insert date of publication).

(b) to refrain from billing the CHAMPUS-eligible beneficiary for amounts which exceed the CHAMPUS-determined allowable amount except for services not covered by CHAMPUS as described in DoD 6010.8–R and for amounts which constitute the CHAMPUS beneficiary's liability for cost-share and deductible.

OCHAMPUS agrees:

(a) to pay the hospital the full allowable amount less any applicable cost-share and deductible amounts.

This agreement shall be binding on the provider and OCHAMPUS upon submission by the provider of acceptable assurance of compliance with Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 as amended, and upon acceptance by the Director, OCHAMPUS, or his designee.

This agreement shall be effective until terminated by either party. The effective date shall be the date the agreement is signed by OCHAMPUS.

The agreement may be terminated by either party by giving the other party written notice of termination. Such notice of termination is to be received by the other party no later than 30 days prior to the date of termination. In the event of transfer of ownership, this agreement is assigned to the new owner, subject to the conditions specified in this agreement and pertinent regulations.

For Provider of Services by:

Name: _____

Title: _____

Date: _____

For OCHAMPUS by:

Name: _____

Title: _____

Date: _____

FR Doc. 87–12461 Filed 6–2–87; 8:45 am]

BILLING CODE 3810–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 6E3421/P418; FRL–3209–8]

Pesticide Tolerances for Paraquat

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes establishing tolerances for residues of the desiccant, defoliant, and herbicide paraquat in or on the raw agricultural commodities cassava, taniers, and yams.

The proposed regulation to establish maximum permissible levels for residues of the pesticide in or on the commodities was requested in petition submitted by the Interregional Research Project No. 4 (IR-4).

DATE: Comments, identified by the document control number [PP 6E3241/P418], must be received on or before July 6, 1987.

ADDRESS:

By mail, submit written comments to: Information Services Section, Program Management and Support Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this document may be confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716B, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703-557-1806).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 6E3421 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project and the Agricultural Experiment Station of Puerto Rico.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for residues of the pesticide paraquat (1,1'-dimethyl-4,4'-bipyridinium ion) derived from application of either the bis(methylsulfate) or the dichloride salt (both calculated as the cation) in or on the raw agricultural commodities cassava, taniers, and yams at 0.05 part per million (ppm). The petitioner proposed that use on these commodities be limited to Puerto Rico based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petition and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances include:

1. Several rat acute oral-feeding studies with median lethal dose (LD_{50}) values of 100 to 150 milligrams (mg) paraquat cation/kilogram (kg) of body weight (bw).

2. A 90-day dog feeding study with a no-observed/effect level (NOEL) of 20 ppm of paraquat cation (0.5 mg/kg bw).

3. A mouse oncogenicity study with no oncogenic effect observed under the conditions of the study at all dose levels tested (12.5, 37.5 and 100/125 ppm, expressed as the paraquat ion).

4. Two teratology studies, rat and mouse, with maternal NOEL's of 1.0 mg/kg and fetotoxic NOEL's of 1 and 5 mg/kg, respectively.

5. A 3-generation rat reproduction study with a reproductive NOEL greater than 150 ppm (highest dose tested) and a systemic NOEL of 25 ppm.

6. A 1-year dog feeding study with a systemic NOEL of 15 ppm (0.45 mg of paraquat cation/kg bw) and a systemic lowest effect level (LEL) of 30 ppm.

7. Twenty-one mutagenicity studies were submitted for paraquat. Paraquat was negative in eight studies (mostly in gene mutation and chromosomal aberration assays); weakly positive in four studies (two gene mutations, one chromosomal aberration assay and one DNA damage/repair assay); and positive in four studies (all DNA damage/repair assays). Five studies were not acceptable.

8. A rat chronic feeding/oncogenicity study indicated a NOEL slightly below 25 ppm (1.25 mg paraquat cation/kg/bw) and lung lesions which were difficult to differentiate between neoplastic and nonneoplastic pulmonary lesions, as addressed in the Registration Standard for Paraquat dated March 31, 1986. The Agency subsequently considered the evidence for pulmonary adenomas and carcinomas as well as several other tumors in evaluating the rat feeding/oncogenicity study, and concluded that only squamous cell neoplasms of the skin and the subcutaneous areas of the head region of the high-dose 150 ppm) male rats were significantly increased over the concurrent control group. The Agency concluded that although the data available for paraquat places it in the "C Category" (limited evidence for oncogenicity in animals), it is not appropriate to develop a quantitative estimation of the oncogenic potential of paraquat.

The acceptable daily intake (ADI), based on the 1-year dog feeding study (systemic NOEL of 0.45 mg/kg/day) and using a 100-fold safety factor, is calculated to be 0.0045 mg/kg of body weight (bw)/day. The maximum permitted to intake (MPI) for a 60-kg human is calculated to be 0.27 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.11132 mg/day for a 60-kg human; the current action will increase the TMRC by 0.000045 mg/day (0.04 percent increase). Published tolerances utilize approximately 41 percent of the ADI.

The Agency has concluded that the amount of paraquat added to the diet from the proposed uses would not significantly increase dietary exposure in humans. Thus the tolerances that would be established by this proposed rule is considered to pose a negligible increment in risk. Tolerances have previously been established for paraquat on a wide variety of food commodities, including meat, milk, grain, fruits, vegetables, and nuts at levels of ranging from 0.01 to 5 ppm.

The nature of the residues is adequately understood and an adequate analytical method, spectrophotometry, is available in the Pesticide Analytical Manual, Volume II (PAM-II), for enforcement purposes. There are currently no actions pending against the continued registration of this chemical. EPA has reviewed paraquat as a candidate for rebuttable presumption against registration (RPAR) and concluded that available data did not support an RPAR (43 FR 30613; July 17 1978).

No secondary residues in meat, milk, poultry or eggs are anticipated since cassava, taniers and yams are not considered livestock feed commodities. Based on the above information and data considered, the Agency concludes that the tolerances established by amending 40 CFR 180.205 would protect

the public health. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3421/P418]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: May 19, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.205(b) is amended by adding and alphabetically inserting entries for cassava, taniers, and yams, to read as follows:

§ 180.205 Paraquat; tolerance for residues.

* * * * *

(b) * * *

Commodities	Parts per million
Cassava	0.05
* * * *	*
Taniers	0.05
* * * *	*
Yams	0.05

[FR Doc. 87–12367 Filed 6–2–87; 8:45 am]

BILLING CODE 6560–50–M

---

40 CFR Part 180

[PP 6E3360/P419; FRL–3209–7]

Pesticide Tolerance for Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that tolerances be established for the combined residues of the insecticide permethrin and the sum total of its metabolites DCVA and 3–PBA in or on the raw agricultural commodities collards, turnip greens, and turnip roots. The proposed regulation to establish maximum permissible levels for residues of the insecticide in or on the commodities was requested in a petition submitted by the Interrregional Research Project No. 4 (IR–4).

DATE: Comments, identified by the document control number [PP 6E3360/P419], mut be received on or before June 18, 1987.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential by Marking Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail.

Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1806)

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted pesticide petition 6E3360 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of Georgia, Florida, North Carolina, Oklahoma, and Texas.

This petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the insecticide permethrin [(3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and the sum of its metabolites 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxyphenyl)-methanol (3-PBA) in or on the following raw agricultural commodities: Collards and turnip greens at 20 parts per million (ppm) and turnip roots at 1 ppm.

The petitioner proposed that this use of permethrin on turnips be limited to Florida, Georgia, Indiana, South Carolina, Texas, and Washington and use of permethrin on collards be limited to Arizona, Georgia, North Carolina, Oklahoma, South Carolina, and Texas based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

The data submitted in the petitions and other relevant material have been evaluated. The pesticide is considered useful for the purpose for which the tolerances are sought. The toxicological data considered in support of the proposed tolerances were discussed in a

final rule document (PP 8F2099/R422), published in the **Federal Register** of October 13, 1982 (47 FR 45008). Tolerances for residues of the insecticide on various raw agricultural commodities have been previously established ranging from 0.05 to 60.0 ppm.

The acceptable daily intake (ADI), based on the 2-year rat chronic feeding/oncogenicity study (NOEL of 5.0 mg/kg/day or 100 ppm) and using a 100-fold safety factor, is calculated to be 0.05 mg/kg of body weight (bw)/day. The maximum permitted intake (MPI) for a 60-kg human is calculated to be 3.0 mg/day. The theoretical maximum residue contribution (TMRC) from existing tolerances for a 1.5-kg daily diet is calculated to be 0.025093 mg/kg/day; the current action will increase the TMRC by 0.000563 mg/kg/day (2.24 percent) to 0.025656 mg/kg/day.

The nature of the residues is adequately understood and adequate analytical methods, gas-liquid chromatography, are available in Pesticide Analytical Method (PAM), Volume II, for enforcement purposes. No secondary residues in meat, milk, poultry, or eggs are expected from use of permethrin on collards and turnips; a label restriction precludes the grazing of livestock in treated fields or feeding treated refuse to livestock. There are currently no actions pending against the continued registration of this chemical.

Based on the above information and data considered by the Agency, the tolerance established by amending 40 CFR 180.378 would protect the public health. Therefore, it is proposed that the tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 15 days after publication of this notice in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act. As provided for in the Administrative Procedure Act (5 U.S.C. 553(d)(3)), the comment period time is shortened to less than 30 days because of the necessity to expeditiously provide a means for control of insects infesting these commodities.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [PP 6E3360/P419]. All written comments filed in response to this petition will be available in the Information Services Section, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions for tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 20, 1987.

James W. Akerman,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.378 is amended by adding new paragraph (d) to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(d) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of permethrin [(3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethyl-cyclopropane carboxylate] amd the sum of its metabolites 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxyphenyl)methanol (3-PBA) in or on the following raw agricultural commodities:

Commodities	Parts per million
Collards	20
Turnip greens	20
Turnip roots	1

[FR Doc. 87-12368 Filed 6-2-87; 8:45 am]

BILLING CODE 6560-50-M

---

40 CFR Parts 264, 265, and 270

[SW-FRL-3211-4]

Proposed Amendments for Landfill, Surface Impoundment, and Waste Pile Closures; Proposed Amendment to Rule

AGENCY: Environmental protection Agency.

ACTION: Extension of the comment period.

SUMMARY: On March 19, 1987, USEPA proposed a new option for closure of hazardous waste landfills, surface impoundments, and waste piles on a site-specific, waste-specific basis (52 FR 8712). The purpose of today's notice is to extend the comment period for the proposed rule by 30 days to give the public additional time to submit comments. We have received requests to extend the comment period by up to 30 days, due to the complexity of the proposed rule and the need of the commenters to devote time to several other EPA proposed rules with similar deadlines for public comment.

DATE: The Agency will accept comments submitted on the proposed rule on or before June 17, 1987.

ADDRESS: Send original comments plus two copies to: Docket Clerk, Office of Solid Waste (WH-562), U.S. Environmental Agency, 401 M Street SW., Washington, DC 20460. Comments should be identified as follows: F-87-ACP-FFFFF.

The public docket for this proposed rule is located in Room MLG100, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC and is available for viewing from 9:00 a.m. to 3:30 p.m., Monday through Friday, excluding holidays. Call Mia Zmud at 475-9327 or Kate Blow at 382-4675 for appointments.

FOR FURTHER INFORMATION CONTACT: RCRA hotline at (800) 424-9346 (in Washington, DC, Call 832-3000).

Dated: May 26, 1987.

J.W. McGraw,

Acting, Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 87-12569 Filed 6-2-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

Departmental Hearings and Appeals Procedures

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Proposed rule.

SUMMARY: The Office of Hearings and Appeals (OHA) in the Department of the Interior (DOI) proposes to revise its rules at 43 CFR Part 4, Subpart, B, by adding a new provision to establish a procedure enabling a party to an administrative proceeding to submit privileged or confidential information as evidence and request limitation on the disclosure of that evidence. The current rules of practice governing hearings and appeals require service of all documents filed in connection with a proceeding to all parties; require that no decision be based upon any record, statement, file, or document which is not open to inspection by all parties; impose a strict prohibition on the receipt of any *ex parte* communication; and make no provision for participants in a proceeding to submit evidence which is protected from disclosure. Therefore, information of a class protected from disclosure by law cannot be introduced at a hearing or reviewed on appeal in conformity with present regulations even where the initial decision was based entirely or substantially on such evidence or information.

DATE: Written comments on the proposed rule must be received by July 6, 1987.

ADDRESS: Written comments on this proposed rulemaking should be mailed or hand-delivered to the Director, Office of Hearings and Appeals Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: James R. Kleiler, Attorney-Adviser, Office of Hearings and Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203; Telephone; (703) 235-3750.

SUPPLEMENTARY INFORMATION:

I. Background

A number of statutes administered by the Department of the Interior expressly require that provision be made for hearings and/or appellate review of initial decision; *e.g.*, The Federal Land Policy and Management Act of 1976, the Surface Mining Control and Reclamation Act of 1977, and the Federal Oil and Gas Royalty Management Act of 1982. The latter two statutes and others identify certain classes of confidential information and require that such information be protected from unauthorized disclosure. Therefore, the Department has a dual obligation: It must conduct hearings and appellate review, and it must preserve the confidentiality of information protected from disclosure by law. However, the present rules of procedure which govern the conduct of Departmental hearings and appeals require that every document submitted by a party to such a proceeding be served upon every other party; all *ex parte* communications are strictly prohibited; no decision can be based upon evidence which is not subject to inspection by all parties; and there is no provision for limiting disclosure of confidential information submitted in an administrative proceeding.

When, on occasion, it has been necessary to subordinate OHA's procedural regulations to the supremacy of Federal statutes to preserve the confidentiality of protected information, that has been done. However, that practice is not a solution to the problem. OHA can only protect the confidentiality of information which is in its possession. It has no means of knowing what information appellants might elect to forego submitting in support of their cases out of their concern for the fact that OHA's regulations require that such information must be made available to all parties. Conceivably, this inhibition might seriously prejudice a party's ability to present its case. Moreover, the Bureau of Land Management, the Office of Surface Mining Reclamation and Enforcement, the Minerals Management Service, and perhaps other components of the Department often utilize properitary data from oil companies and mining companies in making decisions which are subject to appeal. The appellate process is essentially concerned with reviewing the documents which served as the basis for the intial decision, and there have been expressions of concern that any perception on the part of the proprietors of the information that their data might be exposed as the result of an appeal might make them unwilling to furnish information to agencies who need such data or reluctant to appeal decisions based on it. Although OHA has never permitted the exposure of protected information, a procedure is needed which not only will regularize its practice, but provide the requisite reassurances to the public and the component bureaus and offices of this Department that such documents will be safely managed in the adjudicatory process.

Of course, parties to an adjudication conducted pursuant to 5 U.S.C. 554 cannot be denied access to the record upon which a decision is based because "[t]he transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision * * * and, upon payment of the lawfully prescribed costs, *shall be made available to the parties.*" 25 U.S.C. 556(e) (emphasis added). If a determination has been made on the basis of confidential information, the validity of which is challenged, the agency at hearing may hold back the confidential material and take the risk of not being able to prove its case or produce the material for the purpose of direct and cross-examination. *See Wirtz* v. *Baldor Electric Co.*, 337 F.2d 518 (D.C. Cir. 1963). Several agencies have balanced the need to protect confidential information with the requirement that the record of a proceeding be made available to parties by establishing rules which keep confidential information out of the public record of the proceeding and which prohibit parties or their counsel from disclosing the information deemed confidential.

The problem addressed by this rulemaking arises most often in adjudications which are not conducted pursuant to 5 U.S.C. 554 and in which the agency wishes the decisionmaker to consider evidence without disclosing it to other parties. In these cases, the Interior Board of Land Appeals has ruled that information constituting the basis for a decision must be disclosed to a party unless such disclosure is prohibited by law. *Southern Union Exploration Co.*, 51 IBLA 89 (1980). The proposed rulemaking would merely codify a standard for disclosure which the Board of Land Appeals has already applied for over 6 years.

The proposed rulemaking is not intended to affect the availability of information subject to disclosure under the Freedom of Information Act, 5 U.S.C. 552; not is it intended to authorize the withholding from Congress of information to which Congress is entitled under the law.

II. Discussion of the Proposed Amendments

The proposed rule amends Subpart B by adding a new section, 43 CFR 4.31, which establishes a procedure for submitting documents containing confidential information and for requesting limitation on the disclosure of

such documents. The new section would establish conditions under which the confidential information may be provided to other participants to the proceeding. If such conditions are not adequate to protect the confidentiality of information forming the basis for a decision, a final provision would allow the decisionmaker to consider such evidence without disclosing it to the parties, but only if the proceeding does not arise under 5 U.S.C. 554.

The proposed amendment of § 4.22(b) would add a provision to except documents and requests filed pursunt to § 4.31 from the general requirement for service to all parties. The documents and requests would be served only as required by § 4.31.

The proposed amendment to § 424(a)(4) would except evidence reviewed pursuant to § 4.31(e) from the provision that no decision can be based on evidence not open to inspection by the parties.

Section 4.22(c) is proposed to be amended by addition of a proviso for the sealing of protected information against unauthorized disclosure and retaining it with the official record.

Existing § 4.27(b) is a total prohibition of any *ex parte* communication, as defined in that rule, which the proposed rule would amend by providing an exception for the disposition of *ex parte* matters as authorized by law.

III. Procedural Matters

Federal Paperwork Reduction Act

The proposed rules do not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Executive Order 12291

The DOI has examined these proposed rules according to the criteria of Executive Order 12291 [February 17, 1981] and has determined that they are not major and do not require a regulatory impact analysis because the rules only set forth the details of necessary procedures for hearings and appeals.

Regulatory Flexibility Act

The DOI has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that these rules will not have a significant economic impact on a substantial number of small entities because the rules simply provide procedures for administrative review of agency actions.

National Environmental Policy Act

The Office of Hearings and Appeals has determined, on the basis of the categorical exclusion of regulations of a procedural nature set forth at 516 DM 2 Appendix 1, § 1.10., that the proposed rules will not significantly affect the quality of the human environment.

Drafting

The proposed rule was drafted by Edward W. Stuebing, former Administrative Judge with the Interior Board of Land Appeals in OHA, and James R. Kleiler, Attorney-Adviser.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Lawyers.

Dated: May 14, 1987.

Paul T. Baird,

Director, Office of Hearings and Appeals.

Accordingly, it is proposed to revise 43 CFR Part 4, Subpart B, as follows:

PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

1. The authority citation for Part 4 continues to read as follows:

Authority: R.S. 2478, *as amended*, 43 U.S.C. Sec. 1201, unless otherwise noted.

Subpart B—General Rules Relating to Procedures and Practice

2. Section 4.22 is amended by revising paragraph (b) and (c) to read as follows:

§ 4.22 Documents.

* * * * *

(b) *Service generally.* A copy of each document filed in a proceeding before the Office of Hearings and Appeals must be served by the filing party on the other party or parties in the case, except as otherwise provided by 4.31. In all cases where a party is represented by an attorney, such attorney will be recognized as fully controlling the case on behalf of his/her client, and service of any document relating to the proceeding shall be made upon such attorney in addition to any other service specifically required by law or by order of a presiding official or an appeals board. Where a party is represented by more than one attorney, service upon one of the attorneys shall be sufficient.

(c) *Retention of documents.* All documents books, records, papers, etc., received in evidence in a hearing or submitted for the record in any proceeding before the Office of Hearings and Appeals will be retained with the official record of the proceedings. However, the withdrawal of original documents may be permitted while the case is pending upon the submission of true copies in lieu thereof. When a decision has become final, an appeals board in its discretion may, upon request and after notice to the other party or parties, permit the withdrawal of original exhibits or any part thereof by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal. Transcripts of testimony and/or documents received or reviewed pursuant to § 4.31 of these rules shall be sealed against disclosure to unauthorized persons and retained with the official record, subject to the withdrawal and substitution provisions hereof.

* * * * *

3. Section 4.24 is amended by revising paragraph (a)(4) to read as follows:

§ 4.25 Basis of decision.

(a) * * *

(4) In any case, no decision after a hearing or on appeal shall be based upon any record, statement, file, or similar document which is not open to inspection by the parties to the hearing or appeal, except documents or other evidence received or reviewed pursuant to § 4.31(e).

* * * * *

4. Section 4.27 is amended by revising paragraph (b)(1) to read as follows:

§ 4.27 Standards of conduct.

* * * * *

(b) *Ex parte communication*—(1) *Prohibition.* Except to the extent required for the disposition of *ex parte* matters as authorized by law, there shall be no communications concerning the merits of a proceeding between any party to the proceeding or any person interested in the proceeding or any representative of a party or interested person and any Office personnel involved or who may reasonably be expected to become involved in the decisionmaking process on that proceeding, unless the communication, if oral, is made in the presence of all other parties or their representatives, or, if written, is furnished to all other parties.

* * * * *

5. A new § 4.31 is added to Subpart B to read as follows:

§ 4.31 Request for limiting disclosure of confidential information.

(a) If any person submitting a document in a proceeding under this part claims that some or all of the information contained in that document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (5 U.S.C. 552), is information referred to in section 1905 of Title 18 of the United States Code (18

U.S.C. 1905) (disclosure of confidential information), or is otherwise exempt by law from public disclosure, the person:

(1) Must request the presiding officer or appeals board not to disclose such information except to the participants in the proceeding under the conditions provided in paragraphs (c) and (d) of this section, and serve the request upon the participants in the proceeding;

(2) Must submit, together with the document, a second copy of the document from which has been deleted the information of which the person requests nondisclosure and must indicate in the original document that the original document is exempt, or contains information which is exempt, from disclosure;

(3) Must include a statement specifying why the information is privileged or confidential, if the information for which nondisclosure is requested is claimed to come within the exception in 5 U.S.C. 552(b)(4) for trade secrets and commercial or financial information;

(4) Must include a statement specifying the justification for nondisclosure, if the information for which nondisclosure is requested is not within the exception in 5 U.S.C. 552(b)(4).

(b) If the person submitting a document does not submit a second copy of the document from which the appropriate information has been deleted, the presiding officer or appeals board may assume that there is no objection to public disclosure of the document in its entirety.

(c) If information is submitted in accordance with paragraph (a) of this section, the information will not be disclosed except as provided in the Freedom of Information Act, in accordance with Part 2 of this title, or upon request in accordance with paragraph (d) of this section, to participants in the proceeding under the restrictions stated in paragraph (d).

(d) At any time, a participant may request the presiding officer or appeals board to direct a person submitting information under paragraph (a) of this section to provide that information to the participant. The Presiding officer or board will so direct, unless paragraph (e) of this section is applicable, if the participant requesting the information agrees:

(1) Not to use or disclose the information except in the context of the proceeding conducted pursuant to this subpart; and

(2) To return all copies of the information, at the conclusion of the proceeding, to the person submitting the information under paragraph (a) of this section.

(e) If a participant in a proceeding other than a hearing conducted pursuant to 5 U.S.C. 554 believes that a disclosure of evidence to any other party to the proceeding is prohibited by law notwithstanding the protection provided under paragraphs (c) and (d) of this section, such participant may request in writing that the presiding officer or appeals board review such evidence as a basis for its decision without disclosing it to the other party. The request itself must be served upon all parties, describe generally the evidence to be withheld from disclosure, and state why disclosure is prohibited, citing pertinent statutory or regulatory authority. If the prohibition on disclosure is intended to protect the interest of a person who is not a party to the proceeding, the party requesting consideration of evidence without its disclosure must demonstrate that such person refused to consent to the disclosure of the evidence to other parties to the proceeding. If the presiding officer or an appeals board denies the request, the party who made the request shall be given an opportunity to withdraw the evidence before it is considered by the presiding official or board unless a Freedom of Information Act request, administrative appeal, or lawsuit seeking release of the information is pending. If the presiding officer or board grants the request, any reasonably segregable portion of such evidence shall, upon motion by a participant prior to the issuance of a decision, be incorporated in the open record after the deletion of the protected portions, and the parties afforded an opportunity to address the materials thus disclosed. Where the resultant decision is premised in whole or in part on evidence not disclosed to all parties, the decision shall so state, specifying the nature of the evidence and the Federal statute under which disclosure was denied, and the evidence so considered shall be retained under seal as part of the official record.

[FR Doc. 87-12606 Filed 6-2-87; 8:45 am]
BILLING CODE 4310-79-M

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Supplemental Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Supplemental proposed rule.

SUMMARY: In the March 13, 1987, **Federal Register** (52 FR 7900) the public was notified that the U.S. Fish and Wildlife Service (hereinafter the Service) proposes to establish hunting regulations for certain migratory game birds during 1987–88, and provided information on certain proposed regulations. This proposed rulemaking provides supplemental proposals for the early- and late-season migratory bird hunting regulations frameworks.

The early hunting seasons open prior to October 1 and include seasons on mourning doves, white-winged doves, white-tipped doves, band-tailed pigeons, woodcock, common snipe, rails, moorhens and gallinules, teal and sea ducks; experimental early duck seasons in Florida, Iowa, Kentucky, and Tennessee; experimental early goose seasons in portions of Michigan and Illinois; special sandhill crane-Canada goose seasons in southwestern Wyoming; sandhill cranes in the Central Flyway and Arizona; migratory bird hunting seasons in Alaska, Hawaii, Puerto Rico and the Virgin Islands; and extended falconry seasons. Late seasons open about October 1 or later and include those for most waterfowl, seasons not previously selected for other species. The Service annually prescribes hunting regulations frameworks within which the States select specific seasons. The effect of this proposed rule is to facilitate establishment of early- and late-season migratory bird hunting regulations for the 1987–88 season.

DATES: The comment period for proposed migratory bird hunting season frameworks for Alaska, Hawaii, Puerto Rico and the Virgin Islands will end on June 18, 1987; that for other early-season frameworks proposals will end on July 14, 1987; and that for late-season frameworks proposals on August 25, 1987. Public hearings on proposed early- and late-seasons frameworks will be held on June 18 and August 4, 1987, respectively (52 FR 7900).

ADDRESS: Send comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240. The public hearings will be held in the Auditorium of the Department of the Interior Building on C Street, between 18th and 19th Street NW., Washington, DC. Notice of intention to participate in either hearing should be sent in writing to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building-Room 536, Washington, DC 20240.

Comments received on this supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building, Room 536, Washington, DC 20240 (292–254–3207).

SUPPLEMENTARY INFORMATION: The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons. Early seasons include those which open before October 1, while late seasons open about October 1 or later. Regulations are developed independently for early and late seasons. The early-seasons regulations cover mourning doves, white-winged doves, white-tipped doves, bandtailed pigeons, rails, moorhens and gallinulles, woodcock, and common snipe; sea ducks in the Atlantic Flyway; teal in September in the Central and Mississippi Flyways; experimental early duck seasons in Florida, Iowa, Kentucky, and Tennessee; experimental early goose seasons in portions of Michigan and Illinois; sandhill cranes in the Central Flyway and Arizona; special sandhill crane-Canada goose seasons in southwestern Wyoming; doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Late seasons include the general waterfowl seasons; special seasons for scaup and goldeneyes; extra scaup and teal during regular duck seasons; coots, moorhens and gallinules, and snipe in the Pacific Flyway; and other extended falconry seasons.

Certain general procedures are followed in developing regulations for the early and late seasons. Initial regulatory proposals are announced in a **Federal Register** document published in March and opened to public comment. These proposals are supplemented, as necessary, with additional **Federal Register** documents. Following review of comments received and after public hearings, the Service further develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service publishes final frameworks in the **Federal Register**. Using these frameworks, State conservation agencies then select hunting season dates and options. Upon receipt of State selections, the Service publishes a final rule in the **Federal Register**, amending Subpart K of 50 CFR Part 20, to establish specific seasons, bag limits, and other regulations. The regulations become effective upon publication. States may prescribe more restrictive seasons than those provided in the final frameworks.

The regulations schedule for this year is as follows: On March 13, 1987, the Service published in the **Federal Register** (52 FR 7900) a proposal to amend 50 CFR Part 20, with public comment periods ending as noted above. The proposal dealt with establishment of seasons, limits and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109 and 20.110 of Subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. All comments on the March 13 proposal received through May 11, 1987, have been considered in developing this document. Comment periods on this second document are specified above under DATES. Final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, and the Virgin Islands are scheduled for **Federal Register** publication on or about July 24, 1987, and those for early seasons in other areas of the United States on August 4, 1987; and those for late seasons on September 11, 1987.

On June 18, 1987, a public hearing will be held in Washington, DC, as announced in the **Federal Register** of March 13, 1987 (52 FR 7900), to review the status of mourning doves, woodcock, band-tailed pigeons, white-winged and white-tipped doves, rails, moorhens and gallinules, common snipe, and sandhill cranes. Recommended hunting regulations will be discussed for these species and for migratory game birds in Alaska, Puerto Rico and the Virgin Islands; September teal seasons in the Mississippi and Central Flyways; experimental September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extented falconry seasons. Statements or comments are invited.

On August 4, 1987, a public hearing will be held in Washington, DC, as announced in the **Federal Register** of March 13, 1987 (52 FR 7900), to review the status and recommended hunting regulations for waterfowl not previously discussed at the June 18 public hearing.

This supplemental proposed rulemaking describes a number of changes which have been proposed by comments on the original framework proposals published on March 13, 1987, in the **Federal Register**.

Review of Public Comments and the Service's Response

Written Comments Received

As of May 11, 1987, the Service has received comments on proposals published in the March 13 1987, **Federal Register** (52 FR 7900) from 8 correspondents, including three State agencies, four waterfowl flyway councils, and one waterfowl hunters' organization. In some instances, the communications did not specifically mention the open comment period or the regulatory proposals; however, because they were received during the comment period and generally relate to migratory game bird hunting regulations, they are treated as comments. The comments are discussed below with particular attention to new proposals and modifications or clarifications to previously described proposals. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 13, 1987, **Federal Register**. Comments received subsequent to May 11, 1987, as well as those received at the June 18, 1987, public hearing will be addressed in the next supplemental proposal to be published in the **Federal Register** in early July.

General Comments

The Central Flyway Council has recommended adoption of the proposed basic regulations frameworks for 1987–88 hunting seasons on webless and waterfowl species pertinent to the Central Flyway except for specific recommendations given in the numbered headings that follow.

2. *Frameworks for ducks in the conterminous United States—outside dates, season length and bag limits.* The Atlantic Flyway Council reaffirmed its 1986 recommendation that the point value for ring-necked ducks be reduced from 35 to 25 points. The Mississippi Flyway Council adopted a recommendation opposing the proposal to lower the point value on ringnecks to 25 points.

Response. The Service addressed a similar request from Florida for a change in the point value for ring-necked ducks in the **Federal Register** dated September 12, 1986 (51 FR 32463). In 1986 the Atlantic Flyway supported Florida's request and the Mississippi Flyway opposed the change. This year Florida has submitted an updated proposal to reduce point values from 35 to 25.

While Florida's efforts to make the point value for ringnecks more

equivalent with conventional regulations are recognized, the Service reiterates its concern that creation of a lower point value in the Mississippi and Atlantic Flyways would likely increase harvest of ringnecks and could adversely influence the bird's continental population status. Florida contends available data suggests the ringneck population suffered no adverse impact when the point value was less than 35 (1970–84), however, the Service notes that limited breeding population information is available for the northeast which is an important breeding area for Atlantic Flyway ringnecks. In addition, concern has been expressed for high band recovery rates and potential negative impacts of acid rain on production habitat in the northeast. For these reasons the Service defers action on these recommendations until the late-season frameworks are developed in early August and solicits new information relative to this issue.

4. *Wood ducks.* The Mississippi Flyway Council's Lower Region Regulations Committee endorsed a recommendation at its March meeting that the Service seriously consider a proposal from Alabama to experimentally increase the wood duck bag limit by lowering the point value for male wood ducks to 25 points (present value is 70 points). The State has indicated such a change would provide greater opportunities for hunters to have a reasonable chance to harvest a satisfactory waterfowl bag, would prompt an increase in public awareness of the waterfowl resource, and might increase the sale of Federal and State duck stamps which would result in more revenues available for wetland protection.

Response. Analyses of wood duck band-recovery data have suggested a recent decline in survival rates of wood ducks nesting in northern portions of the Mississippi Flyway. Wood ducks from these areas winter in southern regions, including Alabama. Until the significance of these survival-rate changes can be determined, the Service believes that wood duck harvest opportunity should not be increased. Further, in 52 FR 7907, dated March 13, 1987, the Service reaffirmed the need for cooperative studies that are flyway oriented in scope (rather than State oriented) to better understand and manage wood ducks.

5. *Sea ducks.* The Atlantic Flyway Council has approved New York's proposal that the State's sea duck hunting area be redefined to include all coastal waters and all waters of river and streams seaward from the first upstream bridge. The present description of New York's sea duck hunting area is "those coastal waters of New York lying in Long Island and Block Island Sounds and associated bays eastward from a line running between Miamogue Point in the town of Riverhead to Red Cedar Point in the town of Southampton, including any ocean waters lying south of Long Island." The general effect of the proposal is to add a series of shallow coastal bays along the southside of Long Island, between the mainland and barrier beach, to New York's sea duck area.

Response. Presently, sea ducks may be taken in the above referenced southside coastal bays only during New York's regular duck hunting season and must be included as part of the regular daily bag limit. Expanding the State's special sea duck area would permit the taking of 7 sea ducks daily in addition to the daily bag limit of the regular duck season in the new area but only during those times when the dates of the State's sea duck and regular duck seasons coincide. There would also be an overlap between New York's special scaup season area and sea duck area which would permit hunters there to take 7 sea ducks daily in addition to 5 scaup daily during those times that the dates for the two special seasons coincide. The Service recognizes that the criteria for sea duck areas are not uniform among Atlantic Flyway States. Also, these criteria are of long standing and result in part from definitions of State waters. The combination duck bag (regular ducks plus sea ducks or special scaup plus sea ducks) sought by New York is now permitted in a few waters of other States. The Service's concern is twofold. The first is what impact will the proposed change have on the harvest of sea ducks and other ducks in the coastal bays? Second, what is the implication of such a liberalization in New York to other States in the Atlantic Flyway? The Service seeks additional information and/or comment on this proposal.

8. *Experimental September duck season.* (a) Florida has reiterated its request of 1986 that the Service give the State's experimental September duck hunting season operational status. At its March meeting the Atlantic Flyway Council reaffirmed its 1986 recommendation that the experimental September duck season in Florida be granted operational status.

Response. In the August 13, 1986, **Federal Register** (51 FR 28948), the Service responded to Florida's request that their experimental September season become operational by citing that results of wood duck banding information provided in Florida's final report were less than adequate to evaluate impacts from the increased harvest. Thus, the Service permitted Florida to continue the September duck season in 1986–87 as experimental with the condition that adequate pre-season bandings of wood ducks be obtained. In addition, the Service in the March 13, 1987, **Federal Register** (at 52 FR 7907), gave notice of its intent to review the current situation with regards to September duck seasons, particularly their evaluation and suitability for widespread application. Before operational status is given and new experimental seasons are initiated, the Service has expressed the need for cooperative studies that are flyway oriented in scope to better understand and manage wood ducks. In the interim, the Service proposes to continue September duck seasons in Kentucky, Tennessee, Florida and Iowa during 1987 under provisions provided each in 1986.

(b) The Lower Region Regulations Committee of the Mississippi Flyway Council endorsed a recommendation at its March meeting to continue the experimental September duck seasons in Kentucky and Tennessee in 1987.

Response. The Service concurs with the recommendation. The overall concerns of the Service regarding September duck hunting seasons are noted above. Additional information is needed about wood duck survival and recovery rates in the two States and the impact on harvest of the reduction in the wood duck portion of the daily bag limit from 4 to 2 birds that was made in 1986.

13. *Duck zones.* The Upper Region Regulations Committee of the Mississippi Flyway Council endorsed a recommendation at its March meeting supporting Iowa's request to change the boundary between its two duck hunting zones as follows:

North Zone—That portion of Iowa north of a line running from the Iowa-Illinois border along Interstate Highway 80 west to U.S. Highway 59, north to State Highway 37, west to State Highway, 175, then west on 175 to the Iowa-Nebraska border.

South Zone—The remainder of the State.

Iowa has indicated the boundary change would better address hunter preference by placing the DeSoto National Wildlife Refuge and associated waterfowl feeding areas in the State's South Duck Zone, but would not cause an increase in mallard harvest.

Response. The Service seeks additional comment on this recommendation and defers action on the same until the late-season frameworks are developed in early August.

14. *Frameworks for geese and brant in the conterminous United States-outside dates, season length and bag limits.*

Atlantic Flyway

At its March meeting the Atlantic Flyway Council recommended no change from the 1986–87 frameworks for snow geese in the Atlantic Flyway and no liberalization of regulatory frameworks for Canada geese in the Atlantic Flyway in 1987.

Response. The Service defers action on the recommendations until the late-season frameworks are developed in early August.

Mississippi Flyway

At its March meeting the Mississippi Flyway Council's Upper Region Regulations Committee approved the following recommendations:

(a) Indiana be permitted to extend the framework closing date for Canada goose hunting in Posey County to January 31. In support of its request, Indiana indicated that Canada geese do not arrive at Hovey Lake, a State Fish and Wildlife Area in Posey County, until mid-December; Posey County is a Canada goose quota zone, therefore overharvest is not a concern; and the Canada goose season framework closing date is January 31 in an adjacent area of Kentucky that is used at times by some of the geese in Posey County.

Response. The Service notes Indiana has demonstrated good control of harvest in the past. However, the Service defers action on the recommendation until the late-season frameworks are developed in early August, at which time more information about the status of the Mississippi Valley Population of Canada geese will be available. In the interim, the Service requests that Indiana submit documentation of the annual arrival time and population buildup of Canada geese in Posey County in past years.

(b) Modify restrictions in Ohio on Canada goose hunting to change the daily bag and possession limits in Erie and Sandusky Counties, that portion of Lucas County west of the Maumee River, and that portion of Ottawa County east and south of State Route 53. In 1987 the Canada goose limits in these four areas would be 2 daily and 4 in possession (1 daily and 2 in possession in 1986). The restrictive frameworks were initially established at State request to aid the establishment of resident giant Canada geese in these areas. The State has requested the change because resident giant Canada goose flocks in these four areas have achieved population levels where State hunting restrictions to protect the flocks are no longer needed.

Response. The Service concurs with the recommendation.

(c) Minnesota be permitted to adjust the boundary of its Southeast Goose Zone to conform with two of the State's goose management blocks-Metro Block (Anoka, Washington, Ramsey, Hennepin, Carver, Scott and Dakota Counties) and Southeast Block (Rice, Goodhue, Wabasha, Steele, Dodge, Olmsted, Winona, Freeborn, Mower, Fillmore and Houston Counties), and conduct an annual 9-day Canada goose season between September 1 and 15 in the Metro Block with bag limits of 4 Canada geese daily and 8 in possession, and an annual 10-day Canada goose season between December 15 and 30 in the newly described Southeast Goose Zone with bag limits of 2 Canada geese daily and 4 in possession. The State has indicated 95 percent of the Canada geese harvested will be giant Canadas and anticipated harvest is 1500 resident Canada geese in the early season and 500 resident and 300 wintering Canada geese in the late season. The additional harvest in the Metro Block will help alleviate problems associated with a growing number of resident geese in the area. The Upper Region Regulations Committee's approval of this recommendation is contingent upon the proposed special Canada goose seasons meeting the Service's criteria for such seasons.

Response. In view of the increasing interest in early and late experimental hunting seasons to aid in the control of nuisance Canada geese and the acknowledged growth of local nesting Canada goose populations, the Service, in the August 13, 1986, **Federal Register** (at 51 FR 28948), requested the Mississippi Flyway Council and other interested Flyway Councils to develop flyway plans including criteria for proposal, implementation and evaluation of such seasons. Action has been initiated by the Mississippi and Atlantic Flyway Councils and the Service to cooperatively develop a set of criteria for special resident Canada goose seasons in the two flyways; however, until these criteria are developed the Service defers consideration of the recommended seasons in Minnesota.

(d) Michigan be permitted to continue the 6-day early September Canada goose hunting season experiment initiated in areas of the Lower Peninsula in 1986 and that the State be permitted to expand the season to include areas around Fish Point, Shiawassee River and Allegan State Game Areas that were closed during the 1986 special season.

Response. This September season was established in 1986 as a 3-year experiment. The Service concurs with the recommendation to continue the experiement in 1987. However, the Service believes that the provisions of the experiment should not be changed until after the initial experimental period has been completed and the results evaluated.

(e) Michigan be permitted to open the 1987 goose season in the Saginaw County Goose Management Area on September 26. The State has indicated that the earlier season opening is not expected to have any negative impact on Mississippi Valley Population Canada geese.

Response. A September 26 opening in the Saginaw County Area would require an extension of the regular framework opening date. The Service believes that present frameworks are adequate and no further changes should be made at this time.

(f) Illinois be permitted to continue the 6-day September Canada goose hunting season in the Northeast Zone (McHenry, Lake, Kane, DuPage, Cook, Kendall, Grundy, Will and Kankakee Counties) that was initiated in 1986.

Response. The Service concurs with the recommentadtion. As in Michigan, the Illinois September season was established in 1986 as a 3-year experiment.

(g) Illinois be permitted a 30-day Canada goose season in the Tri-County Zone, i.e., extend the present 25-day season 5 days. The State requested the additional days because the Tri-County Zone giant Canada goose flock has grown to a level that will support the additional hunting pressure and there will not be any adverse impact on the resident flock nor migrating Canada geese.

Response. The Service concurs with the recommendation for a limited extension of the extablished season.

The Lower Region Regulations Committee of the Mississippi Flyway Council adopted the following recommendations at its March meeting:

(a) The 1986–87 Mississippi Flyway snow goose season regulatory frameworks, including a January 31 framework closing date for Arkansas, be continued in 1987–88, and the 1987–88 regulatory frameworks for white-fronted geese in Arkansas permit the State's season to run concurrent with its snow

goose season pending evaluation of the status and production information for mid-continent white-fronted geeses.

Response. The Service defers action on the recommendation until the late-season frameworks are developed in early August, at which time more information about the status of snow geese and white-fronted geese will be available.

(b) Arkansas be granted the option to be included in the 1987–88 harvest allocation procedures for Mississippi Valley Population Canada geese and that the Canada goose season regulatory frameworks for Arkansas provided a January 31 framework closing date. The Lower Region Regulations Committee indicated the January 31 closing would help minimize harvest pressure on possible early migrating segments of Mississippi Valley Population and Eastern Prairie Population Canada geese.

Response. The Service defers action on the recommendation until the late-season frameworks are developed in early August, at which time more information about the status of Canada geese will be available.

(c) The Michigan Waterfowl Association (Association) expressed its support for more liberal frameworks for the 1987–88 Canada goose hunting season in the State's Upper Peninsula (U.P.).

Response. The Service will consider the Association's comment during the development of the 1987–88 regulatory frameworks for Canada goose hunting in Michigan's U.P. Those frameworks will be developed in early August, at which time more information about the status of Canada geese will be available.

Central Flyway

(a) The Central Flyway Council adopted a recommendation at its March meeting that beginning in 1987–88, bag limits for geese in the Central Flyway portion of Montana be 3 dark and 3 light geese daily with 6 dark and 6 light geese in possession, except in Sheridan County where 2 dark and 3 light geese daily and 4 dark and 6 light geese in possession will be allowed. Season lengths and dates shall be the same for light geese as for dark geese. The Council noted a harvest liberalization in the Central Flyway portion of Montana is desirable in light of observations indicating increased population size of light geese and increased stopover of these geese in eastern Montana.

Response. Separate bag limits for light and dark geese already are in effect in the Central Flyway portions of Colorado and New Mexico, two States used by the same population of geese that use the Central Flyway portion of Montana. These populations of geese are stable or increasing and the light geese exceed objective levels. The Service defers action on this recommendation until the late-season frameworks are developed in early August.

(b) Colorado has given notice to the Service that it may prepare and submit a proposal to the Central Flyway Council requesting a liberalization of the bag and possession limit on dark geese in all or part of the area in the State utilized by wintering Hi Line Population Canada geese.

Pacific Flyway

(a) At its March meeting, the Pacific Flyway Council adopted a recommendation that there be no change from the 1986–87 brant season regulatory frameworks for Alaska in 1987–88, but that the 1986–87 regulatory frameworks for brant seasons in Washington, Oregon and California be modified to restrict season length and period in 1987–88 as follows: Seasons must be within duck season framework dates and concurrent with the State's duck season; season length may not exceed 16 consecutive days in Washington and Oregon, and 30 consecutive days in California; but bag limits would remain at 2 brant daily and 4 in possession. States selecting a season must implement measures to accurately measure the size of their brant harvest. The harvest in Washington must not exceed 900 brant.

Response. The Service supports (1) continuation of frameworks for brant hunting in the Pacific Flyway within guidelines for the population as indentified in the Pacific Brant Management Plan and (2) maintaining a reduced brant harvest in keeping with the Yukon-Kuskokwim Delta Cooperative Goose Management Plan. However, the Service defers its recommendations for Alaska until the early-season regulation public hearing and for Washington, Oregon, and California until the late-season regulation public hearing. The Service notes that the 3-year-average winter population for brant is only slightly above the level for which hunting is permitted, and, therefore, and seasons should continue to be conservative.

(b) The Pacific Flyway Council recommends for Wyoming's early Canada goose seasons held in conjunction with special sandhill crane seasons that: the season on Canada geese in the Bear River Unit be discontinued; the season limit be reduced from 3 to 2 Canada geese in the Salt River Unit; and the 1 Canada goose per season limit remain the same in the Eden-Farson Unit.

Response. The Service concurs with the Pacific Flyway Council's recommendations for changes in the special early-season Canada goose hunting in western Wyoming.

15. *Tundra Swan.* In the March 13, 1987, **Federal Register** (at 52 FR 7907), the Service gave notice that guidelines to coordinate the sport harvest of Eastern Population (EP) tundra swans among the four waterfowl flyways had been distributed in a draft hunt plan. Comments/recommendations by the four Flyway Councils relative to the draft hunt plan are be consolidated by the Chairman of the Ad Hoc Tundra Swan Committee. A revised draft hunt plan will be circulated to the Flyway Councils for futher comment when available. During the 1987–88 regulations development, the Service will continue to allow harvest of EP Tundra Swans in those areas with authorized seasons.

16. *Sandhill cranes.* (a) The Pacific and Central Flyway Councils recommend that the Service offer frameworks for operational sandhill crane seasons in Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming, within the range of the Rocky Mountain Population (RMP) greater sandhill crane, but that such hunts be conditional upon meeting prerequisites specified in a management plan that was developed jointly by the two Councils. The recommended frameworks call for: Seasons not to exceed 30 days; outside dates for seasons of September 1 to November 30; bag limits of 3 cranes per day and 9 per season; hunting only by State-issued permits; size and allocation of harvest would follow guidelines in the management plan; and hunts must adhere to the recent Whooping Crane Contingency Plan. The two Councils futher recommend that, if the Service does not offer these frameworks for 1987–88, the special seasons of 1986–87 in Wyoming, New Mexico, and Arizona again be offered and that Wyoming additionally be offered an experimental season in the Riverton Area.

Response. The Service strongly supports harvest strategies that consider impacts of harvests on both the entire population as well as subpopulations, such as the harvest guideline within this management plan have done. While looking favorably upon the Pacific and Central Flyway Council's proposal for frameworks for operational sandhill crane within the range of RMP cranes, the Service defers action pending response to this notice. Should there be

persuasive reasons to reject the proposal, the Service will propose continuation of the special seasons in Arizona, New Mexico, and Wyoming, including initiation of the experimental season in the Riverton Area.

(b) At its March meeting the Central Flyway Council adopted the recommendation that the season for sandhill cranes in Sheridan, County, Montana, be increased to 58 days.

Response. The Service gave notice in the March 13, 1987, **Federal Register** at 52 FR 7909) of Montana's interest in the above season change recommended by the Council and indicated the current frameworks for sandhill crane hunting in the Central Flyway portion of Montana provide for such a change.

17. *Coots.* A recommendation that the hunting season for coots coincide with all duck seasons, including teal and other special duck seasons was adopted by the Central Flyway Council at its March meeting. Present coot season frameworks are such that coots may be taken only during the regular duck hunting season. The Council stated that a fremework which allows coot hunting during all duck seasons, will eliminate a restriction which is confusing to many hunters and will provide additional hunting opportunity on a species which it believes is under-utilized.

Response. The Service notes the current frameworks for coot seasons are of long-standing and the full implications of the recommendation to change those frameworks are not certain. The Service seeks additional information and comment on the Central Flyway Council recommendation to liberalize the frameworks for hunting coots.

22. *Band-tailed pigeons.* At its March meeting the Pacific Flyway Council adopted a recommendation that proposes no change in the regulatory frameworks for the Four Corners Population of bandtails (Arizona, Colorado, New Mexico and Utah), but proposes restrictions in the regulatory frameworks for Pacific Coast Population bandtails (Washington, Oregon, California and Nevada) for a 3-year period. The proposed frameworks are given below with 1986–87 frameworks shown in parentheses: Outside dates—September 7 through the Sunday closest to January 1 (September 1 through January 15); season length—16 continuous days (30 days); 4 bandtails daily and 4 in possession (5 daily and 5 in possession). California may select seasons within each of 2 zones.

Response. Population and harvest surveys suggest that Pacific Coast bandtailed pigeon populations have declined precipitously during the past two years. Causes for the decline are unknown. Because of the low reproductive potential of bandtails, the Service concurs that hunting restrictions are warranted. The combination of delayed opening date, reduced number of hunting days, and reduced bag limit is expected to result in lower harvest levels. During the 3-year period, the effectiveness of the restrictions will be evaluated and new strategies developed.

23. *Mourning doves.—Western Management Unit* (Arizona, California, Idaho, Nevada, Oregon, Utah and Washington).

(a) In the March 13, 1987, **Federal Register** (52 FR 7900), the Service gave notice that although no changes in the regulatory frameworks for mourning doves of the Western Management Unit (WMU) were being proposed at that time, consideration would be given to imposing regulatory restrictions for 1987–88 in the WMU if the population trend has not continued the short-term reversal evidenced in 1986.

At its March meeting the Pacific Flyway Council adopted the following recommendation for regulatory frameworks restrictions on WMU mourning doves for a 3-year period beginning in 1987–88:

Washington and Oregon—15 days between September 1 and September 15 with 8 mourning doves daily and 16 in possession.

Idaho, Utah and Nevada—30 days between September 1 and September 30 with 10 mourning doves daily and 20 in possession.

California and Arizona—45 total days split as follows: 15 days between September 1 and September 15 and 30 days between November 1 and January 15, with 10 mourning doves daily and 20 in possession.

Response. Call-count surveys indicate that dove populations in the WMU have experienced a significant long-term (21-year) downward trend. Although apparent throughout the unit, the decline is most prevalent in the coastal States of Washington, Oregon and California. Factors that are suspected of causing the decline are loss of nesting habitat, agricultural changes, and overharvest. The Service concurs that regulations restrictions should be imposed to decrease harvest commensurate with reduced populations. The Council's recommendation is well-conceived and should result in a substantial reduction in mourning dove harvest, particularly in the two States of California and Arizona where 72% of the WMU harvest is taken. A three-year evaluation period is endorsed.

(b) Arizona submitted a request that differs from the Council recommendation for mourning dove regulations in their State. The State requests continuation of a 70-day season, 20 days in September, the remainder during November 1–January 15. The justification is that the long-term downward trend of mourning doves in Arizona is not statistically significant, that based on recoveries of banded doves on a study area only 12 percent of the annual mortality rate of doves is due to hunting, and that the potential reduction in harvest realized by the Council proposals does not justify the severe reduction in hunter opportunity.

Response. The Service acknowledges that mourning dove declines in Arizona do not appear to be as severe as those in coastal WMU States. However, because Arizona takes 40 percent of the WMU harvest, and many northern birds migrate through Arizona during the season, any harvest reduction there would likely have beneficial results throughout the unit. The Service concurs with the Council recommendation for early curtailment of the September season in Arizona and California and maintenance of a closed season in Arizona during mid-September and October when northern doves are passing through. While it appears that in Arizona a longer season during November–January 15 is warranted, the Service defers action pending receipt of comments on the State's request.

24. *White-winged and white-tipped doves.* The Pacific Flyway Council recommended the 1987–88 regulatory frameworks for white-winged dove seasons and bag limits in Arizona, California, and Nevada reflect the Council's recommended frameworks for Western Management Unit mourning doves as given above.

Response. The Service notes that the frameworks for white-winged doves in the above States provide for concurrent seasons and aggregate bag limits relative to the regulatory frameworks for mourning doves. The Council's recommendation regarding mourning dove frameworks will be included in the Service's consideration of regulatory frameworks for white-winged doves.

25. *Migratory bird hunting seasons in Alaska.* The Pacific Flyway Council recommended no change be made in the 1987 regulatory frameworks for migratory game bird seasons in Alaska.

Response. The Service notes the Council's recommendation.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and with due consideration for any data or views submitted by interested parties,

the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States, including Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. He therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals and will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations that differ from these proposals. Comments should be sent to the Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Matomic Building—Room 536, Washington, DC, 20240. Comments received will be available for public inspection during normal business hours at the Service's office in Room 536, Matomic Building, 1717 H Street NW., Washington, DC.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to approriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before mid-June of specific, reliable data on this year's status of some migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified earlier is contrary to the public interest.

Flyway Council Meetings

Department of the Interior representatives will be present at the following meetings of Flyway Councils:

Atlantic Flyway—Tampa, Florida (Harbor Island) July 30–31

Mississippi Flyway—Paducah, Kentucky (Executive Inn) July 30–31

Central Flyway—Cheyenne, Wyoming (Holiday Inn) July 30–31

Pacific Flyway—Reno, Nevada (Reno Hilton) July 30.

Although agendas are not yet available, these meetings usually commence at 8:30 to 9 a.m. on the days indicated.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975 (40 FR 25241). In addition, several environmental assessments have been prepared on specific matters which serve to supplement the material in the Final Environmental Statement. Copies of these documents are available from the Service at the address indicated under the caption **ADDRESS.** As noted in the March 13, 1987, **Federal Register** (at 52 FR 7905), the Service is preparing a supplemental environmental impact statement (EIS) on the FES. The Service anticipates a late spring 1987 publication date for a draft supplemental EIS to be followed by public meetings prior to preparation of the final supplemental EIS.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act provides that the Secretary "shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act," and shall take "such action necessary to insure that any action authorized, funded, or carried out . . . is not likely to jeopardize the continued existence of such endangered or threatened species or result in the destruction or modification of habitat of such species . . . which is determined to be critical."

Section 7 consultations are presently underway regarding both the early- and late- season regulatory proposals. It is possible that the findings from the consultation, which will be included in a biological opinion, may cause modification of some of the regulatory measures proposed in this document. Any modifications that may be desirable will be reflected in the final frameworks for Alaska, Puerto Rico, and the Virgin Islands, scheduled for publication in the **Federal Register** on or about July 24, 1987; those for other early seasons on or about August 4, 1987; and for later seasons on or about September 11, 1987.

Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats.

The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for public inspection in the Office of Endangered Species, and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the **Federal Register** dated March 13, 1987, (52 FR 7900), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. This information is included in the present document by reference. As noted in the above **Federal Register** publication, the Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the same time the first of the annual hunting rules is finalized. This rule does not contain any information collection requiring approval by OMB under 44 U.S.C. 3504.

Authorship

The primary author of this supplemental proposed rulemaking is Morton M. smith, Office of Migratory Bird Management, working under the direction of Rollin D. Sparrowe, Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Dated: May 27, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–12532 Filed 6–2–87; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register
Vol. 52, No. 106
Wednesday, June 3, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Public Meeting of Assembly

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. No. 92–463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by administrative agencies in carrying out their programs, will meet in Plenary Session on Thursday, June 11, 1987, at 1:00 p.m. and Friday, June 12, 1987, at 9:00 a.m. in Hearing Room B, located in the Intersate Commerce Commission Building, at 12th Street and Constitution Avenues, NW., Washington, DC.

The Conference will consider, not necessarily in the order stated, proposed recommendations on the following subjects.

1. OSHA Rulemaking
2. Private Sector Health and Safety Whistleblower Protection
3. Agency Hiring of Private Attorneys
4. Federal User Fees
5. Arbitration in Federal Programs
6. Freedom of Information Act Dispute Resolution (Statement)

Plenary Sessions are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street, NW., Suite 500, Washington, DC 20037, telephone (202) 254–7020.

Dated: May 29, 1987.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 87–12597 Filed 6–2–87; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Foreign Agricultural Service

Targeted Export Assistance Program, Fiscal Year 1988

AGENCY: Commodity Credit Corporation and Foreign Agricultural Servie, USDA.

ACTION: Notice.

SUMMARY: This notice announces the conduct of the Targeted Export Assistance Program for fiscal year 1988.

FOR FURTHER INFORMATION CONTACT: Elizabeth H. Callanan, Chief Marketing Programs Staff, Commodity and Marketing Programs, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, DC 20250–1000, Telephone: (202 447–5521.

Targeted Export Assistance (TEA) Program for FY 1988

Section 1124 of the Food Security Act of 1985, as amended (7 U.S.C. 1736s) (the Act), provides that, for fiscal year 1986 through 1990, the Secretary of Agriculture shall use a specified amount of funds of, or commodities owned by, the Commodity Credit Corporation (CCC) to counter or offset the adverse effect on the export of a U.S. agricultural commodity, or the product thereof, of a subsidy, import quota, or other unfair trade practice of a foreign country. Such funds or commodities must be used for export activities authorized to be carried out by the Secretary of Agriculture or CCC.

Section 1124 of the Act requires the Secretary to provide export assistance on a priority basis in the case of agricultural commodities and products thereof with respect to which there has been a favorable decision under section 301 of the Trade Act of 1974, or for which exports have been adversely affected, as defined by the Secretary, by retaliatory actions related to a favorable decision under Section 301 of the Trade Act of 1974.

For each of the fiscal years 1986 through 1988, the minimum amount of funds or value of commodities required to be used is not less than $110,000,000, and for each of the fiscal years 1989 and 1990, the minimum increases to $325,000,000. However, the Administration has submitted a proposal to Congress to reduce by $30,000,000 the minimum level of funding for targeted export assistance in each of the fiscal years 1988, 1989, and 1990.

It has been determined that, for fiscal year 1988, the commodities which meet the conditions of priority assistance referred to in Section 1124 of the Act are: Pasta, poultry, wheat flour, walnuts, raisins, citrus, canned fruit, soybean meal, almonds, and red meats/offals. CCC will enter into agreements to provide export assistance for other commodities or products thereof only after it is determined that adequate assistance will be available to promote the export of commodities which meet the conditions for priority assistance.

Targeted Export Assistance will be provided through project agreements entered into by CCC with nonprofit agricultural trade associations, regional state sponsored organizations or private U.S. firms. These project agreements will provide for the issuance by CCC of generic commodity certificates to partially reimburse participants for authorized promotional activities to increase the export of specific agricultural commodities as approved by FAS. Agreements are signed by the Administrator, Foreign Agricultural Service (FAS), who is Vice President, CCC, and administered by the Foreign Agricultural Service.

Promotional activities will be undertaken with respect to those countries which (1) maintain trade practices which unfairly discriminate against U.S. agricultural commodities, (2) represent markets in which the export of U.S. agricultural commodities is adversely affected by subsidies or other unfair trade practices of other exporting countries, or (3) offer a reasonable possibility for increased exports to counter or offset such practices.

Persons desiring to participate in the program must be able to provide substantial cost sharing for export promotional activities, adequate administrative support and a commitment to promotional activities. Project agreements will provide for adequate controls and review, similar to those of the present FAS market development program, including the approval of an annual marketing plan, review of progress, provisions for program evaluation, and conduct of compliance audits.

The criteria upon which FAS will base its allocation of fiscal year 1988 resources will include: (1) A review of the commodity or product to be promoted and the degree to which the organization represents U.S. producer interests on a commodity or nationwide basis; (2) the degree to which exports of the commodity or product may benefit from promotional activities; (3) the dollar amount of assistance requested; (4) the identification of an unfair foreign trade practice and the extent to which it has already affected actual or potential exports of the commodity; (5) the extent to which the applicant organization is willing to contribute resources to the joint project; (6) the organization's prior export development experience and the adequacy of its administrative and personnel resources for the purposes of planning and managing the requested program level; (7) the historical export levels of the commodity or product; (8) the anticipated likelihood success of the proposed project in terms of increasing U.S. exports or mitigating the unfair trade practice or its effects; (9) whether or not the commodity or product is in adequate supply; and (10) the extent to which the composition of the commodity or product is U.S. origin. Products whose composition is less than 50 percent U.S. origin, computed on a volume or value basis, will not be considered.

The deadline for submitting applications for consideration for participation in the program for fiscal year 1988 is July 30, 1987. Applications for participation in the allocation of fiscal year 1988 TEA resources should address the above criteria and any other factors the applicant deems appropropriate.

For further information regarding application procedures and the TEA program, contact the Marketing Programs Staff, Foreign Agricultural Service, U.S. Department of Agriculture, Washington DC 20250-1000, telephone (202) 447-5521.

Thomas O. Kay,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 87-12629 Filed 6-2-87; 8:45 am]

BILLING CODE 3410-10-M

COMMISSION ON CIVIL RIGHTS

Colorado Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 1:30 p.m. and adjourn at 4:30 p.m., on June 15, 1987, at the Executive Tower Inn, 1402 Curtis Street, Denver, Colorado 80202. The purpose of the meeting is to plan activities and programming for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Maxine Kurtz, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 26, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-12541 Filed 6-2-87; 8:45 am]

BILLING CODE 6335-01-M

New Mexico Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 6:00 p.m., on June 25, 1987, at The Regent Hotel, 201 Marquette NW., Albuquerque, New Mexico 87102. The purpose of the meeting is to develop program plans and to obtain information on the status of the implementation of the new immigration reform law in New Mexico.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Vincent J. Montoya, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 26, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-12542 Filed 6-2-87; 8:45 am]

BILLING CODE 6335-01-M

South Dakota Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Dakota Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m., on June 26, 1987, at the Hilton Inn, Pactola Room, 445 Mount Rushmore Road, Rapid City, South Dakota. The purpose of the meeting is to obtain information on the status of Native Americans in Rapid City.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Francis Whitebird, or Philip Montez, Director of the Western Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 26, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-12543 Filed 6-2-87; 8:45 am]

BILLING CODE 6335-01-M

West Virginia State Advisory Committee; Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia State Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 noon on June 23, 1987, at the Professional Building, Room 215, 1036 Quarrier Street, Charleston, West Virginia. The purpose of the meeting is to discuss the status of the agency, review the draft report "Discrimination in West Virginia" for submission to the Commissioners, and plan activities for the coming year.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Adam R. Kelly (304/652-4141) or John I. Binkley, Director of the Eastern Regional Division (202/523-5264; TDD 202/376-8117). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at

least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 26, 1987.

Susan J. Prado,

Acting Staff Director.

[FR Doc. 87-12544 Filed 6-2-87; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Management Team will convene a public meeting to discuss groundfish management matters, June 11-12, 1987, at 8 a.m., at the National Marine Fisheries Service, Northwest and Alaska Fisheries Center, 7600 Sand Point Way, NE., Seattle, WA. The Team will review and finalize a draft of issues for amending the groundfish fishery management plan; review inseason groundfish landings under current trip limits; review research needs, and develop a report for the Council's July 8-9, 1987 meeting.

For further information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, 2000 S.W. First Avenue, Suite 420, Portland OR 97201; telephone: (503) 221-6352.

Dated: May 28, 1987.

James E. Douglas Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-12599 Filed 6-2-87; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will convene public meetings, June 22-26, 1987, at the Duke University Marine Laboratory on Pivers Island, NC. Agenda items will include discussion of habitat and environmental protection, sea scallop, flounder, large pelagic, snapper-grouper, shrimp, red drum, and discussion of other fishery management business. A closed session (not open to the public) may also be convened to discuss personnel matters. A detailed agenda will be available to the public on or about June 12, 1987.

For further information contact Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571-4366.

Dated: May 28, 1987.

James E. Douglas Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 87-12600 Filed 6-2-87; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force Activities for Conversion to Contract

AGENCY: Air Force, DOD.

ACTION: Notice.

The Air Force recently determined that the weather forecasting and observing functions at the following locations will be reviewed for possible conversion to contract: Westover Air Force Base, MA; Springfield Municipal Airport, IL; Selfridge Air National Guard Base, MI; Buckley Air National Guard Base, CO; Dobbins Air Force Base, GA; Niagara Falls International Airport, NY; Rickenbacker Air National Guard Base, OH; Volk Field Air National Guard Base, WI; Hector Field, ND; McEntire Air National Guard Base, SC; Ft Indiantown Gap, PA; Ft Meade, MD; Libby Army Air Field, GA; Gila Bend Air Force Auxiliary Field, AZ; and Avon Park Gunnery Range, FL.

Interested commercial concerns should refer to subsequent CBDs for specific announcements to be made as part of the contract solicitation process. For further information, contact Mr. Noble Loucks, HQ Military Airlift Command, Scott Air Force Base, IL, telephone (618) 256-5268.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-12537 Filed 6-2-87; 8:45 am]

BILLING CODE 3910-01-M

Air Force Academy Board of Visitors; Meeting

Pursuant to section 9355, Title 10, United States Code, the Air Force Academy Board of Visitors will meet at the Air Force Academy, Colorado Springs, Colorado, July 31-August 2, 1987. The purpose of the meeting is to consider morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, academic methods, and other matters relating to the Academy.

A portion of the meeting will be open to the public on August 1, 1987, from 9:15 a.m. to 11:40 a.m. Other portions of this meeting will be closed to the public to discuss matters analogous to those listed in subsections (2), (4), and (6) of section 552b(c), Title 5, United States Code. These closed sessions will include: Attendance at cadet classes and panel discussions with groups of cadets and military staff and faculty officers involving personal information and opinions, the disclosure of which would result in a clearly unwarranted invasion of personal privacy. Closed sessions will also include executive sessions involving discussions of personal information, including financial information, and information relating solely to internal personnel rules and practices of the Board of Visitors and the Academy. Meeting sessions will be held in the Superintendent's Conference Room, Harmon Hall, USAF Academy.

In addition to the open meeting session, the public is welcome to attend a press conference scheduled for 4:15 p.m. to 5:15 p.m. on August 1, 1987 in the Upperclass Lounge in Arnold Hall.

For further information, contact Major George J. Geyer, Headquarters, US Air Force (DPPA), Washington, DC 20330-5060, at (202) 697-2919.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 87-12536 Filed 6-2-87; 8:45 am]

BILLING CODE 3910-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 87-19-NG]

Application To Import Natural Gas From Canada; Mobil Gas Co. Inc.

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of application for blanket authorization to import natural gas from Canada.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on March 24, 1987, of an application for an authorization to import natural gas, and of receipt on May 7, 1987, of an amendment to that application, from Mobil Gas Company Inc. (MOGASCO). MOGASCO seeks blanket authorization to import, for its own account or the account of others, Canadian natural gas

for short-term and spot market sales to customers in the United States. Authorization is requested to import up to 100 Bcf of Canadian gas for a two-year period beginning on the date of first delivery. MAGASCO, a Delaware corporation, is a wholly-owned subsidiary of Mobil Natural Gas Inc. which is a wholly-owned subsidiary of Mobil Fairfax Inc. MOGASCO proposes to purchase natural gas from various Canadian suppliers for itself, or as agent for others, on a short-term basis for resale to a wide range of customers in the United States. MOGASCO states that it intends to use existing pipeline facilities for the transporation of the proposed imports. MOGASCO also states that it will advise the ERA of the date of first delivery of the import and submit quarterly reports giving details of individual transactions in the month following each calendar quarter.

The application is filed with the ERA pursuant to section 3 of the Natural Gas Act and DOE Delegation Order No. 0204–111. Protests, motions to intervene, notices of intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable, and written comments are to be filed no later than July 6, 1987.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8162

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6F–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the buden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices or intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.d.t. July 6, 1987.

The administrator intends to develop a decisional record on the application through response to this notice by parties, including the parties written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or a trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstration why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of MOGASCO's application, as amended, is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 22, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–12628 Filed 6–2–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER87–436–000 et al.]

Electric Rate and Corporate Regulation Filings; El Paso Electric Company et al.

May 22, 1987

Take notice that the following filings have been made with the Commission:

1. El Paso Electric Company

[Docket No. ER87–436–000]

Take notice that El Paso Electric Power Company ("EPE") on May 18, 1987, tendered for filing a Short Term Energy Agreement between EPE and Texas-New Mexico Power Company ("TNP"). The primary purpose of this Agreement is to provide the terms and conditions relating to the sale by EPE and the purchase by TNP of energy from April 3, 1987 through March 31, 1988. EPE states that copies of the filing were served upon TNP and the New Mexico Public Service Commission.

Comment date: June 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power Corporation

[Docket No. ER87–438–000]

Take notice that on May 19, 1987, Florida Power Corporation ("Florida Power") tendered for filing in this docket Service Schedules H and I to its Contract for Interchange Service of February 1, 1980 with the Sebring Utilities Commission. The service schedules provide for reserve interchange service and regulating interchange service.

Florida Power asks that the service schedules be permitted to become effective on June 1, 1987 and requests waiver of the notice requirements to permit such effective date. If waiver is not granted, Florida Power alternatively requests that the service schedule be permitted to become effective 60 days from the date of filing.

Comment date: June 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Montaup Electric Company

[Docket No. ER87-437-000]

Take notice that on May 18, 1987, Montaup Electric Company ("Montaup") tendered for filing a contract between itself and the Massachusetts Municipal Wholesale Electric Company ("MMWEC") for the sale of capacity and energy to MMWEC from Montaup's share of the Canal No. 2 unit.

This contract is for a six-month term beginning May 1, 1987 and ending October 31, 1987. MMWEC's entitlement percentage is 0.4281% (2.5 MW) and the capacity charge rate is the same rate of $4.78 per kW-month which is contained in the agreement for sale of Canal No. 2 capacity to MMWEC accepted in Docket No. ER87-168-000 (letter order of January 16, 1987).

Montaup requests waiver of the 60-day notice requirement and requests an effective date of May 1, 1987. Montaup states that negotiations took longer than expected due to uncertainty concerning the final entitlement percentage of the sale and that, if the waiver is granted, there would be no effect upon purchasers under other rate schedules.

Montaup states that copies of the filing were served on the MMWEC and the Massachusetts Department of Public Utilities.

Comment date: June 8, 1987, in accordance with Standard Paragraph E at the end of this document.

4. Montaup Electric Company

[Docket No. ER87-440-000]

Take notice that on May 19, 1987, Montaup Electric Company ("Montaup" or "the Company") tendered for filing a contract between Montaup Electric Company and the Town of Middleborough, Massachusetts. The agreement is Supplement No. 3 of Montaup's Rate Schedule FERC No. 75. The amended Exhibit A provides the charge for radial transmission service to the Town of Middleborough for calendar year 1987 and is based on year-end 1986 investment and capitalization. As shown in Exhibit A, that charge is decreased by $1452 below the charges in effect for 1986, which were based on year-end 1985 investment and capitalization.

Montaup states that copies of the filing have been mailed to the Town of Middleborough, Massachusetts and the Massachusetts Department of Public Utilities.

Comment date: June 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Western Massachusetts Electric Company

[Docket Nos. ER85-689-004, ER85-707-001, ER85-720-001]

Take notice that on May 15, 1987, Western Massachusetts Electric Company advised the Commission that pursuant to a Commission Order issued March 13, 1987, it made refunds on April 23, 1987 to its customers with interest accrued through that date for the difference between the Company's originally filed rates and the compliance rates. The Company stated that it has discovered an error in the computation of the demand charge that caused an overstatement of the refunds. It stated that it will submit revised refunds to its customers on May 18, 1987, and that it will submit a revised compliance filing to the Commission within 15 days of the billing for the over-refund.

Comment date: June 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Power and Light Company

[Docket No. ER87-435-000]

Take notice that Wisconsin Power and Light Company, on May 18, 1987, tendered for filing proposed changes in its W-1, W-2, and W-3 Electric Service Tariffs, Wholesale For Resale. The Company has proposed changes which would decrease revenues from W-1 customers by $265,933, from W-2 customers by $576,878, and from W-3 customers by $1,791,555 for the 12-month period ending July 31, 1988.

Wisconsin Power and Light Company states that the proposed rate decrease is necessary to reflect reduced tax expenses from the Tax Reform Act of 1986.

Copies of the filing were served upon the public utility's jurisdictional customers and the Public Service Commission of Wisconsin.

Comment date: June 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York

[Docket No. ER87-439-000]

Take notice that on May 19, 1987, Consolidated Edison Company of New York, Inc. ("Con Edison") tendered for filing, as an initial rate schedule, an ageement to sell capacity to Long Island Lighting Company ("LILCO"). The agreement provides for a capacity charge of $73.06 per megawatt per day for 250 megawatts and an energy charge based upon incremental costs of generation.

Con Edison requests waiver of the notice requirements of § 35.3 of the Commission's regulations so that the Rate Schedule can be made effective as of April 30, 1987.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: June 8, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-12612 Filed 6-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 8601-001 et al.]

Hydroelectric Applications (Merle Jore and Sons et al.); Applications Filed With the Commission

Take notice that the following Hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1 a. Type of Application: Surrender of License.

b. Project No.: 8601-001.

c. Date Filed: February 27, 1987.

d. Applicant: Mr. Merle Jore and Sons.

e. Name of Project: Jore.

f. Location: On an unnamed tributary of Mollman Creek in Lake County, Montana.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Contact Person: Mr. Matthew Jore, 2120 Hummingbird Drive, Missoula, MT 59802, (406) 728-9192.

i. Comment Date: June 29, 1987.

j. Description of Project: On February 28, 1986, a license was issued to Merle Jore and Sons to construct, operate, and maintain the Jore Project No. 8601 to be located on an unnamed tributary of Mollman Creek, in Lake County, Montana. The project would consist of a dam, a trough containing slotted intake pipes, three penstocks, a powerhouse containing three generating units with a total installed capacity of 1,000 kW, a corrugated pipe, a transmission line, a fish barrier, and appurtenant facilities.

Licensees state that they have decided to surrender the license because the lower energy rates established by the Montana Public Service Commission makes the project no longer feasible.

k. Anyone desiring to be hard or to make any protest about this action should file a motion to intervene or a protest with the Federal Energy Regulatory Commission in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 or 385.214 (1985). Comments not in the nature of a protest may also be submitted by conforming to the procedures specified in § 385.211 for protests. To become a party, or to participate in any hearing that might be held, a person must file a motion to intervene in accordance with the Commission's Rules. The Commission's address is: 825 North Capitol Street, NE, Washington, DC 20426.

2 a. Type of Application: Preliminary Permit.

b. Project No.: 9660–000.

c. Date Filed: December 3, 1985. This notice supersedes the notice issued January 15, 1986, for this project.

d. Applicant: St. Maries Naturalists, Ltd.

e. Name of Project: St. Maries River.

f. Location: On the St. Maries River in the Panhandle National Forest near St. Maries, Benwah County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Louis Rosenman, Esquire, 1333 New Hampshire Avenue, NW, Washington, DC 20005, (202) 457–7500.

i. Comment Date: July 17, 1987.

j. Description of Project: The proposed project would consist of: (1) A 6-foot-high diversion dam at elevation 2,435 feet; (2) a 2,315-foot-long, 102-inch-diameter penstock; (3) a powerhouse containing one generating unit with a rated capacity of 3,400 kW; and (4) a 4.5-mile-long transmission line. Applicant estimates the average annual energy production to be 14.9 GWh and the cost of the work to be performed under the preliminary permit to be $145,000.

k. Purpose of Project: The proposed power is to be sold to the local power company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

m. A preliminary permit application for this site was also filed by St. Maries River Hydro, Inc. Confusion resulting from the expiration of a previously issued permit on the site denied the parties an adequate opportunity to file development applications. Therefore, P–9660–000 is being renoticed in order to provide an opportunity to file competing license applications or notices of intent to file competing license applications.

3 a. Type of Application: Minor License.

b. Project No: 9886–000.

c. Date Filed: January 27, 1986.

d. Applicant: Valatie Falls Hydro Co.

e. Name of Project: Valatie Falls.

f. Location: On Kinderhook Creek in Columiba County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. P.S. Eckhoff, Valatie Falls Hydro Co., Box 158, Stuyvesant Falls, NY 12174, (518) 828–4684.

i. Comment Date: July 17, 1987.

j. Decription of Project: The proposed project would consist of: (1) An existing 6-foot-high, 250-foot-long concrete gravity dam; (2) a reservior with a normal water surface area of 5 acres, a storage capacity of 20 acre-feet, and a water surface elevation of 230.3 feet USGS; (3) new 2-foot-high flashboards; (4) a new intake structure; (5) a new 7-foot-diameter, 60-foot-long steel penstock; (6) a new powerhouse containing one generating unit with an installed capacity of 300 KW; (7) a new transmission, 50 feet long; and (8) appurtentant facilities. The applicant estimates that the average annual generation would be 1,750,000 kWh. The existing dam is owned by the William Munch, Canaan, New York.

k. Propose of Project: The project power would be sold to the Niagara Mohawk Power Corporation.

1. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

4 a. Type of Application: Major License.

b. Project No: 10047–000

c. Date Filed: July 22, 1986.

d. Applicant: Northern Hydro Consultants, Inc.

e. Name of Project: Imperial Dam Water Power.

f. Location: On Saranac River, near City of Plattsburgh, in Clinton County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. Contact Person: Mr. James W. Dowd, Northern Hydro Consultants, Inc., P.O. Box 319, Chateaugay, NY 12920.

i. Comment Date: July 20, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 667-foot-high, 24-foot-high rocket and masonary dam with a 275-foot-long earth berm at the north end, owned by the Imperial Manufacturing Company; (2) an existing impoundment with a surface area of 68 acres at elevation 186 m.s.l. and a gross storage capacity of 836 acre-feet; (3) a new intake concrete structure with fish passage facilities at the north end of the dam; (4) a 45-foot-long, 12-foot-diameter reinforced concrete diameter penstock; (5) a concrete powerhouse containing one turbine-generator unit with an installed capacity of 2,000 kW at a head of 27 feet; (6) a concrete 200-foot-long trailrace; (7) a 5,000-foot-long, 12.3-kV transmission line connecting to the existing New York Electric and Gas Corporation line; and (8) appurtenant facilities.

k. Propose of Project: The project power would be sold to New York Electric and Gas Corporation.

1. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

5 a. Type of Application: Preliminary Permit.

b. Project No.: 10206–000.

c. Date Filed: December 15, 1986.

d. Applicant: Energy Leaders, Inc.

e. Name of Project: New Prospect.

f. Location: On Rogue River in Jackson County, Oregon near the town of Shady Cove, partially on land managed by U.S. Army Corps of Engineers.

T.33S., R2E.
Sec. 12, NE¼, NW¼, NW¼, NW¼, SW¼, NW¼, SE¼, NW¼.
Sec. 1;
Sec. 11;
Sec. 2;
T.33S., R.3E.,
Sec. 6.

g. Filed Pursuant to: Federal Powers Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Ms. Barbara C. Newell, Energy Leaders, Inc., 3916 Preamble, Boise, ID 83706.

i. Comment Date: July 17, 1987.

j. Description of Project: The proposed project would consist of: (1) A 15-foot-high, 150-foot-long roll compacted concrete dam with a crest elevation of 1,982 feet m.s.l. creating; (2) a 3-acre reservoir with a storage capacity of 25 acre-feet; (3) an intake structure; (4) a 40-foot-wide, 9,600-foot-long concrete

box flume; (5) two 10.5-foot-diameter, 200-foot-long, steel penstocks; (6) a powerhouse containing two generating units with a total installed capacity of 16,000 kW, producing an annual average annual energy output of 97,000,000 kWh; (7) a tailrace at elevation 1,850 feet m.s.l.; (8) a 3,000-foot-long, 115-kV transmission line tying into a Pacific Power and Light Company line. No new access roads will be needed to conduct the studies.

The applicant estimates that the cost of the studies to be conducted under the preliminary permit would range between $250,000 and $350,000.

k. Purpose of Project: Project power would be sold to Pacific Power and Light Company.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

6 a. Type of Application: Preliminary Permit.

b. Project No: 10389–000.

c. Date Filed: April 15, 1987.

d. Applicant: Ashton Associates.

e. Name of Project: Ashton Falls.

f. Location: On the Seekonk River in Providence County, Rhode Island.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Thomas Forbes, P.O. Box 421, Mercer Island, WA 98040, (206) 232–6538.

i. Comment Date: July 20, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 10-foot-high, 200-foot-long masonry dam at elevation 74 feet m.s.l. owned by the Ronci Manufacturing Company; (2) an existing 35-acre surface area reservoir with a negligible storage capacity with a maximum surface elevation of 74 m.s.l.; (3) a proposed 7-foot-diameter penstock extending 30 feet in length; (4) an existing powerhouse to be renovated to contain one turbine/generator with an installed capacity of 750 kW; (5) an existing tailrace to be renovated which is 20 feet wide and 30 feet long; (6) a new 115-kV transmission line approximately 600 feet long; and (7) appurtenant facilities. The estimated average annual energy produced by the project would be 4.0 GWh operating under a net hydraulic head of 10 feet. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $155,000.

k. Purpose of Project: Project power will be sold to the Blackstone Valley Electric Co.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, & D2.

7 a. Type of Application: Preliminary Permit.

b. Project No: 10377–000.

c. Date Filed: April 14, 1987.

d. Applicant: Franklin #8 Hydro Associates.

e. Name of Project: Franklin Dam No. 8.

f. Location: On the Winnepesaukee River in Merrimack County, New Hampshire.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Thomas Forbes, P.O. Box 421, Mercer Island, Washington 98040, (206) 232–6538.

i. Comment Date: July 17, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 10-foot-high, 203-foot-long timber crib gravity dam; (2) a reservoir with a surface area of 2 acres, no storage capacity, and a normal water surface elevation of 330 feet m.s.l.; (3) an existing 10-foot-diameter, 250-foot-long steel penstock; (4) an existing powerhouse containing one new generating unit with a capacity of 1,400 kW; (5) an existing 20-foot-wide, 30-foot-long tailrace; (6) a new transmission line, 50 feet long; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 6,600,000 kWh. The applicant estimates that the cost of the studies under permit would be $155,000. The existing dam is owned by Franklin Electric Light & Power Company, Franklin, New Hampshire.

k. Purpose of Project: Project power would be sold to the Public Service Company of New Hampshire.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8 a. Type of Application: New License (Less than 5 MW).

b. Project No.: 848–004.

c. Date Filed: December 29, 1986.

d. Applicant: Wells Rural Electric Company.

e. Name of Project: Trout Creek.

f. Location: On Trout Creek in Ilko County, Nevada.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Dan Kessler, General Manager, Wells Rural Electric Company, P.O. Box 365, Wells, NV 89835, (702) 752–3328.

i. Comment Date: July 24, 1987.

j. Description of Project: The existing project consists of: (1) Two intake structures at 2 small tributary springs of Trout Creek at elevation 403.13 feet; (2) a 14-inch-diameter, 1,900-foot-long steel pipe; (3) a forebay with a surface area of 1.445 acre-feet; (4) a 16-inch-diameter, 2,125-foot-long penstock; (5) a powerhouse with a 1,250-kW turbine-generator unit; (6) a 4,412-foot-long, 24.9-kV transmission line; and (7) other appurtenances. The project's average annual generation is 760,175 kWh. The project occupies approximately 0.5 acre of the Humboldt National Forest land.

The project power is distributed to the applicant's members for consumption as a cooperative.

k. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

9 a. Type of Application: New Major License.

b. Project No: 1988–007.

c. Date Filed: March 5, 1985.

d. Applicant: Pacific Gas and Electric Company.

e. Name of Project: Haas-Kings River Project.

f. Location: On North Fork Kings River, Helms Creek, Dusy Creek, Rancheria Creek, Long Meadow Creek, Kings River and its tributaries, near towns of Centerville, Fresno and Sangar, within the Sierra National Forest, in Fresno County, California.

g. Filed Pursuant to: Federal Power Act U.S.C. 791(a)–825(r).

h. Contact Person: Mr. S. P. Reynolds, Vice President, Rates, Pacific Gas and Electric Company, 77 Beale St., Room 1065, San Francisco, CA 94106.

i. Expiration Date of Original License: March 31, 1985.

j. Comment Date: July 23, 1987.

k. Description of Project: The existing Haas/Kings River Project with a total installed capacity of 179.10 MW consists of:

A. Haas Development comprising: (1) The Courtright Reservoir with a gross storage capacity of 123,286 acre-feet and a surface area of 1,632 acres at elevation 8,184 feet; (2) the Courtright Dam, a 315-foot-high, 862-foot-long rockfill dam with crest elevation 8,188 feet; (3) a 300-foot-wide and 8-foot-high ungated spillway; (4) outlet works structures consisting of a tunnel through left abutment, submerged intake tower and discharge controls feeding into the Helms Pumped Storage Project; (5) the Wishon Reservoir with a gross storage capacity of 128,606 acre-feet and a surface area of 10,025 acres at elevation 6,550 feet; (6) a 260-foot-high, 3,300-foot-long rock-fill Wishon Dam with crest elevation 6,550 feet; (7) four 238-foot-long, 24-foot-high concrete-gravity auxiliary dams; (8) a 15-foot-high, 285-foot-long spillway; (9) a 13-foot-high, 13-foot-wide and 6.19-mile-long Haas Tunnel connecting Lake Wishon with Haas Penstock; (10) a surge tank at the downstream end of the Haas Tunnel; (11) a 96-inch-diameter tapering to 77.5-inch-diameter, 4,560-foot-long Haas Penstock; (12) a powerhouse containing two generating units with a total installed capacity of

135 MW; and (13) a 70-KV, 6.76-mile-long transmission line interconnecting with Applicant's McCall substation; and (15) appurtenant facilities.

B. Kings River Development comprising:

(1) A 14-foot-wide, 14-foot-high, 3.9-mile-long Kings River Tunnel; (2) a 108-inch-diameter tapering to 90-inch-diameter, 1,810-foot-long steel penstock; (3) a 20-foot-wide, 10-foot-deep, 510-foot-long trapezoidal tailrace channel; (4) a powerhouse with a total installed capacity of 44.1 MW; (5) an interconnection with Applicant's nearby Balch-Sanger transmission line; and (6) appurtenant facilities.

Applicant proposes to increase the installed capacity of the project by approximately 22 percent with the following additions and modifications:

A. Haas Development: (1) Adding a 33-foot-high, 220-foot-long rock-fill Rancheria Creek Diversion Dam with a reservoir capacity of 2.8-acre-feet at elevation 6,707 feet; (2) adding a 19-foot-high, 50-foot-long concrete spillway; (3) adding an 18-inch-diameter and a 60-inch-diameter outlet pipes; (4) adding a 15,800-foot-long, 10-foot-diameter Rancheria Tunnel connecting Lake Wilson; (5) adding an 8-foot-high, 53-foot-long concrete Long Meadow Creek Diversion Dam No. 1 with crest elevation 6,694 feet; (6) adding a 7-foot-high, 100-foot-long concrete Long Meadow Creek Diversion Dam No. 2 with crest elevation at 6,797 feet; (7) modifying a powerhouse containing two generating units with a total installed capacity raised from 135 MW to 163.8 MW; and (8) modifying appurtenant facilities.

B. Kings River Development: (1) modifying the existing 44.1 MW installed capacity generating unit with a 54 MW unit; and (2) modifying appurtenant facilities.

The Applicant estimates the cost of the proposed additions and modifications at $66.72 million. The Applicant proposes some fishing access and trial facilities. The Applicant would utilize the project energy to meet the load demands of its service area. The Applicant estimates severance damages at $789 million.

This notice also consists of the following standard paragraphs: B & C.

10 a. Type of Application: Major License (over 5 MW).

b. Project No: 3490–003.

c. Date Filed: February 4, 1986.

d. Applicant: Potter Township, Pennsylvania.

e. Name of Project: Montgomery.

f. Location: Ohio River, Beaver County, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Joseph J. Liberati, Econeco, Inc., Milne Drive, Monaca, PA 15061, (412) 775–0314.

i. Comment Date: July 2, 1987.

j. Competing Application: Project No. 2971–002; Date Filed: June 28, 1984.

k. Description of Project: The proposed run-of-river project would utilize the existing U.S. Army Corps of Engineers' Montgomery Locks and Dam, a facility operated for river navigation, and would utilize one of the existing spillway sections as the entrance to an intake channel to the powerhouse. The proposed hydrogenerating facility would consist of: (1) A proposed porous dike approximately 400 feet long and located upstream of the existing dam; (2) a proposed intake channel from the existing dam to the powerhouse, 80 feet long and varying from 100 to 150 feet in width; (3) a proposed powerhouse 150 feet by 170 feet in plan and 75 feet high located at the right abutment of the existing dam in the river adjacent to the river bank, and housing four horizontal pit or bulb-type turbines and four horizontal generators each rated at 5,000 kW, for a total installed capacity of 20,000 kW; (4) a proposed tailrace retaining wall along the river bank about 200 feet in length and varying in height on a taper from the powerhouse to its downstream termination; (5) a proposed 34.5- or 69-kV transmission line approximately 18,850 feet in length to an existing substation owned and operated by Duquesne Light Company; and (6) appurtenant facilities. The estimated annual energy production is 127 GWh. Project power would be sold to Duquesne Light Company or West Penn Power Company. The net hydraulic head is 16 feet.

1. This notice also consists of the following standard paragraphs: A4, B, and C.

11 a. Type of Application: Amendment of Exemption (5MW or Less).

b. Project No: 8610–002.

c. Date Filed: April 1, 1987.

d. Applicant: Niagara Mohawk Power Corporation.

e. Name of Project: Middle Falls.

f. Location: Battenkill Creek in Washington County, New York.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 as amended.

h. Contact Persons:

Mr. John W. Keib, Senior System Attorney, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 428–6936.

Mr. John H. Terry, Senior Vice President, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, NY 13202, (315) 428–6366.

i. Comment Date: July 8, 1987.

j. Description of Project: The project as exempted from licensing consists of: (1) An existing 12-foot-high, 110-foot-long concrete gravity dam; (2) a reservoir with a surface area of 120 acres, a net storage capacity of 240 acre-feet, and a normal water surface elevation of 295.8 feet m.s.l.; (3) an existing intake structure; (4) an existing canal, 150 feet long; (5) an existing steel penstock with a diameter of 7.5 feet and a length of 102 feet; (6) an existing powerhouse containing one existing generating unit with a capacity of 350 kW, one existing generating unit with a capacity of 360 kW, and a new generating unit with a capacity of 1,040 kW for a total installed capacity of 1,750 kW; (7) an existing transmission line, 300 feet long; and (8) appurtenant facilities. The existing dam is owned by the Niagara Mohawk Power Corporation.

The applicant proposes to construct a new intake structure, two new 7-foot-diameter steel penstocks, and a new powerhouse containing two units with a total installed capacity of 2,051 kW. The average annual generation would increase from 9,948,000 kWh to 10,390,000 kWh. The applicant would retire the existing penstock and powerhouse.

k. Purpose of Project: Project power would be sold to the customers of Niagara Mohawk Power Corporation.

l. This notice also consists of the following standard paragraphs: B, C, D3a.

12 a. Type of Application: Preliminary Permit.

b. Project No.: 10370–000.

c. Date Filed: March 31, 1987.

d. Applicant: Western Land Investment, Inc.

e. Name of Project: Empire Hydropower Project.

f. Location: On the Snake River near the town of Buhl, in Twin Falls and Gooding Counties, Idaho. Township 9S and Range 14E.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Carl L. Myers, P.E., Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, ID 83712, (208) 336–1425.

i. Comment Date: July 23, 1987.

j. Description of Project: The proposed project would consist of: (1) A concrete diversion weir 150 feet long with a normal water surface elevation of 2,945 feet msl; (2) a earthen dike approximately 540 feet long and 15 feet high; (3) a earthen canal approximately

700 feet long, 65 feet wide, and 15 feet deep leading to; (4) a powerhouse at elevation 2,927 feet msl containing two turbine/generator units with an installed capacity of 3,300 kW operating at 18 feet of hydraulic head; (5) a tailrace; and (6) a 2,200-foot-long, 138-kv transmission line. The applicant estimates the average annual energy production to be 48,180,000 kWh. The approximate cost of the studies under the permit would be $60,000.

k. Purpose of Project: Applicant intents to sell the power generated at the proposed facility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

13 a. Type of Application: Preliminary Permit.

b. Project No.: 10371-000.

c. Date Filed: March 31, 1987.

d. Applicant: CPS Products, Inc.

e. Name of Project: Bear Creek Power Project.

f. Location: On Bear Creek near the town of Concrete, Skagit County, Washington.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Kenneth R. Koch, CPS Products, Inc., P.O. Box 5663, Bellingham, WA 98227, (206) 671-7697.

i. Comment Date: July 23, 1987.

j. Description of Project: The proposed project would consist of: (1) A diversion structure with an inlet structure elevation of 900 feet msl; (2) a steel penstock 2,500 feet long and 30 inches in diameter leading to; (3) a powerhouse at elevation 450 feet msl containing a turbine/generator unit with an installed capacity of 2,000 kW operating at 450 feet of hydraulic head; and (4) a 1.2-mile-long, 12.5-kV transmission line.

The applicant estimates the average annual energy production to be 12 MWh. The approximate cost of the studies under the permit would be $75,000.

k. Purpose of Project: The applicant intents to sell the power generated from the proposed facility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

14 a. Type of Application: Preliminary Permit.

b. Project No: 10374-000.

c. Dated Filed: April 9, 1987.

d. Applicant: Windsor Machinery Company, Inc.

e. Name of Project: Honk Falls.

f. Location: On the Roundout Creek in Ulster County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Harry A. Terbush, RD 3, Box 157, Orbit Lane, Hopewell Junction, New York 12533, (914) 897-4194.

i. Commend Date: July 23, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 20-foot-high, 120-foot-long reinforced concrete dam; (2) an existing 50-acre reservoir impounding approximately 400 acre-feet at the normal water surface elevation of 576 feet m.s.l.; (3) a proposed 5-foot-diameter, 1,425-foot-long penstock; (4) a proposed powerhouse which will contain an installed generating capacity of 900-kW; (5) a proposed 300-foot-long, 13.2-kV transmission line; and (6) appurtenant facilities.

The applicant estimates that the average annual energy generation will be 5 GWh. The owner of the dam is Ulster County, New York.

k. Purpose of Project: The applicant anticipates selling the power available to the Central Hudson Gas and Electric Corporation.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

m. Propose Scope of Studies under Permit: A preliminary permit, if issued, does not authorize construction. Applicant seeks issuance of a preliminary permit for a period of twenty-eight months during which time it would prepare studies of the hydraulic, construction, economic, environmental, historic and recreational aspects of the project. Depending on the outcome of the studies, applicant would prepare an application for an FERC license. Applicant estimates the cost of the studies under the permit would be $15,400.

15 a. Type of Application: Preliminary Permit.

b. Project No: 10384-000.

c. Dated Filed: April 14, 1987.

d. Applicant: Windsor Machinery Company, Inc.

e. Name of Project: Firthcliff Project.

f. Location: On Moodna Creek in Orange County, New York.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Contact Person: Harry A. Terbush, Mr. Philip E. Terbush, RD 3, Box 157, Orbit Lane, Hopewell Junction, NY 12533, (914) 897-4194.

i. Commend Date: July 23, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 8.5-foot-high, 162-foot-long concrete gravity dam; (2) a reservoir with a surface area of 3.5 acre, a storage capacity of 17.5 acre-feet, and a normal water surface elevation of 112.5 feet m.s.l.; (3) two-foot-high flashboards; (4) a new 6-foot-diameter, 100-foot-long penstock; (5) a new concrete powerhouse containing one generating unit with a capacity of 230 kW; (6) a new transmission line, 600 feet long; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 803,600 kWh. The existing dam is owned by Moodna Creek Development Ltd., Middletwon, New York. Applicant estimates that the cost of the studies under permit would be $15,400.

k. Purpose of Project: Project power would be sold to Central Hudson Gas and Electric Corporation.

1. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

16a. Type of Application: Declaration of Intention.

b. Project No: EL87-6.

c. Date Filed: November 10, 1986.

d. Applicant: Public Service of New Hampshire.

e. Name of Project: Jackman.

f. Location: North Branch of the Contoocook River, near Hillsboro, New Hampshire.

g. Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. Contact Person: Roy G. Barbour, Vice President, Public Service of New Hampshire, 100 Elm Street, P.O. Box 330, Manchester, NH 03105.

i. Comment Date: July 2, 1987.

j. Description of Project: The existing run-of-river project consists of: (1) An existing 1,870-foot-long and 31-foot-high dam; (2) an existing 130-foot-long concrete gravity spillway/intake with two abutting earth fill dikes; (3) an impoundment with a surface area of 519 acres; (4) an existing 7½-foot diameter 6,208-foot-long penstock; (5) an existing 225,000 gallon differential surge tank; (6) an existing powerhouse with a 5,250 hp 3.2 MW vertical turbine-generator unit; (7) other appurtenances. The Applicant estimates an average annual generation of 9,340 MWH's.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly

modified the project's pre-1935 design or operation.

k. Purpose of Project: All of the power produced by the project will be fed into Public Service of New Hampshire's transmission distribution system and sold to PSNH's electric customers.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

17a. Type of Application: Exemption (Under 5 MW).

b. Project No: 10200–000.

c. Date Filed: December 1, 1986.

d. Applicant: Gary Whipple.

e. Name of Project: Condgon Dam.

f. Location: On the Oxoboxo Brook in New London County, Connecticut.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2709.

h. Contact Person: Mr. Gary Whipple, 1695 Center Groton Road, Ledyard, CT 06339, (203) 464–8004.

i. Comment Date: July 6, 1987.

j. Description of Project: The proposed project would consist of: (1) Renovating an existing 35-foot-long dam with a spillway elevation of 48.1 feet m.s.l. owned by the applicant; (2) an existing 6.5-acre reservoir with a storage capacity of 130 feet at elevation 98.1 feet m.s.l.; (3) reinstallation of 7 inch flashboards; (4) two existing outlet works with an overall length of 23 feet; (5) an existing timber slide gate to be replaced; (6) an existing 5-foot-diameter penstock, 70-feet-long; (7) a proposed powerhouse to contain one turbine/generator with an installed capacity of 60 kW; (8) a proposed tailrace. The estimated average annual energy produced by the project would be 210 MWh per year operating under a net hydraulic head of 29.5 feet.

k. Purpose of Project: Project power would be sold to the local utility.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D3a.

m. Purpose of Exemptions: An exemption, if issued, gives the Exemptee priority of control, development, and operation of the project under the terms of the exemption from licensing, and protects the Exemptee from permit or license applicants that would seek to take or develop the project.

18a. Type of Application: Conduit Exemption.

b. Project No.: 10326–000.

c. Date Filed: February 17, 1987.

d. Applicant: North Side Canal Company, Ltd.

e. Name of Project: Hazelton B Project.

f. Location: On the Northside Main Canal, an irrigation canal near the town of Hazelton, in Jerome County, Idaho.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended*.

h. Contact Person: Mr. Ted Diehl, North Side Canal Company, 921 North Lincoln Avenue, Jerome, ID 83338, (208) 324–2319.

i. Comment Date: July 6, 1987.

j. Description of Project: the proposed project would consist of (1) An intake power canal with a water surface elevation of 4,083 feet msl; (2) a powerhouse containing three generating units with a total installed capacity of 7,500 kW operating at 29 feet of hydraulic head; and (3) a tailrace leading back to the Northside Main Canal. The application estimates the average annual energy production to be 22,600 MWh.

k. Purpose of Project: Applicant intends to sell the power generated from the proposed facility.

l. This notice also consists of the following standard paragraphs: A3, A9. B, C, and D3b.

19a. Type of Application: Preliminary Permit.

b. Project No.: 10375–000.

c. Date Filed: April 13, 1987.

d. Applicant: Weber Basin Water Conservancy District.

e. Name of Project: Drought Relief Pipeline Hydro Project.

f. Location: On Weber River in Weber County, Utah, partly on the U.S. Bureau of Reclamation lands: Section 16, T5N, R2W: SLB&M.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Ivan W. Flint, Manager, Weber Basin Water Conservancy District, 2837 East Highway 193, Layton, UT 84041.

i. Comment Date: July 27, 1987.

j. Description of Project: Applicant proposes to explore the possibility of installing generating capacity at its existing Drought Relief Project. The Drought Relief Pipeline Project consists of a pumping plant situated at elevation 4,276 feet m.s.l. on a 100 acre-foot reservoir adjacent to the Layton Canal; the pumps discharge into a 60-inch diameter reinforced concrete pipeline extending from the pumping plant 2¾ miles east to the higher Davis and Weber Counties Canal at elevation 4,576 feet m.s.l.

A separate turnout is proposed to be constructed on the higher Davis and Weber Counties Canal and connected to the Drought Relief Pipeline in order to deliver excess flows, when available, to the lower Layton Canal with electrical generation as a by-product. The pumping plant would be modified to accept a 453 kW turbine/generator unit operating under a 300-foot head with discharge into the existing 100 acre-foot reservoir. The average annual energy output is estimated to be 1,494,720 kWh. The Applicant estimates that the cost of the studies under the permit would be $15,000.

k. Purpose of Project: Project energy would be utilized by the Applicant with any surplus sold to the Colorado River Storage Project (CRSP).

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, D2.

20 a. Type of Application: Preliminary Permit.

b. Project No. 10380–000.

c. Date Filed: April 14, 1987.

d. Applicant: Pleasant Point Reservation Associates.

e. Name of Project: Half Moon Cove Project.

f. Location: On Half Moon Bay in Washington County, Maine.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Thomas Forbes, P.O. Box 421, Mercer Island, Washington 98040, (206) 232–6538.

i. Comment Date: July 27, 1987.

j. Description of Project: The proposed project would consist of: (1) An existing 75-foot-high, 1,050-foot-long earth and rock gravity dam; (2) a reservoir with a surface area of 795 acres, a storage capacity of 10,500 acre-feet, and a normal surface elevation of 18 feet m.s.l.; (3) a new 10-foot-diameter, 500-foot-long steel penstock; (4) a new concrete powerhouse containing one generating unit with a capacity of 10,000 kW; (5) a new 100-foot-wide, 500-foot-long tailrace; (6) a new transmission line, 700 feet long; and (7) appurtenant facilities. The applicant estimates the average annual generation would be 37,900,000 kWh. The applicant estimates that the cost of the studies under permit would be $155,000. The existing dam is owned by the City of Eastport, Maine.

k. Purpose of Project: Project power would be sold to the Eastern Maine Electric Coop.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

21 a. Type of Application: Preliminary Permit.

b. Project No. 10385–000.

c. Date Filed: April 15, 1987.

d. Applicant: Belton Hydro Associates.

e. Name of Project: Belton and Stillhouse Hollow Hydroelectric Projects.

f. Location: On the Leon and Lampass Rivers near Killeen, Temple, and Belton, Bell County, Texas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Contact Person: Mr. Kirk Rector, 5041 S. Boabab Drive, Salt Lake City, UT 84117, (801) 277–8010.

i. Comment Date: July 27, 1987.

j. Description of Project: The proposed project would consist of two developments.

The Belton Dam development would utilize the existing U.S. Army Corps of Engineers' Belton Dam and reservoir and would consist of: (1) A proposed steel penstock 10 feet in diameter and 550 feet long; (2) a proposed concrete powerhouse 70 feet by 70 feet housing a 16,000-kW hydropower unit; (3) a proposed tailrace 150 feet long, 10 feet deep, and 50 feet wide; (4) a proposed 64-kV transmission line 2,500 feet long; and (5) appurtenant facilities. The applicant estimates that the average annual energy generation would be 26.9 GWh.

The Stillhouse Hollow Dam development would utilize the existing U.S. Army Corps of Engineers' Stillhouse Hollow Dam and reservoir and would consist of: (1) A proposed steel penstock 10 feet in diameter and 500 feet long; (2) a proposed concrete powerhouse 70 feet by 70 feet housing a 7,500-kW hydropower unit; (3) a proposed tailrace 150 feet long, 10 feet deep, and 50 feet wide; (4) a proposed 12.5-kV transmission line 5,100 feet long; and (5) appurtenant facilities. The applicant estimates that the average annual energy generation would be 13.0 GWh.

The applicant proposes to sell the energy to Texas Power and Light and estimates that the cost of the work to be performed under the permit would be $155,000.

k. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

22 a. Type of Application: Conduit Exemption.

b. Project No. 10164–000.

c. Date Filed: November 10, 1987.

d. Applicant: North Side Canal Company, Ltd.

e. Name of Project: Hazelton A Project.

f. Location: On the Northside Main Canal, an irrigation canal near the town of Hazelton, in Jerome County, Idaho.

g. Filed Pursuant to: Section 408 of the Energy Security Act of 1980, 16 U.S.C. 2705 and 2708 *as amended.*

h. Contact Person: Mr. Ted Diehl, North Side Canal Company, 921 North Lincoln Avenue, Jerome, ID 83338, (208) 324–2319.

i. Comment Date: July 6, 1987.

j. Description of Project: The proposed project would consist of: (1) An intake power channel with a water surface elevation of 4,083 feet msl; (2) a powerhouse containing three generating units with a total installed capacity of 8,940 kW operating at 32 feet of hydraulic head; and (3) a tailrace leading back to the Northside Main Canal. The applicant estimates the average annual energy production to be 25,000 MWh.

k. Purpose of Project: Applicant intends to sell the power generated from the proposed facility.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3b.

Standard Paragraphs

A3. Development Application

Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permit will not be accepted in response to this notice.

A4. Development Application

Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. In accordance with the Commission's regulations, any competing development applications, must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36 (1985)). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application.

A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application.

A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent

A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit.

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests or motions to intervene must be received on or before the specified comment date for the particular application.

C. *Filing and Service of Responsive Documents.* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS

AND CONDITIONS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST" or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing is in response. Any of the above named documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. An additional copy must be sent to: Mr. Fred E. Springer, Director, Division of Project Management, Federal Energy Regulatory Commission, Room 203-RB, at the above address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments

States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural and other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. 8251 (b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be set to the Applicant's respresentatives.

D2. Agency Comments

Federal, State and local agencies are invited to file comments on the described application. (A copy of the application may be obtained by agencies directly from the Applicant.) If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's respresentatives.

D3a. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide any comments thay may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3b. Agency Comments

The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are requested, for the purposes set forth in section 30 of the Federal Power Act, to file within 45 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, State, and local agencies are requested to provide comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If an agency does not file comments within 45 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 29, 1987.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-12613 Filed 6-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. QF87-412-000 et al.]

Small Power Production and Cogeneration Facilities; Qualifying Status; Certificate Applications, etc. First Energy Associates et al.;

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Take notice that the following filings have been made with the Commission.

1. First Energy Associates

[Docket No. QF87-412-000]

May 22, 1987

On May 11, 1987, First Energy Associates (Applicant), of 71 Spit Brook Road, Nashua, New Hampshire 03060 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 Orange, Connecticut. The facility will consist of two combustion turbine generators, a heat recovery steam generator and an extraction/condensing steam turbine-generator. Thermal energy recovered by the facility will be used by Miles Pharmaceuticals Division of Miles Laboratories, Inc., for process heating, sanitary hot water for pharmaceutical manufacture and space heating. Heat

recovered by the system will also be used in an absorption chiller for product chilling and building air conditioning. The primary energy source for the facility will be natural gas, with No. 2 fuel oil as back-up. The net electric power production capacity of the facility will be 65.4 MW. Installation is expected to begin in May 1988.

2. Prodek/Hydro Resources Joint Venture

[Docket No. QF87-421-000]

May 22, 1987.

On May 14, 1987, Prodek/Hydro Resources Joint Venture (Applicant), c/o Prodek, Inc., 3314 East 51st Street, Suite B, Tulsa, Oklahoma 74135, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The 215 kilowatt hydroelectric facility (FERC P. 8391) will be located on the Cimarron River in Gunnison County, Colorado.

A separate application is required for a hydroelectric project license, preliminary permit or exemption from licensing. Comments on such applications are requested by separate public notice. Qualifying status serves only to establish eligibility for benefits provided by PURPA, as implemented by the Commission's regulations, 18 CFR Part 292. It does not relieve a facility of any other requirements of local, State or Federal law, including those regarding siting, construction, operation, licensing and pollution abatement.

3. Williard, Inc.

[Docket No. QF87-413-000]

May 26, 1987

On May 11, 1987, Williard, Inc., (Applicant), of 375 Highland Avenue, Jenkintown, Pennsylvania 19046, 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 Cumberland Township, Pennsylvania. The facility will consist of a combustion turbine-generator and a heat recovery steam generator. Steam recovered from the facility will be used by Holy Spirit Hospital for space heating, and cooling and other hospital needs. The net electric power production capacity will be 630 kilowatts. The primary energy source will be natural gas. Construction of the facility is expected to begin July 1, 1987.

4. Sun Refining and Marketing Company

[Docket No. QF87-411-000]

May 26, 1987.

On May 11, 1987, Sun Refining and Marketing Company (Applicant), of 1819 Woodville Road, Toledo, Ohio 43616, 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 at Applicant's Toledo Refinery in Toledo, Ohio. The facility will consist of one combusion turbine generator and a heat recovery steam generator. Thermal energy recovered from the facility will be used in the refinery process for the making of petroleum products. The primary energy source will be natural gas. The net electric power production capacity will be 45.83 MW. Installation of the facility is scheduled in July 1987.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-12614 Filed 6-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-86-000]

Arizona Public Service Co.; Filing

May 28, 1987

Take notice that on May 20, 1987, Arizona Public Service Company ("The Company") tendered for filing an amendment to the rate schedules and cost data in Docket No. ER87-86-000 pursuant to a deficiency letter dated March 30, 1987.

The Company states that the revised ceiling rate for economy interchange sales by the Company under the terms of the Agreements with Southwestern Public Service Company and the City of Azusa, California will be based on an bifurcated rate consisting of the actual variable costs incurred to make the sale, plus a 20.25 mill per kWh ceiling adder.

The Company states that copies of this filing have been served upon Southwestern Public Service Company, the City of Azusa and the Arizona Corporation Commission.

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 NW., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-12608 Filed 6-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EL87-41-000]

Public Service Commission of the District of Columbia; Filing

May 28, 1987.

Take notice that on May 26, 1987, the Public Service Commission of the District of Columbia filed with the Commission a petition for a declaratory order concerning the Commission's jurisdiction over prudence-related issues concerning a proposed purchase by the Potomac Electric Power Company of electricity from the Ohio Edison Company and the Pennsylvania Power Company, which is the subject of an ongoing proceeding in *Monongahela Power Co.*, Docket No. ER87-330-000.

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 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 10,

1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-12551 Filed 6-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-30-000]

The United Illuminating Co.; Filing

May 28, 1987.

Take notice that on May 20, 1987, pursuant to the order of the Commission, The United Illuminating Company ("UI") tendered for filing amendments to its FERC Electric Tariff, Original Volume No. 1. The amendments will decrease the rates established by the Tariff.

UI states that copies of this rate schedule have been mailed or delivered to parties on the official service list and the Connecticut Department of Public Utility Control.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-12609 Filed 6-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER87-24-002]

Utah Power & Light Co.; Filing

May 28, 1987.

Take notice that on May 13, 1987, Utah Power & Light Company ("the Company") tendered for filing copies of its Compliance Report pursuant to 18 CFR Part 35 and the Order issued by the Commission on March 18, 1987, in this docket.

The Company states that copies of this compliance filing have been served upon all affected customers and the State Commissions of Utah, California, Oregon, Colorado, Arizona, Nevada and Idaho.

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 214 or 211 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 11, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-12610 Filed 6-2-87; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[AMS-FRL-3210-1]

California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption; Decision

AGENCY: Environmental Protection Agency.

ACTION: Notice of waiver of Federal preemption.

SUMMARY: EPA is granting California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act to adopt and enforce amendments to its emission standards and test procedures for the certification of heavy-duty diesel engines and vehicles. California amended its exhaust emissions standards and test procedures to make them consistent with Federal test procedures. California also amended its definition of and regulations relating to "useful life" for heavy-duty diesel engines. The procedures for establishing engine durability were revised and procedures were added for small volume manufacturers. Additional conforming changes were made to California's In-use Label Specifications and Emissions-Related Defects Reporting Procedures.

ADDRESSES: A copy of the above standards, procedures, and other amendments, the decision document containing an explanation of the Administrator's determination and the record of those documents used in arriving at this decision, are available for public inspection during normal working hours (8:00 a.m. to 4:30 p.m.) at the U.S. Environmental Protection Agency, Central Docket Room (Docket EN-85-10), West Tower Lobby, 401 M Street, SW., Washington, DC 20460. Copies of the decision document can be obtained from EPA's Manufacturers Operations Division by contacting Alice Crowe, as noted below.

FOR FURTHER INFORMATION CONTACT: Alice Crowe, Section Chief, Waivers/Special Projects Section, Manufacturers Operations Division (EN-340-F) U.S. Environmental Protection Agency, Washington, DC 20460. Telephone: (202) 382-2514.

SUPPLEMENTARY INFORMATION: I have decided to grant California a waiver of Federal preemption pursuant to section 209(b) of the Clean Air Act, as amended (Act), 42 U.S.C. 7543(b) (1982), for its amendments which provide for the certification of heavy-duty diesel vehicles and engines. The amendments adopted by the California Air Resources Board (CARB) are to its heavy-duty diesel exhaust emission standards and test procedures and its In-Use Label Specifications and Emission-Related Defects Reporting Procedures.

Section 209(b) of the Act provides that if certain criteria are met, the Administrator shall waive Federal preemption for California to enforce new motor vehicle emission standards and accompanying enforcement procedures. The criteria include consideration of whether California arbitrarily and capriciously determined that its standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards, whether California does not need the State standards to meet compelling and extraordinary conditions and whether California's amendments are consistent with section 209(a) of the Act.

The CARB determined that these amended standards and accompanying enforcement procedures do not undermine California's prior determinations that the State standards are, in the aggregate, at least as protective of public health and welfare as the applicable Federal standards. No manufacturers presented evidence that California arbitrarily and capriciously reached this determination. Since California's standards and procedures conform in significant part with the Federal standards and procedures, I

cannot find California's determination to be arbitrary and capricious.

The CARB has continually demonstrated the existence of compelling and extraordinary conditions justifying the need for its own motor vehicle pollution control program, which includes the subject standards and procedures. No information has been submitted to demonstrate that California no longer has a compelling and extraordinary need for its own program. Therefore, I agree that California continues to have compelling and extraordinary conditions which require its own program, and, thus, I cannot deny the waiver on the basis of the lack of compelling and extraordinary conditions.

The CARB has submitted information that the requirements of its emissions standards and test procedures are technologically feasible and present no inconsistency with Federal certification requirements and are, therefore, consistent with section 202(a) of the Act. No manufacturer submitted data or other information to satisfy its burden of persuading EPA that the standards are not technologically feasible within available lead time, considering costs. Since California's certification procedures now parallel the Federal certification procedures, California's amendments do not present any issues regarding inconsistent certification procedures. Thus, I cannot find that California's amendments will be inconsistent with section 202(a) of the Act. Accordingly, I must grant the waiver requested by California.

My decision will affect not only persons in California but also the manufacturers outside the State who must comply with California's requirements in order to produce motor vehicles for sale in California. For this reason, I hereby determine and find that this is a final action of national applicability. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

This action is not a rule as defined by section 1(a) of Executive Order 12291, 46 FR 13193 (February 19, 1981). Therefore, it is exempt from review by the Office of Management and Budget as required for rules and regulations by Executive Order 12291. Additionally, a Regulatory Impact Analysis is not being prepared under Executive Order 12291 for this waiver determination since it is not a rule.

This action is not a "rule" as defined in 5 U.S.C. 601(2) (1982). Therefore, EPA has not prepared a supporting regulatory flexibility analysis addressing the impact of this action on small business entities.

Dated: May 13, 1987.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 87-12590 Filed 6-2-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-140084; FRL-3211-9]

Access to Confidential Business Information by Congress

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Senate Committee on Environment and Public Works has requested access to information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATE: Access to the confidential data submitted to EPA will occur no sooner than June 15, 1987.

FOR FURTHER INFORMATION CONTACT: Edward A. Klein, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. E-543, 401 M St., SW., Washington, DC 20460, (202-554-1404).

SUPPLEMENTARY INFORMATION: In a May 6, 1987 letter to the EPA Assistant Administrator for Pesticides and Toxic Substances, the chairman of the Senate Committee on Environment and Public Works requested that the Agency provide specifed Committee employees access to materials submitted to EPA under sections 5 and 8 of TSCA. The letter indicated that such access is necessary for preparation for legislative oversight hearings to be held later this year. Some of the information requested by the Committee may be claimed or determined to be confidential.

In accordance with section 14(e) of TSCA and 40 CFR 2.306 (h), EPA is required to provide TSCA CBI to a congressional Committee in response to a written request by its chairman.

EPA is issuing this notice to inform all submitters of information under sections 5 and 8 of TSCA that EPA may provide this Committee access to these CBI materials on a need-to-know basis. The Committee has indicated that all access to TSCA CBI by the Committee will take place at EPA Headquarters. Clearance for access to TSCA CBI under this request is scheduled to expire on June 1, 1988.

EPA will inform the Committee of the confidential status of the information in question, of the security procedures EPA follows to protect the information, and of the provisions of section 14 of TSCA, which set criminal penalties for unlawful disclosure of CBI:

Dated: May 27, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-12585 Filed 6-2-87; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3212-5]

Science Advisory Board Biotechnology Research Review Subcommittee; Open Meeting

Under the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given that a two-day meeting of the Biotechnology Research Review Subcommittee of the Science Advisory Board's Executive Committee will be held on June 22 and 23, 1987. The meeting will begin at 9:00 a.m. on June 22 and will be held in the Conference Facilities of the Holiday Inn at Embarcadero, 1355 N. Harbor Drive, in San Diego, California 92101-3385. Adjournment on June 23 will take place no later than 5:00 p.m.

The main purpose of the meeting is to assess EPA's Biotechnology Risk Assessment Research Program. The review will provide independent scientific advice on the objectives, relevance and quality of ongoing research. In addition, recommendations concerning modifications to the content and direction of the program will be made to ensure support of future Agency needs. Four major issues will be addressed (1) scientific adequacy of research program design, and goals, (2) evaluation of specific objectives as they support risk assessment of biotechnology products, (3) cross cutting scientific issues and program integration, and (4) ability of the program to meet future Agency needs.

The meeting will be open to the public. Any member of the public who wishes to attend, present information to the subcommittee, or obtain information concerning the meeting, should contact Ms. Janis Kurtz, Executive Secretary, or Ms. Renee Butler, Staff Secretary; (A-101-F), Science Advisory Board, U.S.

EPA, 401 M Street SW., Washington, DC 20460, Telephone (202) 382-2552 or FTS 8-382-2552. Written comments will be accepted, and can be sent to Ms. Kurtz at the address above.

Dated: May 28, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87-12562 Filed 6-2-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-00242; FRL 3213-3]

State-FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting of Working Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 2-day meeting of the Working Committee on Groundwater Protection and Disposal (WC/GPD) of the State FIFRA Issues Research and Evaluation Group (SFIREG). The meeting will be open to the public.

DATE: Monday, June 22, and Tuesday, June 23, 1987, beginning at 8:30 a.m. each day and concluding by 4:30 p.m., Tuesday, June 23.

ADDRESS: The meeting will be held at:

Stouffer Concourse Hotel, 2399 Jefferson Davis Highway, Arlington, VA 22202, (703) 979-6800.

FOR FURTHER INFORMATION CONTACT: By mail,

Philip H. Gray, Jr., Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Rm. 1115, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7096).

SUPPLEMENTARY INFORMATION: This will be the fifth meeting of the Working Committee on Groundwater Protection and Disposal (WC/GPD). The purpose of the WC/GPD is to consider pesticide-related aspects of groundwater protection and disposal of pesticide waste, excess pesticides and used pesticide containers, and to make recommendations through the full SFIREG regarding Agency policies in these key areas. The focus of the meeting will be on groundwater topics on June 22 and on disposal matters on June 23. The following topics are currently on the agenda:

1. Agricultural chemicals in groundwater strategy.
2. Best Management Practices to protect groundwater from pesticide contamination.
3. The National Survey of Pesticides in Drinking Water Wells.
4. Reports of federal agencies concerned with groundwater protection, including EPA and USDA/Extension.
5. State reports on groundwater protection and pesticide disposal.
6. An update on proposed legislation currently before the U.S. Congress.
7. Initial report on March 1987 regional disposal conferences.
8. Indemnification/Disposal Task Force matters.
9. Status of OPP-OSW action plan.
10. Other topics as appropriate.

Dated: May 20, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 87-12685 Filed 6-2-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

TITLE OF INFORMATION COLLECTION: Notice of Acquisition of Control (OMB No. 3064-0019).

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

COMMENTS: Comments on this collection of information should be submitted on or before June 18, 1987.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

SUMMARY:

The FDIC is requesting OMB approval to extend, for a three-year period, the expiration of form FDIC 6822/01, *Notice of Acquisition of Control.* The form expires on September 30, 1987. The form is used by any person or persons acting in concert to provide notice to the FDIC prior to acquiring control of an insured state nonmember bank. Such prior written notice is required under the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)). The specific requirements for filing notices under the Change in Bank Control Act are contained in FDIC regulation 12 CFR 303.4. It is estimated that these information collection requirements impose an annual paperwork burden of 4,290 hours, collectively, on respondents.

Dated: May 28, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-12583 Filed 6-2-87; 8:45 am]

BILLING CODE 6714-01-M

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

Title of information collection: Survey of State Banking Powers.

Background: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review for the information collection system identified above.

ADDRESS: Written comments regarding the submission should be addressed to Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429.

COMMENTS: Comments on this collection of information should be submitted on or before June 18, 1987.

FOR FURTHER INFORMATION CONTACT: Requests for a copy of the submission should be sent to John Keiper, Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898-3810.

SUMMARY:

The FDIC is requesting OMB approval of a one-time telephone survey of the 50 state banking regulators in order to determine the additional powers that have been conferred upon state-chartered banks. Individual states have been expanding the range of

permissible activities for state banks beyond their traditional powers. The FDIC will use this information in its legislative and regulatory program planning. It is estimated that the total reporting burden on the respondents, collectively, will be 13 hours.

Dated: May 28, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87-12584 Filed 6-2-87; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0022.

Title: NFIP Application, NFIP Cancellation, NFIP General Change Endorsement, NFIP Request for Policy Processing and Renewal Information, NFIP V-Zone Risk Factor Rating.

Abstract: Forms needed for continued sale and servicing of policies under the National Flood Insurance Program (NFIP).

Type of respondents:

Individuals or households

State or local governments

Farms

Businesses or other for-profit

Federal agencies or employees

Non-profit institutions

Small businesses or organizations

Number of respondents: 494,392.

Burden hours: 80,028.

Frequency of recordkeeping or reporting: On occasion.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street SW., Washington, DC 20472.

Comments should be directed to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503 within two weeks of this notice.

Dated: May 28, 1987.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 87-12553 Filed 6-2-87; 8:45 am]

BILLING CODE 6718-01-M

FEDERAL MARITIME COMMISSION

[Docket No. 87-12]

Filing of Petition for Declaratory Order; Old Republic Insurance Co.

In the matter of maximum potential liability in Independent Ocean Freight Forwarder Bonds.

Notice is given that a petition for declaratory order has been filed by Old Republic Insurance Company, The Surety Association of America, and the National Custom Brokers & Forwarders Association of America, Inc. seeking that the Federal Maritime Commission terminate a controversy and remove any uncertainty which may exist with respect to the maximum potential liability of a surety under an Independent Ocean Freight Forwarder Bond (FMC-59 Rev), required to be filed with the Commission pursuant to 46 CFR 510.14.

Interested persons may inspect and obtain a copy of the petition at the Office of the Secretary, Rm. 11101, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001. Interested persons may submit replies to the Secretary, address as above, on or before June 29, 1987. An original and fifteen copies of such replies shall be submitted and a copy thereof served on the filing party, B.K. Huffman, Esquire, Webster & Sheffield, 1200 New Hampshire Avenue NW., Washington, DC 20036. Replies shall contain the complete factual and legal presentation of the replying party as to the desired resolution of the petition (See 46 CFR 502.68(d)).

Joseph C. Polking,

Secretary.

[FR Doc. 87-12616 Filed 6-2-87; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Key Atlantic Bancorp; Formulation of Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87-11696) published at page 19395 of the issue for Friday, May 22, 1987.

Under the Federal Reserve Bank of New York, the entry for Key Atlantic Bancorp is revised to read as follows:

A. Federal Reserve Bank of New York (Williams L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *KeyCorp*, Albany, New York; to acquire Key Atlantic Bancorp, Albany, New York, and thereby indirectly retain Key Bancshares of New York, Inc., Albany, New York, and its subsidiary banks. Comments on this application must be received by June 12, 1987.

Board of Governors of the Federal Reserve System, May 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-12535 Filed 6-2-87; 8:45 am]

BILLING CODE 6210-01-M

Northern Bancorp, 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 June 22, 1987.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Northern Bancorp, Inc.*, Woburn, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Woburn Bank and Trust Company, Woburn, Massachusetts. Comments on this application must be received by June 18, 1987.

B. **Federal Reserve Bank of New York** (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Mitsui Trust & Banking Co., Ltd.*, Tokyo, Japan; to become a bank holding company by acquiring 100 percent of the voting shares of Mitsui Trust Bank, New York, New York, a *de nova* bank. Comments on this application must be received by June 26, 1987.

C. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Genbeach Company, Inc.*, Beattyville, Kentucky; to become a bank holding company by acquiring 57.2 percent of the voting shares of Peoples Exchange Bancorp, Beattyville, Kentucky, and thereby indirectly acquire Peoples Exchange Bank, Beattyville, Kentucky. Comments on this application must be received by June 26, 1987.

2. *PSL Financial Corporation*, Cincinnati, Ohio; to become a bank holding company by acquiring 65.01 percent of the voting shares of Citizens State Bancorp, Cincinnati, Ohio, and thereby indirectly acquire Citizens State Bank, Silverton, Ohio.

D. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Peoples Bancorporation*, Rocky Mount, North Carolina, to acquire 18.4 percent of the voting shares of Citizens National Bank, Winston-Salem, North Carolina.

E. **Federal Reserve Bank of Chicago** (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Bosshard Financial Group, Inc.*, LaCrosse, Wisconsin (formerly LaFarge Bancorp, Inc.); to acquire 89.5 percent of the voting shares of Grand Marsh State Bank, Grand Marsh, Wisconsin, and 89 percent of the voting shares of Farmer State Bank—Hillsboro, Hillsboro, Wisconsin. Comments on this application must be received by June June 18, 1987.

F. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Country Bancorp, Inc.*, Mount Olive, Illinois; to acquire at least 93.7 percent of the voting shares of Montgomery County National Bank, Hillsboro, Illinois. Comments on this application must be received by June 26, 1987.

2. *First Northwest Bancshares, Inc.*, Kenton, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank, Kenton, Tennessee. Comments on this application must be received by June 26, 1987.

3. *Magna Group, Inc.*, Belleville, Illinois; to acquire through its subsidiary, FGB Acquisition Company, Belleville, Illinois, 100 percent of the voting shares of First Granite Bancorporation, Inc., Granite City, Illinois, and thereby indirectly acquire First Granite City National Bank, Granite City, Illinois, and Colonial Bank of Granite City, Granite City, Illinois. In connection with this application, FGB Acquisition Company, Belleville, Illinois, has applied to become a bank holding company by acquiring First Granite Bancorporation, Inc., Grantite City, Ilinois, and thereby indirectly acquire First Granite City National Bank, Granite City, Illinois, and Colonial Bank of Granite City, Granite City, Illinois.

G. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Baron II Bancshares, Inc.*, White Bear Lake, Minnesota; to become a bank holding company by acquiring 94.5 percent of the voting shares of Security State Bank of Deer Creek, Deer Creek, Minnesota.

2. *Zappco, Inc.*, St. Cloud, Minnesota; to acquire 100 percent of the voting shares of Melrose Bancshares, Inc., Melrose, Minnesota, and thereby indirectly acquire Melrose State Bank, Melrose, Minnesota.

I. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Dublin Bancshares, Inc.*, Dublin, Texas; to become a bank holding company by acquiring 80 percent of the voting shares of First National Bank of Dublin, Dublin, Texas.

2. *Longview Financial Corporation*, Longview, Texas; to acquire 50 percent of the voting shares of Lindale Bancshares, Inc., Lindale, Texas, and thereby indirectly acquire Lindale State Bank, Lindale, Texas. Comments on this application must be received by June 26, 1987.

J. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *International Capital Trust Limited*, Geneva, Switzerland; to become a bank holding company by acquiring 75 percent of the voting shares of Western United National Bank, Los Angeles, California. Comments on this application must be received by June 18, 1987.

Board of Governors of the Federal Reserve System, May 28, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-12534 Filed 6-2-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Consensus Development Conference on Neurofibromatosis

Notice is hereby given of the NIH Consensus Development Conference "Neurofibromatosis," sponsored by the National Institute of Neurological and Communicative Disorders and Stroke, the National Cancer Institute and the NIH Office of Medical Applications of Research. The conference will be held July 13–15, 1987, in the Masur Auditorium of the Warren Grant Magnuson Clinical Center (Building 10) at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

Neurofibromatosis is a genetic disorder of the nervous system and many other systems of the human body. It affects about one in every 3,000 babies born and is transmitted as an autosomal dominant trait. The most common form of neurofibromatosis is the von Recklinghausen type. This type is characterized by multiple tumors, usually benign, that occur along peripheral nerves in the skin or internally and cafe-au-lait spots, well-defined areas of hyperpigmentation found on all parts of the body. A less common type is central neurofibromatosis, characterized by tumors of both auditory nerves. In both types, other severe clinical problems, including cancer, may develop in nearly all organ systems.

There is no treatment for neurofibromatosis. Auditory and optic nerve tumors, and painful or disfiguring skin tumors, can be treated by surgery, but often the results are disappointing.

The purpose of the consensus conference is to reach agreement on clinical types of neurofibromatosis, medical care of patients and their families, and research needs.

Key questions to be addessed are:

- What are the various clinical types of neurofibromatosis, and what are their frequencies and their diagnostic criteria?
- What are the recommendations for care of patients and their families at diagnosis and during routine followup?

• What are the management options for major manifestations of neurofibromatosis?

• What are the key research areas that will improve our knowledge about prevention, diagnosis, and treatment of neurofibromatosis?

The conference will bring together specialists in neurology, pediatrics, genetics, otolaryngology, and other relevant fields. During the first two days, experts will present their views on diagnosis, management, and prevention, and concerned voluntary organizations will be invited to make statements. After considering the scientific evidence, a consensus panel will write a draft statement in response to the key questions. On the final day of the meeting, the Consensus Panel Chairman will read the statement to the conference audience and invite comments and questions.

Information on the program may be obtained from: Barbara McChesney, Prospect Associates, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 468-6555.

Dated: May 26, 1987.

James B. Wyngaarden,

Director, NIH.

[FR Doc. 87-12558 Filed 6-2-87; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Allergy and Infectious Diseases; Meeting

Notice is hereby given of a meeting entitled, Strategies of Immune Cell Depletion in Bone Marrow Transplantation, sponsored by the Genetics and Transplantation Biology Branch, Immunology, Allergy and Immunologic Diseases Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health.

This meeting will be held in Bethesda, Maryland on July 17, 1987, at the National Institutes of Health, Building 31C, Conference Room 9. The meeting will begin at 9:00 AM with opening remarks by Dr. Jane Schultz and will conclude at approximately 5:00 PM.

Dr. William R. Duncan, IAIDP, NIAID, NIH, Westwood Building, Room 754, Bethesda, Maryland 20892, telephone (301) 496-5598), will provide substantive program information.

Dated: May 26, 1987.

James B. Wyngaarden,

Director, NIH.

[FR. Doc. 87-12559 Filed 6-2-87; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-87-1702 FR-2359]

Real Estate Settlement Procedures; HUD-1 Settlement Statement

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

ACTION: Notice.

SUMMARY: This notice provides instructions on permissible additions that may be made to the HUD-1 Settlement Statement when it is to be used for the limited purpose of providing the Transferor (hereinafter referred to as the Seller) with important tax information under the new Treasury regulations, which provide rules for new section 6045(e) of the Internal Revenue Code. Under the Treasury regulations, a modified HUD-1 may be used for the limited purpose of providing information to the Seller. It may not be used as a substitute for the official form (or magnetic media filing) that must be filed with the Internal Revenue service (IRS). This notice was prepared after consultation with the IRS.

DATE: June 3, 1987.

FOR FURTHER INFORMATION CONTACT: Alan J. Kappeler, Office of Insured Single Family Housing (202) 755-3046, Room 9266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 1521 of the Tax Reform Act of 1986 amended section 6045 of the Internal Revenue Code to require reporting with respect to certain real estate tansactions. Temporary Treasury regulations implementing the new requirements were published at 52 FR 10742 on April 3, 1987. Under the temporary regulations, an information return must be filed with the IRS and the information required by the IRS must be provided to the Seller for certain sales and exchanges of one-to-four-family real estate. Generally, the person responsible for closing the sale is responsible for filing the information return with the IRS and providing information to the Seller. This person will be listed as the settlement agent on the HUD-1 Settlement Statement if that form is used.

The HUD-1 Settlement Statement is used by the person conducting the settlement involving any Federally related mortgage loan, unless the transaction is exempt under HUD's Real Estate Settlement Procedures Act (RESPA) implementing regulations at 24 CFR 3500.5(d) or 3500.8(d). The HUD-1 Settlement Statement shows all charges to be paid by the Buyer and the Seller in connection with the settlement. It is furnished to the Seller in each transaction, and the temporary Treasury regulations provide that it may be used as a means of providing certain information required by the IRS to the Seller, if it is modified to meet specified requirements.

(The requirement for reporting real estate transactions using Form 1099B or a substitute has already been approved by OMB under OMB No. 1545-0715.)

RESPA regulations at 24 CFR 3500.9 set forth instructions for printing and duplicating the HUD-1, as well as the permissible changes. Deviations to the HUD-1 that are not provided for in § 3500.9 must be approved by HUD. We are hereby publishing the allowable additions to the HUD-1 to comply with IRS notice-to-Seller requirements:

1. Insert the Seller's taxpayer identification number (TIN) in block E.

2. Insert the settlement agent's address and TIN in block H.

3. Include the complete address of the property in block G, including a legal description if necessary to identify the property unambiguously.

4. If the contract price on line 401 includes the value of property other than cash and notes, (1) insert an asterisk next to the amount shown on line 401, (2) use line 403 (as shown on the sample following this text) to indicate Gross Proceeds (the total of the cash received by the Seller, the amont of liabilities taken over by the Buyer, and the amount of notes received from the Buyer), and (3) use line 404 to indicate that other property was received by the Seller.

5. Insert the following "Substitute Form 1099 Seller Statement" regarding notice to the Seller at the bottom of either page 1 or 2 of the Seller's copy of the HUD-1 or on an addendum: "The information contained in Blocks E, G, H and I and on line 401 (or, if line 401 is asterisked, line 403 and 404) is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported."

6. (1) If the TIN solicitation and certification are included at the bottom of page 1 of the Seller's copy of the HUD-1, insert the following statements:

"You are required by law to provide [INSERT NAME OF SETTLEMENT AGENT] with your correct taxpayer identification number. If you do not provide [INSERT NAME OF SETTLEMENT AGENT] with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law," and "Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number. _____ Seller's Signature"; or

(2) If the TIN solicitations and certifications are included on the bottom of another page, or on an addendum, insert the following statements:

TAXPAYER IDENTIFICATION NUMBER SOLICITATION

You are required by law to provide [INSERT NAME OF SETTLEMENT AGENT] with your correct taxpayer identification number. If you do not provide [INSERT NAME OF SETTLEMENT AGENT] with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.

Seller's Name _____

Address _____

_____

TIN _____

CERTIFICATION

Under penalties of perjury, I certify that the number shown on this statement is my correct identification number.

_____

Seller's Signature.

7. Insert applicable instructions similar to those on the back of Copy B of the official Form 1099 for reporting real estate transactions. (See the attached "Seller Instructions" on page 2 of the sample following this text for appropriate instructions for 1987.) It is anticipated that these Form 1099 instructions will be revised for 1988.

A line item charge for modifying the HUD-1 is prohibited by HUD pursuant to section 12 of RESPA, which prohibits a fee for preparation of the HUD-1 Settlement Statement.

The current HUD-1 form follows, as well as a sample of the same form completed for the Seller which complies with the IRS notice requirements.

Authority: Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. 2601-2626).

Dated: May 29, 1987.

James E. Schoenberger,

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

BILLING CODE 4210-27-M

A. **Settlement Statement**

U.S. Department of Housing and Urban Development

OMB No. 2502-0265

B. Type of Loan

1. ☐ FHA 2. ☐ FmHA 3. ☐ Conv. Unins.
4. ☐ VA 5. ☐ Conv. Ins.

6. File Number	7. Loan Number	8. Mortgage Insurance Case Number

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower	E. Name and Address of Seller	F. Name and Address of Lender

G. Property Location	H. Settlement Agent	
	Place of Settlement	I. Settlement Date

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due From Borrower		**400. Gross Amount Due To Seller**	
101. Contract sales price		401. Contract sales price	
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)		403.	
104.		404.	
105.		405.	
Adjustments for items paid by seller in advance		**Adjustments for items paid by seller in advance**	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due From Borrower		**420. Gross Amount Due To Seller**	
200. Amounts Paid By Or In Behalf Of Borrower		**500. Reductions in Amount Due To Seller**	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		**Adjustments for items unpaid by seller**	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower		**520. Total Reduction Amount Due Seller**	
300. Cash At Settlement From/To Borrower		**600. Cash At Settlement To/From Seller**	
301. Gross Amount due from borrower (line 120)		601. Gross amount due to seller (line 420)	
302. Less amounts paid by/for borrower (line 220)	( )	602. Less reductions in amt. due seller (line 520)	( )
303. Cash ☐ **From** ☐ **To Borrower**		**603. Cash** ☐ **To** ☐ **From Seller**	

L. Settlement Charges			Paid From Borrowers Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Sales/Broker's Commission based on price $ @ % =				
Division of Commission (line 700) as follows:				
701. $	to			
702. $	to			
703. Commission paid at Settlement				
704.				
800. Items Payable in Connection With Loan				
801. Loan Origination Fee	%			
802. Loan Discount	%			
803. Appraisal Fee	to			
804. Credit Report	to			
805. Lender's Inspection Fee				
806. Mortgage Insurance Application Fee to				
807. Assumption Fee				
808.				
809.				
810.				
811.				
900. Items Required By Lender To Be Paid In Advance				
901. Interest from to	@$	/day		
902. Mortgage Insurance Premium for		months to		
903. Hazard Insurance Premium for		years to		
904.		years to		
905.				
1000. Reserves Deposited With Lender				
1001. Hazard insurance	months@$	per month		
1002. Mortgage insurance	months@$	per month		
1003. City property taxes	months@$	per month		
1004. County property taxes	months@$	per month		
1005. Annual assessments	months@$	per month		
1006.	months@$	per month		
1007.	months@$	per month		
1008.	months@$	per month		
1100. Title Charges				
1101. Settlement or closing fee	to			
1102. Abstract or title search	to			
1103. Title examination	to			
1104. Title insurance binder	to			
1105. Document preparation	to			
1106. Notary fees	to			
1107. Attorney's fees	to			
(includes above items numbers:		)		
1108. Title insurance	to			
(includes above items numbers:		)		
1109. Lender's coverage	$			
1110. Owner's coverage	$			
1111.				
1112.				
1113.				
1200. Government Recording and Transfer Charges				
1201. Recording fees: Deed $	; Mortgage $	; Releases $		
1202. City/county tax/stamps: Deed $	; Mortgage $			
1203. State tax/stamps: Deed $	; Mortgage $			
1204.				
1205.				
1300. Additional Settlement Charges				
1301. Survey to				
1302. Pest inspection to				
1303.				
1304.				
1305.				
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)				

A. Settlement Statement

U.S. Department of Housing and Urban Development

- SAMPLE -

OMB No. 2502-0265

B. Type of Loan	5. File Number	7. Loan Number	8. Mortgage Insurance Case Number
1. ☐ FHA 2. ☐ FmHA 3. ☐ Conv. Unins. 4. ☐ VA 5. ☒ Conv. Ins.	123456	123456	123456

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower	E. Name and Address of Seller	F. Name and Address of Lender
John Smith 123 Main Street Arlington, VA 22206	Mary Jones 456 First Street Arlington, VA 22206 TIN-200-00-0000	First National Bank 100 Main Street Arlington, VA 22206

G. Property Location	H. Settlement Agent	I. Settlement Date
789 Maple Avenue Arlington, VA 22206	John Doe, 200 Main Street Arlington, VA 22206 TIN-00-0000000 Place of Settlement: 200 Main Street, Arlington, VA 22206	July 1, 1987

J. Summary of Borrower's Transaction		K. Summary of Seller's Transaction	
100. Gross Amount Due From Borrower		400. Gross Amount Due To Seller	
101. Contract sales price	100,000.00	401. Contract sales price	100,000.00 *
102. Personal property		402. Personal property	
103. Settlement charges to borrower (line 1400)	3,852.00	403.* (Gross Proceeds- 80,000;	
104.		404. Other property received)	
105.		405.	
Adjustments for items paid by seller in advance		Adjustments for items paid by seller in advance	
106. City/town taxes to		406. City/town taxes to	
107. County taxes to		407. County taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due From Borrower	103,852.00	420. Gross Amount Due To Seller	100,000.00
200. Amounts Paid By Or In Behalf Of Borrower		500. Reductions In Amount Due To Seller	
201. Deposit or earnest money	3,000.00	501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)	80,000.00	502. Settlement charges to seller (line 1400)	
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff of first mortgage loan	
205.		505. Payoff of second mortgage loan	
206.		506.	
207.		507.	
208.		508.	
209.		509.	
Adjustments for items unpaid by seller		Adjustments for items unpaid by seller	
210. City/town taxes to		510. City/town taxes to	
211. County taxes to		511. County taxes to	
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517.	
218.		518.	
219.		519.	
220. Total Paid By/For Borrower	83,000.00	520. Total Reduction Amount Due Seller	—
300. Cash At Settlement From/To Borrower		600. Cash At Settlement To/From Seller	
301. Gross Amount due from borrower (line 120)	103,852.00	601. Gross amount due to seller (line 420)	100,000.00
302. Less amounts paid by/for borrower (line 220)	(83,000.00)	602. Less reductions in amt. due seller (line 520)	(—)
303. Cash ☒ From ☐ To Borrower	20,852.00	603. Cash ☒ To ☐ From Seller	100,000.00

SUBSTITUTE FORM 1099 SELLER STATEMENT

The information contained in Blocks E, G, H and I and on line 401 (or, if line 401 is asterisked, lines 403 and 404) is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction will be imposed on you if this item is required to be reported and the IRS determines that it has not been reported.

Previous Edition is Obsolete

HUD-1
RESPA, HB 4305.2

- SAMPLE -

L. Settlement Charges		Paid From Borrowers Funds at Settlement	Paid From Seller's Funds at Settlement
700. Total Sales/Broker's Commission based on price $100,000.00 @ 6 % = 6,000			
Division of Commission (line 700) as follows:			
701. $ 3,000.00	to John Doe		
702. $ 3,000.00	to Robert Martin		
703. Commission paid at Settlement			
704.			
800. Items Payable In Connection With Loan			
801. Loan Origination Fee	%	250.00	
802. Loan Discount	2 %	2,000.00	
803. Appraisal Fee	to ABC Appraisal	50.00	
804. Credit Report	to XYZ Credit Reporting Co.	50.00	
805. Lender's Inspection Fee			
806. Mortgage Insurance Application Fee to			
807. Assumption Fee			
808.			
809.			
810.			
811.			
900. Items Required By Lender To Be Paid In Advance			
901. Interest from to	@$ /day		
902. Mortgage Insurance Premium for	months to		
903. Hazard Insurance Premium for	1 years to Hazard Co.	240.00	
904.	years to		
905.			
1000. Reserves Deposited With Lender			
1001. Hazard Insurance	2 months@$ 20 per month	40.00	
1002. Mortgage Insurance	months@$ per month		
1003. City property taxes	months@$ per month		
1004. County property taxes	9 months@$ 20 per month	180.00	
1005. Annual assessments	months@$ per month		
1006.	months@$ per month		
1007.	months@$ per month		
1008.	months@$ per month		
1100. Title Charges			
1101. Settlement or closing fee	to		
1102. Abstract or title search	to		
1103. Title examination	to		
1104. Title insurance binder	to		
1105. Document preparation	to		
1106. Notary fees	to		
1107. Attorney's fees	to John Esquire	400.00	
(Includes above items numbers:	1102, 1103, 1105)		
1108. Title insurance	to Title & Abstract Inc.	100.00	
(Includes above items numbers:	1104)		
1109. Lender's coverage	$ 80,000.00		
1110. Owner's coverage	$100,000.00		
1111.			
1112.			
1113.			
1200. Government Recording and Transfer Charges			
1201. Recording fees: Deed $ 4.00	; Mortgage $ 10.00 ; Releases $	14.00	
1202. City/county tax/stamps: Deed $ 4.00	; Mortgage $ 10.00	14.00	
1203. State tax/stamps: Deed $ 4.00	; Mortgage $ 10.00	14.00	
1204.			
1205.			
1300. Additional Settlement Charges			
1301. Survey to Best Survey Co.		400.00	
1302. Pest Inspection to Pest-Test Co.		100.00	
1303.			
1304.			
1305.			
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)		3,852.00	---

SELLER INSTRUCTIONS

If this real estate was your principal residence, file Form 2119, Sale or Exchange of Principal Residence, for any gain, with your income tax return; for other transactions, complete the applicable parts of Form 4797, Form 6252 and/or Schedule D (Form 1040).

BILLING CODE 4210-27-C

—SAMPLE—

ADDENDUM

TAXPAYER IDENTIFICATION NUMBER SOLICITATION

You are required by law to provide [INSERT NAME OF SETTLEMENT AGENT] with your correct taxpayer identification number. If you do not provide [INSERT NAME OF SETTLEMENT AGENT] with your correct taxpayer identification number, you may be subject to civil or criminal penalties imposed by law.

Seller's Name _____

Address _____

_____

TIN _____

CERTIFICATION

Under penalties of perjury, I certify that the number shown on this statement is my correct taxpayer identification number.

_____

Seller's Signature.

[FR Doc. 87-12630 Filed 6-2-87; 8:45 am]

BILLING CODE 4210-27-M

Office of the Regional Administrator—Regional Housing Commissioner

[Docket No. D-87-853]

Acting Regional Administrator, Region IV (Atlanta); Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation.

SUMMARY: Updates the designation of officials who may serve as Acting Regional Administrator for Region IV.

EFFECTIVE DATE: May 19, 1987.

FOR FURTHER INFORMATION CONTACT: Henry E. Rollins, Director, Management Systems Division, Office of Administration, Atlanta Regional Office, Department of Housing and Urban Development, Room 634, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303-3388, 404-331-5199.

Designation of Acting Regional Administrator for Region IV

Each of the officials named below or appointed to the following positions is designated to serve as Acting Regional Administrator during the absence of, or vacancy in the position of, the Regional Administrator, with all the powers, functions, and duties redelegated or assigned to the Regional Administrator: Provided, That no official is authorized to serve as Acting Regional Administrator unless all other employees whose names or titles precede his/hers in this designation are unable to serve by reason of absence:

1. James W. Mills (Acting Deputy Regional Administrator)
2. Director, Office of Administration
3. Director, Office of Public Housing
4. Special Assistant to the Regional Administrator
5. Director, Office of Community Planning and Development
6. Regional Counsel
7. Georgia Program Coordinator
8. Director, Office of Fair Housing and Equal Opportunity
9. Director, Program Planning and Evaluation
10. Director, Operational Support Division

This designation supersedes the designation effective February 25, 1987. (Delegations of Authority by the Secretary effective May 4, 1962, (27 FR 4319, May 4, 1962); Dept. Interim Order II (31 FR 815, January 21, 1966).

This designation shall be effective as of May 19, 1987.

Raymond A. Harris,

Regional Administrator, Region IV (Atlanta).

[FR Doc. 87-12631 Filed 6-2-87; 8:45 am]

BILLING CODE 4210-32-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-070-07-4212-14-M73220]

Realty Action; Sale of Public Land in Granite County, MT

AGENCY: Bureau of Land Management, Butte District Office, Interior.

ACTION: Notice of realty action, noncompetitive sale of public land in Granite County.

SUMMARY: The following described lands have been determined to be suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976; 43 U.S.C. 1716: Principal Meridian Montana T. 12 N., R. 14 W., Section 3: A tract of land located on the Garnet Lode, Mineral Survey Number 5853: Beginning at the Southeast Corner of said tract, from which the Southeast Corner No. 2 of the said Garnet Lode bears S. 09°09′ E., 218.1 feet, thence S. 87° 36′ W., 58 feet, thence N. 03° 14′ W., 68 feet; thence N. 87° 36′ E., 58 feet; thence S. 03°14′ E., 68 feet, to the place of beginning and covering an area of 0.09 acres more or less.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the sale, including the environmental assessment and land report, is available for review at the Butte District Office, P.O. Box 3388, Butte, Montana 59702. Telephone (406) 494-5059.

SUPPLEMENTARY INFORMATION: The purpose of this sale is to authorize the long standing presence of a cabin on this 0.09 acre tract of land. This sale will also aid in the acquisition of approximately 18 acres, which will provide improved access and parking for Garnet Ghost Town. The owners of the cabin are also owners of a portion of the tract to be acquired.

The publication of this notice segregates the public land described above from settlement, location, or entry under the public land laws, including the mining laws, but not from sale pursuant to section 203 of the Federal Land Policy and Management Act of 1976.

The patent, when issued, will contain certain reservations and provisions. Detailed information concerning these reservations and provisions are available for review at the Butte District Office, P.O. Box 3388, Butte, Montana, 59702. Telephone (406) 494-5059.

This sale is consistent with Bureau of Land Management policies and planning and has been discussed with state and local officials. This sale is proposed to allow for the completion of the Garnet Ghost Town exchange which has been determined to be in the public interest.

James A. Moorhouse,

District Manager.

May 26, 1987.

[FR Doc. 87-12538 Filed 6-2-87; 8:45 am]

BILLING CODE 4310-DN-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-143]

Certain Amorphous Metals and Amorphous Metals Articles; Issuance of Advisory Opinion

AGENCY: U.S. International Trade Commission.

ACTION: Issuance of advisory opinion.

SUMMARY: The Commission has issued an advisory opinion finding that certain processes for manufacturing amorphous metals would not, if practiced in the United States, infringe U.S. Letters Patent 4,221,257 (the '257 patent). Amorphous metals manufactured by these non-infringing processes are not covered by the exclusion order issued by the Commission in October 1984 in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, telephone 202-523-1693. Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal at 202-724-0002.

SUPPLEMENTARY INFORMATION: At the conclusion of the above-captioned investigation, the Commission issued an order excluding from entry into the United States products made by amorphous metal casting processes that, if practiced in the United States, would infringe claims 1, 2, 3, 5, 8, or 12 of U.S. Letters Patent 4,221,257. At the request of respondents Hitachi Metals Ltd., Hitachi Metals International Ltd., and Vacuumschmelze GmbH, the Commission instituted advisory opinion proceedings to determine whether articles made by these respondents' modified processes are subject to the exclusion order issued in this investigation. The Commission has completed the advisory opinion proceedings and determined that respondents' modified processes would not infringe the '257 patent if practiced in the United States. Amorphous metals manufactured by those non-infringing processes are therefore not covered by the exclusion order issued in the subject investigation.

The Commission's action was taken pursuant to 19 CFR 211.54(b).

Copies of the advisory opinion and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

By order of the Commission.

Issued: May 28, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-12621 Filed 6-2-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-259]

Certain Battery-Powered Smoke Detectors; Determination Not To Review Initial Determination

AGENCY: U.S. International Trade Commission.

ACTION: Commission determination not to review initial determination.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) March 27, 1987, initial determination (ID) (Order No. 32) granting in part respondents' motion for sanctions against complainants' counsel for breach of protective order.

FOR FURTHER INFORMATION CONTACT: Mitchell W. Dale, Esq. (tel. 202-523-1641) or Jean H. Jackson, Esq. (tel. 202-523-1693), Office of General Counsel, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION: On March 27, 1987, the ALJ issued an ID in the above-captioned investigation ordering that, because of complainants' counsel's inadvertent breach of a Commission protective order, counsel would not be allowed to enter his appearance on the record, examine witnesses, make oral arguments, render objections, or otherwise participate in the oral conduct of the evidentiary hearing in this investigation. The ALJ also recommended that the Commission publish an official reprimand, noting counsel's violation of the protective order and censuring him for his actions. The Commission has officially reprimanded complainants' counsel for his breach of the protective order.

Authority for the Commission's action is contained in §§ 210.37 and 210.53 of the Commission's rules (19 CFR 210.37 and 210.53).

Copies of the ID and all other nonconfidential documents filed inconnection therewith are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E St., NW., Washington, DC, 20436, telephone 202-523-0161. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: May 29, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-12619 Filed 6-2-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-253]

Certain Electrically Resistive Monocomponent Toner and "Black Powder" Preparations Therefor; Decision Not To Issue Questionnaires

AGENCY: U.S. International Trade Commission.

ACTION: Decision not to issue questionnaires.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to issue questionnaires pursuant to a request, certified to the Commission by Order No. 14 of the presiding administrative law judge (ALJ), made in a joint motion of complainant Aunyx Corp. and the Commission investigative attorney (IA).

FOR FURTHER INFORMATION CONTACT: Edwin J. Madaj, Jr., Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0148.

SUPPLEMENTARY INFORMATION: On April 7, 1987, the ALJ issued an order (Order No. 14) granting the joint motion of complainant Aunyx and the IA seeking an order requesting the issuance of questionnaires by the Commission in this investigation and certifying the order to the Commission. The questionnaires are proposed to be issued to 525 dealers of the respondents (Canon, Inc. and Canon, U.S.A., Inc.) and to 66 manufacturers of photocopy machines and toner, in order to gather data alleged to be relevant to the antitrust issues presented in this investigation. Respondents opposed the motion.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Part 210 of the Commission rules (19 CFR Part 210).

Copies of the Commission's Action and Order and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: May 22, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-12623 Filed 6-2-87;8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 701-TA-282 (Final) and Investigations Nos. 731-TA-351 and 353 (Final)]

Certain Forged Steel Crankshafts From Brazil, the Federal Republic of Germany, and the United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with these investigations and with countervailing duty investigations No. 701-TA-282 (Final), and clarification of the notice of institution of investigation No. 701-TA-282 (Final).

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-351 and 353 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the Federal Republic of Germany and the United Kingdom of certain forged steel crankshafts, provided for in items 660.67 of the Tariff Schedules of the United States, that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV).The Commission also hereby gives notice of the scheduling of a hearing in connection with these investigations and with countervailing duty investigation No. 701-TA-282 (Final), Certain Forged Steel Crankshafts from Brazil, which the Commission instituted effective February 19, 1987 (52 FR 5200, February 19, 1987). The schedules for investigation 701-TA-282 (Final) and for the subject antidumping investigations will be identical, pursuant to Commerce's extension of its final countervailing duty determination (52 FR 7286, March 10, 1987). Commerce will make its final LTFV determinations and its final countervailing duty determination in these cases on or before July 21, 1987. Accordingly, the Commission will make its final injury determinations by September 9, 1987 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673(b))).

For further information concernng the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, Part 207, subparts A and C (19 CFR Part 207), and Part 201, subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: May 13, 1987.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202-523-7914), Office of Investigations U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002. Information may also be obtained via electronic mail by calling the Office of Investigations' remote bulletin board system for personal computers at 202-523-0103. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-523-0161.

SUPPLEMENTARY INFORMATION: Background.—These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain forged steel crankshafts from the Federal Republic of Germany and the United Kingdom are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). These investigations were requested in a petition filed on October 9, 1986, by the Wyman-Gordon Company, Worcester, MA. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (51 FR 44537, December 10, 1986).

Participation in these investigations.—Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearances. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to these investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff report.—A public version of the prehearing staff report in these investigations will be placed in the public record on July 20, 1987, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing.—The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on August 4, 1987, at the U.S. International Trade Commission Building, 701 E Street NW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on July 23, 1987. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on July 23, 1987, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is July 30, 1987.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written submissions. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR § 207.22). Posthearing briefs must conform with the provisions §207.24 (19 CFR 207.24) and must be submitted not later than the close of business on August 10, 1987. In addition, any person who has not entered an appearance as a party to

these investigations may submit a written statement of information pertinent to the subject of the investigations on or before August 10, 1987.

A signal original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: May 26, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-12622 Filed 6-2-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-255]

Certain Garment Hangers; Receipt of Initial Determiantion Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondents on the basis of a consent order agreement: Kaung Kai Industrial Co., Ltd. (Kaung Kai).

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on May 28, 1987.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

Written Comments: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accent the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.

Issued: May 28, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-12620 Filed 6-2-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-244]

Certain Insulated Security Chests; Commission Decision; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of the presiding administrative law judge's (ALJ's) initial determination (ID) granting a joint motion to terminate one respondent on the basis of a settlement agreement and the remaining respondents based on withdrawal of the complaint with respect to those respondents.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an ID (Order No. 15) granting a joint motion of complainant John D. Brush & Co. ("Brush") and respondent EP Industrial Co., Ltd. ("EP") to terminate the investigation as to EP on the basis of a settlement agreement, and to withdraw the complaint with respect to the remaining respondent Fedco, Inc., Builder's Emporium, Inc., and Handyman, thus terminating the investigation.

FOR FURTHER INFORMATION CONTACT: Edwin J. Madaj, Jr., Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-523-0148.

SUPPLEMENTARY INFORMATION: On May 6, 1987, the ALJ issued an ID granting a joint motion to terminate respondent EP on the basis of a settlement agreement previously submitted to the Commission, and to terminate respondents Fedco, Inc., Builder's Emporium, Inc., and Handyman on the basis of Brush's withdrawal of the complaint with respect to those respondents. The Commission investigative attorney supported the motion. No petitions for review of the ID, Government agency comments, or public comments regarding the ID were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rules 210.53-55 (19 CFR 210.53-55).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-1626.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

By order of the Commission.

Issued: May 29, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-12618 Filed 6-2-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30879]

Staten Island Rapid Transit Operating Authority; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of petition filing and institution of proceeding.

SUMMARY: Staten Island Rapid Transit Operating Authority has filed a petition under section 1, First of the Railway Labor Act seeking a Commission determination that it is no longer a carrier within the meaning of that section (45 U.S.C. 151, First).

DATES: Comments are due July 6, 1987. Parties who have already replied need not reply again. Petitioner's rebuttal argument is due July 27, 1987.

ADDRESSES: Contact petitioner's representative for a copy of the petition. Send pleadings referring to Finance Docket No. 30879 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Edward D. Greenberg, Galland, Karasch, Morse & Garfinkle, P.C., 1054 31st., NW., Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245.

Dated: May 27, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-12453 Filed 6-2-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31045]

Connecticut Central Railroad Co.; Filing of Exemption To Operate Certain Lines in the State of Connecticut

Connecticut Central Railroad Company (CCR) has filed a notice of exemption to operate the following lines in Middlesex County, CT, totaling approximately 17.4 miles: (1) The Middletown Secondary Track from a point approximately 4,330 feet south of the centerline of Route 157—Overhead Bridge Nol 17.71 in Reed's Gap, Durham Township (approximately milepost 15.0) to the west side of the Connecticut River Swing Bridge (approximately milepost 22.3); (2) the Portland Industrial Track from the west side of the Connecticut River Swing Bridge, its connection to the Middletown Secondary in Middletown (approximately milepost 0.0) to the easterly side of Marlboro Street in Portland (approximately milepost 0.9); (3) the Laurel Industrial Track from its connection to the Middletown Secondary on the west side of the Connecticut River Swing Bridge (approximately milepost 0.0)—south along the west side of the Connecticut River to the end of the line in Laurel, Middletown Township (approximately milepost 5.5); (4) the Cromwell Industrial Track from its connection to the Laurel Industrial Track at milepost 0.0 in Middletown (approximately milepost 16.2) north along the west side of the Connecticut River to the end of the line in Cromwell (approximately milepost 13.7); and (5) the East Berlin Industrial Track in Middletown from its point of connection to the Cromwell Industrial Track at milepost 16.05 (approximately milepost 0.0) to the end of the line (approximately milepost 1.2). The involved lines, purchased by the State of Connecticut from Consolidated Rail Corporation (Conrail) on March 26, 1987, were abandoned pursuant to Docket No. AB-169 (Sub-No. 962N), *Conrail Abandonment of the Middletown Secondary Track, et al.* Conrail will grant CCR trackage rights to operate for the purpose of winter interchange over that portion of Conrail's Middletown Secondary from point of connection with the State's line at approximately milepost 15.0, south to the Cedar Hill Yard Lead Track at milepost 4.8, then over Conrail's Cedar Hill Yard Track to a point approximately 500 feet south of the southernmost end of Cedar Hill Yard at approximately milepost 1.75, a total distance of approximately 13.25 miles. Any comments must be filed with the Commission and served on John D. Heffner, Gerst & Heffner, 1133 15th Street NW., Suite 1100, Washington, DC 20005.[1]

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: May 29, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-12680 Filed 6-2-87; 8:45 am]

BILLING CODE 7035-01-M

[1] The Railway Labor Executives' Association (RLEA) filed an unsupported request for labor protection, claiming that this transaction is subject to the mandatory labor protection provisions of 49 U.S.C. 11347. Since this transaction involves an exemption from 49 U.S.C. 10901, only a showing of exceptional circumstances will justify the imposition of labor protective conditions. The request is denied, because the requisite showing has not been made. *See Class Exemption—Acq. & Oper. of R. Lines under 49 U.S.C. 10901, 1 I.C.C.2d 810 (1985).*

[Docket No. AB-10 (Sub-No. 43X)]

Norfolk and Western Railway Co.; Exemption; Abandonment in Tazewell County, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Commission exempts the Norfolk and Western Railway Company (NW) from the requirement of prior approval under 49 U.S.C. 10903 *et seq.* to abandon a 19-mile line of railroad between Minier and Morton, Tazewell County, IL, subject to the employee protective conditions in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979), and to a 180-day public use condition.

DATES: This exemption will be effective on July 6, 1987. Petitions to stay must be filed by June 18, 1987. Petitions for reconsideration must be filed by June 29, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-10 (Sub-No. 43X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Robert J. Cooney, Norfolk Southern Corporation, 204 South Jefferson Street, Roanoke, VA 24042-0069.

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 (202) 289-4357.

Decided: May 26, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-12512 Filed 6-2-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; Wholesale Oil Co.

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on April 29, 1987, a proposed consent decree in *United States* v. *Wholesale Oil Company,* Civil Action No. 85 C 6993, was lodged with the United States District Court for the

Northern District of Illinois. The proposed consent decree resolves a judicial enforcement action brought by the United States against Wholesale Oil Company for violations of the Clean Air Act.

The proposed consent decree requires Wholesale Oil Company to pay a civil penalty of $125,000. Wholesale Oil Company is required to pay $10,000 within 60 days of the entry of the consent decree and $9,000 every six months until the penalty is paid in full. The proposed decree also requires Wholesale Oil Company to pay stipulated penalties if it fails to make a timely payment of the civil penalty.

The proposed consent decree may be examined at the office of the United States Attorney, 219 South Dearborn Street, Chicago, Illinois and at the office of the Investigation and Enforcement Branch, United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Copies of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

F. Henry Habicht II,

Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 87-12594 Filed 6-2-87; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standard Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (26 U.S.C. 656) will meet on June 9, 10, 1987 in Room C2318 Francis Perkins Buildings, Department of Labor, Washington, DC. The meeting is open to the public and will start at 9:00 am.

The agenda for this meeting is a review of the proposed standards for Scaffolds Used in Construction, Fall Protection in the Construction Industry, and Safety for Stairways and Ladders used in the Construction Industry. Written data, views or comments may be submitted, perferably with 20 copies, to the Division of Consumer Affairs. Any such submissions reviewed prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting.

Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear, and brief outline of the content of the presentation.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3647, Third Street and Constitution Avenue, NW. Washington, DC, 20210. Telephone: 202-523-8615.

Official records of the meetings will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 29th day of May, 1987.

John Pendergrass,

Assistant Secretary.

[FR Doc. 87-12598 Filed 6-2-87; 8:45 am]

BILLING CODE 4510-26-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Employee Stock Ownership Plans (ESOP) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 9:30 a.m., Friday, June 19, 1987, in Room S-2217, U.S. Department of Labor Building, Third and Constitution Avenue NW., Washington, DC 20210.

This nine-member work group was formed by the Advisory Council to study various ERISA issues relating to employee stock ownership plans (ESOP'S).

The purpose of the June 19 meeting is to review and discuss public comments made, and statements received on the issue.

Individuals, or representatives of organizations, wishing to address the work group should submit written requests on or before June 15, 1987 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to Charles W. Lee, Jr., Executive Secretary of the Advisory Council, at the above address. Papers will be accepted and included in the record of the meeting if received on or before June 15, 1987.

Signed at Washington, DC this 29th day of May, 1987.

David M. Walker,

Deputy Assistant Secretary for Pension and Welfare Benefits.

[FR Doc. 87-12580 Filed 6-2-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Availability of Records Schedules and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before July 20, 1987. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration,

Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending Approval

1. Department of the Air Force, (N1-AFU-86-7). Facilitative records relating to the development of Intercontinental Ballistic Missiles. The schedule provides for the permanent retention of ICBM program records.

2. Department of the Air Force (N1-AFU-86-46). Records of system change requests for the base level Personnel Data System.

3. Environmental Protection Agency, Office of Research and Development (NC1-412-85-22). Research and development records.

4. Federal Labor Relations Authority (FLRA), Offices of the Executive Director, General Counsel (including regional offices of the FLRA), Administrative Law Judges, Solicitor, Case Management, and the Federal Service Impasses Panel and Foreign Service Impasses Disputes Panel (N1-146-86-1). Administrative records, publications, and case files.

5. Department of Health and Human Services, Social Security Administration, Office of Central Operations (N1-47-86-2). Case files relating to terminated Title II claims with inactive overpayment collections.

6. Department of Health and Human Services, Social Security Administration, Office of Disability (N1-47-87-4). Case files, reports, and administrative records relating to the vocational rehabilitation reimbursement case processing system.

7. Department of Health and Human Services, Public Health Service, Food and Drug Administration (N1-88-87-1). Revised retention periods for Notices of Claimed Investigational Exemptions for Drugs, New Drug Applications, Abbreviated New Drug Applications, Antibiotic Applications, and Drug Master Files.

8. Department of State, Brussels Universal and International Exhibition of 1958, (N1-43-87-1). Facilitative and administrative materials. (Records of historical value are permanent).

9. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms (N1-436-86-2). Revisions to the agency's comprehensive records schedule.

10. Department of the Treasury, Internal Revenue Service, (N1-58-87-4). Individual, corporate and employer tax returns severely damaged in a fire at the Glendale office of the Los Angeles District.

Dated: May 26, 1987.

Frank G. Burke,

Acting Archivist of the United States.

[FR Doc. 87-12595 Filed 6-2-87; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act; David G. Ainley

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permits issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On April 20, 1987, the National Science Foundation published a notice in the **Federal Register** of permit applications received. A permit was issued to the following individual on May 26, 1987: David G. Ainley.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 87-12539 Filed 6-2-87; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Bi-Weekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular bi-weekly notice. P.L. 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 notices of amendments issued, or proposed to be issued from May 11, 1987, through May 20, 1987. The last bi-weekly notice was published on May 20, 1987 (52 FR 18970).

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 it receives a request for a hearing.

Written comments may be submitted by mail to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 4000, Maryland National Bank Building, 7735 Old Georgetown Road, Bethesda, Maryland from 8:15 a.m. to 5:00 p.m. Copies of written comments received may be examined at the NRC Public Document Room, 1717 H Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 6, 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 petitioner'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 fifteen (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 reasonable 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 satisfies 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 hazards consideration, the Commission may issue the amendment and make it immediately 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 petitioner 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 (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, 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)-(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 Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2 and 3 Maricopa County, Arizona

Date of amendment request: May 4, 1987

Brief description of amendment request: The proposed amendments consist of proposed changes to the Technical Specifications (Appendix A to Facility Operating License Nos. NPF-41 for PVNGS, Unit 1, NPF-51 for PVNGS, Unit 2, and NPF-65 for PVNGS, Unit 3).

Technical Specification 2.2 includes Table 2.2-1 which lists a number of reactor protection instrumentation trip setpoint limits. Included in the list are the trip setpoints for the variable overpower trip (VOPT) expressed in terms of settings for band, ceiling and rate. The purpose of the VOPT is to protect the reactor core during rapid positive reactivity excursion events.

Notation (8) of Table 2.2-1 defines band, ceiling and rate. Notation (8) currently states that there are no restrictions on the rate at which the variable overpower trip setpoint can decrease. The proposed change to Table 2.2-1 would provide a lower limit of 5% per second for the rate at which the variable overpower trip setpoint can decrease. In addition, the proposed change would clarify the definition of band by including the words "steady state" with the term "input signal" so that the band would be defined as the amount by which the trip setpoint is above the steady state input signal.

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; (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.

A discussion of the proposed change, as it relates to these standards is presented below.

Standard 1-Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The VOPT reactor trip is credited for providing a reactor trip for several design basis events at PVNGS. Among the events that credit the VOPT as the primary trip are the Control Element Assembly (CEA) ejection events and the CEA withdrawal from low power event. Additionally, the VOPT reactor trip is a backup trip for feedwater line break events. The CEA ejection, CEA withdrawal and feedwater line break events are, in all cases, initiated from steady-state conditions and these events all involve an increase in reactor power from this steady-state condition. Therefore, the rate of decrease of the VOPT trip setpoint is not relevant to any of these events. Therefore, the probability or consequences of an accident previously evaluated will not be significantly increased.

Standard 2-Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated

The proposed change to the Technical Specifications is an additional limitation to the downward reset rate of the VOPT trip setpoint. The addition of the words "steady state" in the definition of band given in Table Notation (8) is a clarification which is consistent with the intent of the VOPT trip function. These changes have no adverse impact on the plant operating conditions or characteristics. Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

Standard 3-Involve a Significant Reduction in a Margin of Safety

The bases section of the Technical Specifications states that the VOPT trip function is provided to protect the reactor core in the event of a rapid positive reactivity addition excursion. The decrease rate of the VOPT trip setpoint has no effect on the CEA ejection, CEA withdrawal, or feedwater line break events since all of these events are characterized by power increases from a steady state condition. Therefore, this proposed Technical Specifi-cation change will not involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensees' analysis.

Accordingly, the Commission has proposed to determine that the above change does 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. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2 and 3 Maricopa County, Arizona

Date of amendment request: May 6, 1987

Brief description of amendment request: The proposed amendments consist of a proposed change to the Technical Specifications (Appendix A to Facility Operating License Nos. NPF-41 for PVNGS, Unit 1, NPF-51 for PVNGS, Unit 2, and NPF-65 for PVNGS, Unit 3).

Technical Specification 3.0.3, states in part,

"when a Limiting Condition for Operation is not met, except as provided in the associated action requirements, within 1 hour, action shall be initiated to place the Unit in a mode in which the specification does not apply by placing it, as applicable, in:

1. At least HOT STANDBY within 6 hours,
2. At least HOT SHUTDOWN within the following 6 hours, and
3. At least COLD SHUTDOWN within the subsequent 24 hours."

The proposed amendment would change this part of the specification to read:

1. At least hot standby within 6 hours, and
2. At least cold shutdown within the following 30 hours.

The reason for the proposed change is that a reduction of reactor coolant system (RCS) temperature causes the volume of the water in the RCS to be reduced. In order to keep the pressurizer at its proper level, water has to be added to the RCS, via the positive displacement charging pumps. The charging pumps have a fixed rate of flow which limits the rate of makeup to the RCS, which is less than required to makeup for volume reduction to assure that hot shutdown can be achieved within 6 hours.

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; (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.

A discussion of the proposed change, as it relates to these standards is presented below.

Standard 1-Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change does not alter the current design or operation of the facility. The change is proposed to avoid the possibility of the pressurizer heaters becoming uncovered during cooldown. The charging pumps have a fixed rate of flow which limits the rate of makeup to the RCS. The 6 hour requirement to be in hot shutdown is a time based on a typical reactor coolant system size and pump flow. PVNGS reactor coolant system has a larger volume than other CE designs with the normal charging pump size. Therefore, to cool the PVNGS system down within the current limits of Specification 3.0.3 is not possible if a Unit is in hot standby at full operating temperature and pressure, and one of the three charging pumps is not operating. Changing LCO 3.0.3, as proposed would allow 30 hours to cooldown from hot standby to cold shutdown, which is not an increase over what is presently allowed. The proposed change would provide the flexibility to safely cooldown RCS.

Standard 2-Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated

The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed amendment does not vary, effect or provide any physical changes to the facility. The proposed change would allow plant cooldown from Mode 3 (approximately 565°F) to Mode 5 (approximately 210°F) within the allowable time directed by Specification 3.0.3.

Standard 3-Involve a Significant Reduction in a Margin of Safety

The requested amendment does not involve a significant reduction in a margin of safety because the proposed change does not affect the design basis of the plant. The design basis of the plant requires two of the three charging pumps to be operable. With only two charging pumps operating, makeup water can not be supplied fast enough to allow cooling of the RCS from hot standby to hot shutdown in 6 hours. Since it has been demonstrated that PVNGS cannot meet this requirement under certain conditions, the requested change would allow a safe RCS cooldown while preserving the 30 hours required to cooldown from hot standby to cold shutdown. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The staff has reviewed the licensees' no significant hazards consideration determination and agrees with the licensees' analysis.

Accordingly, the Commission has proposed to determine that the above change does 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. Arthur C. Gehr, Snell & Wilmer, 3100 Valley Center, Phoenix, Arizona 85007.

NRC Project Director: George W. Knighton

Carolina Power & Light Company, North Carolina Eastern Municipal Power Agency, Docket No. 50-400, Shearon Harris Nuclear Power Plant, Wake County, North Carolina

Date of amendment request: May 14, 1987

Description of amendment request: The amendment would modify Technical Specification (TS) Table 3.3-11, "Radioactive Liquid Effluent Monitoring Instrumentation," by adding an action statement to the Secondary Waste Sample Tank Discharge Monitor to allow continuous, as well as batch, release of secondary waste liquid effluents. TS Table 4.3-8, "Radioactive Effluent Monitoring Instrumentation Surveillance," would also be modified by adding a monthly source check requirement of the Secondary Waste Sample Tank Discharge Monitor when the Secondary Waste System is in the continuous release mode. Moreover, TS Table 4.11-1, "Radioactive Liquid Waste Sampling and Analysis Program," would be modified to identify the required sampling and analysis of liquid effluent when the Secondary Waste Water System is in the continuous release mode.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license 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 change would allow continuous, as well as batch, release of secondary waste liquid effluents and involve procedural changes associated with the release of the above cited effluents. These procedural changes and the continuous release of these liquid effluents would not change the consequences of any previously analyzed accident because the only change is the method of release. Moreover, the monitoring instrumentation associated with the release of these effluents is not used in the initiation or mitigation of previously analyzed accidents. The licensee concluded that the proposed amendment does not involve a significant increase in the probability or consequences of accidents previously evaluated and the staff concurs.

The proposed amendment to allow the provision to continuously release the liquid effluent would not create a new or different accident not previously considered because the only change is the method of release. The licensee concluded that the proposed change, does not create the possibility of a new or different kind of accident from any accident previously evaluated and the staff concurs.

Because the liquids being released by the batch or the continuous release mode are the same liquids, the staff concurs with the licensee's conclusion that proposed amendment does not involve a significant reduction in a margin of safety.

Accordingly, the Commission proposes to determine that this change does not involve a significant hazards consideration.

Local Public Document Room location: Richard R. Harrison Library, 1313 New Bern Avenue, Raleigh, North Carolina.

Attorney for Licensee: Thomas A. Baxter, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company, Docket No. 50-373 and 50-374, La Salle County Station, Unit 1 and 2, La Salle County, Illinois

Dates of amendments request: January 19, 1987 and as supplemented by letter dated February 24, 1987

Description of amendments request: The proposed amendments to Operating

License No. NPF-11 and Operating License No. NPF-18 would revise the La Salle Units 1 and 2 Technical Specifications to allow the continued operation of one unit for a period of seven days, while the common plant Division 1 diesel generator, "0", is out of service for the performance of certain Technical Specification (TS) surveillance requirements, without requiring:

1. The offsite A.C. electrical power sources and other operable diesels to be tested immediately and every eight hours, thereafter.

2. The operating unit to be shutdown after 72 hours when the "0" diesel generator is taken out of service for performance of the above surveillances.

These TS surveillances requirements are: TS 4.8.1.1.2d.1 which involves disassembly and inspection of the diesel generator, and TS 4.8.1.1.2f.1, which involves draining and cleaning of the diesel fuel oil storage tank.

These changes would only be applied to cases involving pre-planned preventative maintenance activities. Experience has shown that performance of either surveillance requirement 4.8.1.1.2d.1 or 4.8.1.1.2f.1 requires longer than the 72 hours which is allowed by the present Technical Specifications.

The licensee has concluded that the proposed changes will not endanger the health and safety of the public provided that the following conditions are met before the "0" diesel generator is taken out of service for completion of either surveillance requirement 4.8.1.1.2d.1 or 4.8.1.1.2f.1:

1. One of the units must be in cold shutdown, refueling or defueled.

2. Within 48 hours prior to removing the "0" diesel generator from service, surveillance required by TS 4.8.1.1.1a and TS 4.8.1.1.2a.4 must be successfully completed for the offsite power circuits and for the "1A" and "2A" diesel generators. These TSs determine operability of the diesel generators and verify the diesels can start from ambient conditions.

3. No maintenance is performed on the offsite power circuits or the "1A" and "2A" diesel generators while "0" diesel generator is out of service. This will be controlled by a procedure to be written prior to invoking the Technical Specification change.

4. Technical Specification surveillance requirement 4.8.1.1.1a is performed daily to determine correct breaker alignment and indicated power availability.

5. The control circuit for the unit cross-tie circuit breakers between buses 142Y and 242Y are temporarily modified to allow the breakers to be closed with a diesel generator feeding one of the buses. A procedure will be in place for administering this cross-tie. This cross-tie procedure for circuit breakers will control the loads carried on the two buses to ensure the diesel generator does not become overloaded from non-essential loads. This ensures sufficient margin to carry the engineering safety feature design loads and ensures the design basis for the Final Safety Analyses Report accident analysis is maintained.

In the event that the above conditions cannot be met, the appropriate Technical Specification action statement requirements will be met.

In addition, the licensee is requesting the deletion of temporary Technical Specifications. These temporary changes are no longer required.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no significant hazards consideration exists as stated 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 an accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined, and the NRC staff agrees, that the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated because in the event of a loss of offsite power with the "0" diesel inoperable for this period sufficient onsite power is available that even with a single active failure the operating unit can be safely shutdown.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated because emergency power is still available to those systems required to mitigate accidents evaluated in the Final Safety Analysis Report.

3. Involve a significant reduction in the margin of safety because the probability of a loss of offsite power, in addition to a remaining diesel generator failure occurring during this period of surveillance, is sufficiently small to reasonably assure the health and safety of the public.

Accordingly, the Commission proposes to determine that the proposed changes to the Technical Specifications involve no significant hazards considerations.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Attorney for licensee: Isham, Lincoln and Beale Suite 840, 1120 Connecticut Avenue, NW., Washington, DC 20036

NRC Project Director: Daniel R. Muller

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of amendment request: March 6, 1987, as supplemented May 1, 1987

Description of amendment request: The proposed amendment would revise the Fermi-2 Operating License No. NPF-43 Plant Technical Specification to delete fire protection requirements from the Technical Specifications as recommended by NRC Generic Letter 86-10 entitled, "Implementation of Fire Protection Requirements," dated April 24, 1986. The fire protection requirements would be transferred from the Technical Specifications to the Fermi-2 Final Safety Analysis Report (FSAR) and thus fire protection reporting, commitments and program changes would be transferred from the jurisdiction of 10 CFR 50.73 and 10 CFR 50.90 to 10 CFR 50.59 and 10 CFR 50.71(e), respectively.

The change would also amend License Condition 2.C(9) of Operating License No. NPF-43 to substitute subitems (a), (b) and (c) with the license condition wording stated in Generic Letter 86-10, and delete subitem (d) since all actions related to the independent alternate shutdown system installation and operation have been completed by the licensee.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether no 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 any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has determined that the proposed amendment to Operating License No. NPF-43 and the Technical Specifications, deleting the fire

protection requirements currently specified therein:

1. does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed change does not involve a physical modification to the plant, or a change to any safety system, or a change in the fire protection program accepted by the Commission prior to plant licensing. The administrative concept, recommended in Generic Letter 86-10, of concurrently removing the fire protection requirements from the Plant Technical Specifications and incorporating them into the Fermi-2 FSAR will also not affect or have any impact on the functioning of the fire protection program, which will continue to be maintained. In addition, the proposed change will not conflict with the requirements of the plant's operating license.

2. does not create the possibility of a new or different kind of accident from any accident previously evaluated because, as is stated in Item 1. above, the proposed change is administrative in nature and will not affect the plant accident analyses documented in the FSAR, or the operation or the functions of any safety-related plant equipment. The fire protection program found acceptable by the Commission prior to issuance of the Fermi-2 operating license will continue to be maintained.

3. does not involve a significant reduction in the margin of safety because the incorporation of the fire protection requirements into the Fermi-2 FSAR will not decrease the level of fire protection in the plant. In effect, the proposed change would increase the margin of safety since all fire protection requirements and related FSAR commitments would be contained in a single document ensuring the uniform enforcement of the fire protection requirements. Any future fire protection requirement change would continue to be evaluated in accordance with the provisions of 10 CFR 50.59.

The Commission agrees with the licensee's determinations and proposes to determine that the requested amendment to the Operating License and Technical Specifications 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., Detroit Edison Company, 2000 Second Avenue, Detroit, Michigan 48226.

NRC Project Director: Martin J. Virgilio, Acting

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: April 1, 1987

Description of amendment request: The Unit No. 2 Technical Specifications currently contain tables which identify safety-related hydraulic snubbers and safety-related mechanical snubbers. The snubbers ensure that the structural integrity of the reactor coolant system and all other safety-related systems is maintained during and following a seismic or other event initiating dynamic loads.

The Commission issued Generic Letter 84-13 entitled "Technical Specifications for Snubbers" on May 3, 1984. The Generic Letter stated that the staff reassessed the inclusion of snubber listings within the technical specifications and concluded that such listings are not necessary provided the snubber technical specification is modified to specify which snubbers are required to be operable. The licensee proposes to: (1) delete Table 3.7-2a which identifies safety related hydraulic snubbers and Table 3.7-2b which identifies safety-related mechanical snubbers; (2) modify the technical specification wording in various locations to state safety-related snubbers are required to be operable; (3) maintain the actual listings in a separate document, and (4) implement any changes in snubber quantities, types or locations as a change to the facility under the Commission's regulation 10 CFR 50.59.

In addition to the above changes, the licensee also proposed to remove a snubber related requirement that is outdated. This change would delete the first inservice visual inspection requirement which has already been fulfilled.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards considerations exists as stated 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 licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis:

The changes being proposed by FPL are administrative; they do not affect assumptions contained in plant safety analyses, nor do they affect Technical Specifications that do preserve safety analysis assumptions. Safety related snubbers will continue to be controlled and surveilled according to Technical Specifications. Changes in snubber quantities, types, or locations would be a change to the facility and would be adequately controlled per the provisions of 10 CFR 50.59. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

In connection with the second standard, the licensee states that:

. . . the changes being proposed by FPL are administrative; they will not lead to physical modifications. These changes do not add to, delete from, the total number of plant snubbers available to provide dynamic load support during and following a seismic event or other initiating dynamic loads. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

Regarding the third standard, the licensee states that:

. . . the changes being proposed by FPL are administrative; they do not modify the safety margins defined in and maintained by the Technical Specifications. The NRC has concluded that snubber listings are not necessary provided the snubber Technical Specification specifies which snubbers are required to be OPERABLE. The snubber LCO has been clarified to show that all safety related snubbers must be OPERABLE. This change does not involve a significant reduction in a margin of safety since: 1) the LCO clearly specifies which snubbers are required to be OPERABLE, and 2) the snubber listing will be maintained via controlled documents.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based on this review, we agree with the licensee that the proposed amendment does not involve an increase in the probability or consequences of events previously evaluated and that the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated. Likewise, the margin of safety will not be reduced.

The listing of safety-related snubbers in the Technical Specifications will be moved to another document and controlled under 10 CFR 50.59. The proposed technical specifications make it clear that safety-related snubbers are required to be operable. In addition, the removal of an outdated requirement is administrative in nature.

Based upon the above discussion, the staff proposes to determine that the

proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Lester S. Rubenstein

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Dates of amendment request: February 6, 1987 and May 8, 1987

Description of amendment request: The amendment request dated February 6, 1987 was previously noticed (52 FR 9568, March 25, 1987). The licensee's request of February 6, 1987, proposed to reduce the Technical Specification (TS) limits on the sodium pentaborate solution in the Standby Liquid Control System (SLCS) to reflect the use of sodium pentaborate enriched in the isotope Boron-10. During its preliminary review, the staff concluded that the revised TS limits proposed by the licensee were acceptable, but that the TS needed to be further revised to require a periodic check of the isotope concentration of Boron-10 in the sodium pentaborate solution. This matter was discussed with representatives of the licensee and, on May 8, 1987, the licensee supplemented its initial request by proposing to add an additional surveillance requirement to TS 4.4.A.2 which requires that prior to startup for each operating cycle, the sodium pentaborate enrichment be analyzed to verify that it is within prescribed limits.

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 new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The additional TS change merely provides added assurance that the sodium pentaborate solution contains an adequate quantity of Boron-10 for the SLCS to accomplish its designed function. It therefore does 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.

Therefore, the Commission has made a proposed determination that the amendment application does not involve a significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 M Street, NW., Washington, DC 20037

NRC Project Director: B.J. Youngblood

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: March 27, 1987

Description of amendment request: The amendment would modify the differential pressure instrument setpoints for the core spray sparger in the Unit 1 and Unit 2 Technical Specifications (TS) to "less than or equal to 3.1 psid greater (less negative) than the normal indicated pressure differential at rated core power and flow." This would be a new setpoint for the Unit 1 TS which currently do not have a setpoint, and a change to the setpoint value given in the current Unit 2 TS. The differential pressure instrumentation provides no trip function, but alarms to alert the plant operators to a possible break in the core spray sparger piping. A footnote would be added to the table in which the setpoint value appears in the Unit 1 TS to inform the operators that the instrumentation provides an alarm function only. The footnote also adopts an action statement, equivalent to that in the Unit 2 TS, which requires monitoring of the differential pressure every 12 hours if the instrumention is inoperable.

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 new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed setpoint change does not involve a significant increase in the probability or consequences of an accident, because the revised setpoints for both units were determined based on the differential pressure change which would occur in the event of a break in the core spray sparger piping. The setpoints include appropriate margins to the analytical limits. With the revised alarm setpoints, the core spray differential pressure instrumentation in both Unit 1 and Unit 2 will continue to fulfill its design function. Changing the Specification to correspond to a single operating condition (rated power and flow) does not involve a significant increase in the probability or consequences of an accident because it simply clarifies the word "normal" in the current Unit 2 specification. Also, adding an action requirement to the Unit 1 TS which will call for monitoring the CS differential pressure every 12 hours if the instrumentation is inoperable will not significantly increase the probability or consequences of an accident. The instrument performs no control or initiation function, but only provides an alarm to indicate a possible loss of integrity in the core spray sparger piping. If the differential pressure can be verified to be within limits with the instrumentation inoperable, the unit can continue to operate in a safe manner.

The possibility of a different kind of accident from any analyzed previously is not created by these changes, since the design function of the system, as described in the FSAR, is not affected. The instrument performs an alarm function only.

Margins of safety are not significantly reduced by the changes because revising the setpoint and clarifying the wording in the TS will still ensure that a break occurring within the core spray sparger piping will be detected (within the capabilities of the instrumentation). The occurrence of false alarms will be reduced.

Based on the above, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 M Street, NW., Washington, DC 20037

NRC Project Director: B.J. Youngblood

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: May 1, 1987

Description of amendment request: The amendment would modify the Technical Specifications (TS) to add a generic methodology to accommodate utilization of additional monitored gaseous effluent release points.

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 any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes to the TS would allow the licensee to augment existing ventilation systems at Plant Hatch by using temporary monitored release points for gaseous effluents. Use of these temporary monitored release points would enable the licensee to reduce excessive temperatures and noble gas concentrations within work areas at Plant Hatch, while still maintaining total gaseous effluent releases from the plant within the limits allowed by Appendix I to 10 CFR Part 50.

The licensee has indicated that the proposed changes do not involve a significant increase in the probability or consequences of an accident because the changes have no effect on the consequences of a postulated steam line break outside containment or a radwaste accident since the present analysis in the FSAR assumes that all releases are ground level and unfiltered. Further, the possibility of a different kind of accident from those analyzed previously is not created by these changes, since the design function of systems, as described in the FSAR, is not affected. Margins of safety are not significantly reduced by the changes because the applicable design basis accidents assume a ground level, unfiltered release. The changes do not adversely affect this assumption because they only provide for additional, monitored release pathways during normal operation.

On the basis of the above, we conclude that the proposed changes do not (1) increase the probability or consequences of accidents previously evaluated, (2) create the possibility of a new or different kind of accident, or (3) involve a reduction in the margin of safety. Therefore, we propose to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Attorney for licensee: Bruce W. Churchill, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 M Street, NW., Washington, DC 20037

NRC Project Director: B.J. Youngblood

Indiana and Michigan Electric Company, Docket Nos. 50-315, and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendments request: March 26, 1987 (Partial)

Description of amendments request: The amendments would revise the Technical Specifications for Unit 1 consistent with changes that were previously made for Unit 2 by license Amendment No. 82 (51 FR 20379). These include changes to the shutdown margin; changes to the required refueling water storage tank (RWST) and boric acid storage tank (BAST) volumes; modifications to the pressurizer power operated relief valve (PORV) specification; removal of references to 3-loop operation in Modes 1 and 2; simplifications to the power distribution specifications, including removal of references to the axial Power Distribution Monitoring System; clarification of the Differential Pressure Between Steam Lines-High signal, including additional modes for the nuclear instrumentation power range detectors; addition of specification 4.0.5 exclusions to applicable specifications; adding footnotes to clarify the meaning of positive reactivity additions and boron dilutions with regards to the RWST; relaxation of the auxiliary feedwater discharge pressure requirements; and other miscellaneous changes.

The amendments also would revise the Technical Specifications for Units 1 and 2 to add requirements for a Peaking Factor Limit Report; decrease the minimum required reactor coolant system flowrate for dilution and Mode 6 operation from 3000 to 2000 gpm; achieve consistency between units by adopting the more conservative of various requirements; remove temporary requirements no longer in effect; clarify the Physics Tests Special Test Exception with regards to Power Range Neutron Flux low and high setpoints; and enhance the consistency of the specifications with regards to reactor coolant pump requirements.

The remaining items from the licensee's March 26, 1987 submittal were the subject of a separate action noticed on May 6, 1987 (52 FR 16949).

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazard consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration 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, (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, in the letter dated March 26, 1987, has performed a detailed analysis of all the proposed changes to the above criteria. The staff has reviewed the licensee's analysis and agrees with the licensee's conclusions that the proposed changes involve no significant hazards consideration. Many of the proposed changes are similar or equal to changes previously found acceptable on one of the Units. Some of the proposed T.S. revisions are comparable to changes which the NRC has previously determined appropriate and which are reflected in the current Westinghouse Standard Technical Specifications.

On the basis of the above, the staff proposes to determine that the proposed technical specification changes do not involve a significant hazards consideration.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Mississippi Power & Light Company, System Energy Resources, Inc., South Mississippi Electric Power Association, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: April 8, 1987

Description of amendment request: The proposed amendment would delete Operating License Condition 2.C.(20) regarding the standby service water (SSW) system for the Grand Gulf Nuclear Station, Unit 1 (GGNS-1). Operating License Condition 2.C.(20) prohibits placement of irradiated fuel in the GGNS-1 spent fuel storage pool prior to completion of modifications to either loop A or loop B of the SSW system and verification that the design flow can be achieved to all essential SSW system components in the modified loop. Certain provisions for a core off-loading prior to completion of system modifications are provided in the license condition. The license condition also requires that until SSW loops are modified, the spent fuel pool cooler in an unmodified loop shall be isolated from the loop by locked closed valves or the loop shall be declared inoperable. The position of these valves are required to be verified every 31 days until the design flowrate for the SSW loop is demonstrated.

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 request for a license amendment. The licensee has concluded, with appropriate bases, that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards considerations.

The Commission has also provided guidance concerning the application of these standards by providing examples of amendments considered likely, and not likely, to involve a significant hazards consideration. These were published in the **Federal Register** on December 3, 1986 (51 FR 7744). The NRC staff has made a preliminary review of the licensee's submittal. A discussion of one example as it relates to the proposed amendment follows.

One of the examples of actions involving no significant hazards consideration is (v) which involves a relief granted from an operating restriction that was imposed because the construction was not yet completed satisfactorily. Example (v) involves only restrictions where it is justified that the construction has been satisfactorily completed. The proposed deletion of Operating License Condition 2.C.(20) is similar to this example. This license condition was imposed because preoperational tests of the standby service water (SSW) system showed that some essential equipment would not receive design flow if all the components were connected to the system as designed. Since the spent fuel pool coolers would not be required until the first refueling outage, the operating license was conditioned to require that no spent fuel be placed in the spent fuel pool and that spent fuel pool coolers be isolated from the SSW system until modifications were made to the SSW system and tests had verified that design flow could be achieved in all essential components. Modifications to the SSW system were completed during the first refueling outage in the fall of 1986, including installation of larger SSW pump motors and impellers and the cleaning and modification of small diameter piping to certain room coolers. Prior to restart from the first refueling outage, flowrates to the SSW system components were measured and found to be acceptable with all components connected to the system as designed.

Accordingly, for the reasons cited above, the Commission proposes to determine that the proposed deletion of Operating License Condition 2.C.(20) does not involve a significant hazards consideration.

Local Public Document Room location: Hinds Junior College, McLendon Library, Raymond, Mississippi 39154

Attorney for licensee: Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Lester S. Rubenstein

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: April 28, 1987

Description of amendment request: The proposed amendment would modify the list of containment isolation valves and the requirements included in Table 3.7.1 of the Millstone Technical Specifications. A new paragraph would also be added to the Technical Specifications Bases, Section 4.7.D relevant to the proposed changes.

Basis for proposed no significant hazards consideration determination: The proposed changes would update Table 3.7.1 to reflect modifications that have been made to the plant. The revised table would include not only valves that receive a containment isolation signal but also check valves and valves opened during power operation for testing and/or sampling purposes. The proposed changes are presented in a new Table 3.7.1 format containing a section listing automatic isolation valves, as in the currently approved table, and a new additional section listing remote manual isolation valves.

The five group 1 items listed in Table 3.7.1 would remain unchanged except to rename the two recirculation valves, SM1 and SM2 changed to RR36 and RR37.

The number of group 2 isolation valve identities would increase from 11 to 23 and the normal position for the drywell floor and equipment drain valves would change from open to closed and stay closed on activation instead of go closed as currently specified.

The number of group 3 isolation valve identities would increase from 7 to 8 with the addition of a bypass valve around CU-2.

The number of group 4 items would increase from 8 to 17. Control rod hydraulic return check valves would be removed from the existing list and the position for the check valves would be changed from "open" to "not applicable."

The proposed additional paragraph to the Technical Specification Bases, Section 4.7.D would clarify the intent of Table 3.7.1

The licensee has reviewed the proposed changes pursuant to 10 CFR 50.59 and has determined that they do not constitute an unreviewed safety question. The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety (i.e., safety-related) previously evaluated in the Final Safety Analysis Report would not be increased. The possibility for an accident or malfunction of a different type than any evaluated previously in the Final Safety Analysis Report has not been created. There would not be a reduction in the

margin of safety. These proposed changes do not result in physical changes to the plant or changes in the way the plant is operated. The proposed changes would add new valves to the table that identifies primary containment isolation valves. The two valves to be deleted from the table are both check valves that are no longer in service.

The licensee has reviewed the proposed changes, in accordance with 10 CFR 50.92, and has concluded that they do not involve a significant hazards consideration in that these changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. There are no physical changes to the plant as a result of the proposed changes, therefore, previously analyzed accidents are not affected.

2. Create the possibility of a new or different kind of accident from any previously analyzed. There are no changes in the way the plant is operated, therefore, the potential for an unanalyzed accident is not created.

3. Involve a significant reduction in a margin of safety. Adding additional valves to Table 3.7.1 imposes more restrictive surveillance requirements for primary containment isolation valves. Since this change imposes an additional surveillance requirement, it does not reduce the margin of safety as specified in the bases of any Technical Specification. The two valves deleted from Table 3.7.1., CRD valves 301-95 and 301-98, are no longer in service.

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). The changes proposed herein are enveloped by example (ii), a change that constitutes an additional control not presently included in the Technical Specifications, in that the addition of valves to Table 3.7.1 constitutes an additional control as the valves will fall under the surveillance requirement for all primary containment isolation valves. The changes involving the deletion of CRD valves 301-95 and 301-98 from Table 3.7.1 as discussed above, most closely resemble example (i), a purely administrative change to Technical Specifications, justified by the fact that these valves are no longer in service.

Based on the information provided by the licensee, the staff proposes to determine that the licensee's 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: Cecil O. Thomas.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of amendment request: May 12, 1987, as supported by April 12, 1985 submittal.

Description of amendment request: The amendment would revise the technical specifications by updating the plant heat up and cool down curves to reflect the most recent reactor vessel material surveillance capsule examination and analysis.

Basis for proposed no significant hazards consideration determination: The proposed changes would revise the pressure-temperature limits and the maximum allowable heat up and cool down rates for the reactor coolant system. The current limitations are valid to a corrected value of 11.7 effective full power years (EFPY). The proposed increase in the EFPY to 16 EFPY is necessary because of the predicted shift in fluence values. The new limits have been calculated using data obtained from surveillance capsules (removed from the MP-1 reactor vessel in May 1984) that contained flux wires for neutron fluence measurements and Charpy and tensile test specimens for reactor vessel material property evaluation. The new limits reflect the predicted radiation-induced embrittlement of the reactor vessel through 16 EFPY based on measurements. The current limit of 11.7 EFPY could be attained by mid-summer 1987 if delays in the scheduled June 1987 refueling outage should occur.

Pressure-temperature limits are required by 10 CFR Part 50 Appendix G, "Fracture Toughness Requirements," to provide adequate margins of safety during any condition of normal operation, including anticipated operational occurrences. These limits depend upon the metallurgical properties of the reactor vessel materials. The vessel beltline region material properties change over the lifetime of the vessel due to the effects of neutron irradition. The amount of neutron irradiation to which these materials are exposed determines the shift in the material's reference temperature for nil ductility transition (RT_{NDT}) property values. RT_{NDT} is the temperature at which materials exhibit ductile behavior. The shift in this value can be predicted from the results of tests of reactor vessel surveillance specimens and from the calculational methodology of Regulatory Guide 1.99.

The pressure-temperature limits must, therefore, be modified periodically to reflect the vessel's reduced resistance to brittle fracture due to irradiation. This will ensure that stresses in the vessel will be held within acceptable limits.

The licensee has reviewed the proposed changes pursuant to 10 CFR 50.59 and has determined that they do not constitute an unreviewed safety question. The probability of occurrence or the consequences of an accident or malfunction of equipment important to safety (i.e., safety-related) previously evaluated in the final safety analysis report have not been increased. The possibility for an accident or malfunction of a different type than any evaluated previously in the final safety analysis report has not been created. There has not been a reduction in the margin of safety as defined in the bases for any technical specification (TS). The proposed TS changes ensure that the reactor vessel is maintained within its original design tolerances for all unit operations.

The licensee has also reviewed the proposed changes, in accordance with 10 CFR 50.92, and has concluded that they do not involve a significant hazards consideration in that these changes would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated. Since the design basis safety factors have been maintained, there is no such increase in accident or malfunction probabilities. Since this change is an update of the existing operational limits, reflecting increased vessel neutron-induced embrittlement, accident or malfunction consequences are not adversely affected. (2) Create the possiblity of a new or different kind of accident from any previously analyzed. Again, since this change is an update of existing limits without any hardware modifications, no new accidents or malfunctions are created. (3) Involve a significant reduction in a margin of safety. As previously stated, this change will not adversely affect the current margins of safety. Safety margins as defined in the bases of the TS are maintained.

The Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain example (51 FR 7751, March 6, 1986). The changes proposed herein most closely resemble example (ii), a change that constitutes an additional

limitation, restriction or control not presently included in the technical specifications. The proposed heat up and cool down curves are more restrictive than the existing curves. The basis of the new curves is the same as the basis of the current curves, merely updated to reflect an interval of time later in service life of the reactor pressure vessel.

On the basis of the above information, the Commission proposes to determine that the amendment 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: Cecil O. Thomas.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: May 1, 1987

Description of amendment request: The amendment would revise Millstone Unit No. 3 Operating License NPF-49 License Condition 2.C.(6) to extend the latest implementation date for the containment sump water temperature until "prior to start-up following the second refueling outage." The current condition requires implementation "no later than start-up after the first refueling outage."

Basis for proposed no significant hazards consideration determination: According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations 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 previously evaluated; or

(3) involve a significant reduction in a margin of safety.

The current containment sump water temperature instrumentation deviates from the provisions of R.G. 1.97. The justification for this deviation is under review by the staff. If the staff requires modifications to be made, additional time is required to make those modifications. The sump temperature instrumentation is not required to ensure adequate net positive suction head for the ECCS pumps. No automatic or manual actions are initiated based on sump water temperature. The sump water temperature instrumentation is not included in the Technical Specifications or their bases.

The licensee has therefore concluded that the three criteria of 10 CFR 50.92(c) are not compromised and the proposed amendment does not involve a significant hazards consideration. The staff has reviewed the licensee's submittal and agrees with its no significant hazards determination.

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: John F. Stolz

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of amendment request: April 8, 1987

Description of amendment request: The proposed amendment would revise the Susquehanna Steam Electric Station (SSES) Unit 1 Technical Specifications to delete the requirements that the mechanical snubbers' functional test shall verify that "the drag force shall not have increased more than 50% since the last surveillance test."

The licensee states that there is insufficient information to support a linkage between increase in drag force and failures of mechanical snubbers. Additionally, large variations in drag force values of snubbers at Susquehanna Unit 1 make 50% increase in a specific snubber drag force meaningless. The licensee states that the drag force values for the Susquehanna Unit 1 snubbers vary by 500%. The Susquehanna Unit 2 Technical Specifications were approved without any requirement to show that the drag force test values do not increase more than 50%. The licensee concludes that the requirement, that "drag force shall not have increased more than 50% since the last test," is not a useful requirement and should be deleted from the Susquehanna Unit 1 Technical Specifications.

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 concurs with the licensee's evaluation and conclusion that the proposed request does not involve a significant hazards consideration. The staff has also performed an independent evaluation and found that the proposed change:

(1) does not involve a significant increase in the probability or consequences of an accident previously evaluated, because the requested deletion of the requirement will have no significant effect on the reliability of the snubbers' performance;

(2) does not create a possibility of a new or different kind of accident from any accident previously evaluated, because the proposed deletion does not affect the design or operation of snubbers; and

(3) does not involve a significant reduction in a margin of safety, because the requirement being deleted does not play any useful role in maintaining a margin of safety.

Based on the above evaluation, the staff proposes to determine that the requested action does not involve a 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, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Walter R. Butler

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of amendment request: March 31, 1987 as revised by letter dated April 15, 1987

Description of amendment request: The proposed amendment involves a core reload and would permit operation with Westinghouse Vantage 5 (V-5) fuel assemblies in addition to the Westinghouse Low Parasitic (LOPAR) and Optimized Fuel Assemblies (OFA's) remaining in the core during Cycle 3. Design features of the V-5 fuel include assemblies with up to approximately 4.2 weight percent U-235, integral fuel

burnable absorbers, intermediate flow mixers, reconstitutable top nozzles and extended burnup capability. This requires changes to the technical specifications (TS) due to the use of the V5 fuel and use of the following analytical methods: the WRB-2 departure from nucleate boiling (DNB) correlation, the BASH large break loss-of-coolant accident (LOCA) model, the FQ(z) peaking factor, the ANSI/ANS-5.1-1979 decay heat model, and an updated methodology for the calculation of radiological consequences for Chapter 15.0 accidents and transients. Changes to the TS would be made to: reactor core safety limits; overtemperature delta T, overpower delta T and reactor coolant flow allowable values; bases to reflect the WRB-2 DNB correlation; rod drop times; axial flux difference limiting condition for operation (LCO) and Action statements; peaking factor surveillances; DNB parameters; and the volume range for reactor coolant system (RCS) accumulators.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751) of actions not likely to involve a significant hazards consideration. Example (iii) of this guidance states: "For a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable."

The proposed license amendment is directly related to the above example in that the core reload uses V5 fuel which is not significantly different from previous cores at Callaway, the changes to the technical specifications are as a result of the core reload and not because of any significant change made to the acceptance criteria for technical specifications, and the analytical methods used by the licensee in the required reload analyses have been previously found acceptable by the NRC. Therefore, based on the above, the staff proposes to determine that the proposed technical specification changes do not involve a significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: David L. Wigginton, Acting.

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: January 24, 1986, May 13, 1986, June 9, 1986, and January 16, 1987

Description of amendment request: By letters dated January 24, 1986, May 13, 1986, June 9, 1986, and January 16, 1987, the licensee, Vermont Yankee Nuclear Power Corporation, submitted a proposed license amendment for NRC review and approval which would revise the Vermont Yankee Technical Specifications with respect to certain radiological effluent requirements. These changes would:

(1) Specify action to be taken when the plant stack noble gas activity monitor is unavailable.

(2) Clarify location requirements for sample points for airborne iodine and particulate off site air monitoring stations.

(3) Delete confusing definitions for radioactive material and contamination from the Definitions section of Technical Specifications, and require the inclusion of the revision number on each page of the offsite Dose Calculation Manual.

(4) Add a reporting level for CO-60 in sediment samples.

Basis for proposed no significant hazards consideration determination: The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing certain examples (51 FR 7751). One of the examples (ii) of actions not likely to involve a significant hazards consideration is a change which constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications, for example, a more stringent surveillance requirement. As described above, the change specifying the required action when the plant stack noble gas activity monitor is unavailable (item 1) constitutes an additional limitation and control not presently included in the Technical Specifications for Vermont Yankee, and is similar to example (ii). Also, the addition of a reporting level for CO-60 in sediment samples (item 4), constitutes an additional limitation and control not presently included in the Technical Specifications for Vermont Yankee and is similar to example (ii).

Another of the Commission's examples (i) states: A purely administrative change to technical specifications; for example, a change to achieve consistence throughout the technical specifications, correction of an error, or a change in nomenclature. Proposed changes described in items (2) and (3) fall within the envelope of example (i) since the changes would clarify requirements without changing the intention and would remove confusing definitions. These changes would not alter the intention of the existing Technical Specifications but would remove ambiguity, and therefore are similar to example (i).

Accordingly, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of amendment request: April 29, 1987.

Description of amendment request: The amendment request was submitted to reflect personnel and department changes, correct a typographical error and make a minor wording change to clarify the intent of a specification.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. 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 licensee has evaluated the revised personnel titles and organization changes against the standards provided above and has determined that the changes would have no significant hazards consideration because they reflect an improvement in the management of various programs by

increasing the level of detail afforded to them, thereby increasing safety. The staff agrees with this evaluation.

The Commission has provided examples (51 FR 7751) of amendments which are not likely to involve significant hazards considerations. One of these examples, (i), states: "A purely administrative change to the technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature." The proposed correction of a typographical error and minor wording change to clarify the intent of a specification are administrative in nature and therefore are similar to example (i).

Based on the above, the staff proposes to determine that the proposed amendment would involve no significant hazards considerations.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Attorney for licensee: David Baker, Esq. Foley and Lardner, P. O. Box 2193 Orlando, Florida 31082.

NRC Project Director: David L. Wigginton, Acting.

Wolf Creek Nuclear Operating Corporation, Kansas Gas and Electric Company, Kansas City Power & Light Company, Kansas Electric Power Cooperative, Inc., Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: May 15, 1987

Description of amendment request: The proposed amendment request revises Wolf Creek Generating Station (WCGS) Technical Specification Section 6.5.2 to replace the table of qualified technical personnel who are designated as members of the Nuclear Safety Review Committee (NSRC). This table will be replaced with more general wording to specify that the NSRC shall consist of eight members, including the Chairman, from Wolf Creek Nuclear Operating Corporation (WCNOC) organization or from outside organizations. A specific list of NSRC members similar to Technical Specification Section 6.5.2.2 will be maintained in a WCNOC procedure.

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:

This amendment request revises Wolf Creek Generating Station (WCGS) Technical Specification Section 6.5.2.2 to replace the table of qualified technical personnel who are designated as members of the Nuclear Safety Review Committee (NSRC). This table will be replaced with more general wording to specify that the NSRC shall consist of eight members, including the Chairman, from Wolf Creek Nuclear Operating Corporation (WCNOC) organization or from outside organizations. A specific list of NSCR members similar to Technical Specification Section 6.5.2.2 will be maintained in a WCNOC procedure.

Removing this table will reduce the burden on the Nuclear Regulatory Commission (NRC) by eliminating the need to review and issue changes to this Technical Specification when NSRC member's titles change or when the WCNOC organizational structure changes. This will also reduce the burden on Plant Safety Review Committee (PSRC) and NSRC members by eliminating the review of administrative changes to the Technical Specification which in turn will allow additional time for PSRC and NSRC members to review and discuss issues with safety significance. This change retains the NSRC Chairman's flexibility in the appointment of members to the NSRC to allow appointment of either technical or management personnel.

The proposed revision does not involve a significant increase in the probability or consequences of an accident previously evaluated. This change only involves the deletion of a table and, as such, has no effect on plant equipment or the technical qualifications of plant personnel.

The proposed revision does not create the possibility of a new of different kind of accident from any accident previously evaluated. This change does not affect the minimum number of qualifications of personnel in the Wolf Creek Generating Station NSRC, nor does it involve any change to installed plant systems or the overall operating philosophy of Wolf Creek Generating Station.

The proposed revision does not involve a significant reduction in a margin of safety. This change does not adversely effect the amount of time in which NSRC members have to review NSRC matters and therefore will not impact their ability to perform the NSRC duties. Since the effectiveness of the NSRC is not changed, no margin of safety is reduced.

The Commission has provided guidance concerning the application of the standards in 10 CFR 50.92 by providing examples of Amendments that are not likely to involve Significant Hazards Considerations (48 FR 14870). Among those examples are, "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the Technical Specifications, corrections of an error, or a change in nomenclature" and "A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications....".

Based on the above analysis and utilizing the guidance provided by the Commission, it has been concluded that the proposed revision to the Wolf Creek Generating Station Technical Specifications involve no significant hazards considerations.

Based on the previous discussion, the licensee concluded that the proposed amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated; nor create the possibility of a new or different kind of accident from any accident previously evaluated; nor involve a significant reduction in the required margin of safety. The NRC staff has reviewed the licensee's no significant hazards considerations determination and agrees with the licensee's analysis. 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, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Jose A. Calvo

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices because time did not allow the Commission to wait for this bi-weekly notice. They are repeated here because the bi-weekly notice lists all amendments proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Arizona Public Service Company et al., Docket No. STN 50-528, Palo Verde Nuclear Generating Station (PVNGS), Unit 1, Maricopa County, Arizona

Date of amendment request: May 10, 1987, as supplemented May 14, 1987.

Brief description of amendment request: The amendment would change Technical Specification 3/4.11.1, "Secondary System Liquid Waste Discharges to the Onsite Evaporation Pond," to allow the concentrations of Antimony-124 (Sb-124) discharged from the secondary system liquid waste to the onsite evaporation pond to exceed $5X10^{-7}$ uCi/ml for a period not to exceed May 31, 1988. This discharge will be within the limits of 10 CFR 20, Appendix B, Table II, Column 2, concentrations.

Date of publication of individual notice in **Federal Register:** May 19, 1987 (52 FR 18763).

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Arkansas Power & Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of amendment request: May 6, 1987

Brief description of amendment request: The proposed amendment would revise ANO-1 Technical Specification (TS) to allow a one-time waiver from TS 3.8.15 and the related Basis to allow the Auxiliary Building crane to handle a spent fuel shipping cask. The waiver would allow the licensee to ship up to 16 spent fuel pins in a spent fuel shipping cask licensed by the U.S. Department of Energy (DOE) for hot cell examination as a part of the DOE Extended Burnup Program.

Date of publication of individual notice in **Federal Register:** May 14, 1987 (52 FR 18297)

Expiration date of individual notice: June 15, 1987.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Pacific Gas and Electric Company, Docket No. 50-323, Diablo Canyon Nuclear Power Plant, Unit 2, San Luis Obispo County, California

Date of amendment request: May 6, 1987

Brief description of amendment: The proposed amendment would revise the Diablo Canyon Unit 2 License Condition 2.C.(9) to permit the submittal of a plant-specific steam generator tube rupture analysis in April 1988, rather than prior to startup following the first refueling outage.

Date of publication of individual notice in Federal Register: May 12, 1987 (52 FR 17864)

Expiration date of individual notice: June 11, 1987

Local Public Document Room location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407

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.

Carolina Power & Light Company, Docket No. 50-325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of application for amendment: December 16, 1986

Brief description of amendment: Changes the designation of valve 1-CAC-V172 from drywell purge exhaust isolation valve to suppression chamber purge exhaust isolation valve.

Date of issuance: May 15, 1987

Effective date: May 15, 1987

Amendment No.: 107

Facility Operating License No. DPR-71: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 11, 1987 (52 FR 4403)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 1987

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.

Carolina Power & Light Company, Docket No. 50-325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of application for amendment: October 21, 1986, as supplemented March 11, 1987. The March 11, 1987 letter was only a clarification and not a substantive change.

Brief description of amendment: Incorporates revised minimum critical power ratio values in Section 3/4.2.3 and Table 3.2.3.2-1. Revises Table 3.2.3.2-1 to combine the turbine trip/load reject without bypass and the feedwater control failure transients into a single pressurization transient.

Date of issuance: May 15, 1987

Effective date: May 15, 1987

Amendment No.: 108

Facility Operating License No. DPR-71: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** December 3, 1986 (52 FR 43678)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 1987.

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, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: March 24, 1987.

Brief description of amendments: These amendments revise Technical Specification 3/4.7.5 to allow plant operation with the essential service water pump discharge temperature greater than 80°F, but less than 28°F, with no cooling tower fans running. Operation in this condition would be allowed only during the ultimate heat sink cooling tower performance testing.

Date of issuance: May 12, 1987

Effective date: May 12, 1987

Amendment Nos.: 8

Facility Operating License Nos. NPF-37 and NPF-66. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 9, 1987 (52 FR 11575)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 12, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61103.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendments: February 10, 1987

Brief description of amendments: These amendments would permit a one-time change that will extend the allowable outage time on the "O" diesel generator from 7 days to 21 days for the Spring 1987 Unit 2 refueling outage. This extended outage period is required to complete required modifications to comply with Appendix R to 10 CFR 50 and perform an extensive refueling outage maintenance program.

Date of issuance: May 8, 1987

Effective date: May 8, 1987

Amendment Nos.: 104 and 94

Facility Operating License Nos. DPR-39 and DPR-48. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9563)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 8, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: March 29, 1985 (TSCRN 3)

Brief description of amendment: The amendment adds a programmatic requirement to the Technical Specifications specifying implementation of a Post-Accident Sampling and Analysis Program pursuant to the recommendations of Generic Letter 83-37.

Date of issuance: May 13, 1987

Effective date: May 13, 1987

Amendment No.: 99

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 20, 1985 (50 FR 47863)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 13, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: September 19, 1983 as supplemented by letters dated December 14, 1983, December 20, 1983, September 13, 1985 and January 6, 1986

Brief description of amendments: The amendments modify the Technical Specifications to provide closure time requirements for the scram discharge volume vent and drain valves.

Date of issuance: May 13, 1987

Effective date: May 13, 1987

Amendment Nos.: 136 and 75

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 27, 1984 (49 FR 7161), November 6, 1985 (50 FR 46213) and May 21, 1986 (51 FR 18683)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1987

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: July 29, 1986 (corrected on August 21, 1986)

Brief description of amendment: Changed the administrative section of the Technical Specfications to revise certain unit staff organizational responsibilities and titles, and clarify operator license requirements for shift personnel.

Date of issuance: May 13, 1987

Effective date: May 13, 1987

Amendment No.: 128

Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 22, 1986 (51 FR 37511).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 13, 1987.

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 Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: May 12, 1986 as supplemented September 11, 1986

Brief description of amendment: The amendment revised the Technical Specifications (TS) relating to reporting requirements to conform with the 10 CFR 50.72 and 73 rule changes. Additionally, administrative and editorial changes have been made to correct, improve and clarify existing TS, this included incorporating elements of the Standard TS where appropriate.

Date of issuance: May 14, 1987

Effective date: May 14, 1987

Amendment No.: 129

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 12, 1986 (51 FR 24256) and October 22, 1986 (51 FR 37510.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 14, 1987.

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 Company, Docket No. 50-315 Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of application for amendment: February 10, 1987.

Brief description of amendment: The amendment revises the Technical Specifications to allow a one-time extension of the ice condenser surveillance interval until the next refueling outage currently scheduled to begin about July 1987.

Date of issuance: May 8, 1987

Effective date: May 8, 1987

Amendment No.: 108

Facility Operating License No. DPR-58. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1987 (52 FR 7685).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 8, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Indiana and Michigan Electric Company, Docket No. 50-315 Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of application for amendment: February 20, as supplemented March 13, 1987.

Brief description of amendment: The amendment revises the Technical Specifications to reflect an increase in peak pellet exposure from 48.0 MWd/kg to 48.7 MWd/kg for Advanced Nuclear Fuel Corporation (formerly Exxon Nuclear Company) fuel.

Date of issuance: May 19, 1987

Effective date: May 19, 1987

Amendment No.: 109

Facility Operating License No. DPR-58. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 8, 1987 (52 FR 11364).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1987.

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 Company, Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of application for amendment: January 21, 1987

Brief description of amendment: This amendment changes the reactor vessel water level setpoint for closure of the main steam isolation valves and main steam line drain valves from Level 2 to the lower level of Level 1.

Date of issuance: May 4, 1987

Effective date: May 4, 1987

Amendment No. 5

Facility Operating License No. NPF-36. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** (52 FR 4410) February 11, 1987

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 4, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 23212.

Long Island Lighting Company, Docket No. 50-322, Shoreham Nuclear Power Station, Suffolk County, New York

Date of application for amendment: February 4, 1987 as supplemented by letter dated April 10, 1987, which supplements information furnished in the February 4, 1987 application and is not of a substantive nature.

Brief description of amendment: This amendment changes the Technical Specifications with regard to the Standby Liquid Control System (SLCS). The changes reflect LILCO's plan to enrich the boron in the SLCS to eighty-five atom percent Boron-10 to satisfy the requirements of 10 CFR 50.62(c)(4).

Date of issuance: May 18, 1987

Effective date: May 18, 1987

Amendment No. 6

Facility Operating License No. NPF-36. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1987 (52 FR 9573)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Shoreham-Wading River Public Library, Route 25A, Shoreham, New York 23212.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Scriba, New York

Date of application for amendment: March 11, 1987, as supplemented March 16, 1987

Brief description of amendment: Delete license condition 2.C.(14) concerning main steam isolation valves.

Date of issuance: May 11, 1987

Effective date: May 11, 1987

Amendment No.: 1

Facilities Operating License No. NPF-54: Amendment deleted license condition 2.C.(14).

Date of initial notice in **Federal Register:** April 8, 1987 (52 FR 11367)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 11, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit No. 2, Oswego, New York

Date of application for amendment: March 11, 1987, as supplemented March 16, 18 and 31, 1987 and April 2, 3, 7, 23 and 28, 1987.

Brief description of amendment: This amendment revises the Technical Specifications related to the main steam isolation valves (MSIVs). Specifically, the amendment revises the trip setpoint and allowable value for the MSIV closure in Table 2.2.1-1 and to change the valve designations in Tables 3.6.1.2-1 and 3.6.3-1. Also, items 1.a.(2), (3) and (4) in Attachment 1 to the License are deleted. These change result from the change out of ball valves with globe valves. License Condition 2.C.(14) is the subject of a separate amendment.

Date of issuance: May 15, 1987

Effective date: May 15, 1987

Amendment No.: 2

Facilities Operating License No. NPF-54: Amendment revised License and the Technical Specifications.

Date of initial notice in **Federal Register:** April 10, 1987 (52 FR 11787)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 1987.

Significant hazards consideration comments received: No

Local Public Document Room location: Penfield Library, State University College, Oswego, New York 13126.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station Unit No. 3, Town of Waterford, Connecticut

Date of application for amendment: January 30, 1987, as supplemented March 6, 1987

Brief description of amendment: The amendment revised the Technical Specification Sections 4.8.1.1.2.f.1) and 4.0.6 to extend the diesel generator 18-month inspection from May 1987 to the refueling outage scheduled to start about January 1988.

Date of issuance: May 13, 1987

Effective date: May 13, 1987

Amendment No.: 4

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1987 (52 FR 7689).

The March 6, 1987 submittal provided additional clarifying information and did not change the finding of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 13, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: December 12, 1986

Brief description of amendment: This amendment revises the Unit 1 Technical Specifications to change the Maximum Average Planar Linear Heat Generation Rate and Minimum Critical Power Ratio limits, to preclude single loop operation, and to change the affected bases in the Technical Specifications.

Date of issuance: May 7, 1987

Effective date: May 7, 1987

Amendment No. 64

Facility Operating License No. NPF-14: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** (52 FR 4414) February 11, 1987

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 7, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: February 11, 1987

Brief description of amendment: The amendment changes the requirement of Technical Specification 3.9.2 and Table 3.3.6-1 for a minimum Source Range monitor detector count rate when sixteen or fewer fuel assemblies, adjacent to the SRM's, are in the reactor.

Date of issuance: May 11, 1987

Effective date: May 11, 1987

Amendment No. 4

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 8, 1987 (52 FR 11369)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 11, 1987.No significant hazards consideration comments received: No

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Southern California Edison Company et al., Docket No. 50-206, San Onofre Nuclear Generating Station, Unit No. 1, San Diego County, California

Date of application for amendment: May 9, 1985, as revised on October 7, 1985.

Brief description of amendment: The amendment revised the list of containment isolation valves contained in the Technical Specifications and the limiting conditions for operation and related action statements applicable to these valves.

Date of issuance: May 18, 1987

Effective date: This license amendment is effective the date of issuance and shall be fully implemented no later than 30 days from date of issuance.

Amendment No.: 99

Provisional Operating License No. DPR-13. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 17, 1985 (50 FR 29016)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: General Library, University of California, P. O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Docket Nos. 50-237 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: December 23, 1986

Brief description of amendments: The amendments change the Technical Specifications to permit installation of slower acting valve operators on valves between the suction of the centrifugal charging pumps and the volume control tank.

Date of issuance: May 12, 1987

Effective date: May 12, 1987

Amendment Nos.: 55 and 47

Facility Operating License Nos. DPR-77 and DPR-79. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 26,1987 (52 FR 5870)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 12, 1987.

No significant hazards consideration comments received: No

Local Public Document Room location: Chattanooga-Hamilton County Bicentennial Library, 1001 Broad Street, Chattanooga, Tennesse 37401.

Virginia Electric and Power Company, et al., Docket No. 50-338, North Anna Power Station, Unit No. 1, Louisa County, Virginia

Date of application for amendment: February 20, 1987

Brief description of amendment: The amendment adds a license condition to the NA-1 Facility Operating License No. NPF-4 which states: "VEPCO may use two (2) fuel assemblies containing fuel rods clad with an advanced zirconium base alloy cladding material as described in VEPCO's letter dated February 20, 1987." These two fuel assemblies meet the guidelines for lead test fuel assemblies and are enveloped by the existing NA-1 reload design and safety analysis limits.

This amendment also grants an exemption from the requirement of 10 CFR 50.46. The evaluation of the granting of this exemption is contained in the Safety Evaluation issued with this amendment.

Date of issuance: May 13, 1987

Effective date: May 13, 1987

Amendment No.: 94

Facility Operating License No. NPF-4: The amendment adds a license condition.

Date of initial notice in **Federal Register:** April 8, 1987 (52 FR 11376)

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated May

7, 1987 (52 FR 18035), and in a Safety Evaluation dated May 13, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket No. 50-339, North Anna Power Station, Unit No. 2, Louisa County, Virginia

Date of application for amendment: February 19, 1987

Brief description of amendment: The amendment revises License Condition 2.C.(15)(c) to permit the second inspection of the recirculation spray pumps inside containment to be performed during the forthcoming NA-2 1987 refueling outage.

Date of issuance: May 11, 1987

Effective date: May 11, 1987

Amendment No.: 79

Facility Operating License No. NPF-7: Amendment revised the License.

Date of initial notice in **Federal Register:** April 8, 1987 (52 FR 11375)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 11, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Virginia Electric and Power Company, et al., Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: April 10, 1986

Brief description of amendments: The amendments differentiate the requirements of Technical Specification (TS) 3/4.3.7 (fire detection instrumentation) for inside and outside of containment and modify the functional testing interval for fire detection instrumentation inside containment to be consistent with NUREG-0452, Revision 4.

Date of issuance: May 13, 1987

Effective date: 14 days from the date of issuance

Amendment Nos.: 95 and 80

Facility Operating License Nos. NPF-4 and NPF-7. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** January 14, 1987 (52 FR 1557)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 13, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room locations: Board of Supervisors Office, Louisa County Courthouse, Louisa, Virginia 23093, and the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Washington Public Power Supply System, Docket No. 50-397, WNP-2, Richland, Washington

Date of amendment request: January 31, 1986

Brief description of amendment: This amendment revises the WNP-2 Technical Specification 4.6.1.2 to extend the maximum interval between performances of both Type B and Type C tests from 24 to 27 months. An exemption that relieves the license from the requirement that Type C leak testing of containment isolation valves be done during each reactor shutdown for refueling was issued on April 29, 1987.

Date of issuance: April 29, 1987

Effective date: April 29, 1987

Amendment No.: 41

Facility Operating License No. NPF-21: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** February 26, 1987 (51 FR 5871)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 29, 1987.

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, Washington

Date of amendment request: June 13 and June 18, 1985 and October 7, 1986.

Brief description of amendment: This amendment revises the WNP-2 Technical Specification 3/4.8.4.2 by removing a list of containment penetration fuses and a surveillance requirement to test these fuses functionally on a rotating basis.

Date of issuance: May 21, 1987

Effective date: May 21, 1987

Amendment No.: 42

Facility Operating License No. NPF-21: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 19, 1986 (51 FR 41871), The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 21, 1987

No significant hazards consideration received: No.

Local Public Document Room location: Richland Public Library, Swift and Northgate Streets, Richland, Washington 99352.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: January 16, 1987.

Brief description of amendment: The amendment corrected typographical errors, clarified the requirements of existing specifications, and adopted requirements from NRC Generic Letter 83-37, dated November 1, 1983, entitled, "NUREG-0737 Technical Specifications" in regard to the containment hydrogen monitors.

Date of issuance: May 15, 1987

Effective date: May 15, 1987

Amendment No.: 74

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1987 (52 FR 7675 at 7702)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 1987.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301

Yankee Atomic Electric Company, Docket No. 50-029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of application for amendment: February 5, 1986

Brief description of amendment: The amendment modifies the Technical Specifications relating to reporting requirements on reportable events and primary coolant system spiking.

Date of issuance: May 7, 1987

Effective date: May 7, 1987

Amendment No.: 104

Facility Operating License No. DPR-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 12, 1986 (51 FR 8604).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 7, 1987

No significant hazards consideration comments received: No.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND FINAL DETERMINATION OF NO SIGNIFICANT HAZARDS CONSIDERATION AND OPPORTUNITY FOR HEARING (EXIGENT OR EMERGENCY CIRCUMSTANCES)

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 for the amendment 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.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards considera-tion. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communi-cation for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

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 application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, 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 room for the particular facility 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.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By July 6, 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 petitioner'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 fifteen (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 reasonable 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 satisfies 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.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

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 petitioner 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 (**Project Director**): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel-Bethesda, 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 Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Arizona Public Service Company, et al. Docket No. STN 50-528 Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of application for amendment: March 23, 1987

Brief description of amendment: The amendment revised Technical Specification 3/4.11.1, on a one time basis and for a period not to exceed 60 days, to allow the release of secondary system liquid waste to the onsite evaporation pond while the concentration of principal gamma emitters with half lives less than 75 days exceeds $5x10^{-7}$ uCi/ml, provided that the concentration does not exceed the limits of 10 CFR Part 20, Appendix B, Table II, Column 2.

Date of issuance: April 29, 1987

Effective date: March 24, 1987

Amendment No.: 16

Facility Operating License No.: NPF-41: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation is contained in a Safety Evaluation dated April 29, 1987.

Attorney for licensees: Mr. Arthur C. Gehr, Snell and Wilmer, 3100 Valley Center, Phoenix, Arizona 85007

Local Public Document Room location: Phoenix Public Library, Business, Science and Technology Department, 12 East McDowell Road, Phoenix, Arizona 85004.

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: December 2, 1986; revised February 3, 1987 and April 16, 1987

Brief description of amendment: The amendment changed the Technical Specifications for Beaver Valley Unit 1 to provide operability requirements, Limiting Conditions of Operation, and surveillance requirements on the habitability systems for the combined Unit 1 and 2 Control Room.

Date of issuance: May 20, 1987

Effective date: May 20, 1987

Amendment No. 109

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes, Published in the **Federal Register** May 4, 1987 (52 FR 16323).

No significant hazards consideration comments received: No

The Commission's related evaluation of the amendment and final determination of no significant hazards consideration are contained in a Safety Evaluation dated May 20, 1987.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

NRC Project Director: John F. Stolz

Dated at Bethesda, Maryland this 28th day of May, 1987.

FOR THE NUCLEAR REGULATORY COMMISSION

Dennis M. Crutchfield, Director

Division of Reactor Projects-III, IV, V & Special Projects

[FR Doc. 87-12519 Filed 6-2-87; 8:45 am]

BILLING CODE 7590-01-FD

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24517; File No. SR-CBOE-87-07]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options, Exchange, Inc. relating to Public Securities Business/Stock Execution Service

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 16, 1987, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE, pursuant to Rule 19-4 of the Act, hereby proposes the following changes to the Rules of the Exchange (Italics indicate material proposed to be added; brackets indicate material proposed to be deleted):

Public Securities Business

Rule 3.1.

(a) Every individual member or member organization shall have as the principal purpose of its membership the conduct of a public securities business.

(b) A member shall be deemed to have such a purpose if and so long as

(1) The member has qualified and acts in respect of its business on the Exchange in one or more of the following capacities: (i) A member approved to transact business with non-affiliated public customers in accordance with Rule 9.1 or to clear Exchange transactions of other members in accordance with the Rules of the Clearing Corporation; (ii) a Market-Maker as defined in Rule 8.1; (iii) a Floor Broker as defined in Rule 6.70; (iv) a Board Broker as defined in Rule 7.1; *(v) a stock service as defined in Rule 6.77;* and

(2) No change.

(c) No change.

Stock Execution Business

Rule 6.77.

a. A stock service is a regular member organization that is registered with the Exchange for the purpose of providing stock execution services to market-makers on the floor of the Exchange. An applicant for registration as a stock service shall file its application in writing with the Membership Department of the Exchange. Applications shall be reviewed by the Membership Committee, which shall consider an applicant's financial condition, regulatory history and such other factors as the Membership Committee deems appropriate. After reviewing the application, the Membership Committee shall either approve or disapprove the applicant's registration as a stock service. Before registration, the Membership Department, upon direction of the Membership Committee, shall post the names of the applicant and its nominee(s) on the floor of the Exchange for at least three business days.

(b) A stock service shall: (i) Conduct its stock execution business so that only the name of an Exchange member is identified as the clearing agent ("give-up") at the time a stock transaction is effected on behalf of a market-maker; (ii) maintain its stock execution records in a form acceptable to the Exchange and (iii) make available to market-maker customers upon request a statement of financial condition as disclosed by its most recent balance sheet, which shall be prepared no later than the tenth business day following each calendar month-end.

(c) A clearing member need not register as a stock service in order to effect stock transactions on behalf of market-makers for which it has a currently outstanding Letter of Guarantee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.[1]

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

A stock execution service ("stock service") has as its primary function the execution of hedging transactions in underlying securities for Exchange options market makers. Stock orders are solicited and initiated by stock service personnel from facilities maintained on the Exchange floor. The proposed rule would recognize stock service as a floor function for which Membership Committee approval is required. The rule would establish certain business practices and recordkeeping standards, and provide for limited client access to the financial statement of stock services. The purpose of the proposed rule change is to recognize in the Exchange's rule structure those firms which conduct a stock service for members. Such firms have existed for some time but have not been identified as such or regulated as such by the rules. Thus, all members engaged in the stock service business would be assured of equal treatment under the proposed rules. Another purpose of the proposed rule change is to reduce the risk to Exchange members of uncleared stock transactions should a stock service firm become insolvent by requiring that a stock service utilize only Exchange members as clearing give-ups, insuring the Exchange's ability to enforce necessary recordkeeping standards and to monitor financial condition.

The rule change will require firms to apply and register to become stock service firms and spells out their recordkeeping obligations. These requirements are intended to ensure that the Exchange can identify the parties to market maker stock trades at any given time. The Exchange has determined to work with stock services to establish recordkeeping standards and formats. Such records will form the basis for negotiating clearing safeguards at both Midwest Clearing Corporation and National Securities Clearing Corporation. It is not anticipated that any information would be required which the stock services are not already maintaining in some form. Stock services will be reviewed prior to admission to membership, and on an on-going basis thereafter, to ensure compliance with applicable recordkeeping, financial reporting, and net capital standards, and to determine that proper procedures are in place to prevent, detect, and liquidate errors.

The rule change also limits the stock service firm's ability to give up another firm on a stock ticket in order to assure proper financial responsibility for trades. The stock service firm is required to utilize only Exchange members as clearing give-ups in order to guarantee that the Exchange has jurisdiction over the books and records needed to insure that market makers' stock transactions are settled. The rule also requires a stock service firm to provide financial information upon request of a member with whom the stock service firm does business, to assure that members can assess the financial security of giving their business to a particular stock service firm.

The proposed rule change is consistent with the Securities Exchange Act of 1934 and, in particular, section 6(b)(5) thereof in that the rule change is designed to improve the market clearing and trading mechanism, and assure appropriate regulation of the stock execution business.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received from Members, Participants or Others.

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action.

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[1] The CBOE has supplemented the discussion of the proposed rule change contained in this filing by a letter dated May 11, 1987, from Mary Bender, Vice President, CBOE, to Howard Kramer, Assistant Director, Division of Market Regulation, Securities and Exchange Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissisons should refer to the file number in the caption above and should be submitted by June 24, 1987.

Dated: May 27, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary

[FR Doc. 87-12576 Filed 6-2-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24518; File No. SR-CBOE-87-21]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Change to Schedule of Arbitration Fee Deposits.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 7, 1987, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Text of the Proposed Rule Change

The proposed change to Rule 18.33(a) increases the fee deposit by claimants in Exchange arbitrations to conform the deposits to those of other self-regulatory organizations. The current fee deposit for cases with an amount in dispute of $10,000 up to $20,000 is $300, $500 for cases from $20,000 up to $100,000 and $750 for cases above $100,000. The new fee deposits are $400 for cases from $10,000 up to $50,000, $500 for cases from $50,000 up to $100,000, $750 for cases from $100,000 up to $500,000, and $1,000 for cases involving over $500,000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose*

The proposed rule change is being filed so that the Exchange's schedule of fees to be deposited by parties in connection with arbitration claims will be uniform with those of other exchanges and self-regulatory organizations. In that connection, the Commission has approved a similar proposed rule change submitted by the American Stock Exchange ("AMEX") (Securities Exchange Act Release No. 24379, April 22, 1987). The Commission has received proposed rule changes providing for amendments similar to those proposed by the Amex from the New York Stock Exchange, Inc. and the Boston Stock Exchange, Inc.

(2) Statutory Basis

The proposed rule change is consistent with the provisions of the Act in general and, in particular, with section 6(b)(4) thereof, in that it provides for the equitable allocation of reasonable fees and other changes among persons using the Exchange's arbitration facility.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that this proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commissioin, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 24, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 27, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-12577 Filed 6-2-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 24511; File No. SR-PSE-86-26]

Proposed Rule Change By The Pacific Stock Exchange Inc.; Relating to Options Floor Members Who Have Been Approved by the Exchange to Act in the Capacity Both as a Market Maker and a Floor Broker

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on December 1, 1986, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or the "Exchange"), pursuant to Rule 19(b)-4 of the Securities Exchange Act of 1934 ("Act") hereby proposes certain rule changes with respect to options floor members who have been approved by the Exchange to act in the capacity both as a market maker and a floor broker. (Brackets indicate language to be deleted, italics and indicates new language.)

Rule VI

Restriction on Acting as Market Maker and Floor Broker

Sec. 80. (*a*) Except under unusual circumstances and with the prior permission of an Options Floor Trading Committee Member, no Market Maker shall on the same business day and with respect to option contracts covering the same underlying security, act as such and also act as a Floor Broker.

(b) *Members who act as both Market Makers and Floor Brokers whose quarterly total contract volume as a Market Maker exceeds that as a Floor Broker shall be given principal appointment and comply with the terms of Section 79, Commentary .04.*

(c) With the exception of those members who are sole proprietors and/or those who are given primary appointments, members who act as Floor Brokers and Market Makers shall be limited to the trading of 100 contracts per month as a Market Maker.

(d) Members who wish to apply for the privilege of acting in the capacity of both a Market Maker and Floor Broker must apply for and receive approval through the Options Appointments Committee and the Options Floor Trading Committee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

From the beginning of trading of listed options, the Exchange has permitted its floor members to act as both Market Makers and Floor Brokers. The only restrictions placed on such members were that they not act as such in the same options during the same trading session, and, as a policy matter, if their principal business was as a Market Maker, that they be given a primary appointment and comply with the trading requirements accompanying such appointment. The Exchange believes that in today's environment this system which permits a floor member to be registered in both capacities may create possible abuses to the specialist exempt credit provided for in SEC Rule 15c3-1(c)(2)(x)(F)(1). Specifically, the Exchange believes that a firm may nominate a floor member to act in both capacities. The floor member then would act primarily as an independent Floor Broker. At the same time, however, the same firm might submit orders from off the trading floor, in the name of the Floor Broker/Market Maker, to other sections of the floor, with such orders enjoying the treatment as Market Maker orders and receiving specialist exempt credit. Such abuse is difficult to detect for and thus the Exchange proposes these rule changes as a deterrent to such possible abuse.

The Exchange believes that by excluding sole proprietors and those members who would be assigned a principal appointment, the rights of those members who legitimately act in both capacities would be preserved. Sole proprietors, by their very nature, are single trading entities and would not be in a position to both enjoy the privilege of floor brokering while at the same time entering orders from off the floor. Members who are principally appointed to trading pits have certain requirements ensuring that in return for exempt credit, affirmative and negative obligations, with respect to market making in such appointments, are met.

The Exchange believes that the principal impact of the rule proposal will be on firms that would abuse the privileges by nominating an independent Floor Broker and then placing trades, from off floor, as though they were initiated by such floor member.

The Exchange believes that the proposed rule change is specifically in keeping with section 6(b)(5) of the Act, in that it is designed to prevent the fraudulent acts and practices described above and to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed

rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 24, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 26, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-12575 Filed 6-2-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15755; File No. 812-6680]

Bankers National Life Insurance Co; Application

May 27, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Bankers National Life Insurance Company ("Bankers"), Bankers National Variable Account B ("Account B"), Bankers National Variable Account C ("Account C"), and Bankers National Series Trust ("Trust").

Relevant 1940 Act Sections: Order requested *under* sections 26(b) and 17(b).

SUMMARY OF APPLICATION: Applicants seek an order to permit the substitution of shares of the Mortgage-Backed Securities Portfolio for shares of the Government Securities Portfolio in order to preserve the existing tax status of certain variable contracts in light of temporary regulations issued by the Internal Revenue Service ("IRS").

FILING DATE: The application was filed on April 3, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 22, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personnally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, c/o conrad E. Rousseau, 1599 Littleton Road, Parsippany, NJ 07054.

FOR FURTHER INFORMATION CONTACT: Financial Analyst Margaret Warnken (202) 272-2058 or Special Counsel Lewis B. Reich (202) 272-2061 (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 (301-253-4300).

Applicants' Representations

1. Bankers, the depositor of the Accounts, is a legal reserve stock life insurance company wholly-owned by Conseco, Inc., an insurance holding company. The Accounts are separate accounts of Bankers registered under the 1940 Act as unit investment trusts. Account B was established for the purpose of funding certain individual flexible purchase payment deferred variable annuity contracts ("annuity contracts"). Account C was established for the purpose of funding certain individual flexible premium variable life insurance contracts ("life contracts"). Both the annuity contracts and the life contracts are designed for use in connection with retirement plans qualifying for special income tax treatment under the Internal Revenue Code of 1986 ("Code") ("qualified contracts"), and for use with plans not qualifying for such special income tax treatment ("non-qualified contracts").

2. Payments under the contracts may be allocated by contract owners to various sub-accounts of the Accounts each of which invests exclusively in the shares of a corresponding portfolio of the Trust. The Trust is registered under the 1940 Act as an open-end, diversified management investment company and is presently segmented into seven portfolios, including the Government Securities Portfolio and the Mortgage-Backed Securities Portfolio. Bankers Investment Adviser, Inc., is the investment adviser to the Trust.

3. Contractowners may transfer all or part of their contract values from one sub-account to another at any time, subject to a $5.00 transfer processing fee. With respect to annuity contracts entered into on or after August 20, 1984, no sales charge is deducted from premiums. With certain exceptions, surrenders or partial surrenders of contract values under these contracts are subject to a contingent deferred sales charge. Annuity contracts entered into prior to August 20, 1984 are not subject to the contingent deferred sales charge, but are subject to a 6.5% sales charge deducted from each premium payment. With respect to the life contracts, a sales charge of 9% is deducted from each payment made during the first ten years. Bankers has reserved the right under the contracts to substitute shares of another portfolio for shares of any portfolio held by the Accounts.

4. The contracts are expected to be taxed as annuities or as fixed life insurance (as appropriate) under the Code so that, for federal income tax purposes, any income, gain or loss realized with respect to the assets held in the Account will not be includible in the income of contractowners or of any annuitant or beneficiary under a contract.

5. On September 15, 1986, the IRS published proposed and temporary regulations that prescribe diversification standards to be met by segregated asset accounts funding variable contracts as a condition to the taxation of those contracts as annuities or as life insurance under the Code. *Treas. Reg.* § 1.817-5T, 51 FR 32633 (1986). The temporary regulations, together with the transition rules thereunder, generally prohibit non-qualified variable contracts from investing in a portfolio holding more than fifty-five percent (55%) of its assets in securities of the same issuer and provide that all "government securities" are to be treated as securities of a single issuer. The temporary regulations, which become effective as to the Accounts on December 15, 1986, together with the transition rules thereunder, generally provide that a portfolio containing certain government securities need not adequately diversify until October 30, 1987.

6. The Government Securities Portfolio will not meet the diversification standards established by the temporary regulations and transition rules and, consequently, any non-qualified contract with contract values allocated to that portfolio will forfeit its eligibility for existing tax treatment under the Code. As a result of the issuance of the temporary regulations, Bankers has decided to cease offering the Government Securities Portfolio after June 30, 1987 as an eligible

portfolio for allocations of payments or transfers of contract values with respect to non-qualified contracts. If may not be eligible to take advantage of the October 30, 1987 transition rule date as it will not ultimately be diversifying the Government Securities Portfolio. Early in May 1987, Bankers intends to send a letter to owners of non-qualified contracts accompanied by a prospectus for the appropriate Account and for the Trust, advising them of their right to re-allocate contract values from the Government Securities Portfolio to any other portfolio prior to June 30, 1987 without charge, and that absent to re-allocation by the contractowner, Bankers intends to exercise its right under the contracts to effect, on June 30, 1987, the substitution of shares of the Mortgage-Backed Securities Portfolio for all shares of the Government Securities Portfolio then held by the Accounts for non-qualified contracts. In connection with the substitution, Bankers intends, on June 30, 1987, to transfer assets from the Government Securities Portfolio to the Mortgage-Backed Securities Portfolio in an amount equal to the value of the non-qualified contracts that Bankers will be re-allocating between these portfolios, as described above.

7. Applicants request the SEC issue an order, pursuant to sections 26(b) and 17(b) of the 1940 Act permitting the proposed substitutions.

Section 26(b) of the 1940 Act provides for SEC scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both. The proposed substitution of shares of the Mortgage-Backed Securities Portfolio for shares of the Government Securities Portfolio is necessary to preserve the existing tax status of the non-qualified contracts, consistent with the investment expectations of contractowners, and is appropriate in view of the investment objectives of these contracts. The Mortgage-Backed Securities Portfolio is closely comparable to the Government Securities Portfolio in investment objectives and portfolio composition. Applicants assert that the substitutions will not result in the type of costly forced redemption which section 26(b) was intended to guard against because: (1) The substitutions will be effected at current market price without the imposition of any transfer or other charges or any sales load; and (2) owners of non-qualified contracts may transfer contract values from the Government Securities Portfolio to any other portfolio of the Trust prior to June 30, 1987, without the transfer processing fee (or any other charge) being assessed against any such transfer.

Section 17(a) of the 1940 Act makes it unlawful for registered investment companies to sell securities to, or purchase securities for, certain affiliated persons. Section 17(b) authorizes the SEC to issue an order exempting a proposed transaction from section 17(a) if evidence establishes that: (1) The proposed transaction is fair and reasonable; (2) the proposed transaction is consistent with the policy of each registered investment company; and (3) the proposed transaction is consistent with the general purposes of this title. Applicants assert that the terms of the proposed transactions are consistent with the standard for relief prescribed by section 17(b). The proposed re-allocation of assets by the Accounts from the Government Securities Portfolio to the Mortgage-Backed Securities Portfolio will be done in a manner consistent with the standards prescribed by section 17(b). The proposed transactions will be made at current market of the securities involved; Bankers will bear all expenses associated with the transaction; the transactions will not result in any change in the charges, costs, fees, or other expenses borne by contractowners; and the transactions are consistent with the policies of each the invesment company involved and of the 1940 Act generally.

8. The proposed transactions fall within the intent of, but not the literal requirements of, Rule 17a-7 under the 1940 Act. That rule generally exempts from section 17(a) certain purchase and sale transactions between registered investment companies or separate series of registered investment companies, which are affiliated persons of each other, provided certain conditions are met.

Applicants' Conditions

As a condition to any order under section 17(b), Applicants will comply with all the conditions set forth in Rule 17a-7except for subparagraph (a), which requires that the transaction be "for no consideration other than cash payment." Lack of a cash payment, under the circumstances, does not give rise to the type of potential abuse Rule 17a-7 was designed to guard against. Rather, Rule 17a-7 was designed to permit investment companies to sell securities between themselves at current market price without unnecessarily incurring costs, including brokerage costs, to the detriment of contractowners. Here the consideration involved is securities, which will be transferred at current market price, and thus, in substance, the transactions are of the type ordinarily exempted by Rule 17a-7.

For the SEC, by the Divison of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-12574 Filed 6-2-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15757; 812-6685]

Lifetime Global Equity Trust; Application

May 28, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Lifetime Global Equity Trust.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of section 12(d)(3).

Summary of Application: Applicant seeks an order to permit investment in the equity and convertible debt securities of major Japanese securities companies which are listed and publicly traded on the Tokyo Stock Exchange (First Section).

Filing Date: The application was filed on April 14, 1987.

Hearing or Notification or Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on June 22, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

Addresses: Secretary, SEC, 450 5th Street, NW., Washington, DC. 20549. Lifetime Global Equity Trust, 200 Berkeley Street, Boston, Massachusetts 02116 Attention: Arnold D. Scott, Esq.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney (202) 272-2799 or Brion R. Thompson, Special

Counsel (202) 272-3016, Office of Investment Company Regulation, 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 an open-end, diversified management investment company reqistered under the 1940 Act The general distributor of the Applicant is MFS Financial Services, Inc., and its investment adviser is Lifetime Advisers, Inc., each of which is a subsidiary of Massachusetts Financial Services Company ("MFS"). MFS is a subsidiary of Sun Life Assurance Company of Canada (U.S.), which is turn is a subsidiary of Sun Life Assurance Company of Canada.

2. In accordance with its general investment policies, Applicant invests in all types of common stocks and equivalents (such as convertible debt securities and warrants) and preferred stocks of U.S. and non-U.S. issuers. Applicant proposes to invest in the equity and convertible debt securities of major Japanese securities companies whose securities are listed and publicly traded on the Tokyo Stock Exchange (First Section), which currently are: Cosmo Securities Co., Ltd., Dai-ichi Securities Co., Ltd., Daiwa Securities Co., Ltd., New Japan Securities Co., Ltd., The Nikko Securities Co., Ltd., The Nippon Kangyo Kakumaru Securities Co., Ltd., The Nomura Securities Co., Ltd., Okasan Securities Co., Ltd., Yamaichi Securities Co., Ltd., and Yamatane Securities Co., Ltd. (collectively, the "Securities Companies").

3. Japanese companies with publicly issued securities, including the Securities Companies, are required by the Japanese Securities and Exchange Law (the "Law") to file with the Minister of Finance (the "Minister") annual reports contained information relating to the company's objectives, stated capital, securities issued and financial position, the nature and state of its business operations, and such other information as the Minister may request. Amended reports must be filed with the Minister upon the occurrence of any material change of information. The Law further requires that the financial statements which are contained in these annual reports be certified by a certified public accountant or an incorporated accounting firm which has no special interest in the reporting corporation. The Securities Companies also publish their annual reports in English.

4. Japanese securities companies are subject to regulation as broker-dealers under separate provisions of the Law. Before a company may act as a broker, dealer or underwriter of securities, or handle a public offering, it must apply for and obtain a license from the Minister. Before issuing a license, the Minister must be satisfied that such company has sufficient financial resources and sufficent knowledge and experience to conduct the proposed business profitably and fairly, and that the proposed business is necesary and appropriate in light of economic conditions, such as the number of existing securities companies and the state of securities trading in the area. The Law authorizes the Minister to cancel a license if the securities company violates a statutory provision, administrative order, or a condition attached to its license, or if it is threatened with insolvency.

5. Japanese securities companies may not engage in businesses other than those which are securities related without the approval of the Minister and may not act as both principal and broker in the same transaction. All securities companies must file business reports with the Minister within two months after the close of the business year, and if the Minister deems it necessary and appropriate in the public interest or for the protection of investors, he may cause the inspection, without notice, of the business condition, financial position, accounting books and documents or other articles of the securities corporation. The Minister is also authorized to order a securities company to alter its method of business or take other corrective measures which the Minister finds appropriate in the event that the Minister finds that the company's ratio of total debt to net assets is excessive or that the company's borrowing or lending position is unsound or as necessary in the public interest for the protection of investors.

6. In terms of both the total dollar transaction volume and the total market value of equity shares of domestic companies listed, the Tokyo Stock Exchange ranks second in the world, surpassed only by the New York Stock Exchange. In addition, the criteria which must be satisfied for listing on the Tokyo Stock Exchange include a minimum of 10 million listed shares (20 million for companies whose main business is outside Tokyo); 2,000 shareholders (as many as 3,000 shareholders depending upon the number of shares over 20 million outstanding); corporate existence of at least five years; net tangible assets of at least Y1,500 million and net tangible assets per share of Y100; net pre-tax profits for the last three years of Y200 million, Y300 million and Y400 million, respectively; and dividends of Y5 per share for the last three years. More seasoned listed stocks are assigned to the First Section of the Tokyo Stock Exchange if they meet the following criteria: At least 20 million listed shares; capital stock of Y1 billion; 3,000 shareholders holding no less than 500 nor as much as 50,000 shares; shareholders of 500 to 50,000 ("float") shares must account for more than 3 million shares plus 25 percent of the total listed shares (if more than 60 million shares are listed, the float must total more than 12 million shares plus 10 percent of the total listed); an average monthly trading volume for three months of 200,000 shares; and dividends for each of the last three years of Y5 per share. These requirements are comparable, in terms of share distribution, total market value and earning power, to those imposed by the New York and American Stock Exchanges, by the NASD for eligibility for the NASDAQ system and by the Board of Governors of the Federal Reserve System (the "Board") for inclusion on the over-the-counter margin list.

Applicant's Legal Conclusions

1. Section 12(d)(3) of the 1940 Act, in pertinent part, prohibits registered investment companies from acquiring any interest in the business of a broker, dealer or underwriter. Rule 12d3-1 under the 1940 Act provides, in pertinent part, that a registered investment company may purchase securities issued by companies deriving more than 15% of their gross revenue from securities-related activities provided certain quantitative and qualitative conditions are satisfied. The "quantitative" requirements are met if, immediately after the acquisition, the investment company has not invested more than 5% of the value of its total assets in the target company's securities and does not own more than 5% of the outstanding equity securities of the class acquired, or more than 10% of the outstanding principal amount of the issuer's debt securities. The "qualitative" condition of Rule 12d3-1 requires that the stock acquired be a "margin security" as defined in Regulation T promulgated by the Board, which includes any security listed on a national securities exchange,

or an over-the-counter security designated as a margin stock by the Board. Because only securities, the principal market for which is in the United States, can qualify as "margin securities" as required by Regulation T, the securities of the Securities Companies could not be acquired by the Applicant within the latitude afforded by Rule 12d3–1, without an exemption from section 12(d)(3) of the 1940 Act.

2. In support of this exemptive request, Applicant submits that, with one exception noted above, each of the conditions set forth in Rule 12d3–1 is satisfied under its proposal to purchase shares of the Securities Companies. In particular, the availability of annual reports disseminated by these firms will readily enable the Applicant to calculate the percentage limitations under Rule 12d3–1. The Applicant may currently, consistent with Rule 12d3–1 and its investment policies and restrictions, purchase debt securities of foreign broker-dealers. Applicant agrees, however, to purchase only those convertible debt securities of the Securities Companies that satisfy the qualitative requirements of Rule 12d3–1(b)(5), where the underlying equity securities are listed on the Tokyo Stock Exchange (First Section).

3. The Securities Companies are of a size and quality comparable to United States securities firms which meet the requirement of Rule 12d3–1(b)(4), and in accordance with paragraph (c) of Rule 12d3–1, which prohibits a registered investment company from acquiring any security issued by its investment adviser, promoter or principal underwriter, or by any affiliated person of the foregoing that is a securities-related business, none of the Securities Companies engage in the distribution of Applicant's securities, or act as or are affiliated with the Applicant's investment manager. Thus, Applicant states that Rule 12d3–1 will be complied with in this regard.

4. Applicant further represents that its board of directors has made or will make a specific business decision to permit Applicant to purchase, as Applicant's investment adviser sees fit, the equity and convertible debt securities of the Securities Companies and that such purchases will benefit Applicant. Applicant also represents that the public information available about the Securities Companies is equal to the information concerning other issuers listed on the Tokyo Stock Exchange in which the Applicant may freely invest, and that Applicant's investment adviser is knowledgeable and experienced in foreign market investments.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–12572 Filed 6–2–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Loan Area #2280]

Declaration of Disaster Loan Area; Reeves County, TX

As a result of the President's major disaster declaration on May 26, 1987, I find that Reeves County in the State of Texas constitutes a disaster loan area because of damage from severe storms and tornadoes which occurred on May 22, 1987. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on July 27, 1987, and for economic injury until the close of business on February 26, 1988, at:

Disaster Area 3 Office,
Small Business Administration,
2306 Oak Lane, Suite 110,
Grand Prairie, Texas 75051

or other locally announced locations.

The interest rates are:

	Percent
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses without credit available elsewhere	4.000
Businesses (EIDL) without credit available elsewhere	4.000
Other (non-profit organizations including charitable and religious organizations)	9.500

The number assigned to this disaster is 228012 for physical damage and for economic injury the number is 653000.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: May 28, 1987.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 87–12547 Filed 6–2–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[CM–8/1085]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Fire Protection; Meeting

The working Group on Fire Protection of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on June 30, 1987 at 9:30 in Room 2415 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC.

The purpose of the meeting will be to discuss actions the U.S. should take relative to work underway by the International Maritime Organization Subcommittee on Fire Protection on fire retardance of upholstered furniture and mattresses. The Subcommittee is developing an international standard that would establish the fire retardance limits for upholstered furniture and mattresses used on commercial vessels. Interested parties are welcome to attend the meeting to provide their views, data on upholstered furniture and mattress fire testing, need for testing, information on standards used in the United States, and information on casualties fire exposure. Written submittals are also welcome and will be summarized at the meeting to aid the discussion.

For further information or copies of IMO papers on this subject contact Ms. Marjorie Murtagh, U.S. Coast Guard (G–MTH–4), 2100 Second Street, SW., Washington, DC 20593–0001; Telephone (202) 267–2997. Written submittals should also be mailed to this address.

Dated May 21, 1987.

Michael E. McNaull,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 87–12596 Filed 6–2–87; 8:45 am]

BILLING CODE 4710–07–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: May 28, 1987

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearnace Officer listed. Comments regarding these information collections should be addressed to the OMB reviewer listed and to the Treasury

Department Clearance Officer, Room 2224, Main Treasury Building, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0351
Form Number: 3975, 3975A, 3975B, 3975C, 3975D, 3975E, 3975F, 3975G, 3975H, 3975I and 3975J
Type of Review: Resubmission
Title: Tax Practitioner Mailing File (TPMF)
Description: Form 3975 series allows practitioners a systematic way to remain on the Tax Practitioner mailing file (TPMF) and to order informational copies of tax forms materials.
Respondents: Businesses
Estimated Burden: 31,105 hours
Clearance Officer: Garrick Shear (202) 566–6150, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 87–12548 Filed 6–2–87; 8:45 am]
BILLING CODE 4810–25–M

Public Information Collection Requirements Submitted to OMB for Review

Dated: May 28, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0151
Form Number: None
Type of Review: Extension
Title: Foreign Trade Zone
Description: Each foreign trade zone operator will be responsible for maintaining its inventory control and recordkeeping system including an annual reconciliation for Customs review for compliance with statute and regulations. The operator will furnish Customs an annual certification of his compliance.
Respondents: Businesses
Estimated Burden: 119 hours
OMB Number: 1515–0128
Form Number: None
Type of Review: Extension
Title: Request for Temporary Identification Card
Description: Cartman, lighterman, and airport employees may request a temporary identification card to be issued to their employees if they can show that a hardship to their business would result pending issuance of the permanent identification card and a determination is made that the permanent identification care cannot be administratively processed in a reasonable period of time.
Respondents: Businesses
Estimated Burden: 300 hours
OMB Number: 1515–0116
Form Number: None
Type of Review: Extension
Title: Marking Serially Numbered Substantial Holders or Containers
Description: The marking is used to provide for duty-free entry of holders or containers which were manufactured in the U.S. and exported and returned without having been advanced in value or improved in condition by any process of manufacture. The regulation also provides for duty-free entry of holders of containers of foreign manufacture if duty has been paid before.
Respondents: Businesses.
Estimated burden: 90 hours.
Clearance officer: B.J. Simpson (202) 566–7529, U.S. Customs Service, Room 6426, 1301 Constitution Avenue NW., Washington, DC 20229.
OMB reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Alcohol, Tobacco and Firearms

OMB number: 1512–0026.
Form number: ATF F 3 (7560.3).
Type of review: Extension.
Title: Application for Tax Exempt Transfer of Firearms and Registration of Special Occupational Taxpayer.
Description: This application allows a Special Taxpayer Firearms Licensee to transfer National Firearms Act firearms without payment of tax to another eligible Special Tax Payer upon approval of ATF. The approved form is proof that the firearm is legally held and legally transferred to the current holder of the firearm. Conversely, lack of the form could indicate illegal possession.
Respondents: Individuals or households, State or local governments, Businesses.
Estimated burden: 9,600 hours.
Clearance officer: Robert Masarsky, (202) 566–7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue NW., Washington, DC 20226.
OMB reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Internal Revenue Service

OMB number: 1545–0531.
Form number: 706NA.
Type of review: Revision.
Title: United States Estate (and Generation-Skipping Transfer) Tax Return—Estate of a Nonresident not a Citizen of the United States.
Description: Under section 6018 of the Internal Revenue Code, executors must file estate tax returns for nonresident noncitizens who had property in the U.S. Executors use Form 706NA for this purpose. IRS uses the information to determine correct tax and credits.
Respondents: Individuals or households.
Estimated burden: 1,211 hours.
Clearance officer: Garrick Shear (202) 566–6150, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.
OMB reviewer: Milo Sunderhauf, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 87–12549 Filed 6–2–87; 8:45 am]
BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities

The Office of Private Sector Programs of the United States Information Agency (USIA) announces a program of limited grant support for non-profit U.S. institutions and organizations in the private sector which fosters long-term communication and understanding between the United States and other countries through educational and cultural exchange.

Projects proposed for grant support should be designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. Projects must include an international people-to-people component and demonstrate a substantial contribution to long-term communication and understanding

between the United States and other countries on subjects consistent with Agency themes and priorities. Programs must have an educational or cultural focus of significant long-term interest.

The Office of Private Sector Programs works with U.S. not-for-profit organizations on cooperative international group projects which introduce American and foreign participants to one another's traditions, arts, social and political structures, and international interests. Each private sector activity must meet the highest professional standards, be non-partisan, and address substantive areas of mutual interest.

USIA grant assistance will constitute only a portion of total project funding. Proposals should lists other anticipated sources of support—both financial and in-kind. The project should be completed during the duration of the grant, which does not normally exceed one year. Most funding assistance is limited to participant travel and per diem requirements with only modest contributions to cover administrative costs. Grants are not ordinarily given to support research projects, youth or youth-related activities or to fund publications or student exchanges. Priority consideration is normally given to projects that directly involve United States Information Service posts overseas in the selection of the participants and the development of the program.

The Office of Private Sector Programs is now considering projects whose activities will begin after October 1, 1987. Grant proposals are reviewed on a regular basis and should be submitted in final written form a minimum of four months prior to the commencement of the proposed program to be eligible for consideration. Inquiries are welcome prior to submission of formal applications.

For further information, organizations interested in participating in this process should contact Dr. Raymond H. Harvey, Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street NW., Washington, DC 20547, or call (202) 485-7319.

Dated: May 27, 1987.

Dr. Robert Francis Smith,

Director, Office of Private Sector Programs.

[FR Doc. 87-12540 Filed 6-2-87; 8:45 am]

BILLIN CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 106
Wednesday, June 3, 1987

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MARITIME COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: May 29, 1987, 52 FR 20191.

PREVIOUSLY ANNOUNCED DATE AND TIME OF THE MEETING: June 3, 1987, 10:00 a.m.

CHANGE IN THE MEETING: The Commission meeting scheduled for June 3, 1987 at 10:00 a.m. has been cancelled.

Joseph C. Polking,
Secretary.

[FR Doc. 87-12730 Filed 6-1-87; 1:39 pm]

BILLING CODE 6730-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 1, 8, 15, and 22, 1987.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 1

Thursday, June 4

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Friday, June 5

10:00 a.m.
Briefing by Executive Branch (Closed—Ex. 1)
2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 1, 2, & 6)

Week of June 8 (Tentative)

Monday, June 8

10:00 a.m.
Briefing by Executive Branch and Discussion of Possible Enforcement Action (Closed—Ex. 5 & 10)

Tuesday, June 9

3:00 p.m.
Discussion of Performance Indicator Program (Public Meeting)

Thursday, June 11

2:00 p.m.
Briefing by DOE on High Level Waste Program (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 15 (Tentative)

Tuesday, June 16

10:00 a.m.
Discussion/Possible Vote on Full Power Operating License for Nine Mile Point-2 (Public Meeting)
2:00 p.m.
Meeting with States and Affected Indian Tribes on the Status of National High Level Waste Program (Public Meeting)

Wednesday, June 17

2:00 p.m.
Discussion/Possible Vote on Fort St. Vrain Authorization to Exceed 35 Percent Power Level (Public Meeting)

Thursday, June 18

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of June 22 (Tentative)

Thursday, June 25

10:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

To verify the status of meetings call (recording)—(202) 634-1498

CONTACT PERSON FOR MORE INFORMATION: Robert McOsker (202) 634-1410.

Andrew L. Bates,
Office of the Secretary.
May 28, 1987.

[FR Doc. 87-12635 Filed 6-1-87; 9:00 am]

BILLING CODE 7590-01-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

ACTION: Notice of meeting to be held pursuant to the Government in the Sunshine Act (5 U.S.C. 552b).

STATUS: Open.

TIME AND DATE: June 10, 1987, 10:30 a.m.; June 11, 1987, 9:00 a.m.

PLACE: Ashland Hills Inn, 2525 Ashland Street, Ashland, Oregon.

MATTERS TO BE CONSIDERED:

1. Panel Discussion on the Energy Efficiency of Manufactured Housing and Council Action on Comments regarding Proposed Federal Legislation and Department of Housing & Urban Development Regulations.
2. Panel Discussion: How should lenders account for the value of MCS energy savings in their lending decisions?
3. Staff Presentation on Salmon and Steelhead Lifecycle and Planning Model.
4. Staff Status Report and Public Comment on System Planning Work Plan.
5. Staff Presentation and Public Comment on the Council's Draft Fiscal Year 1989 and 1988 Revised Budget.
6. Staff Presentation on Mainstem Passage Issues.
7. Staff Presentation on Western Electricity Study Briefing Paper on Electricity Use in the Western United States and Canada.
8. Council Business.
9. Public Comment.

FOR FURTHER INFORMATION CONTACT: Ms. Bess Atkins at (503) 222-5161.

Edward Sheets,
Executive Director.

[FR Doc. 87-12687 Filed 6-1-87; 11:19 am]

BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold an open meeting on Thursday, June 4, 1987 at 2:30 p.m., to consider the following items.

1. Consideration of whether to propose for public comment an amendment to rule 19b-1 under the Investment Company Act of 1940. The proposal would allow certain registered investment companies to make one additional distribution of long-term capital gains with respect to a taxable year where failure to make the distribution may result in the assessment of a special excise tax. The proposal also includes changes to the rule to correct certain references to the Internal Revenue Code. For further information, please contact Meryl Dewey at (202) 272-3038.

2. Consideration of whether to propose for public comment an amendment to Rule 45 under the Public Utility Holding Company Act of 1935 proposed in a rulemaking petition submitted by The Columbia Gas System, Inc., a registered holding company. The proposed rule would create a new exemption from the present requirement of Commission authorization pursuant to a declaration for certain routine agreements in the nature of guarantees by parent companies in registered holding company systems of obligations connected to the ordinary business operations of their subsidiary companies. For further information, please contact Martha C. Baker at (202) 272-2073.

3. Consideration of a release announcing amendments to the Commission's financial responsibility rules involving the treatment of repurchase and reverse repurchase agreements by registered broker-dealers. The amendments affect Securities Exchange Act

Rules 15c3-1, 15c3-3, 17a-3 and 17a-13. For further information, please contact Michael P. Jamroz at (202) 272-2398 or Michael A. Macchiaroli at (202) 272-2904.

Commissioner Fleischman, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272-2014.

Jonathan Katz,

Secretary.

May 29, 1987.

[FR Doc. 87-12715 Filed 6-1-87; 12:24 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 52, No. 106
Wednesday, June 3, 1987

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, 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.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87M-0115]

Alcon Laboratories, Inc.; Premarket Approval of PERM-WET™ Wetting Solution and PERM-CLEAN™ Daily Cleaner

Correction

In notice document 87-9994 beginning on page 16316 in the issue of Monday, May 4, 1987, make the following correction:

On page 16317, in the first column, in the fifth paragraph, in the eighth line, "11" should read "II".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ACE-1]

Proposed Alteration of VOR Federal Airways; Missouri

Correction

In proposed rule document 87-11435 beginning on page 18920 in the issue of Wednesday, May 20, 1987, make the following corrections:

§ 71.123 [Corrected]

On page 18921, in § 71.123, in the third column, under the heading **V-12 [Amended]**, in the third line, "096°T" should read "095°T" and; in the fourth line, "292°T" should read "289°T".

BILLING CODE 1505-01-D

federal register

Wednesday
June 3, 1987

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 154, 282, 375, and 381
Revisions to the Purchased Gas Adjustment Regulations; Notice of Proposed Rulemaking

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 282, 375, and 381

[Docket No. RM86-14-000]

Revisions to the Purchased Gas Adjustment Regulations

May 20, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing the procedures by which a natural gas pipeline company (company or pipeline) passes through the cost of purchased gas to its jurisdictional customers.

The Commission is proposing to modify the mechanism by which a company can bill its purchased gas costs (purchased gas adjustment or PGA) by requiring a company to file a comprehensive annual PGA filing instead of two semi-annual filings and updating the annual PGA filing with three additional quarterly filings.

DATES: Written comments on this proposed rule must be filed with the Commission August 3, 1987.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

The FERC Form No. 542-PGA, although not published in this notice, is available at The Division of Public Information, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Room 1000, Washington, DC 20426, during regular business hours.

FOR FURTHER INFORMATION CONTACT: Andrew S. Katz, Office of the General Counsel, Federal Energy Regulatory Commission, Washington, DC 20426, (202) 357-9144.

For further technical information contact: Elizabeth A. Taylor, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, Washington, DC 20426, (202) 357-5381.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing the procedures by which a natural gas pipeline company (company or pipeline) passes through the cost of purchased gas to its jurisdictional customers.

A. Summary of the Proposed Rule

The Commission is proposing to amend the Purchased Gas Adjustment (PGA) regulations to make the PGA mechanism more responsive to market conditions; to codify the PGA policies already established by the Commission on a case-specific basis; to establish an affiliated entities test, which would limit a pipeline's recovery of gas costs from its affiliate purchases to the cost of non-affiliate purchases; to clarify the existing PGA regulations; and to facilitate the PGA review process by streamlining the filing requirements, standardizing the PGA computations, and requiring information supporting rate changes to be submitted in a computerized format.

II. Background

A. Development of Current PGA Regulations

For most pipeline companies, the cost of purchased gas is the largest single component of their cost of service. Prior to 1972, natural gas pipeline companies made general rate filings under section 4 of the Natural Gas Act (NGA)[1] to recover increases in their purchased gas costs caused by supplier rate increases. Pipelines sought authority through Commission approved settlement agreements to submit "tracking filings" based upon their suppliers' rate increases. On April 14, 1972, the Federal Power Commission (FPC), the predecessor of the Federal Energy Regulatory Commission (Commission), promulgated regulations to permit natural gas pipeline companies to include purchased gas adjustment (PGA) clauses in their tariffs. [2] The PGA mechanism allowed a pipeline to flow through to its jurisdictional customers the changes in purchased gas costs without requiring the pipeline to file a general section 4 rate filing or to seek special permission to track gas costs.

B. Amendments to the PGA Regulations

By 1978, the number of PGA filings prompted by the constantly rising costs of purchased gas had reached such a level that the Commission found that such filings imposed an undue financial and administrative burden on pipelines, their customers, Commission staff, state commissions, and the ultimate consumers. Accordingly, the Commission amended the PGA regulations to limit the number of PGA filings a pipeline could make to two per year.[3] Additionally, because the Commission recognized that the pipelines would probably accumulate larger balances in their deferred accounts because of the limitation on PGA filings, the amendment allowed pipelines to collect carrying charges on the deferred balances.

Later in 1978, the Commission amended the PGA regulations to require each pipeline to make an election whether to recoup all changes in purchased gas costs through its PGA clause or pursuant to a general section 4 rate filing under § 154.63 of the regulations.[4] The election is binding for a three-year period. The Commission instituted the election requirement to reduce the number of filings used by a pipeline to track its purchased gas costs. A company that has elected the PGA option may only include changes in purchased gas costs in a general section 4 filing, if it is granted a waiver upon a showing of severe financial consequences because of the election.

After the passage of the Natural Gas Policy Act of 1978 (NGPA),[5] the Commission amended its PGA regulations to allow a pipeline to estimate its producer supply costs for computing the current adjustment instead of using actual costs, in a PGA filing so as to reflect the automatic monthly escalations under the NGPA wellhead pricing regulations. On December 1, 1978, the Commission allowed these estimates on a one-time basis.[6] The Commission permitted PGA filings to reflect NGPA ceiling price projections on a regular basis in 1979.[7] The Commission limited the estimated cost projections to producer supplies subject to NGPA ceiling prices that were attached to a pipeline's system as of the date the new PGA rates would take effect. This rule allowed a pipeline to average its estimated costs over the six-

[1] 15 U.S.C. 717c (1982).

[2] Purchased Gas Cost Adjustment Provision in Natural Gas Pipeline Companies' FPC Gas Tariffs, 47 FPC 1049 (1972) (Order No. 452), modified, 47 FPC 1550 (1972) (Order No. 452-A) and 49 FPC 84 (1973) (Order No. 452-B).

[3] Modification of Purchased Gas Cost Adjustment Clause Regulations (Order No. 13) FERC Stats. & Regs., 1977-1981 Regulations Preambles ¶ 30,020A (1978).

[4] Final Regulation Requiring Jurisdictional Pipelines to Elect Either Adoption of PGA Clauses or General section 4 Rate Filings to Recover Changes in the Cost of Purchased Gas, (Order No. 16) FERC Stats. & Regs., 1977-1981 Regulations Preambles ¶ 30,023 (1978).

[5] 15 U.S.C. 3301-3432 (1982).

[6] Regulation Allowing Jurisdictional Pipelines With a PGA Clause in Effect on January 1, 1979, Which Includes a Deferred Account, to Include in Their PGA Tariffs, One Time, Certain Estimated Changes in Purchased Gas Costs Due to Implementation of the Natural Gas Policy Act of 1978 (Order No. 18) FERC Stats. & Regs., 1977-1981 Regulations Preambles ¶ 30,027 (1978).

[7] Regulations Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978 (Order No. 49) FERC Stats. & Regs., 1977-1981 Regulations Preambles ¶ 30,085 (1979).

month PGA effective period. The most recent change to the PGA regulations was on November 21, 1983, when the Commission required a pipeline to use a standard PGA format prescribed in FERC Form No. 542–PGA.[8]

C. How the Current PGA Mechanism Operates

The PGA consists of a two-part charge that is added to the pipeline's base tariff rate. The base tariff is established in a pipeline's general rate case in which all aspects of its rates are reviewed to ensure that the rates reflect the pipeline's costs. The two part charge consists of a current adjustment and a surcharge adjustment. The current adjustment allows a pipeline to set rates to collect the gas costs that the pipeline estimates it will incur over a PGA effective period, which is usually six months. A pipeline projects these costs based on the quantities of gas and the vintages of gas it expects to buy. Quantities are projected based on historical purchases, known changes in its resale markets, new supplies attached, expected quantities needed to meet expected sales levels, and contractual or settlement "take" obligations. Once it establishes the quantities to purchase, the pipeline applies applicable prices to individual purchase quantities.[9]

The current adjustment is a unit-cost change in a pipeline's projected cost of gas supply from one PGA filing to the next. The pipeline computes the total cost by adding all the individually determined supply costs. The pipeline then divides the total by either the expected total sales quantities (unit-of-sales) or the expected total purchase quantities (units-of-purchase) to arrive at an average unit price. The pipeline's tariff governs whether a unit-of-sales or unit-of-purchase methodology is used. The pipeline compares this per unit cost to the per unit cost determined in the last PGA filing. The difference is the change in cost of the gas supply. This difference is the current adjustment. A simplified illustration of how a current adjustment is derived is shown in Appendix A to this preamble.

The surcharge rate adjustment is a charge or credit to a pipeline's current customers to adjust for imprecise gas cost forecasting and rate setting in a prior period. The surcharge rate adjustment makes a pipeline's customers whole by providing a mechanism to credit overrecovered amounts to its customers if the rates established by the current adjustment were higher than necessary to recover the cost of the pipeline's gas supply expenditures. Conversely, the surcharge rate adjustment charge reimburses the pipeline if the rates were too low to recover the cost of the pipeline's gas purchases. Generally, every month, a pipeline will tally its expenditures for gas purchased during that month. Under the unit-of-purchase methodology, the pipeline determines the unit cost of purchased gas by dividing this total by its total purchase quantities. The pipeline compares the resulting per unit cost for the month to the projected per unit cost used to compute the current adjustment which was in effect during that month. The difference between the actual monthly per unit cost and the projected cost of gas reflected in a current adjustment in effect during the month is the unit amount the pipeline over- or underrecovers. A pipeline determines its total monthly overrecovered or under-recovered costs by multiplying the per unit overrecovery or underrecovery by the monthly quantities of gas purchased.

Under the unit-of-sales methodology, a pipeline will tally its expenditures for gas purchased during the month. The overrecovered or underrecovered costs are determined by comparing the actual costs to the revenues received from gas sold during the month (*see* Appendix B).

After the pipeline determines its monthly overrecovered or underrecovered costs, it records this amount in a subaccount of Account No. 191 of the Uniform System of Accounts (18 CFR Part 201). Each month, the pipeline debits the underrecoveries or credits the overrecoveries to Account No. 191, as appropriate, to reflect increases or decreases in its purchased gas costs. To develop the surcharge, a pipeline is required to group the monthly overrecoveries or underrecoveries into deferral periods of six or 12 months (according to its tariff). At the end of each deferral period, the pipeline divides the ending balance in the current subaccount of Account No. 191 by its projected sales quantities for the next PGA period to determine the per-unit surcharge adjustment.

The surcharge adjustment is designed to amortize the balance that accumulated in the current subaccount of Account No. 191 as of the closing day of the deferral period. The pipeline must maintain separate subaccounts of Account No. 191 for each deferral period and for the related amortization of the underrecovered or overrecovered charges or gas costs, as applicable, in order to keep each period separate. Once the Commission-approved surcharge rate adjustment becomes effective, the pipeline debits or credits the surcharge subaccount of Account No. 191, as applicable, to reflect the additional revenues collected or the amounts credited while the accumulated balance in Account No. 191 is surcharged over the succeeding PGA period. The amounts in Account No. 191 may only be recovered by a surcharge adjustment.

Because a pipeline usually makes its PGA rate change filings in advance of the proposed PGA effective date, there is an automatic lag between the end of a deferral period and the start of the surcharge amortization period to recover or return that period's deferred costs. Added to this lag is the time the company needs to prepare the filing, plus the time needed for the company to close its books. Therefore, generally, a three-month delay occurs between the close of a deferral period and the effective date of a surcharge rate to recover that balance.

III. The Need for Revised PGA Regulations

The NGPA removed wellhead price controls on a substantial portion of natural gas on January 1, 1985. In anticipation of wellhead decontrol, the Commission issued a Notice of Inquiry (NOI) on April 27, 1984.[10] In that NOI, the Commission sought information to determine to what extent, if any, the PGA regulations in § 154.38(d)(4) should be revised in light of wellhead deregulation. In addition, the Commision requested comments on whether it should propose general revisions to the format, methodology, or components of PGA filings. Specifically, the Commission was concerned that the present PGA regulations did not give a pipeline enough flexibility to adapt to a deregulated gas market environment. The Commission considered allowing pipelines to make more frequent PGA rate changes, to revise the method of valuing purchased gas costs, and to

[8] Standard Form for Purchased Gas Adjustment Filings Submitted by Natural Gas Pipeline Companies (Order No. 349) FERC Stats. & Regs., 1982–1985 Regulations Preambles ¶ 30,515 (1983).

[9] For gas purchased from other pipelines, the pipeline applies as its price the pipeline suppliers' rates in effect as of the effective date of the PGA. For gas purchased from producers, the rules vary depending on whether the gas purchased is regulated or deregulated. A pipeline may project the monthly escalations allowed under the NGPA for gas still subject to NGPA wellhead price ceilings. For supplies no longer subject to NGPA price ceilings, generally, the pipeline uses the price in effect as of the proposed PGA effective date.

[10] Revisions to the PGA Regulations, Docket No. RM84–12–000, 49 FR 18539 (May 1, 1984), 27 FERC ¶ 61,146 (1984).

submit different information to support the purchased gas cost projections in a PGA filing. Also, the Commission believed that it might be appropriate to incorporate into the regulations recent Commission policy, standardized procedures, and clarifications of terminology. The Commission received 90 comments in response to the NOI. The Commission believes that the proposed rule adequately accomplishes the purpose of the Notice of Inquiry. Accordingly, the Commission withdraws the Notice of Inquiry and terminates Docket No. RM84-12-000.

Changes in the natural gas market particularly an increase in the natural gas supply, created a need for a more flexible PGA mechanism. Also, Commission Order No. 380[11] made it easier for a sales customer to change its pipeline suppliers by eliminating variable cost minimum bill provisions in pipeline tariffs Thus as customers shifted purchases away from their traditional suppliers in order to purchase less expensive gas, pipelines were forced to compete and had to reflect any price changes in their rates quickly. However, the existing PGA regulations (in § 154.38(d)(4)) do not allow the pipelines to do that.

Many pipelines sought case-by-case waivers from § 154.38(d)(4). In order to give the pipelines the flexibility they need, the Commission waived the time-of-filing and cost support provisions in § 154.38(d)(4). These are requests to allow a pipeline to file an "out of-cycle" adjustment to pass on reduced gas costs between the pipeline's established PGA filing dates.[12] The Commission has granted a waiver when a company voluntarily elects to charge rates that are lower than the rates that would result if the company applies the PGA clause in its tariff. The company making such an election, in general, does so because it expects that its rates will be lower because of purchase contract renegotiations, decontrol of NGPA price ceilings, or the replacement of historical sources of gas supply with spot market purchases.[13]

Because a pipeline may not accurately project the gas acquisition costs reflected in its out-of-cycle PGA filings, the Commission has conditioned these waivers of the PGA regulations. The pipeline is required to assume the risk of underrecovering its actual gas costs. A pipeline that is placed "at risk" for underrecoveries must demonstrate why it should be permitted to later recover its underrecoveries in a PGA filing.

If a pipeline reflects large quantities of spot market gas in its PGA filing purchased gas supply mix, the Commission has imposed an "at risk" condition for underrecoveries unless the pipeline supports the gas cost projections with information in addition to that required by FERC Form No. 542-PGA.[14] This is in recognition of the price fluctuations and the uncertainty of deliverability generally associated with the spot market.

The Commission has recently allowed pipelines to adopt "flexible" PGA tariff clauses to allow frequent adjustments (as often as daily) to the pipelines' rates.[15] Under the flexible PGA, a pipeline continues to make its scheduled PGA filings. In addition, between the regularly scheduled filings, the pipeline is permitted to file interim adjustments, at any time, to adjust its jurisdictional rates to reflect a revised average cost of gas. The flexible PGA concept allows the pipeline to track accurately and in a timely manner, major changes in a company's purchased gas costs due to changes in gas prices, contract renegotiations, changes in the supply mix or other actions taken to reduce its gas costs, within the existing PGA framework. Although an interim adjustment can reflect either a decrease or increase in a pipeline's jurisdictional rates the pipeline is precluded from making any interim rate adjustment based on a projected average cost of gas that would be above the projected average cost of gas established in its most recent scheduled PGA filing. However, if a pipeline obtains a waiver of the regulations and increases its rates in a fully cost supported out-of-cycle PGA filing, the out-of-cycle filing establishes a new rate ceiling for interim adjustments.

A pipeline is required to demonstrate its right to recover underrecovered costs attributable to the flexible PGA rate in the next regularly-scheduled PGA after the effective period of an interim adjustment. Because a pipeline cannot precisely control its gas costs, the Commission currently permits a three-percent margin for underrecoveries.[16] Thus, a pipeline is required to demonstrate the reasonableness of its actions and why it should be permitted to recover any underrecovery of gas costs only with respect to underrecoveries due to a flexible PGA rate that exceed three percent of the actual jurisdictional cost of gas during the current deferral period.

When the flexible PGA proposals were first introduced, the Commission and pipeline customers had concerns that the flexible PGA mechanism could lead to inappropriate cost shifting between PGA effective periods, and could lead to possible manipulation of the PGA mechanism. To prevent manipulation, the Commission modified the flexible PGA proposals to provide that the interim adjustment could track only known and measurable changes in a pipeline's gas costs. This reduces the possibility that a pipeline would arbitrarily lower its rates to retain the sales load of customers who could switch to less expensive fuel supplies. By including only known and measurable changes, a pipeline cannot accumulate large unrecovered gas costs in one portion of a PGA deferral period and then offset those underrecoveries with gas cost overcharges accumulated in another portion of the same PGA deferral period. Such underrecoveries

[11] Elimination of Variable Costs From Certain Natural Gas Pipeline Minimum Commodity Bill Provisions (Order No. 380-C), FERC Stats. & Regs., 1982-85 Regulations Preambles ¶ 30,607 (1984), *aff'd Wisconsin Gas Co.* v. *FERC*, 770 F.2d 1144 (D.C. Cir. 1985), *cert. denied* 106 S. Ct. 1969 (1986).

[12] *See, e.g.*, Midwestern Gas Transmission Company, 32 FERC ¶ 61,176 (1985).

[13] *E.g.* Transcontinental Gas Pipeline Corporation, 29 FERC ¶ 61,148 (1984); Northern Natural Gas Company, 29 FERC ¶ 61,342 (1984); Midwestern Gas Transmission Company, 33 FERC ¶ 61,471 (1985).

[14] This information consists of the following:

(1) That the projected rate is the contractual rate in effect as of the effective date of the PGA filing;

(2) The lengths of the contracts and their termination dates;

(3) The relationships of the projected takes of such purchases to prior period historical takes and rates, both on a general overall spot purchase basis and individual contract basis;

(4) Information regarding the stability of the transportation arrangements necessary to transport such spot gas to the pipelines' gas system; and

(5) Any other facts that the pipeline believes will support the inclusion of short-term spot market purchases in its projected gas costs.

Mississippi River Transmission Corporation, 35 FERC ¶ 61,152 at 61,365.

[15] *E.g.* Florida Gas Transmission Company, 34 FERC ¶ 61,406 (1986); Transwestern Pipeline Company, 34 FERC ¶ 61,409 (1986); Tennessee Gas Pipeline Company, 35 FERC ¶ 61,148 (1986); Panhandle Eastern Pipe Line Company, 36 FERC ¶ 61,255 (1986). Between April, 1986 and December, 1986, most major pipelines using the PGA cost recovery mechanism have applied for permission to adopt a flexible PGA tariff.

[16] The Commission's approval of the three percent margin is subject to a 12-month "test period" for each pipeline with a flexible PGA tariff. At the end of the "test period" the Commission will review the pipeline's actual experience with the three percent margin to determine if this level should be revised in subsequent PGA filings. The Commission has reviewed the three-percent margin for two pipelines and issued orders to allow the three-percent margin to remain in effect in future flexible PGA filings. *See* Florida Gas Transmission Company, 38 FERC ¶ 61,310 (1987) and Transwestern Pipeline Company, Commission letter order issued March 30, 1987 in Docket No. TA87-3-42-000 and -001.

could result from arbitrary rate reductions. A pipeline could incur overrecoveries by intentionally not passing on gas cost decreases.

The Commission also places an "at risk" condition on all underrecoveries of gas cost to the extent a pipeline's flexible interim adjustment is not based on known and measurable changes in gas costs. Thus, a pipeline must support its entire deferred balances, including the three-percent margin, to satisfy the "known and measurable" requirement.[17]

The Commission requires a pipeline to seek Commission approval before it will be permitted to include undercollections in excess of the three-percent margin in a semi-annual PGA rate. A pipeline is deemed to waive its guaranteed recovery rights under NGPA section 601(c) [18] to the extent its undercollections exceed the three-percent margin. Also, any undercollections falling within the three-percent margin are subject to the scrutiny imposed by the fraud and abuse standards of the NGPA and the prudence standards of the Natural Gas Act. Finally, the Commission requires that in making a comparison between the projected cost of gas in an interim PGA filing and the actual cost of gas for the three-percent test, the actual cost of gas must exclude the effect of storage activity,[19] retroactive payments or other out-of-period adjustments.[20]

IV. The Proposed Rule

A. Overview

Although the Commission is proposing to leave the existing PGA mechanism substantially intact, it is proposing to revise the manner of reporting gas cost adjustments. A pipeline that elects to use a PGA would file only one fully supported PGA per year, instead of two comprehensive semi-annual PGA filings. The Commission is proposing to allow an annual surcharge as part of the annual filing. The rule would require quarterly filings to track any changes in gas costs that occur after the annual filing becomes effective. Also, the rule would allow a pipeline to adopt the flexible PGA tariff as an optional cost recovery mechanism. The Commission is proposing to allow out-of-cycle PGA rate filings as long as they are fully supported and justified.

The Commission is proposing to require a pipeline to separately maintain a refund, revenue credits, and billing adjustments balance in the deferred account (in a separate subaccount of Account No. 191). When the credit balances reach a level specified in the proposed regulation, the pipeline will be required to disburse the amounts owed to the pipeline's jurisdictional customers in a lump sum payment.

The Commission will assess a pipeline's performance in tracking its purchased gas costs during the 12-month deferral period applicable to an annual PGA filing. If a pipeline's gas cost projections prove inaccurate, and the rates were too low to recover the pipeline's actual gas costs, the pipeline will be required to obtain the Commission's approval before it will be permitted to recover actual gas costs above a level specified in the rule.

Also, the Commission will review a pipeline's deferred purchased gas costs based on a more restrictive standard imposed on unpaid accruals and on the new affiliated entities test. The unpaid accruals restrictions limit the length of time a pipeline may recognize an unpaid gas expense as a gas cost. The affiliated entities test implements section 601(b)(1)(E) of the NGPA.[21]

The Commission is proposing to give effect to quarterly PGA adjustments and to interim adjustments without establishing lengthy proceedings. All issues concerning a pipeline's purchasing practices reflected in an interim or quarterly filing, the Commission is proposing to consider only in review of each pipeline's scheduled annual filing. The Commission is proposing a 60-day notice period for the annual PGA filing to allow interested parties and the Commission sufficient time to review the filing. The Commission believes the review of the annual PGA filing will be facilitated by the proposed standardized procedures for computing a surcharge rate and carrying charges on the deferred account balances.

The proposed regulations clarify the procedures for determining deferred account balances and for computing interest (carrying charges) on deferred account balances.

It is proposed that a revised Form 542 will be submitted in a computer readable format on magnetic tape which will enhance the Commission staff's review capability. The Form 542 standardized format for reporting subaccount activity in Account No. 191 and for showing the computation of carrying charges and quarterly compounding of interest will also simplify the staff review of the annual filing.

The Commission is further proposing revised filing requirements to the regulations and to the Form No. 542 which will also facilitate the Commission's PGA review process. The annual PGA filing is a comprehensive filing for both projected gas costs and deferred account balances. The quarterly filings are less comprehensive and would require a pipeline to report only the anticipated average cost of purchased gas for a three-month period. Similarly, a filing for an optional interim PGA will require less information than the quarterly filing.

Finally, the Commission is proposing to move the PGA regulations from the middle of § 154.38, entitled "Composition of rate schedule" to a new subpart of Part 154, "Purchased Gas Adjustment Clauses" to be codified as §§ 154.301–310.

B. Section-by-Section Analysis

Section 154.301 Applicability.

This section provides that the purpose of this subpart is to establish procedures by which interstate natural gas pipelines can recover the changes in the cost of purchased natural gas through a PGA clause instead of in a general rate proceeding under section 4 of the NGA.

Section 154.302 Definitions.

This section defines certain terms used in the proposed regulations. The Commission is defining these terms to clarify both the existing PGA mechanism and the new policy being incorporated into the proposed rule.

The definitions incorporate Commission policies and procedures for computing PGA rates. The definitions of "purchased gas cost" for purposes of a current adjustment and monthly deferrals are intended to act as a limitation on the specific costs that may be included in a PGA rate.

The rule would define the types of actual costs that are appropriate for the determination of monthly deferrals of overrecovered or underrecovered purchased gas costs. Each month a pipeline records in its books of account the following gas costs for quantities of gas purchased during the month: (1) Actual amounts paid during the month; (2) known amounts that are billed, but not paid during the month; (3) estimated amounts the pipeline expects it might pay, but has not paid (and may never pay), (4) refunds of amounts for prior

[17] The Commission defines a "known and measurable" change in gas cost as a change that a pipeline has a reasonable basis for assuming will actually occur. Such changes could be based on the exercise of contract market-out provisions or other price redeterminations based on changes in the price of competitive fuels such as No. 6 residual oil.

[18] 15 U.S.C. 3431(c)(2) (1982).

[19] Panhandle Eastern Pipe Line Company, 36 FERC ¶ 61,255 (1986).

[20] *See* n. 15, *supra*.

[21] 15 U.S.C. 3431(b)(1)(E) (1982).

months' overcharges by suppliers; and (5) additional amounts billed for prior months' purchases. To send the most accurate market signal of a month's actual gas costs, the rule would permit only actual amounts paid, and known costs payable that have not been paid within a normal billing and payment cycle of 60 days to be recognized as actual gas costs for natural gas purchased in that month. After 60 days, as amounts due become known, unpaid amounts or refunds and additional amounts owed would be recognized as separate adjustments to the deferred account in the month the amounts become known. The proposed definition of actual purchased gas costs excludes estimated costs because the Commission does not believe that estimates accurately reflect market signals.

The Commission is proposing this definition of actual purchased gas costs to ensure that the comparison of projected to actual costs in the assessment of past performance is accurate. If the pipeline were to use all costs recorded in its books, including prior period charges or refunds, there would be distortation of the comparison of projected to actual costs in the assessment of past performance.

The definitions of "unit-of-purchase" and "unit-of-sales" methodologies describe the specific computation of the average projected cost of gas that the proposed rule requires a pipeline to use when computing a current adjustment.

The definition of "unpaid accruals" reflects the Commission's requirements that only rates in effect may be included as gas costs in PGA rates.

Section 154.303 Election of PGA Clause

This section establishes the procedure a pipeline must follow in order to choose whether to recover its purchased gas costs through a PGA clause or through a NGA section 4 rate case. The proposed rule incorporates the procedure outlined in § 154.38 (d)(4)(ix) of the current PGA regulations.

A pipeline with an effective PGA clause in its tariff on December 1, 1987, is deemed to have chosen the PGA clause option. If a pipeline chooses to recover gas costs in a general rate proceeding under § 154.63, it must file tariff sheets to remove its PGA clause by December 1, 1987. The election whether or not to use the PGA option is binding for a three-year period that begins on January 1, 1988. This "election period" will continue on a three-year cycle beginning on January 1 of every third year.

A company that chooses the PGA option will not be permitted to include purchased gas cost changes in general rate filings during the PGA election period. However, if a company that chooses the PGA option is confronted with severe financial consequences due to the election, it may request a waiver and file a general rate increase under § 154.63 which includes changes in purchased gas cost. If a pipeline wishes to change its elected option, it must file tariff sheets to implement its decision by the December 1 preceding the three-year election period that commences on January 1.

Purchased Gas Adjustment Clause

A pipeline that chooses the PGA option must file a revised PGA clause that conforms to all the terms and conditions of the rule. The conditions are outlined in this section. The revised PGA clause will become effective only after the Commission issues an order accepting the PGA clause for filing. The procedures for implementing the revised PGA clause are outlined in transition rules in § 154.310.

First, a company must choose a unit-of-purchase or unit-of-sales methodology for computing a current adjustment[22] and for determining the monthly deferrals of purchased gas costs to Account No. 191.[23] Both the current adjustment and the gas cost deferrals must be calculated using the same methodology. A company must indicate which methodology it uses in its revised PGA clause.

The total cost of gas a company projects would be the same whether a pipeline chooses a unit-of-sales or unit-of-purchase methodology. However, the projected unit cost of gas would be different depending on which methodology is used to calculate it. The company must compute a projected average unit cost of gas so that it can compare that cost with the average cost of gas it projected in its last scheduled PGA. The difference between the two costs yields the amount of the current adjustment. If a company uses a unit-of-purchase methodology in order to compute the projected unit cost of gas, it divides the total projected costs of gas by the projected purchase quantities. If a company uses a unit-of-sales methodology in order to compute the projected unit cost of gas, it divides the total projected costs of gas by the projected sales quantities. These methodologies usually result in different projected average unit costs of gas.

The difference in the projected average unit cost of gas derived through these methodologies will affect the deferred costs—the difference between the projected costs and the actual costs in a month. Under a unit-of-sales methodology, the company may recover through the deferred account the difference between purchased gas costs incurred and purchased gas costs recovered through gas sales revenues. The difference in the projected average cost of gas derived by these methodologies occurs because a pipeline generally sells fewer quantities of gas than is purchased due to the operation of compression stations and other operational factors. Under a unit-of-purchase methodology, the company usually cannot recover the entire difference between purchased gas costs and revenues through the deferred account because calculation of the monthly deferred costs under this methodology uses actual purchase quantities, not sales quantities used in the unit-of-sales methodology. An example of this distinction is included in Appendix B.

The Commission is proposing to require a company to choose between the unit-of-sales and the unit-of-purchase methodology so that a company uses one methodology to compute the base cost of gas, the current adjustment, and the monthly deferred costs. If a company does not do this it could double recover through both the PGA and through a NGA section 4 rate case under § 154.63 for the costs of quantities it could not sell.

A pipeline that elects a PGA clause must follow the Commission's regulations regarding comprehensive interperiod income tax allocation. The Commission, and its predecessor the FPC, required through a series of orders that certain timing differences between the determination of taxable income and pre-tax accounting income be normalized. The deferral of purchased gas costs, refunds, revenue credits, or billing adjustments can create a timing difference between the period during which an expense or revenue transaction enters into the determination of taxable income and the period during which the expense or revenue transaction enters into the determination of pre-tax book income. However, whether there is a timing difference to be normalized is an issue of fact which depends on each pipeline's financial and income tax position. Normalizing any timing differences in

[22] For the current adjustment, the unit-of-purchase methodology is defined in § 154.302 (m) and the unit-of-sales methodology is defined in § 154.302 (n).

[23] The method for determining monthly deferrals to Account 191 on either a unit-of-purchase or unit-of-sales basis is proposed in § 154.305 (g)(1).

the proposed rule reflects the Commission's requirements expressed in these orders.[24]

Three Year Requirement To Establish New Base Tariff Rate

Proposed § 154.303 modifies § 154.38(d)(4)(vi) of the current PGA regulations. Since most pipelines have elected the PGA clause option under the existing regulations,[25] the Commission is proposing a three-year restatement period to be tied to the effective date of a previously-effective base tariff rate,[26] instead of the effective date of a new PGA clause. The restated base tariff rate will reflect the system average cost of gas established by a pipeline's most recent PGA filing.

The regulation would eliminate the cost study requirement under existing § 154.38(d)(4)(i), which was used when a pipeline filed its initial PGA clause for the Commission's approval. Instead, the regulation would require base tariff rate restatements to be supported by the cost study used in § 154.63 for section 4(e) rate changes.

Section 154.304 Scheduled annual and quarterly PGA filings

Through this section the Commission hopes to make the PGA mechanism more market-responsive. It proposes that a pipeline will be required to report its projected purchased gas costs more frequently than required by the current regulations. A pipeline that elects to recover its purchased gas costs under a PGA clause would file one comprehensive annual filing, which would contain a current adjustment to be in effect for three months and a surcharge rate adjustment to be in effect for twelve months. During the same twelve-month period, a pipeline would file, at three-month intervals, three quarterly PGA filings, each containing a current adjustment. At the end of the twelve-month period, a pipeline would file its next annual PGA.

The regulation provides an exception to the required filings, currently set forth in § 154.38(d)(4)(iii). A pipeline would adjust its rates only when such adjustment constitutes a dollar amount equal to at least 1 mill ($0.001) per MMBtu of annual jurisdictional sales. The Commission is proposing to retain the 1 mill triggering level to avoid the administrative burden on all affected parties to review rate adjustments based upon insignificant changes in gas costs.

Section 154.304(c) Effective dates

The Commission is proposing a schedule of PGA effective dates in § 154.304(c) based on the annual or semi-annual dates set forth in § 154.38(d)(4)(iv)(a) of the current PGA regulations. The new schedule maintains, as nearly as possible, one of each pipeline's historical effective dates. In proposing this schedule the Commission considered a pipeline's purchasing patterns in an effort to schedule an effective date after the annual effective date of the pipeline's major pipeline suppliers. The Commission's proposed schedule is also designed to reduce the burden on the Commission staff, state regulatory commissions, and other interested parties, by distributing the filings over the year. This section also proposes the quarterly PGA effective dates that will follow a pipeline's annual PGA effective date.

Section 154.305 Annual PGA

Filing Requirements

The Commission is proposing to extend the requirement in current § 154.38(d)(v) that a company file with the Commission at least 30 days before the effective date of a PGA rate change, to 60 days. Specifically, the Commission is proposing that a pipeline must make its annual PGA filing at least 60 days before the company's annual PGA effective date cited in § 154.304(c). This additional review period is necessary because the Commission is planning at the time of the annual filing to review the deferred account to evaluate a pipeline's performance in projecting its gas costs over the year. Also, at this time the Commission is planning to evaluate the pipeline's past purchases under the proposed test for applying the affiliated entities limitation of NGPA section 601(b)(1)(E). Finally, the Commission is planning at the time of the annual filing to consider any issues concerning the prudence of a pipeline's gas purchases over a year. The Commission believes that a 60-day notice period is necessary to provide it and all interested parties with sufficient time to evaluate these issues and any other issue that may be raised in an annual PGA filing.

The Commission recognizes that section 4 of the NGA requires a pipeline to give the Commission only 30 days notice for rate changes. In this rule the Commission is proposing to modify many of its regulations to allow a pipeline to make virtually automatic gas cost rate adjustments in quarterly and interim filings. The Commission can only give the pipeline this flexibility if the pipeline is willing to provide the Commission with the additional 30-day notice period necessary to fully evaluate the annual filing and the pipeline's performance over the year. Also, the longer notice period should eliminate the need to establish technical conferences which results when the Commission Staff lacks adequate time to resolve problems that are discovered during the 30-day review period.

The Commission is proposing to require the pipeline to file, in its annual PGA filing, tariff sheets and a report showing the derivation of the current adjustment and the surcharge rate. The format for the tariff sheets showing the "Notice of Purchased Gas Cost Adjustment Rate Change" is being revised from the current format in § 154.38(d)(4)(v) of the regulations. Proposed § 154.305(a)(1) refines the existing format by adding a column for the proposed surcharge adjustment, the Gas Research Institute adjustment, other adjustments (if needed), and the total rate adjustment.

The Commission is also proposing to require that the "Notice of Purchased Gas Cost Adjustment Rate Change" reflect the estimated average cost of gas included in a pipeline's last quarterly PGA filing and the current estimated average cost of gas. This format requirement would show whether a pipeline made any interim adjustments to its projected average cost of gas between its scheduled PGA filings.

This section would also require that all reports reflecting a pipeline's books of account be supported by working papers that reconcile the reports to the company's books. The workpapers must be made available for inspection upon request by the Commission's staff. Under Part 225 of the regulations these records must be retained for a six-year period as part of a pipeline's corporate

[24] *See e.g.* Order Implementing A Portion of Docket No. R-424 Relating to Interperiod Allocation of Income Taxes and Docket No. R-446 To Achieve Comprehensive Interperiod Allocation of Income Taxes And To Prescribe Accounting To Implement The Class Life Asset Depreciation Range System, (Order No. 504), 39 FR 6072 (February 19, 1974), 51 FPC 659 (1974); Order Implementing That Portion of Docket No. R-424 Relating To Interperiod Allocation of Income Taxes and Docket No. R-446, To Achieve Interperiod Allocation of Income Taxes, (Order No. 530), 40 FR 28981 (June 26, 1975), 53 FPC 2123 (1975); Modification of Purchased Gas Cost Clause Regulations, (Order No. 13), 43 FR 50167 (October 27, 1978), FERC Stats. & Regs., 1977-1981 Regulations Preambles, ¶ 30,020 A (1978); and Regulations Implementing Tax Normalization from Certain Items Reflecting Timing Differences in the Recognition of Expenses or Revenues for Ratemaking and Income Tax Purposes, (Order No. 144), 46 FR 26613 (May 14, 1981), FERC Stats. & Regs., 1977-1981 Regulations Preambles, ¶ 30,254 (1981).

[25] *See* n. 4 *supra*.

[26] As defined in proposed § 154.302(c), the effective base tariff rate is the rate on file with the Commission excluding PGA or other adjustments.

and general records.[27] The requirement that accounting workpapers must support any reports reflecting the books of account is substantially the same as the requirement in § 154.63(e)(4)(iii) of the regulations for general rate change proceedings.

Treatment of Change in Cost of Gas From Various Types of Suppliers

The rule would require that changes in the cost of gas from suppliers must be allocated on an "as billed" basis to a pipeline's two-part rates, or to a pipeline's volumetric rates consistent with the pipeline's one-part rate design. "As billed" is defined to mean that a pipeline will charge its customers for gas costs in the manner it is billed by its suppliers, in § 154.302(b). Specifically, producer-supplier cost changes must be allocated to the commodity component of a pipeline's demand/commodity rates, or to its volumetric rates, if the company uses a one-part rate. The rule would limit the flow-through of supplier cost changes on an as-billed basis in the case of imported natural gas to reflect the Commission's policy on as-billed treatment of cost changes associated with imported natural gas.[28] Rate changes associated with imported natural gas must be allocated to a domestic pipeline's rates consistent with a rate design methodology approved by the Commission.

Domestic pipeline supplier rate changes must be allocated on an as-billed basis to a pipeline's two-part rates or consistent with the pipeline's one-part rate design.

Projecting Purchased Gas Costs to Determine the Current Adjustment

The rule would establish a method for projecting purchased gas costs in order to determine the current adjustment. The definition of "current adjustment" sets out the method for computing the current adjustment.[29] A pipeline determines the current adjustment by computing the current weighted average projected purchased gas costs using either the unit-of-purchase or unit-of-sales methodology.[30] A pipeline will determine its projected purchased gas costs based on its best estimate of the quantities of gas the company will purchase over the three-month period subsequent to the annual PGA effective date. For each projected purchase of natural gas the pipeline must apply either the purchase rate as of the annual PGA effective date, or the rate that was last in effect before the annual PGA effective date. The difference between the current weighted average projected purchased gas costs and the weighted average projected purchased gas costs used for the previous current adjustment effective period is the current adjustment.

The rule would retain two provisions from the existing PGA regulations concerning cost projections. First, § 154.305(a)(1)(ii) provides that the rate used for projecting gas costs may be adjusted by the monthly ceiling price escalations allowed under the NGPA if the supply is still subject to wellhead price controls under Title I. Second, § 154.305(c)(2) specifies that a pipeline may not project the costs of any gas that is not capable of flowing into the company's system, barring any operational problems, as of the annual PGA effective date.

Because spot market purchases have increased in the supply mix of many pipelines, the Commission is proposing to permit projected spot market purchases to be used to determine a current adjustment. However, the Commission will apply the same review criteria established in prior orders for projections of spot purchases.[31]

Finally, if a pipeline uses the unit-of-sales methodology to compute a current adjustment, the rule would require a pipeline to use the best estimate of the quantities of natural gas the pipeline expects to sell over the three months following the annual PGA effective date. Appendices C and D illustrate how to compute a current adjustment using either the unit-of-purchase or the unit-of-sales methodology.

Section 154.305 (d) and (e) The surcharge rate.

The deferred cost entries recorded in Account No. 191 "Unrecovered purchased gas costs" [32] would be reported only in the annual PGA filing, not in the quarterly or interim filing, in order to establish a twelve-month surcharge rate. A pipeline must adjust its PGA rates to include this twelve-month surcharge to recover underrecovered costs or to refund overrecovered costs that have accumulated in Account No. 191 over a twelve-month deferral period ending four months before the surcharge rate effective date. The rule would specify a four-month delay between the end of the twelve-month deferral period and the annual PGA effective date because of the proposed 60-day notice requirement and the need for a pipeline to close its books and prepare the PGA filing. Also, the pipeline needs time to transfer the actual gas costs recorded on the books to the reports required by the FERC Form No. 542–PGA (Schedules B1 or B2, C1 and C2).

The pipeline computes the surcharge rate by dividing the surcharge balance by the estimated sales for the twelve-month period the surcharge rate will be in effect (the "surcharge rate amortization period" as defined in proposed § 154.302(q)). The surcharge balance consists of the balances accumulated in the current deferral subaccount of Account No. 191 during the deferral period and any other costs the Commission allows a pipeline to include in the surcharge balance. The balances accumulated in the current deferral subaccount of Account No. 191 will consist of:

(1) The monthly deferrals of purchased gas costs during the twelve-month deferral period;

(2) Any adjustments to prior months' costs;

(3) The transfer of any unamortized surcharge balance from a prior surcharge rate amortization period;

(4) Carrying charges (interest) accumulated in the deferral period; and

(5) The transfer from the refund, revenue credits, and billing adjustments subaccount of amounts not yet refunded in cash.

The following illustration shows how a surcharge balance and surcharge rate would be determined under the proposed rule:

Surcharge Balance and Computing the Surcharge Rate

All amounts are illustrative only. The example assumes estimated sales for the effective surcharge rate amortization period (the twelve months beginning on the rate effective date) of 230,000 MMBtu.

[27] 18 CFR 225.3; Item No. 6(b)(5) "Copies of Formal order of regulatory commissions served upon utility"; Item No. 7(b) "Contracts with other utilities or other persons for the purchase, sale or interchange of product"; and Item No. 7(g) "Memorandum essential to clarifying or explaining provisions of contracts."

[28] *See* Natural Gas Pipeline Company of America, 37 FERC ¶ 61,215 (1986) (Opinion No. 256) (rehearing pending).

[29] See § 154.302(o) of the proposed rule.

[30] See § 154.302 (m) and (n) of the proposed rule.

[31] *See* n. 14 *supra*.

[32] As set forth in 18 CFR Part 201, Uniform System of Accounts. The appropriate Account No. 191 subaccount is debited or credited each month for increases or decreases in purchased gas costs with contra entries to Account No. 805.1. Separate subaccounts are maintained for the amounts relating to the period in which the increases or decreases are accumulated (the deferral period) and for the amortization of purchase gas cost increases or decreases from a prior period so as to keep each period separate.

The Surcharge Balance is:	
(1) The sum of the monthly deferrals of the 12 months in the deferral period	$3,400
(2) Adjustments of prior month costs	190
(3) Transfer of unamortized balance from a prior expired surcharge rate amortization period	200
(4) Carrying charges accumulated in the deferral period	250
(5) Transfer from the refund sub- account of amounts not yet refunded	<740>
Surcharge Balance	3,300

Surcharge Rate:
Surcharge Balance $3,300 ÷ Projected Sales 230,000 MMBtu = $0.0143 or 1.43¢/MMBtu

Any other costs that the Commission may allow a pipeline to include in a surcharge balance will be determined on a case-by-case basis. These costs could involve extraordinary, non-recurring costs, such as retroactive repricing of company-owned production pursuant to Order No. 391.[33]

Section 154.305(f) Balances in the current deferral subaccount of Account No. 191.

The Commission is proposing to define the costs that would be included in the subaccount of Account No. 191 that reflects the current deferrals. This account reflects the actual costs related to gas purchased during the twelve-month deferral period. The recorded costs include monthly deferrals of underrecovered or overrecovered purchased gas costs.

The pipeline would also record adjustments to a prior month's cost of gas. For example, such an adjustment would be required if a pipeline had purchased a commingled supply of gas several months earlier and the supplier notified the pipeline during the deferral period that the price paid for the gas has to be adjusted due to a problem with allocating the mixed vintages.

A pipeline would record any unamortized amounts from the last surcharge balance in the current deferral subaccount. If an amount remains in the current refund subaccount at the end of the deferral period, the pipeline would be permitted to transfer that amount to the current deferral subaccount. Finally, the pipeline must compute carrying charges on the appropriate carrying charge base applicable to the monthly ending balances in the current deferral subaccount. The subaccount entries in Account No. 191 for an annual PGA are reported on Schedule C1 of the revised Form 542.

Monthly Deferred Gas Costs

The rule would specify a method for computing monthly deferrals of underrecovered or overrecovered purchased gas costs under the unit-of-purchase or unit-of-sales methodology. A pipeline must include as the actual cost of gas purchased amounts attributable to gas quantities purchased only during the month. These costs may include wellhead purchases, wellhead intracompany transfers, field line purchases, gasoline plant purchases, transmission line purchases, non-concurrent exchange transactions authorized by contract, severance taxes, production related costs, and unpaid accruals. However, a pipeline that uses a unit-of-sales methodology must adjust its monthly actual purchased gas costs to reflect the effect of exchange transaction and transportation transaction imbalances.

Because a pipeline that uses a unit-of-purchase methodology will not be compensated through its PGA for the costs of the differences between the quantities purchased and the quantities sold, the actual total cost of gas may not be recovered through the pipeline's PGA rates, and those differences may instead be recovered through a general rate filing under § 154.63. Therefore, in order to determine its monthly deferrals, the pipeline must compare the actual unit cost of gas for the month to the appropriate projected unit cost of gas recovered through the pipeline's PGA rate and multiply the difference by the applicable purchase quantities.[34]

A pipeline that uses a unit-of-sales methodology can be compensated through the PGA for compressor station use or other operational factors. In order to determine its monthly deferrals, the pipeline must compare its total gas purchased gas costs for a month to the revenues received from its gas sales.[35] Appendices E and F show how a monthly deferral would be computed under both methodologies.

The normal cycle for the billing receipt and payment of gas purchases by a pipeline is presumed to be 60 days from the month of purchase. Therefore, the rule would require that any amounts that are paid or are known but unpaid within 60 days from a purchase month must be reflected as an actual gas cost for purposes of determining monthly deferrals for that month. Any amounts that are paid or are known but unpaid after 60 days of the purchase month must be included as an adjustment to Account No. 191 for a prior month's gas costs in the month the amounts are paid or are known but unpaid.

Section 154.305(g) Unpaid accrual restrictions.

The rule would require a pipeline to record as a monthly gas cost, certain expenses for gas delivered (or services rendered for gas delivered) that remain unpaid after the 60-day billing and payment cycle ("unpaid accruals"). The Commission is proposing to include certain types of unpaid accurals as gas costs because the pipeline's ratepayers receive the benefit of the gas supply associated with the unpaid amounts. The Commission requires all pipelines to maintain their books of account on an accrual rather than a cash basis.

There are two kinds of unpaid accruals. First, "suspended payables" are known amounts that are not paid, for example when the payee is unknown or the payee is subject to lien, garnishment, or court order. The other, "accrue-but-don't pay," are estimated or anticipated amounts which may be paid. An example would be where the contract prices are under renegotiation and a pipeline accrues for the estimated, but not in effect increase in price. The accrue-but-don't pay accrual would be the amount estimated that is above the rate in effect.

The Commission is proposing to recognize only the "suspended payable" type of unpaid accruals as gas costs.[36] These accrued costs represent known amounts that have a higher probability of being paid. For ratemaking purposes, a pipeline should pass through known or actual amounts to its customers. "Accrue-but-don't pay" accruals represent estimated amounts or contingent liabilities that may not be paid. Because the accrue-but-don't pay accruals represent contract rates that are not in effect, the Commission finds it

[33] Production under section 2(21) of the Natural Gas Policy Act of 1978, 49 FR 33849 (August 27, 1984), FERC Stats. and Regs., 1982-1985 Regulations Preambles, ¶ 30,588 (1984).

[34] If a pipeline files more than one interim current adjustment rate during a month there would be more than one projected unit cost of gas in effect for purposes of determining that month's deferrals. Therefore, the pipeline must allocate the volumes purchased to the current adjustment rates in effect during that month.

[35] For purposes of determining monthly deferrals on a unit-of-sales basis when more than one current adjustment is in effect in a month, a pipeline must allocate the volumes sold under each current adjustment in effect.

[36] The definition of "unpaid accruals" in § 154.301(r) reflects this policy.

inappropriate to allow pass through of these accruals in the PGA.

The Commission recognizes that "suspended payable" accruals may never be paid. If payment is not made, a pipeline that recovered these amounts in its rates may be unjustly enriched. In order to prevent this, the rule would require a pipeline to list and describe in each annual filing each unpaid accrual which remained unpaid for three or more years from the month it was originally recognized as a gas cost to the end of the current deferral period. The pipeline would have to provide justification and request the Commission's approval to continue recognizing the unpaid accruals listed as gas costs. The Commission considers a three-year limitation on unpaid accruals is reasonable because there is little likelihood that a pipeline will actually pay the outstanding amounts beyond that time. If the Commission does not approve the continued recognition of any of the unpaid accruals listed as a gas cost, the pipeline would be required to credit the unpaid amount to the current refund subaccount of Account No. 191. If a pipeline does eventually pay an outstanding accrued cost that was previously credited to Account No. 191, the pipeline can be compensated by a debit of the payment to Account No. 191 and thereby recover the amount through its deferred account surcharge rate.

Section 154.305(h) Carrying charges.

Under current § 154.38(d)(4)(iv)(C), a pipeline may compute carrying charges (interest) on the deferred account balances in Account No. 191. Carrying charges compensate the pipeline's customers for the time value of the overrecovery of gas costs and compensate the pipeline for the time value of the underrecovery of gas costs.

The rule would require a pipeline to compute carrying charges on the carrying charge base applicable to the monthly ending balances in Account No. 191. The Commission is proposing this methodology because it believes that the pipeline and its jurisdictional customers should be able to recoup out-of-pocket expenses as quickly as possible. This is consistent with the Commission's policy that the PGA should be used to recover a pipeline's purchased gas costs as soon as possible.[37] Because the proposed rule requires a pipeline to maintain a separate subaccount for refunds, revenue credits, or billing adjustments there is a separate carrying charge base for refunds, revenue credits or billing adjustments and a separate carrying charge base for all other subaccounts of Account No. 191.

The carrying charge base for all the subaccounts of Account No. 191 must reflect the Commission's requirements of comprehensive interperiod income tax allocation. The carrying charge base for refunds, revenues credits, and billing adjustments is not adjusted for the activity recorded in the other subaccounts of Account No. 191. The carrying charge base for the other subaccounts of Account No. 191 must be adjusted for exchange, storage, and unpaid accruals.

The Commission is proposing to require a pipeline to reimburse its customers for the time value of unpaid accruals collected as gas costs. To compensate the ratepayers for the time value of the monies they have paid to the pipeline before the pipeline has paid the supplier, the Commission is proposing to require that the pipeline effectively credit carrying charges to the customer for all unpaid accrual amounts included on the pipeline's books that have been collected through the pipeline's rates. In order to effectively pay time value on the unpaid accruals, the deferred tax effect is taken on the entire deferred balance in Account No. 191, not on the adjusted balance.[38]

For example:

Federal and State Tax Rate (Pre-7/1/87 Rate)...=	48.16%
Accrued Account N. 191 balance.....=	$10,000
Unpaid accruals.....=	$1,000
Adjusted balance.....	$9,000
Deferred Tax Balance=$10,000 × 48.16%....=	$4,816

Accrued Balance	−	Deferred Tax	=	Carrying Charge Base	×	Monthly Interest Rate	=	Monthly Carrying Charge
$10,000		$4,816		$5,184		.0081		$41.99

$$\frac{\text{Adjusted Balance}}{\$9{,}000} - \$4{,}816 = \$4{,}184 \times .0081 = \$33.89$$

Thus, carrying charges would be $33.89 in order to give effect to the time value for unpaid accruals of $41.99−$33.89=$8.10

The carrying charge base must also be adjusted for other estimated costs that are included in Account No. 191. Under estimated LIFO inventory accounting the pipeline estimates costs to value gas storage inventory during a year. The assignment of costs for exchange transactions and transportation imbalances, under the procedures in proposed § 154.305(j), also reflects estimates of the cost of these exchange transactions and transportation imbalances.

The Commission is proposing to retain the existing requirements for calculating monthly carrying charges based on the current rate of interest, quarterly compounding of interest, and the crediting or debiting of carrying charges to Account No. 191. Depending on whether the monthly ending carrying charge base is a debit (positive) or a credit (negative) Account No. 191 will be correspondingly debited or credited. However, the Commission is proposing to amend the existing regulations to definet the procedure for calculating carrying charges on the deferred account. The Commission is proposing a change to ensure that carrying charges will be consistently calculated by all pipelines. This will facilitate review of the PGA deferred account by all interested parties. Schedule C2 of the

[37] Natural Gas Policy and Procedures; Final Regulation and Request for Comments (Order No. 47), 44 FR 53493 (September 14, 1979), FERC Stats. & Regs., 1977–1981 Regulations Preambles, ¶ 30,083 at 30,553; and Modifications of Purchased Gas Cost Adjustment Clause Regulations, (Order No. 13), 43 FR 50167 (October 27, 1978), FERC Stats & Regs., 1977–1981 Regulations Preambles, ¶ 30,020A at 30,091–5.

[38] This policy is reflected in the carrying charge base because a monthly accrued balance in Account No. 191 is adjusted for the deferred income taxes on the balance and any unpaid accruals in the balance are deducted before the monthly carrying charge rate is applied.

revised Form 542 incorporates the standardized procedure for computing carrying charges. Appendix G shows how monthly carrying charge rates will be computed under the proposed rule. Exhibit H shows quarterly compounding of carrying charges under the proposed rule.

Section 154.305(i) Refunds.

Under § 154.38(d)(4)(vii) of the existing PGA regulations, the jurisdictional portion of all supplier refunds, including interest received, is credited to Account No. 191 and flowed through to the pipeline's jurisdictional customers through the deferred account surcharge. The rule would require a pipeline to make a lump sum distribution of refund amounts, except under limited circumstances. The rule would require a pipeline to credit the jurisdictional portion of refunds (with interest), billing adjustments, or revenue credits it receives to a separately-identified subaccount of Account No. 191.[39] The pipeline would compute carrying charges for purposes of refunds on the monthly ending balances of the refund subaccount as described in proposed § 154.305(h).

When the refund subaccount balance reaches a trigger level specified in the proposed regulations, the amounts accumulated would be disbursed in cash. The disbursement would be apportioned among the pipeline's jurisdictional customers based on the ratio of an individual customer's latest 12 months of purchases to the pipeline's latest 12 months of actual sales for the same 12-month period. Any refund balance remaining in the refund subaccount at the end of the 12-month deferral period of an annual PGA would be cleared from the refund subaccount. A pipeline would have the option of refunding the remaining amounts to its customers through a cash disbursement or by transferring the balance to the current deferral subaccount to be surcharged.

The Commission is proposing to require the pipeline to file a refund report that shows how the pipeline disbursed its refunds. This report would be filed with each annual filing.

The Commission is proposing this method of refunds to ensure that PGA rates are not distorted as a result of large refunds or revenue credit balances. Specifically, it is proposing a disbursement trigger. Thus, whenever a refund subaccount balance reaches one percent per MMBtu of the latest 12 months of actual sales or $2 million, whichever is lower, the pipeline would make a cash disbursement.[40]

Under the proposed rule, a pipeline is required to determine with each credit whether the refund subaccount balance of Account No. 191 has reached the trigger level. In computing the trigger amount, the pipeline would include carrying charges on the accumulated refund balances as part of the balance.

The proposed refund methodology would provide repayment to a pipeline's customers faster than through the amortization of a surcharge balance on a prospective basis. Under the existing rules, due to the seasonal demand for natural gas or the expiration of a service agreement, some customers who made overpayments may not be purchasing gas from a pipeline's system when refunds are flowed through a subsequent PGA surcharge rate.

Finally, the proposed rule adds a new § 154.38(d)(4) to provide a refund procedure for a pipeline company that does not recover its gas costs through the PGA. This section is added because some pipelines may not elect the PGA for gas cost recovery.

Cancellation of § 154.38(h)

The Commission's staff has calculated that over ninety (90) percent of the outstanding Btu refunds [41] have already been paid by first sellers. Future refunds are generally expected to be received infrequently and in small amounts.

As proposed in § 154.305(i), once refund amounts reach the lesser of one cent per MMBtu of jurisdictional sales or two million dollars immediate cash refunds based on the most recent twelve months sales must be made and all subsequent and/or lesser accumulated refunds must be cleared annually through the surcharge adjustment.

In recognition of the small amounts of Btu refunds left to be paid and the frequency of payment, together with the proposed revisions to the PGA refund provisions, the Commission considers that retention of § 154.38(h) as a separate refund requirement is no longer necessary.

Section 154.305(j) Exchange and transportation imbalances.

A noncurrent exchange transaction [42] occurs when a pipeline delivers gas to another pipeline (or other party) one or more months before the party that receives the gas redelivers an equivalent amount of gas. Sometimes an additional cost is paid for the returned gas. The more common concurrent exchange transaction,[43] involves pipelines (or other parties) that contract to deliver equal (or exchange) quantities of gas to each other every month. If the deliveries are unequal, the resulting imbalance is corrected as soon as operationally feasible.

Pipelines have used various methods to reflect out-of-balance exchange transactions and transportation imbalances in their rates. Nevertheless, it always has been the Commission's policy not to permit exchange transactions and transportation imbalances that cause an imbalance between receipts and deliveries of gas to change the calculation of monthly deferred purchased gas costs.[44]

The Commission is proposing to incorporate that policy in its regulations. Accordingly, the proposed definition of "exchange-in" quantities (receipts exceeding deliveries) and "exchange-out" quantities (deliveries exceeding receipts) includes concurrent, and nonconcurrent exchange transactions and transportation imbalances.[45] In addition, the Commission is proposing that a pipeline will be required to revise its gas tariff to reflect that it will use the same methodology it uses to adjust monthly deferrals to adjust for exchange and transportation transaction imbalances.

Section 154.306 Assessment of past performance.

The annual and three quarterly filings, plus the optional interim (flexible) filing mechanism, proposed in this rule are designed to allow a pipeline sufficient flexibility to transmit accurately and

[39] The revenue credits would include transportation revenue credits or natural gas liquid revenue credits or any other credits the Commission designates.

[40] The $2 million trigger level is based on a review of the FERC Form No. 2 "Annual Report of Major Natural Gas Companies."

[41] In Order No. 399, 49 FR 37735 (Sept. 26, 1984), FERC Stats. Regs. [Regulations Preambles 1982–1985] ¶ 30,597, the Commission established refund procedures for charges for natural gas that exceeded NGPA ceilings as a result of Btu measurements based on the water saturated basis. In so doing, the Commission was implementing the decision in Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission, 716 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984).

[42] *See* proposed § 154.302(g) for a definition of noncurrent exchange. Under proposed § 154.302(j), noncurrent exchange transactions are considered purchased gas costs if authorized by a written contract.

[43] *See* proposed § 154.302(f) for a definition of concurrent exchange.

[44] The Commission issued orders in January 1986, which directed pipelines to adopt a specific methodology to remove the effects of out-of-balance concurrent exchange transactions from their rates. Mid Louisiana Gas Company, 34 FERC ¶61,051 (1986); United Gas Pipeline Company, 34 FERC ¶61,052 (1986).

[45] "Exchange-in" is defined in proposed § 154.302(h) and "Exchange-out" is defined in proposed § 154.302(i).

quickly the true market cost of gas to its customers. The pipeline can use its best estimates of quantities of gas it plans to purchase to project gas costs. The frequent tracking of expected purchased gas costs provides the pipeline the flexibility to meet the competitive situation in its market area, because the pipeline can more accurately forecast the cost of gas and manage the cost of its supplies. Thus, a pipeline should not incur substantial underrecovered gas costs unless it experiences unforeseen operational or marketing problems. The Commission is proposing these revisions because a large surcharge, whether positive or negative, has a distorting effect on the current cost of gas and can send inaccurate signals to the market as to the current cost of the gas being purchased.

In addition, the Commission is proposing to review a pipeline's performance in projecting gas costs during the 12-month deferral period at the time of the annual PGA filing. The Commission is proposing to establish a review threshold for the level of under-recovered gas costs contained in an annual PGA filing's surcharge balance. The threshold will be 1.02 or 102 percent of a pipeline's computed projected gas costs. If the actual gas costs equals or exceed the threshold, the Commission would have to approve recovery of any underrecovered gas costs that equal or exceed the threshold. The Commission does not intend for the threshold to be used to automatically deny passthrough of purchased gas costs that equal or exceed the threshold. Rather, the Commission is proposing the threshold as part of its review of a pipeline's recovery of its gas costs under section 4 of the NGA. The Commission recognizes that the threshold introduces an element of risk into the collection of gas costs, but it believes that the added flexibility of the proposed PGA mechanism would allow the pipeline to keep its gas costs under better control than is possible under the twice a year PGA rules.

As discussed in the introduction portion of this preamble, the Commission has used the threshold test on a case-by-case basis in approving flexible PGAs. For example, pipelines have been permitted a three percent margin on underrecovered gas costs before being required to justify to the Commission why they should be permitted to collect underrecovered gas costs.[46] Based on the experience under the flexible PGAs, the Commission is proposing to set the margin on the underrecovery of gas costs at two percent. Specifically, the Commission is proposing that a pipeline can include in a surcharge balance any underrecovered gas costs in each of the proposed test intervals below two percent of its projected gas costs without prior Commission approval.

The Commission is proposing to revise the mechanism to allow companies to file flexible PGAs while quarterly filings adjust the average purchased gas cost ceilings every three months. This change should allow the companies to respond more quickly to both upward and downward cost movement than was previously possible. Since the Commission is proposing to provide pipelines with greater flexibility to raise and lower their rates, it is proposing to reduce the margin of three percent previously used on a case-by-case basis to a generically-applied two percent rule. However, the Commission is not proposing that a pipeline waive its rights under section 601(c) of the NGPA[47] for underrecoveries that reach the threshold. The Commission believes it is important that a pipeline justify any undercollected gas costs which exceed a margin of two percent in each of the proposed test intervals in order to minimize the opportunity for a pipeline to manipulate the PGA mechanism.

The Commission proposes to assess a pipeline's past performance in four "test" intervals within the 12-month deferral period. The Commission is proposing an assessment within each interval because of the possibility of shifting costs over the entire 12-month period. For example, a pipeline might use an artificially low average cost of gas during one portion of the period and an artificially high cost of gas during another portion of the period. The pipeline might then offset the resulting undercollections and overcollections to show a new undercollection below the proposed two percent margin. However, the Commission believes that it is unlikely that cost shifting could occur within as short a period of time as the test intervals. Therefore, the Commission is proposing the following test intervals: The first four months of the deferral period; the next three months of the deferral period; the next three months, and finally the remaining two months of the deferral period (months eleven and twelve). The Commission is proposing that the last test period will be only two months because the deferral period for the annual PGA ends four months before the annual PGA effective date. As shown in Appendix I, the intervals match, as closely as possible, the effective date for any new ceiling rates established in either an annual or quarterly PGA filing.

Under the proposed rule a pipeline is required to determine which gas costs will require specific Commission approval for surcharge recovery within each test interval. The pipeline would be required to compute its actual cost of gas purchased for each test interval, which will be the sum of the actual cost of gas purchased that is used to determine monthly deferrals of underrecovered or overrecovered purchased gas costs under proposed § 154.305(g)(1). These actual gas costs would exclude adjustments for exchange transactions and transportation imbalances and other out-of-period adjustments. The pipeline would only include the gas cost components that were used to compute the current adjustments in effect during the test interval to compute the actual cost of gas purchased.

The pipeline must then subtract the interval's actual cost of gas purchased from the test interval's "test amount." The test amount is determined by first calculating the computed projected gas costs for the test interval. To do this a pipeline will first allocate the quantities of natural gas purchased and received to each current adjustment in effect in the test interval and then mulitply these quantities by a projected average rate. The projected average rate is derived by dividing the projected gas costs the pipeline used to calculate each current adjustment by the related quantities of gas the pipeline projected to purchase during each current adjustment effective period. The computed projected gas costs for the test interval are then multiplied by 1.02 to arrive at the test amount. Appendix I illustrates the computation of the assessment for one test interval.

The Commission is proposing to consider any reasonable method for allocating quantities. For example, a pipeline may allocate the purchase quantities based on the number of days in a month that the related current adjustment was in effect. The pipeline could also allocate the purchase quantities based on the quantities of gas sold under each current adjustment.

The Commission is proposing to base the test amount on a pipeline's projected purchase quantities and not sales quantities because the Commission is assessing the pipeline's performance in projecting its purchased gas costs. Also, if the Commission were to use sales

[46] *See* n.15, *supra*.

[47] 15 U.S.C. 3432(c)(2) (1982); this section guarantees a pipeline recovery of statutorily defined "just and reasonable" gas acquisition costs, unless the Commission finds "that the amounts were excessive due to fraud, abuse, or similar grounds."

quantities for the test, a pipeline's total costs might be distorted if the pipeline sells less gas than it purchases.

Any amount that remains once a test interval's acutal cost is subtracted from the test amount can be included in the annual PGA filing surcharge balance only upon Commission approval. The proposed regulation provides that the pipeline must include the computation of the test results in its annual filing (in schedule D1 of the proposed Form 542) and that it specify any costs that require prior approval for surcharge recovery.

The Commission emphasizes that the results in the test intervals of a deferral period cannot be cumulative, any amounts below the review threshold of two percent in one test interval cannot be used to offset amounts at or above the threshold in other intervals.

The Commission would continue to apply the fraud and abuse standards of section 601 of the NGPA in addition to the assessment of past performance when reviewing each annual PGA filing.

Section 157.307 Affiliated entities test.

NGPA section 601(b)(1)(E) provides that amounts paid by an interstate pipeline to an affiliate will be deemed just and reasonable if "such amount does not exceed the amount paid in comparable first sales between persons not affiliated with such interstate pipeline". In the past, the Commission has considered issues involving application of the affiliated entities test on a case-by-case basis. Although certain issues concerning how the affiliated entities test will be applied were decided by the Commission in its recently-issued Opinion No. 269,[48] the Commission has not adopted uniform standards to be applied in determining the justness and reasonableness of amounts paid by pipelines to their producer affiliates or for their own production. In this rule the Commission proposes to standardize its policies and procedures for deciding cases involving affiliated entities, so that all affected parties will be able to adjust their gas purchasing and pricing activities as appropriate to comply with the policy. In this way, a pipeline would determine before it purchases gas those amounts payable to affiliates that the Commission considers just and reasonable and not wait for a Commission determination long after the transaction in question ends.

As more fully described in the succeeding discussion, the Commission is proposing that amounts paid by a pipeline to an affiliate or charged for its own production will be deemed just and reasonable if they do not exceed the average of prices paid by all pipelines to non-affiliated producers in a designated geographic area for a particular type of gas.

NGPA section 601(b)(1)(E) provides that the amounts paid by a pipeline for purchases from affiliates may not exceed amounts paid in "comparable" non-affiliated transactions. It is therefore necessary to establish standards governing comparability for purposes of comparing amounts in affiliated and non-affiliated transactions. Based on a careful review of this matter, the Commission is proposing a comparability standard based on NGPA price categories and geographic location. Under this proposal, two price categories will be established based generally on the NGPA's differentiation between "old" and "new" gas. One category (old gas) would be comprised of gas subject to maximum lawful prices under section 104, 106(a), and 109 of the NGPA. The second category (new gas) would be comprised of all other gas (including stripper well gas subject to NGPA section 108).

These categories were selected based on considerations of administrative convenience as well as the reality of prevailing regulated and market prices for natural gas. In Order No. 451,[49] the Commission modified the price structure of old gas by establishing a uniform ceiling price for old gas equal to the ceiling price for post-1974 vintage gas under the NGPA. In view of this action, it appears unnecessary to incorporate the numerous NGPA sub-categories of old gas for purposes of applying the affiliated entities test. These sub-categories have been combined into a single old gas category consistent with the action taken in Order No. 451. With regard to new gas, it is likewise unnecessary to incorporate the NGPA's various sub-categories as part of the affiliated entities test. Most new gas has been price decontrolled, and the field or spot market price of new gas is below the applicable NGPA ceiling prices of those categories of new gas which remain regulated. The Commission will reconsider the need to establish additional categories of new gas based on NGPA ceiling prices in the event market prices rise and the applicable NGPA ceiling prices again become binding.

Five geographic areas will be established based on regional market similarities. The proposed areas are: (1) Permian Basin, (2) Southern Louisiana, Mississippi, Alabama and Texas Gulf Coast, (3) Arkansas, Oklahoma, Kansas, North Louisiana, and other Texas, (4) Appalachian-Illinois Basin, and (5) Rocky Mountain. This results in a total of 10 Categories—Permian Basin old gas, Rocky Mountain new gas, and so forth.

These areas were developed by the Commission's staff based on a survey of domestic gas producing areas and are adopted for comparability purposes based on our conclusion that they exhibit regional market similarities.

The Commission proposes to review and evaluate affiliate purchases in conjunction with each pipeline's annual PGA filing. This evaluation would be based on annual weighted average prices for each category for both affiliate and non-affiliate transactions. Under this proposal, each pipeline would be required to submit monthly on computer tape detailed information for all gas purchased in first sale transactions including pipeline production (Schedule A1(2) of revised Form 542). These data would be submitted within 60 days following the month in which the transactions took place and will be publicly available. Each pipeline engaging in affiliate transactions therefore would have available detailed information showing what other pipelines are paying for gas purchased from non-affiliated producers. With this information, pipelines would calculate average prices paid in non-affiliate transactions and may use this information as a basis for determining the maximum amounts they can pay in affiliate transactions under the affiliated entities test.[50]

The filing pipeline's non-affiliated transactions would be included with those of all other purchasers in determining the weighted average prices for non-affiliated transactions. Where the annual weighted average prices paid (or charged) by the filing pipeline for a particular category do not exceed the annual weighted average prices paid by purchasers in non-affiliated transactions, the pipeline's affiliate payments would be deemed just and

[48] Tennessee Gas Pipeline Company, 38 FERC ¶ 61,306 (1987). In this decision the Commission ruled that in applying the affiliated entities test, a pipeline's average price for affiliate transactions should be compared with the average price of every pipelines' purchases of comparable non-affiliated purchases.

[49] Ceiling Prices; Old Gas Pricing Structure, 51 FR 22168 (June 18, 1986), 35 FERC ¶ 61,308 (1986); Order No. 451-A, 51 FR 46762 (December 24, 1986), 37 FERC ¶ 61,252.

[50] Monthly filing of gas purchases would still be required due to the staggered scheduling of PGA filings. Data for particular months would be selected to obtain average price data for the 12 months to be utilized for evaluating the filing pipeline's compliance with the affiliated entities test.

reasonable for that category. Where the filing pipeline's annual weighted average price is higher than that for non-affiliated purchases, the pipeline would be required to make refunds through a credit to the refund subaccount and to reduce its unrecovered purchased gas surcharge accordingly.

The annual period to be used in determining the annual weighted average prices would be the 12-month period used to derive the balance in the deferred account in the pipeline's annual PGA filing. For example, a pipeline filing its annual PGA on December 31, 1987 (to be effective March 1, 1988) will have closed its deferred account as of October 31, 1987, and the relevant weighted average prices therefore would be determined based on the 12-month average November 1986 through October 1987.[51] The above-outlined policy would be applied only prospectively. The new standard would be applied only with respect to those months for which data have been filed pursuant to this rule. Thus, in their initial filings under this rule, most pipelines would have deferral periods which are subject partially to weighted average price test and partially to the Commission's pre-existing policy.

Section 154.308 Quarterly PGA filing.

Proposed § 154.304 would require a pipeline to file three quarterly PGA filings during a year, in addition to the annual PGA filing to reflect changes in gas costs which have occurred three, six, and nine months from the effective date of the last annual PGA filing. The pipeline would file quarterly PGA filings at least 30 days prior to the pipeline's quarterly effective date.

The quarterly filing would revise the current and cumulative adjustments to a pipeline's existing rates. A pipeline would submit tariff sheets that reflect these revisions in the same format as the "Notice of Purchased Gas Cost Adjustment Rate Change" specified in proposed § 154.305 for annual filings. Additionally, the rule would require the pipeline to submit three months of projected cost data with the quarterly filing which is outlined in Schedule Q1 of the proposed revised FERC Form No. 542–PGA. The projected cost data underlying the quarterly adjustment must be computed in the same manner as in the annual PGA current adjustment in proposed § 154.305(c).

The information the Commission proposes to require the pipeline to report in order to support the quarterly filing is far less detailed that the information a pipeline would submit with its annual filing. The quarterly filing only contains three months of projected costs.

A pipeline would be able to change its current and cumulative adjustment in a quarterly filing. The projected average cost of purchased gas established in a quarterly filing would be the ceiling for any interim adjustments filed under proposed § 154.309 during the quarter. In other words, the cost of gas underlying an interim adjustment could not exceed the projected average cost of gas of the quarterly filing in effect or the out-of-cycle PGA filing in effect. Furthermore, a pipeline could not file a revised surcharge rate in the quarterly filing. The pipeline would have to amortize a surcharge balance over a full 12-month period.

As discussed in the Overview section of this preamble, the Commission is proposing to simplify the PGA review process. Therefore, the proposed regulation provides that all challenges to a pipeline's purchasing practices as reflected in a quarterly filing would have to be raised when the pipeline files its next annual PGA. The Commission intends that the quarterly adjustments would go into effect subject to refund and subject to revisions for errors in mathematical computation of rates, typographical errors on the tariff sheets, or an accounting error that affects the computation of a quarterly adjustment.

Section 154.309 Interim adjustments.

The Commission is proposing to allow a pipeline to adopt a PGA clause in its tariff that allows interim adjustments below the ceiling established in the pipeline's last scheduled PGA filing or fully supported out-of-cycle PGA filing. However, these interim adjustments may only track known and measurable changes in gas costs, which are changes in cost a pipeline has a reasonable basis for believing will occur.

The Commission is proposing to permit the adjustment to take effect upon 24-hours notice to the Commission, applicable state commissions, and other interested parties. The Commission would allow the adjustment to take effect on short notice because its intent is to permit the interim adjustment filing to be used by the pipeline to quickly reflect in its rates actual changes in its costs of gas.

The proposed rule requires that the interim adjustment filing include a summary tariff sheet showing the amount of the proposed adjustment, the resulting rates, and a calculation of the adjustments. Additionally the filing would reflect the revised quantities and purchased gas costs underlying the proposed rate. A proposed format for the supporting information, schedule F1, is included in the revised FERC Form No. 542–PGA. The filing would be posted in accordance with § 154.16 of the Commission's regulations.

Section 154.310 Transition rules

The transition rules proposed in § 154.310 are intended to provide an orderly transition from the existing PGA regulations. Also in order to ensure that a pipeline does not receive a competitive advantage, especially if all pipelines wish to adopt the more flexiblle PGA mechanism, the Commission is proposing to permit them to do so at the same time.

The Commission is also proposing in the transition rules to allow a pipeline to amortize its deferred gas costs that accumulated in Account No. 191 before the new regulations take effect. The surcharge rate amortization of the deferred gas costs in Account No. 191 would result from a PGA surcharge balance in the last PGA a pipeline files before the new PGA rules go into effect, or from deferrals of gas costs that accumulate between the time a pipeline files its PGA before the new PGA goes into effect and when the pipelines files its first annual PGA under the new PGA rules.

Under the proposed regulations, every pipeline would file certain PGA rate changes under the proposed PGA regulations to be effective on the same date, the "new PGA" date. This proposed date is the first day of the first month that begins at least 90 days after a final rule in this docket becomes effective. The Commission is proposing the first day of a month because the annual and quarterly PGA effective dates under porposed § 154.304(c) are on the first day of a month. The Commission is proposing a 90-day period between the effective date of the final rule and the new PGA date because a pipeline must first file tariff sheets reflecting a new PGA clause that adopts the terms and conditions of the new PGA regulations within 60 days before the new PGA date; and 30 days later, an initial current adjustment rate and a surcharge rate to be effective on the new PGA date.

The transition rules permit a pipeline to retain certain terms and conditions from its existing PGA clause during the transition period. Similarly, a pipeline would file tariff sheets with its revised PGA clause to continue in effect its existing flexible PGA tariff provisions

[51] Industry-wide data for purchases made during October 1987 is not required to be submitted until December 31, 1987 (60 days following October 31). Since these data would not be available to the pipeline filing on December 31, 1987, the pipeline will be given a 31-day period (January 1–31) to amend its filing, if necessary, in light of the data reported for October 1987.

during the 30 days before the new PGA date. A pipeline that files for an interim adjustment during this 30-day period would remain subject to the 3 percent margin for underrcoveries established for the flexible PGA tariffs. After the new PGA date, the pipeline would have to file with its first scheduled PGA to remove the flexible PGA tariff, and any additional interim adjustments would be subject to the requirements of its revised PGA clause.

The Commission is proposing to permit a pipeline to retain its existing methodology for computing a current adjustment and monthly deferrals to Account No. 191, until the pipeline files its first request for a general rate change under § 154.63 of the regulations, after the new PGA date.

The Commission believes that the choice of the methodology for computing a current adjustment or deferrals (on either a unit-of-purchase or unit-of-sales basis) is an issue that would be determined in a general rate proceeding. Once the pipeline files its first general rate case after the new PGA date, it would choose the methodology and amend its PGA clause to reflect that choice. The revised PGA clause would also reflect the computation of monthly deferrals specified in proposed § 154.305(g)(1). Also, the regulation proposes to require the pipeline to restate the average cost of purchased gas in its base tariff rates using the methodology it selected.

The transition rules require a pipeline to file an initial current adjustment to be effective on the the new PGA date. The projected average cost of gas used to compute this current adjustment will establish a ceilng if a pipeline files interim adjustments under proposed § 154.309 before the pipeline files an annual or quarterly PGA.

The proposed regulation provides that if a new PGA date is also the scheduled effective date for a pipeline's annual or quarterly PGA, the pipeline would file a tariff sheet that reflects the rate change in the annual format specified in proposed § 154.305(a) or the quarterly format specfied in proposed § 154.308(b). The pipeline would have to support the current adjustment with reports filed in the FERC Form No. 542–PGA for either the annual or quarterly PGA depending on which type of filing was effective on the new PGA date.

If the new PGA date is not an effective date for a pipeline's annual or quarterly PGA, filings, the pipeline would compute an initial current adjustment to be effective until the pipeline's first scheduled annual or quarterly PGA effective date. The tariff sheet filed by the pipeline would be in the quarterly format specified in proposed § 154.308(b). The current adjustment would be supported by the Form No. 542–PGA Schedule Q1.

Under the transition rules a pipeline would also file a surcharge rate to be effective on the new PGA date. The surcharge rate that is filed would depend on whether a pipeline is continuing to amortize a surcharge balance from the last PGA in effect before the new PGA date. This period is described in the transition rules as the "existing surcharge rate amortization period."

The Commission is proposing to allow amortization of an existing surcharge balance to continue for the length of time the underlying deferred gas costs are accumulated in Account No. 191. If the existing surcharge rate amortization period runs over the new PGA date, the pipeline would file the existing surcharge rate to be effective on the new PGA date. If the existing surcharge rate amortization period ends by the new PGA date, the pipeline would file a new surcharge rate to be effective on the new PGA date. The amortization period for the new surcharge to be effective on the new PGA date is defined as the "new surcharge rate amortization period." If the pipeline's first annual PGA effective date is on the new PGA date, the new surcharge rate would be included as part of the annual filing.

The transition rules propose to require a pipeline to file tariff sheets 30 days before the end of either a new or existing surcharge rate amortization period to remove the new or existing surcharge rate at the end of the applicable surcharge amortization period. The proposed regulation provides that a surcharge balance could not be amortized for longer than 12 months.

The surcharge rates a pipeline files after after the new PGA date would depend on when a pipeline's initial annual PGA filing becomes effective. If the initial annual PGA becomes effective on the new PGA date, the pipeline would file a subsequent surcharge rate with its second annual PGA. If a pipeline's initial annual PGA becomes effective after the end of the new surcharge rate amortization period (for the new surcharge rate effective on the new PGA date), the pipeline would file a subsequent surcharge rate with the initial annual PGA. If a pipeline's initial annual PGA becomes effective during the new surcharge rate amortization period (for the new surcharge rate effective on the new PGA date), the pipeline would retain the new surcharge rate in the initial annual PGA and file a subsequent surcharge rate with its second annual PGA filing.

The surcharge rate a pipeline files after the new PGA date when the existing surcharge rate amortization period (for the surcharge in effect before the new PGA date) continues beyond the new PGA date would also depend on when a pipeline's initial annual PGA becomes effective. As mentioned above the existing surcharge rate would be filed to be effective on the new PGA date. If a pipeline's initial annual PGA becomes effective during the existing surcharge rate amortization period the pipeline would retain the existing surcharge rate in the initial annual PGA under this situation. The pipeline would file a subsequent surcharge rate 30 days before the end of the existing surcharge rate amortization period to be effective the day after the end of the existing surcharge rate amortization period. If a pipeline's initial annual PGA becomes effective after the end of the existing surcharge rate amortization period, the pipeline would file a subsequent surcharge rate with its initial annual PGA.

The length of the various surcharge amortization periods that will occur during the transition period will depend on the number of months of deferred gas costs that have accumulated in the appropriate subaccount of Account No. 191. This reflects the Commission's policy of allowing amortization of deferred gas costs over a similar period of time as the period the deferrals accumulated.

The general rule for all surcharges a pipeline files with an initial annual PGA filing is to allow amortization of deferrals that accumulated up to four months before the annual PGA becomes effective. An exception to the general rule is when the initial annual PGA becomes effective on the new PGA date and the existing surcharge rate amortization period ends the day before the new PGA date. In this case, a pipeline must file a new surcharge rate with the annual PGA to amortize deferrals that accumulated up to three months before the new PGA date. If a pipeline files a new surcharge rate to be effective on a date other than the date the initial annual PGA becomes effective, the general rule provides for amortization of deferred gas costs accumulated up to three months before the surcharge rate becomes effective.

The deferral accumulation periods under either general rule could be of any length of time depending on a pipeline's PGA filing dates. Under the proposed rule the Commission would not permit amortization of deferred gas costs to

exceed 12 months, however. This limitation is necessary to implement the proposed schedule of PGA effective dates and the assessment of past performance. The 12-month limitation should not impose a hardship on pipelines because the frequent tracking of gas costs permitted by the proposed rule should result in small surcharge balances. To compute a surcharge rate for the transition period, a pipeline would divide the balance of deferred gas costs that accumulated in Account No. 191 during the appropriate period by the pipeline's expected sales quantitites during the appropriate surcharge rate amortization Period. A series of hypothetical examples illustrating the operation of the transition rules in included in Appendix J.

C. Provisions in the Current PGA Regulations Not Incorporated Into the Proposed Rule

In addition to amending the updating the PGA regulations, the Commission is proposing to delete several provisions of the current regulations that are no longer necessary. First, the Commission proposes to no longer require a pipeline to file a cost study with its proposed PGA clause, currently required in § 154.38(d)(4)(i). Every company with a currently effective PGA clause already has such a study on file with the Commission.

Also, the Commission proposes to eliminate § 154.38(d)(4)(x) promulgated in 1978.[52] This section authorizes a one-time pass-through of certain NGPA costs for companies with a PGA clause in effect on January 1, 1979, and is no longer needed. Similarly, the Commission proposes to delete § 154.38(d)(4)(ii). The passage of the NGPA replaces the special rate structure for small producers established in this section, and thus this section is no longer necessary.

V. Revised FERC Form No. 542–PGA

As previously discussed, pipelines are required to file supporting information with their PGA filings in a standardized format prescribed in FERC Form No. 542–PGA.[53]

A. Need for Standardized Format for Supporting Information

A standarized format for the supporting information is necessary to facilitate the Commission's examination of PGA filings to ensure that PGA rate changes are just and reasonable and accurately reflect the pipeline's approved PGA clause. The process of analyzing and comparing data submitted in PGA filings affords the Commission an opportunity not only to verify the data submitted in the PGA filing under examination, but it also allows the Commission and the Department of Energy (DOE) to study industry-wide effecs of implementation of national programs, statutes or policies. These studies help the Commission and DOE to implement their respective responsibilities under the NGA, the NGAP and the Department of Energy Organization Act, and provide an important source of information on gas markets for use by Congress, public interest groups, intervenors, and other governmental agencies. The widespread use and importance of this information requires clear, complete and accurate reporting of the data in PGA rate adjustment filings.

B. Submission on Magnetic Tape

At present, the largest pipelines submit both the mandatory paper copies of their PGA filings, and voluntarily, magnetic computer tapes. The Commission believes that its analysis and review function would be facilitated if all pipelines submit their PGA filings on magnetic computer tape. By requiring annual and quarterly PGA data to be submitted on magnetic computer tape, the Commission would be able to improve its review capabilities. During the 60-day notice period for the annual filing the Commission would be able to perform cost studies and comparative analyses of pipeline purchasing patterns. In addition, the magnetic tape requirement is essential for implementing the proposed affiliated entities test.[54] Therefore, the Commission is proposing to revise the Form 542 to provide a mandatory standardized format so that all data supporting the rate adjustments filed with the annual and quarterly PGA's would be submitted on 9-track magnetic computer tapes. For purposes of providing copies of the annual and quarterly PGA filings to customers and interested state commissions, however, a pipleline would be required to provide a paper copy format of the revised Form 542 as contained in Exhibit C, unless the customers or state commissions agree to accept the magnetic computer tape format. Also, the suggested format for the interim PGA support (Schedule F1) would be submitted in paper copy.

The Commission recognizes that filing data on magnetic computer tape could involve a special hardship for some companies. Certain companies would need additional time to comply with the computer tape requirement or the cost of compliance for a particular company may be prohibitive. For these reasons, the Commission would consider any reasonable request for a waiver of the computer tape filing requirement. A waiver could be granted on a permanent basis or it could be temporary depending on the basis of the request. If such a waiver is granted to a pipeline, the pipeline would be required to submit the annual and quarterly supporting information in the paper format provided at Exhibit C of the revised Form 542.

The Commission is also proposing a three-year transition period during which a pipeline would submit paper copies along with its magnetic computer tapes. The paper copies would be used to verify the accuracy of the magnetic tapes and to help resolve any problems that may arise.

C. Revisions to the Form 542

The Form 542 is also being revised to reflect the proposed changes in the PGA mechanism and to collect other information that is of interest to the Commission. In particular, the Form 542 revisions reflect the proposed method for computing monthly deferrals, carrying charges, and quarterly compounding of interest specified in the proposed rule. A proposed mandatory format for reporting activity in the subaccounts of Account No. 191 is also included in the Form 542. Although the proposed rule would require certain changes to the Form 542 format, the majority of the information that would be required from pipelines is identical to the information now collected in the present Form 542.

In addition, the proposed Form 542 retains in Exhibit A the current price category codes used in the existing Form 542. Also retained in Exhibit B is the listing of FERC geographic names for regional sources of supply.

The information to support the annual PGA would be contained in four types of reports.

[52] *See* n.6 *supra*.

[53] 18 CFR 154.38(d)(4)(v) (1986); as approved, "Standard Form for Purchased Gas Adjustment Filings Submitted by Natural Gas Pipeline Companies: FERC No. 542–PGA (Order No. 349) FERC Stats. & Regs. ¶ 30,515 (1983).

[54] Pipelines that purchase natural gas that qualifies as a "first-sale" under the NGPA would be required to submit a monthly Actual Gas Purchases Record 60 days subsequent to the last day of the month being reported. The Monthly Actual Gas Purchases Record would provide the data for the computation of the weighted average prices for affiliate and nonaffiliated purchases during the deferral period. A pipeline must have access to the data of all other pipelines' purchases during the annual PGA deferral period so it could determine if overpayments were made for its affiliate purchases.

1. Gas Purchases Report

The Gas Purchases Report, Schedule A1, collects detailed data on a pipeline's actual gas purchases for the 12-month period ending 4 months before the effective date of an annual PGA. This information would be provided by filing either the Annual Actual Purchases Record—(Record 1) (for pipelines that do not purchase first sales) or by the monthly filings of the Monthly Gas Purchases Record—(Record 2) (for pipelines that purchase first sales). The revised Form 542 also would require a pipeline to submit a Projected Gas Purchases Record—(Record 3) (to reflect projected purchases for the first quarter of an annual cycle). The actual purchase records reflect the emphasis the Commission is placing on obtaining actual purchase data. The actual purchase records detail the components of the actual rate paid for individual purchases over a 12-month period. The proposed organization of actual and projected purchase data in this report by geographic area, NGPA category/subcategory, and FERC Uniform System of Accounts is identical to what is now required in the Form 542. The revised Form 542 also would require a pipeline to identify any actual or projected spot market purchases by a "spot market indicator." Similarly, an "Order 451 Indicator" is proposed for the actual and projected purchases records to show whether the price under a sale is renegotiated under the provisions of the good faith negotiation rule in 18 CFR 270.201. Pipelines would submit the Annual Actual Purchases Record—Record 1 and the Projected Gas Purchases Record—Record 3 with their annual PGA filing. The monthly Actual Gas Purchases Record—Record 2 would be submitted 60 days after the last day of the month being reported.

2. Unrecovered Purchase Gas Cost Reports

The Unrecovered Purchase Gas Cost Schedules B1 (for unit-of-purchase methodology) or B2 (for unit-of-sale methodology) are similar to the schedules for reporting monthly deferred purchase gas costs in the current Form 542. Schedule B1 is divided into five formats, Records A through E, in recognition of the impact of the interim (flexible) PGA on determining monthly deferrals. If a pipeline had a single projected average cost of gas in effect during a month, it would file the Unrecovered Purchased Gas Cost Record A to reflect the monthly totals of actual and deferred purchased gas costs and purchase quantities and the monthly unit cost of gas purchased; and Record B to reflect the monthly total actual purchased gas costs by FERC Account number. A single actual unit cost of gas would be computed because only one projected average unit cost of gas was in effect during the subject month. If a pipeline had two or more projected average unit costs of gas in effect during a month it would file Unrecovered Purchased Gas Cost Record C to reflect the monthly totals of actual and deferred purchased gas costs and purchase quantities and the monthly unit cost; Unrecovered Purchased Gas Cost Record D to reflect monthly total actual purchased gas costs and unit costs by FERC Account number; and Unrecovered Purchased Gas Cost Record E that allocates the monthly total gas costs quantities purchased, and unit cost of gas purchased to the periods during a month during which a different projected unit cost of gas was in effect.

Schedule B2 is divided into three formats, Records A through C. Record A reflects monthly totals of purchased gas costs and quantities, the total unit cost of gas purchased, and the monthly total deferred purchased gas costs. Record B shows the total purchased quantity, total cost, and total unit cost by FERC Account number. Record C allocates the monthly applicable sales quantity, gas cost recovered in rates, actual cost of gas, and the monthly deferred gas costs to the period a projected unit cost of gas is in effect during the month. Both Schedule B1 and B2 are set up to reflect the appropriate methodology for computing deferrals specified in the proposed rule. A pipeline would submit these schedules with the annual PGA. One schedule will be submitted for each month of the applicable deferral period.

3. Subaccounting of Account No. 191 and Carrying Charges on Account No. 191

Also submitted with the annual filing would be a Schedule C1 showing details of subaccount debits and credits to Account No. 191 on a monthly basis. The Commission's goal is to standardize the reporting of Account No. 191 activity to facilitate review of the annual PGA. In addition, the methodology for computing carrying charges and quarterly compounding of interest that is specified in the proposed rule is implemented by the proposed mandatory format of Schedule C2. A pipeline would submit this schedule with the annual filing.

4. Supporting Information

Any supporting schedules a pipeline must submit with the annual PGA, that are not provided for by one of the detailed schedules mentioned above, must be filed on Schedule D1. The schedules suporting the cost adjustment for exchange and tranportation transaction imbalances would be included with the D1, as would the schedule of unpaid accruals requiring Commission approval for continued recognition as a gas costs. The computations for the assessment of past performance would be on Schedule D1. The Schedule D1 would also contain any explanatory footnotes to the detailed schedules submitted with the annual PGA.

For the quarterly PGA filings, a pipeline would only be required to submit projected purchased gas cost and quantities for the quarterly adjustment effective period. This information would be submitted on a Schedule Q1. The Q1 consists of a projected cost record for all purchases and a special supply record for spot market and pipeline purchases. The special supply record separately identifies these special purchases for purposes of applying the Commission's review standards for spot purchases and for determining that the Commission approved pipeline supplier rate is reflected in the filing.

VI. Technical and Conforming Amendments

Under the proposed rule, the PGA regulations would be codified in a new Subpart §§ 154.301–310 and the current PGA regulation in § 154.38 would be revoked. The final rule amends other sections of the Commission's regulations to incorporate the proposed PGA regulations and to remove cross-references to any revoked rule. Additionally, the final rule would make these technical or conforming changes necessary to incorporate the proposed PGA regulation into the Commission's overall regulatory program.

VII. Fees

The Commission is proposing to amend § 381.205 by replacing a single fee of $5,100 for a tariff filing which tracks costs by three separate fees. The Commission is proposing an $1,800 fee for an annual PGA filing, including any adjustments; a $300 fee for a quarterly filing, and a $300 fee for an interim filing. The fee for APGA filing was established by the Commission in a separate rulemaking.[55] The Commission

[55] Fees Applicable to Natural Gas Pipeline Rate Matters. (Order No. 361) 49 FR 5083 (February 10, 1984). FERC Stats. and Regs., 1982–1985 Regulations Preambles. ¶ 30,543 (1984).

is proposing a change in the fee schedule to reflect the change from the current semi-annual PGA filing procedures to the one annual, three quarterly, and the voluntary interim filings established by this rule.

The Commission's calculation of the cost of providing each of the services represented by the new fee categories is directly related to the amount of time the Commission expects to spend providing each of the services. The fees in this rule are based on information obtained through the Commission's Management Information System (MIS), which provides the amount of time spent on all Commission functions.

The fees for annual and quarterly filings are based on past experience with the cost of all staff time expended during the current 30 day review period. Staff time expended on follow-up activities for the small number of filings which exceed the initial review period is excluded, for inclusion would create an inequitable fee for the majority of filings. Fees for PGA interim (flexible) filings are tracked separately from the annual and quarterly filings and reflect the Commission costs associated with providing the interim review and the recommended action by staff.

VIII. Regulatory Flexibility Act Certification

When the Commission is required by section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553 (1982), to publish a notice of proposed rulemaking, it is also required by section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612 (1982), to prepare and make available for public comment an intital regulatory flexibility analysis unless the Commission certifies pursuant to section 605(b) of the RFA that the proposed rule would not have a significant economic impact on a substantial number of small entities.[56] The RFA is intended to ensure careful and informed agency consideration of rules that may significantly affect small entities and to encourage consideration of alternative approaches to minimize harm to or burdens on small entities.

In this case, the RFA requires the Commission to analyze only the impacts on small entities that would be subject to this rule. This rule would only apply to natural gas companies whose services, rates, or facilities are regulated under the Natural Gas Act or the NGPA. Most jurisdictional natural gas companies that would comply with this rule do not fall within the RFA's definition of small entity because: (1) The jurisdictional natural gas company is too large to be considered a "small-entity", or (2) the regulated natural gas company holds exclusive selling rights within its respective fields of operation and is therefore dominant in that field of operation. Pursuant to section 605(b) of the RFA, therefore, the Commission certifies that this rule will not have a "significant economic impact on a substantial number of small entities."

IX. Paperwork Reduction Act Statement

This proposed rule is being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act. 44 U.S.C. 3501–3502 (1982) and OMB's regulations, 5 CFR 1320.13 (1986). Interested persons can obtain information on the proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 (Attention: Ellen Brown, (202) 357–8272). Comments on the information collection provisions including the impact of the proposed automated filing requirements can be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

X. Special Comment Request

The Commission requests public comment on alternatives to the current and proposed PGA mechanism. Specifically, the Commission seeks comments on the advisability of adopting a formula rate approach for recovery of purchased gas costs instead of the current PGA mechanism. Under this approach, a formula rather than a fixed price is the approved rate. In contrast, under the approach of the current and proposed PGA mechanisms, a stated rate for recovery of purchased gas costs (composed of the sum of a base tariff rate, a current adjustment, and a surcharge rate) remains in effect, after Commission approval, for a given interval of time until a new rate is approved.

A formula rate approach is now used for the fuel adjustment clauses (FAC's) that electric utilities are permitted to use under the Commission's regulations.[57] The FAC permits electric utilities to reflect changes in their fuel costs per kilowatt (kWh) sold on a current basis. Thus, if the fuel cost per kWh of sales exceeds or falls below the base cost of fuel (established in the utility's most recent rate proceeding) then the fuel adjustment charge will increase or decrease a customer's bill accordingly on a monthly basis. Adjustments under the formula are automatically reflected in a customer's bill without prior Commission approval.

The Commission is particularly interested in comments on a formula approach based on a formula where the unit rate for gas sales in each month would be determined by dividing a month's purchased gas cost by the same month's sales volume. If a posted rate was needed in advance of gas deliveries for competitive or other reasons, the prior month's rate (or the rate for some other current period) could be used as a proxy for the current month's rate. Rates under this approach would not necessarily have to be full cost recovery rates but could be uniformly lower if a pipeline, for marketing reasons, wished to reduce its gross sales margin through less than full recovery of the gas component of its rates. Further, the Commission could require that sufficient information be filed in such detail and as frequently as necessary for it to evaluate whether automatic rate changes reflect only just and reasonable costs that are correctly billed in accordance with the approved formula. To the extent bills rendered under the formula were found to reflect imprudently incurred cost, improper purchasing practices or are not in accordance with the formula, refunds with interest would be required. To the extent a pipeline did not recover its costs by the formula it would be denied the right to collect these costs through cost deferrals or otherwise.

XI. Comment Procedure

The Commission invites interested persons to submit written comments on the matters proposed in this notice.

The Commission also invites interested persons to comment on the impact on reporting burden as a result of the information collection provisions and proposed automated filing requirements in this proposed rule. These comments should also address the costs and/or burden associated with implementing the proposed rule in the initial start-up year and in subsequent years. An original and 14 copies of such comments must be filed with the Commission no later than August 3, 1987. Comments should be submitted to

[56] 5 U.S.C. 601(3) citing section 3 of the Small Business Act, 15 U.S.C. 632 (1982). Section 3 of the Small Business Act defines "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation. *See also*, SBA's revised Small Business Size Standards, 49 FR 5024 (Feb. 9, 1984) (to be codified at 13 CFR Part 121).

[57] *See* 18 CFR 35.14.

the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, and should refer to Docket No. RM86-14-000.

Written comments will be placed in the public files of the Commission and will be available for inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, DC 20426, during regular business hours.

List of Subjects

18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 282

Intergovernmental relations, Natural gas, Reporting and recordkeeping requirements, Uniform System of Accounts.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 381

Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Parts 154, 282, and 375, and 381 of Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By direction of the Commission. Commissioner Trabandt concurred with a separate statement attached.

Kenneth F. Plumb,

Secretary.

Issued May 20, 1987.

Concurring Statement of Commissioner Charles A. Trabandt

Today the Commission issued a Notice of Proposed Rulemaking that would revise our current PGA regulations. I believe that the proposed NOPR will solicit appropriate comments to enable the Commission to fashion a final rule with the most workable regulations with one reservation. That reservation deals with pipeline affiliated-entity transactions.

In 1978 the Congress passed the NGPA which set the standard for Commission review of the costs of affiliated-entity purchases under section 601. Under section 601(b) (1) and (2) a pipeline is guaranteed passthrough of prices paid in a first sale to its affiliate as long as the amounts are "comparable."

The Commission had its first opportunity to interpret section 601 in the *Tennessee Gas Pipeline Company* affiliated-entities case in Docket No. TA82-2-9-000, *et al.*, Opinion No. 269, 38 FERC ¶ 61,306 (March 26, 1987). That case is currently pending rehearing.

I believe that it is important for the Commission to attempt to develop a general approach to address affiliated-entities issues. And I support the concept of having a generic test to the extent such a test is legally possible and to the extent the test can be implemented in a responsible way.

I, however, have concerns regarding the particular approach taken in the NOPR notwithstanding my support of the attempt to develop a workable generic approach to implement the section 601 comparability test.

Specifically, I continue to have concerns whether we have the broad legal authority under section 601 to implement by general rulemaking this form of a generic affiliated-entities test. In addition, I am concerned as to the risk and advisability of adopting this particular approach that requires nationwide rate-like analysis and regulation of prices and amounts paid, and lends itself to potential abuse of the system created under the analysis once developed. I am not anxious to support *any* new system of nationwide natural gas rate regulation, regardless how commendable and limited the objective may be. Consequently, I urge interested parties to review the proposal and address the legal and policy issues related to this approach to generic nationwide regulation of affiliated production prices under section 601.

Finally, as discussed in my concurring statement in the Tennessee affiliated-entities case, I believe that any approach to determining comparability under section 601 of the NGPA must include an analysis of the company's contract administration. The approach in the current NOPR does not provide for an effective enforcement mechanism to determine whether a pipeline may prefer its affiliate production in manners other than mere pricing. There probably will be instances such as the staff allegations in the Tennessee case where the pipeline continued to take 100 percent of the production from its affiliated companies' wells while at the same time totally shutting in non-affiliated companies. Because I believe this example may not be an isolated instance, I would find it helpful to determine how we can include the concept of contract administration in developing the generic affiliated-entity test as currently proposed or as potentially modified. To this end I encourage parties to address this matter in their comments.

Charles A. Trabandt,

Commissioner.

Note.—The following appendices will not appear in the Code of Federal Regulations.

Index to Appendices

Appendix A—Simplified Illustration of Current Adjustment Computation.
Appendix B—Comparison of Unit-of-Purchase and Unit-of-Sales Methodologies.
Appendix C—Computation of Current Adjustment Under Proposed Rule (Unit-of-Purchase).
Appendix D—Computation of Current Adjustment under Proposed Rule (Unit-of-Sales).
Appendix E—Monthly Deferrals (Unit-of-Purchase).
Appendix F—Monthly Deferrals (Unit-of-Sales).
Appendix G—Monthly Carrying Charge Rate Computation.
Appendix H—Quarterly Compounding of Carrying Charges (CCs) Account No. 191.
Appendix I—Assessment of Past Performance.
Appendix J—Hypotheticals to Illustrate Transition Rules.

Appendix A.—Simplified Illustration of Current Adjustment Computation

Projected Purchased Gas Costs for Upcoming PGA

	Col A Proposed Pur. Vol.	Col B NGPA Vintage	Col C Projected Price	Cost Col A x Col B
Producer R	[1] 100	108	$3.980	$398
Producer S	[1] 500	102	3.716	1858
Producer T	[1] 200	104	.498	98
Producer X	[1] 300	107	4.50	1350
Producer Y	[1] 2000	104	.489	978
Producer Totals	[1] 3100			4682
Pipeline A	[1] 900		3.350	3015
Totals All	[1] 4000			7697
A. *Unit-of-purchase method*				
Projected cost			$7697	

APPENDIX A.—SIMPLIFIED ILLUSTRATION OF CURRENT ADJUSTMENT COMPUTATION—Continued

	Col A Proposed Pur. Vol.	Col B NGPA Vintage	Col C Projected Price	Cost Col A x Col B
Projected *purchased* units			[1] ÷4000	
Average cost for upcoming PGA			$1.9243	
Average cost for prior PGA			−1.6743	
New current Adjustment			=0.2500	
B. *Unit-of-sales method*				
Projected cost			$7697	
Projected *sales* units			[1] ÷3750	
Average cost for upcoming PGA			$2.0525	
Average cost for prior PGA			−1.8025	
New current Adjustment			0.2500	

[1] MMBtu.

APPENDIX B.—COMPARISON OF UNIT-OF-PURCHASE AND UNIT-OF-SALES METHODOLOGIES

Producers	Col A Proposed Pur. Vol.	Col B NGPA Vintage	Col C Projected Price	Cost Col A x Col C
Unit-of-Sales				
Producer R	100	108	$3.9800	$398
Producer S	500	102	3.7160	1,858
Producer T	200	104	0.4890	98
Producer X	300	107	4.5000	1,350
Producer Y	2000	104	0.4890	978
Producer totals	3100		1.5103	4,682
Pipeline A	900		3.3500	3,015
Totals all	4000			7,697
Projected Sales Units				3,750
Average gas cost for upcoming PGA				2.0525
Deferrals would be calculated thus: Month 1				
Company purchased 1,000 MMBtu from various sources at a total price of				2,000
Pipeline sells 950 MMBtu at $2.0525				1,950
Month 1's deferral				50
Analysis:				
Cost		$2,000		
Revenue		−1,950		
Difference collected		50		
Through deferred account		50		
Not collected through PGA		0		
Unit-of-Purchase				
Producer R	100	108	3.9800	398
Producer S	500	102	3.7160	1,858
Producer T	200	104	0.4890	98
Producer X	300	107	4.5000	1,350
Producer Y	2000	104	0.4890	978
Producer totals	3100		1.5103	4,682
Pipeline A	900		3.3500	3,015
Totals all	4000			7,697
Projected Purchase Units				4,000
Average gas cost for upcoming PGA				1.9242
Deferrals would be calculated thus: Month 1				
Company purchased 1000 MMBtu from various sources at a total price of				2,000
Purchases				1,000
Unit cost				2.000
Cost				2,000
Proj. gas cost for PGA				1,9242

APPENDIX B.—COMPARISON OF UNIT-OF-PURCHASE AND UNIT-OF-SALES METHODOLOGIES—Continued

Producers	Col A Proposed Pur. Vol.	Col B NGPA Vintage	Col C Projected Price	Cost Col A x Col C
Unit difference				0.0758
Purchase quantities				×1,000
Month 1's deferral				76
Analysis:				
Cost		2,000		
Revenue		[1] −1,828		
Difference		172		
Collected through deferred account		76		
Not collected through PGA		96		

[1] Pipeline sold 950 MMBtus at $1.9242; 950×$1,9242=$1,828.

APPENDIX C.—COMPUTATION OF CURRENT ADJUSTMENT UNDER PROPOSED RULE (UNIT-OF-PURCHASE)

Unit-of-Purchase Current Adjustment			Effective 2/1/xx	
Line No.	Projected Quantity of Purchases	NGPA Category	Rate	Projected Cost
1 Purchase #1	[7] 30,000	104Bi, Small	[1] $2.22	$66,600
2 Purchase #2	[7] 40,000	n/a—pipeline	[2] 3.00	120,000
3	[7] 70,000	Total Projected Gas Cost		186,600
4 Adjustments				
5 Storage Injections	[7] <1,000>		[3] 2.67	<2,670
6 Storage Withdrawals	[7] 6,000		[3] 2.67	16,020
7	[7] 75,000			199,950
8 Purchase Quantity—Including Storage Adjustments				[7] ÷75,000
9 Current Unit Cost of Gas (Line 7 ÷ Line 8)				2.6660
10 Less: Previous Quarterly PGA's Current Unit Cost of Gas				−2.5760
				0.0900 or 9.0¢

[1] This is the NGPA rate at the mid point of the projected quarter.
[2] This is the current rate in effect for the pipeline supplier.
[3] For simplicity of this example, the storage rates are at the WACOG.

The above computation would yield the following rate sheet:

Rate Sched.	Base Tariff Rate [4]	Curr. Adj.	Cum. Adj.	Surch. Adj.	GRI Adj.	Other Adj.	Total
x	$3.00	0.0900	$0.6500	0	0	0	$3.6500

Estimated average cost of gas in most recent scheduled PGA $2.5760.[5]
Current estimated average cost of gas in most recent PGA (rate currently being charged) $2.6660.[6]

[4] The base tariff rate is the effective rate on file with the Commission, excluding adjustments approved by the Commission.
[5] $0.56 cumulative, $2.016 in base rate.
[6] $0.65 cumulative, $2.016 in base rate.
[7] MMBTU.

APPENDIX D.—COMPUTATION OF CURRENT ADJUSTMENT UNDER PROPOSED RULE (UNIT-OF-SALES)

Unit-of-Sales Current Adjustment			Effective 2/1/xxx	
Line No.	Projected Quantity of Purchases	NGPA Category	Rate	Projected Cost
1 Purchase #1	[7] 30,000	104Bi, Small	[1] $2.22	$66,600
2 Purchase #2	[7] 40,000	n/a—pipeline	[2] 3.00	120,000
3	[7] 70,000	Total Projected Gas Cost		186,600
4 Adjustments				
5 Storage Injections	[7] <1,000>		[3] 2.67	<2,670>

APPENDIX D.—COMPUTATION OF CURRENT ADJUSTMENT UNDER PROPOSED RULE (UNIT-OF-SALES)—Continued

Unit-of-Sales Current Adjustment			Effective 2/1/xxx	
Line No.	Projected Quantity of Purchases	NGPA Category	Rate	Projected Cost
6 Storage Withdrawals	[7] 6,000		[3] 2.67	16,020
7	[7] 75,000			199,950
8 Sales Quantity—Including Storage Adjustments				[7] ÷72,000
9 Current Unit Cost of Gas (Line 7 ÷ Line 8)				2.7771
10 Less: Previous Quarterly PGA's Current Unit Cost of Gas				2.6419
				0.1352 or 13.52¢

[1] This is the NGPA rate at the mid point of the projected quarter.
[2] This is the current rate in effect for the pipeline supplier.
[3] For simplicity of this example, the storage rates are at the WACOG.

The above computation would yield the following rate sheet:

Rate Sched.	Base Tariff Rate [4]	Curr. Adj.	Cum. Adj.	Surch. Adj.	GRI Adj.	Other Adj.	Total
x	$3.00	$0.1352	$.7752	0	0	0	$3.7752

Estimated average cost of gas in most recent scheduled PGA $2.6419.[5]
Current estimated average cost of gas in most recent PGA (rate currently being charged) $2.7771.[6]

[4] The base tariff rate is the effective rate on file with the Commission, excluding adjustments approved by the Commission.
[5] $0.64 cummulative, $2.0019 in base rate.
[6] $0.7752 cummulative, $2.0019 in base rate.
[7] MMBtu.

Appendix E—Monthly Deferrals (Unit-of Purchase

Unit-of-Purchase

Monthly Deferrals

[(C–D)×B] where:
A=total monthly cost of gas purchased[1]—$55,229*
B=actual monthly purchase quantity [2]—20,600 MMBtu
C=actual unit gas cost (A/B) [3]—$2.6810
D=cost of gas in base rates plus cumulative adjustment—($2.0160+.65=$2.6660)

A monthy deferral would then be:

($2.8610−2.6660)×20,600 MMBtu=
$0.0150x20,600=$309 (underrecovery)

Appendix F—Monthly Deferrals (Unit-of-Sales)

Unit-of-Sales

Monthly Deferrals

[A–(BxC)] where:
A=total actual monthly cost of gas purchased[1]−$55,229*
B=base cost of gas in rates + cumulative adjustment–(2.0019+.7752=$2.7771)
C=actual quantities of gas sold sold in month[2]–20,200 MMBtu

A monthly deferral would then be:

$55,229−[($2.0019 + $.7752)×20,200]=
$55,229−($2.7771×20,200)=
$55,229−$56,097=<$868> (overrecovery)

Appendix G—Monthly Carrying Charge Rate Computation

Annual Rate: 9.50%−1st qtr.
For Jan. 9.50%÷365 days=.00026027×31 days=.0081(.81%)
For Feb. 9.50%÷365 days=.00026027×28 days=.0073(.73%)
For March 9.50%÷365 days=.00026027×31 days=.0081(.81%)
Annual Rate: 8.05%−2nd qtr.
For April 8.05%÷365 days=.00022055×30 days=.0066(.66%)
For May 8.05%÷365 days=.00022055×31 days=.0068(.68%)
For June 8.05%÷365 days=.00022055×30 days=.0066(.66%)
In Leap Year:
For Feb. 9.50%÷366 days=.00025956×29 days=.0075(.75%)
For March 9.50%÷366 days=.00025956×31 days=.0080(.80%)

Appendix H—Quarter by Compounding of Carrying Charges (CCs) Account No. 191

1st Quarter Annual Interest Rate 9.50% 2nd Quarter Annual Interest Rate 8.05%		Combined Federal and State Rate 48.16%	
12/31/XX Acct. No. 191 Balance	$10,000	12/31/XX Related Def. Tax Balance	$4,816
Jan. Deferral	600		
Jan. Surcharge Bal. Amortization	<700>		
01/31/XY Acct. No. 191 Balance	9,900	01/31/XY Related Def. Tax Balance	$4,768

[1] The $55,229 actual monthly cost of gas used in this example represents the sum of all gas costs considered as actual gas costs for a month under this rule, and would include adjustments necessary for prior months' gas costs determined in that month.

*In this example there are *no* adjustments to the monthly gas costs.

[2] For purposes of this example, only one rate was in effect for the entire quarter. No interim rates were utilized, therefore no proration of quantities to different costs of gas recovered in rates was necessary and the full months purchase quantities should be used, i.e., 20,600.

[3] $55,229÷20,600=$2.6810.

[1] The $55,229 actual montly cost of gas used in this example represents the sum of all gas costs considered as actual gas costs for a month under this rule, and would include any adjustments necessary for exchange and transportation imbalances and for prior months' gas costs determined in that month.

* In this example there are *no* adjustments to the monthly gas costs.

[2] For purposes of this example, only one rate was in effect for the entire quarter, no interim rates were utilized, therefore all quantities sold were applicable to only one rate, i.e., 20,200.

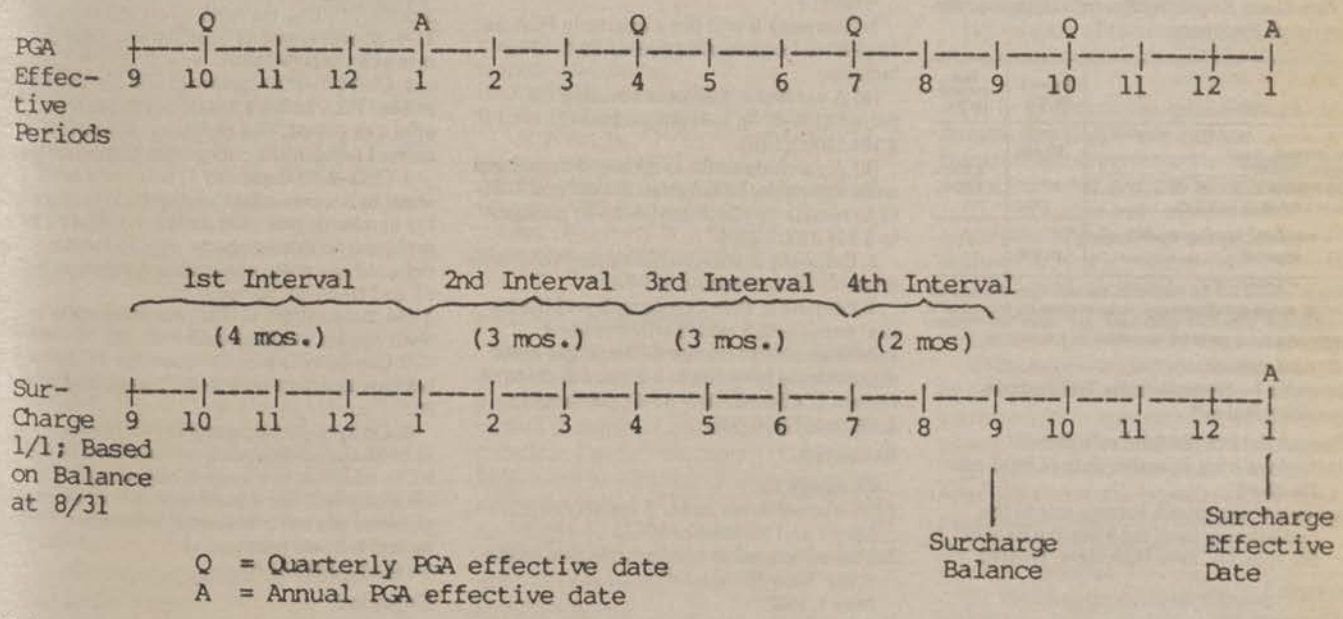
1st Quarter Annual Interest Rate 9.50% 2nd Quarter Annual Interest Rate 8.05%		Combined Federal and State Rate 48.16%	
Feb. Deferral	780		
Feb. Surcharge Bal. Amortization	<910>		
02/28/XY Acct. No. 191 Balance	9,770	02/28/XY Related Def. Tax Balance	$4,705
Mar. Deferral	1,050		
Mar. Surcharge Bal. Amortization	<700>		
1st Qtr. CCs	120.48		
03/31/XY Acct. No. 191 Balance	10,240.48	03/31/XY Related Def. Tax Balance	$4931.82

Carrying charges month of	Account No. 191 balance		Deferred tax		Balance for CCs		Monthly Interest Rate		Monthly CCs	Quarterly CCs
January	$10,000	—	4,816	=	$5,184	x	.0081	=	$41.99	
February	9,900	—	4,768	=	5,132	x	.0073	=	37.46	
March	9,770	—	4,705	=	5,065	x	.0081	=	41.03	120.48
April	10,240.48	—	4,931.82	=	5,308.66	x	.0066	=	35.04	

The April interest is computed on a March 31st Account No. 191 balance that includes carrying charges earned in the first quarter of the calendar year. By including the CCs earned in the first quarter in the balance upon which carrying charges are computed, in future months the interest will be compounded quarterly.

Appendix I—Assessment of Past Performance

A. Test Intervals



B. Assessment of Past Performance for the First Interval

1. Actual Cost of Gas:

	Quantity	Cost
Month 9	10,000	$30,000
Month 10	8,000	24,000
Month 11	13,000	38,000
Month 12	9,000	28,000
Total	40,000	120,000

2. Computed Projected Cost of Gas:

	Quantity	Proj. Avg. Rate	Cost
Month 9	10,000	2.70	$27,000
Month 10	8,000		
1-11	*3,000	3.10	9,300
12-31	*5,000	2.90	14,500
Month 11	13,000	2.90	37,700
Month 12	9,000		
1-20	* 6,000	2.90	17,400
21-31	*3,000	3.10	9,300
Total			115,200

* Reflects allocation of purchased volumes amongst multiple projected average costs of gas in effect for month.

3. Test Amount:

Compute Projected Cost of Gas for Interval (See 2 above) × 102%

$115,200 × 1.02 = $117,507

4. Gas Cost Requiring Specific Approval for Recovery:

Actual cost of Gas for the Interval (See 1 above)—The test Amount (See 3 above)

$120,000 − $117,504 = $2,496

C. Gas Costs Requiring Specific Approval for Surcharge Recovery

	Exceed by 2%	Not exceed by 2%
First interval	$2,496	
Second interval		<500>
Third interval		<1,200>
Fourth interval	$750	
Amounts needing Commission approval	[1] $3,246	

[1] Each interval will be subject to the test. Only the interval in which actual purchased gas costs exceed by two-percent its computed projected purchased gas costs will require Commission approval to be recovered by a surcharge.

Appendix J—Hypotheticals To Illustrate Transition Rules *

Effective date of the final rule: 8-1-87

Ninety days from effective date of final rule: 10-29-87

First day of the month subsequent to the nintieth day from the effective date of the rule, *i.e.*, new PGA date: 11-1-87

Example 1

Company A:

Semi-annual dates under § 154.38(d)(4):
May 1 and November 1

Last semi-annual to become effective before the "new PGA date":
May 1, 1987

Existing surcharge rate amortization period:
May 1 to October 31, 1987

Annual PGA effective date under § 154.304(c):
November 1

1. Company A will file its first annual PGA on 10-2-87 to become effective on 11-1-87 to include:

(a) A current adjustment covering the period 11-1-87 to 1-31-88 pursuant to § 154.310(c)(1)(i);

(b) A surcharge rate to recoup deferred gas costs accumulated between 2-1-87 and 7-31-87 pursuant to § 154.310(d)(3)(i) to remain in effect until 4-30-88.

2. Company A will file quarterly PGAs to become effective on 2/1/88, 5/1/88 and 8/1/88.

3. On 9/2/88 Company A will file its second annual PGA which will include a surcharge rate to recoup deferred gas costs accumulated between 8-1-87 and 6-30-88 to become effective 11-1-88 pursuant to § 154.310(d)(3)(ii)(A) to remain in effect until 10-31-89.

Example 2

Company B:

Semi-annual dates under § 154.38(d)(4):
May 1 and November 1

Last semi-annual to become effective before the "new PGA date":
May 1, 1987

Existing surchage rate amortization period:
May 1 to October 31, 1987

Annual PGA effective date under § 154.304(c):
August 1

1. Company B will file a quarterly PGA on 10-2-87 to become effective on 11-1-87 to include:

(a) A current adjustment covering the period 11-1-87 to 1-31-88 pursuant to § 154.310(c)(1)(ii);

(b) A surcharge rate to recoup deferred gas costs accumulated between 2-1-87 and 7-31-87 to remain in effect until 4-30-88 pursuant to § 154.310(d)(3)(i).

2. Company B will file quarterly PGAs to be effective on 2-1-88 and 5-1-88

3. On June 2, 1988 Company B will file its first annual PGA which will include a surcharge rate to recoup deferred gas costs accumulated between 8-1-87 and 3-31-88 to remain in effect unitl 3-31-89 pursuant to § 154.310(d)(3)(ii)(B).

Example 3

Company C:

Semi-annual dates under § 154.38(d)(4):
May 1 and November 1

Last semi-annual to become effective before the "new PGA date":
May 1, 1987

Existing surcharge rate amortization period:
May 1 to October 31, 1987

Annual PGA effective date under § 154.304(c):
January 1

1. Company C will file a tariff sheet on 10-2-87 to become effective on 11-1-87 to include:

(a) A current adjustment covering the period 11-1-87 to 12-31-87 pursuant to § 154.310(c)(1)(iii)(A);

(b) A surcharge rate to recoup deferred gas costs accumulated between 2-1-87 and 7-31-87 to remain in effect until 4-30-88 pursuant to § 154.310(d)(3)(i).

2. On 11-1-87 Company C will file its first annual PGA under § 154.304(c) to become effective 1-1-88. The company will reflect a current adjustment only in this annual filing.

3. Company C will file quarterly PGAs to become effective on 4-1-88, 7-1-88 and 10-1-88.

4. On 11-1-88 Company C will file its second annual PGA to become effective 1-1-89. In addition to a current adjustment the company will file a surcharge rate to recoup deferred gas costs accumulated between 8-1-87 and 8-31-88 pursuant to § 154.310(d)(3)(ii)(C).

Example 4

Company D:

Semi-annual dates under § 154.38(d)(4):
February 1 and August 1

Last semi-annual to become effective before the "new PGA date":
August 1, 1987

Existing surcharge rate amortization period:
August 1, 1987 to January 31, 1988

Annual PGA effective date under § 154.304(c):
January 1

1. Company D will file a tariff sheet on 10-2-87 to become effective on 11-1-87 to compute a current adjustment covering the period 11-1-87 to 12-31-87 pursuant to § 154.310(c)(1)(iii)(A). The surcharge rate will be restated pursuant to § 154.310(d)(4)(i), *i.e.*, if the surcharge rate effectuated on 8-1-87 is 5 cents/MMBtu, the tariff sheet effective on 11-1-87 will continue to show a surcharge rate of 5 cents/MMBtu.

2. On 11-1-87 Company D will file its first annual PGA under § 154.304(c) to become effective 1-1-88. The company will reflect a current adjustment only in this annual filing.

3. On 1-2-88 Company D will file a tariff sheet to become effective 2-1-88 to remove the surcharge rate effectuated 8-1-87 and to replace it with a surcharge rate to recoup deferred gas costs accumulated between 5-1-87 and 10-31-87 pursuant to § 154.310(d)(4)(ii)(A). This surcharge rate shall remain in effect until 7-31-88.

4. Company D will file quarterly PGAs to become effective on 4-1-88, 7-1-88 and 10-1-88.

5. On 11-1-88 Company D will file its second annual PGA to become effective 1-1-89. In addition to a current adjustment the company will file a surcharge rate to recoup deferred gas costs accumulate between 11-1-89 and 8-31-88 pursuant to § 154.310(d)(4)(ii)(A).

Example 5

Company E:

Semi-annual dates under § 154.38(d)(4):
September 1 and March 1

Last semi-annual to become effective before the "new PGA date":
September 1, 1987

Existing Surcharge rate amortization period:
September 1, 1987 to February 29, 1988

Annual PGA effective date under § 154.304(c):
September 1

1. On October 2, 1987 Company E will file a tariff sheet to become effective on 11-1-87 to compute a current adjustment covering the period 11-1-87 to 11-30-87 pursuant to

* Examples 1, 2 and 3 illustrate § 154.310(d)(3) *New Surcharge Rate Effective on New PGA Date;* Examples 4, 5 and 6 illustrate § 154.310(d)(4) *Existing surcharge rate continues beyond new PGA date.*

§ 154.310(c)(1)(iii). The surcharge rate will be restated pursuant to § 154.310(d)(4)(i).

2. Quarterly PGA's will be filed to become effective on 12-1-87, 3-1-88, and 6-1-88.

3. On 7-1-88 Company E will file its first annual PGA to become effective 9-1-88. In addition to a current adjustment the company will file a surcharge rate to recoup deferred gas costs accumulated from 6-1-89 to 4-30-88 pursuant to § 154.310(d)(4)(ii)(B). This surcharge rate shall remain in effect until 7-31-89.

Example 6

Company F:
Semi-annual dates under § 154.38(d)(4):
June 1, and December 1
Last semi-annual to become effective before the "new PGA date":
June 1, 1987
Existing surcharge rate amortization period:
June 1, 1987 to November 30, 1987
Annual PGA effective date under § 154.304(c):
December 1

1. On October 2, 1987, Company F will file:

(a) A tariff sheet to become effective 11-1-87 to reflect a current adjustment covering the period 11-1-87 to 11-30-87 pursuant to § 154.310(c)(1)(iii).

(b) A tariff sheet to become effective 12-1-87 to:

(i) Establish a current adjustment covering the period 12-1-87 to 2-29-88 and

(ii) Remove the surcharge rate effectuated June 1, 1987 and replace it with a surcharge to recoup deferred gas costs accumulated between 3-1-87 and 7-31-87 pursuant to § 154.310(d)(4)(ii)(B). The surcharge rate shall remain in effect until 4-30-88.

2. Quarterly PGAs will be filed to become effective on 3-1-88, 6-1-88, and 9-1-88.

PART 154—[AMENDED]

1. The authority citation for Part 154 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); Executive Order 12009, 3 CFR Part 142 (1978); Administrative Procedure Act, 5 U.S.C. 551-557 (1982); Natural Gas Act, 15 U.S.C. 717-717w (1982); Federal Power Act, 16 U.S.C. 791a-828c (1982); Natural Gas Policy Act, 15 U.S.C. 3301-3432 (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601-2645 (1982); Interstate Commerce Act, 49 U.S.C. 1-27 (1976).

2. Section 154.38(d)(4) is revised to read as follows:

§ 154.38 Composition of rate schedule.

* * * * *

(d) * * *

(4) *Refunds.* If a pipeline does not elect to recover its gas costs under the PGA procedures in §§ 154.301 through 154.310 of this part, and holds supplier refunds for more than 30 days, the jurisdictional portion of supplier refunds (including interest received) must be flowed through to the pipeline's jurisdictional customers with interest. The reporting requirements for refunds accomplished through billing adjustments are set forth in § 270.101(f) and § 273.302(f) of this chapter. An interstate pipeline, that does not make a PGA filing under §§ 154.301 through 154.310 of this part, but has recovered refunds through billing adjustments pursuant to § 270.101(e) or § 273.302 during a calendar year, must file a refund report for that year by the following March 1 which sets forth all the information required by § 270.101(f) and § 273.302(f)(2)(i) of this chapter. Any requirement for the serving and filing of other reports showing details of the computations of any such refunds, must be either as agreed in settlement discussions held among the pipeline, jurisdictional customers, interested state commissions, other interested parties, and the Commission staff, or as prescribed by Commission order.

* * * * *

§ 154.38 [Removed]

3. Section 154.38(h) is removed

4. Part 154 is amended by adding the following new subpart consisting of §§ 154.301 through 154.307:

Purchased Gas Adjustment Clauses

Sec.
154.301 Applicability.
154.302 Definitions.
154.303 Election of a PGA clause.
154.304 Scheduled annual and quarterly PGA filings.
154.305 Annual PGA filing.
154.306 Assessment of past performance.
154.307 Affiliated entities test.
154.308 Quarterly PGA filing.
154.309 Interim adjustment filing.
154.310 Transition rules.

§ 154.301 Applicability

(a) *Scope.* The subpart establishes procedures for an interstate natural gas pipeline to recover the changes in the cost of purchased natural gas through a purchased gas adjustment (PGA) clause instead of in a general rate proceeding under section 4 of the Natural Gas Act and § 154.63 of this chapter.

(b) *Who may apply.* These procedures are only applicable to interstate natural gas pipelines.

(c) *Cross-reference.* The procedures for recovering purchased gas costs in a general rate proceeding under section 4 of the Natural Gas Act are set forth in § 154.63 of this chapter.

§ 154.302 Definitions.

For purposes of this part:

(a) "Pipeline" means an interstate natural gas pipeline company subject to the Commission's jurisdiction under section 1 of the Natural Gas Act.

(b) "As-billed" means a method by which a pipeline charges its customers the costs of gas in the same manner it is billed by its suppliers.

(c) "Base tariff rate" is the rate level determined at the time a pipeline adopts a PGA clause, in a general rate case under § 154.63 of this chapter, under section 5 of the Natural Gas Act, or in a proceeding under § 154.303(e) of this part.

(d) "Effective rate" means the rate a pipeline charges, including adjustments, as provided for in the pipeline's FERC Gas Tariff, as approved by the Commission.

(e) "Base cost of gas" means the component in the base tariff rate that represents the average cost of purchased gas.

(f) "Concurrent exchange transaction" means a transfer of equal quantities of natural gas between two parties that is intended under a written agreement to occur at the same time.

(g) "Nonconcurrent exchange transactions" means a transfer of equal quantities of natural gas between two parties that is intended under a written agreement to occur at different times.

(h) "Exchange-in" means the quantities of natural gas a pipeline receives during a month:

(1) As part of concurrent and nonconcurrent exchange transactions, and

(2) In excess of the quantities of natural gas it delivers under transportation agreements authorized under Parts 157 and 284 of this chapter.

(i) "Exchange-out" means the quantities of natural gas a pipeline delivers during a month:

(1) As part of concurrent and nonconcurrent exchange transactions, and

(2) In excess of the quantities of natural gas it receives under transportation agreements, authorized under Parts 157 and 284 of this chapter.

(j) "Purchased Gas Cost" means the cost of natural gas purchased by a pipeline. These costs, adjusted to reflect net injections to or withrawals from storage, include:

(1) Wellhead purchases from producers in gas fields or production areas where only the pipeline's facilities are used to bring the gas from the wellhead into the pipeline's natural gas system;

(2) Wellhead intracompany transfers of gas supplied by a pipeline's production division when the price of the gas is not determined by a cost-of-service proceeding;

(3) Field line purchases in gas fields or production areas at points along gathering lines and at points along the pipeline's transmission lines within field

or production areas, excluding purchases at outlets of gasoline plants, where the facilities of the vendor or others are used to bring the gas from the wellhead to the point of entry into the pipeline's natural gas system;

(4) Natural gas gasoline plant purchases at the outlet side of a vendor's natural gas products extraction plant.

(5) Natural gas transmission line purchases at points along the pipeline's transmission lines not within gas fields or production areas, excluding purchases at the outlets of products extraction plants.

(6) Pipeline or affiliate production that qualifies under § 154.42 of this chapter;

(7) The cost of nonconcurrent exchange transactions when authorized under a written agreement;

(8) Taxes under § 271.1102 of this chapter;

(9) Costs under § 271.1104 of this chapter;

(10) Unpaid accruals, as defined in paragraph (r) of this section; and

(11) Any other costs of natural gas purchased by a pipeline and approved by the Commission.

(k) "Purchased gas adjustment (PGA) clause" means a statement filed in a pipeline's tariff that explains how the pipeline will implement the requirements of this section.

(l) "PGA effective period" means the time period during which a current adjustment is in effect.

(m) "Unit-of-Purchase methodology" means, for purposes of a current adjustment, a method for computing a pipeline's average projected purchased gas costs derived by dividing the pipeline's total projected purchased gas cost the pipeline anticipates purchasing during the PGA effective period by the quantities of gas used to compute its total projected purchased gas costs, as defined in § 154.305 of this subpart.

(n) "Unit-of-Sales methodology" means, for purposes of a current adjustment, a method for computing a pipeline's average projected purchased gas costs derived by dividing the pipeline's total projected purchased gas costs by the quantities of gas the pipeline anticipates selling during the PGA effective period.

(o) "Current adjustment" means a rate component in a pipeline's tariff, determined by applying either the unit-of-purchase or unit-of-sales methodology, used to reflect the difference between:

(1) The current weighted average projected purchased gas costs and

(2) The weighted average projected purchased gas costs reflected in the effective period of the previous scheduled PGA.

(p) "Deferral period" means a period of 12 months ending four months before the effective date of a pipeline's annual PGA filing.

(q) "Surcharge rate amortization period" means the time period approved by the Commission during which a surcharge rate determined under § 154.305 of this part, is charged by a pipeline.

(r) "Unpaid accrual" means an expense for services rendered or property delivered to the pipeline for which the pipeline has a legally-enforceable obligation to pay which the pipeline has not paid within its billing and payment cycle, provided that the billing and payment cycle does not exceed 60 days from the end of the month in which the services were rendered or property was delivered.

§ 154.303 Election of a PGA clause.

(a) *General rule.* Subject to § 154.310 of this part, a pipeline may elect to recover changes in its purchased gas costs either by (1) filing a request for a change in its rate level under § 154.63 of this chapter, or (2) complying with the procedures in paragraph (b) of this section.

(b) *Procedure for election.* For purposes of this paragraph "election period" means a three-year calendar period commencing on January 1 of every third year.

(1) The first election commences on January 1, 1988.

(2) A pipeline with a PGA clause in its tariff on December 1, 1987, will be considered to have elected to recover its changes in purchased gas costs through the PGA clause unless the pipeline notifies the Commission by December 1, 1987, that it has elected not to recover any changes in purchased gas costs through a PGA clause.

(3) A pipeline that elects to discontinue recovering for changes in purchased gas costs through its PGA clause must file revised tariffs sheets eliminating the PGA clause from its tariff by December 1, 1987, to be effective on January 1, 1988. Waiver of the notice requirements of § 154.22 of this chapter will be granted to permit the conforming tariff sheets to become effective on January 1, 1988.

(4) A pipeline that elects the PGA clause option in the first election period may terminate its PGA clause effective as of the next election period by filing revised tariff sheets eliminating the PGA clause on or before December 1 preceding a new election period, to be effective on the first January 1 of the new election period.

(5) If a pipeline with a PGA clause in its tariff does not make a filing to terminate the PGA clause on or before December 1 preceding a new election period, the pipeline will be considered to have elected to recover changes in its purchased gas costs through the PGA clause during the new election period.

(6) A pipeline that elected the non-PGA option for an election period may file revised tariff sheets implementing the PGA clause option for the next election period. A pipeline that makes such an election must file revised tariff sheets to implement the PGA clause option on or before December 1 preceding a new election period to make the PGA clause effective on the first January 1 of that election period.

(7) A pipeline must not file tariff sheets eliminating its PGA clause from its tariff during the election period.

(c) *PGA clause option.* Subject to paragraph (e) of this section, a pipeline that elects the PGA clause option for the first election period, beginning on January 1, 1988, must not include any change in purchased gas cost in a general section 4 rate filing made under § 154.63 of this chapter which is filed in December 1987.

(1) Subject to paragraph (c)(6) of this section and paragraph (e) of this section, during any period in which a pipeline elects the PGA clause option, the pipeline must file for changes in purchased gas costs through its PGA clause and not through a rate change filing under § 154.63 of this chapter.

(2) If a pipeline elects to recover changes in its purchased gas costs through filings made under a PGA clause, it must file tariff sheets containing a PGA clause, to be approved by the Commission, that:

(i) Detail the computation of all the adjustments to the pipeline's base tariff rates as permitted by §§ 154.305, 154.308, and 154.309 of this part;

(ii) Indicate whether the pipeline has elected either the unit-of-purchase methodology or the unit-of-sales methodology, and state that it will consistently use the same methodology elected for computing the current adjustment and for determining the monthly deferrals to Account No. 191;

(iii) State that the pipeline will apply only the jurisdictional portion of the changes in its purchased gas costs to the adjustments permitted by §§ 154.305, 154.308 and 154.309;

(iv) Describe how the pipeline will refund amounts described in § 154.305(i) of this part; and

(v) Adopt all other terms and conditions specified in this part.

(3) A pipeline must normalize all income tax timing differences which are the result of differences between the period in which expense or revenue enters into the determination of taxable income and the period in which the expense or revenue enters into the determination of pre-tax book income.

(4) A PGA clause filed with the Commission will become effective only after the Commission issues an order accepting the PGA clause for filing.

(5) A pipeline may request a waiver from the Commission of the PGA election requirements of this section if the pipeline demonstrates:

(i) That it is unable to arrange for financing of the balances accrued in Account No. 191, or

(ii) That it is unable to earn its overall rate of return last allowed by the Commission because of the magnitude of the balances in Account No. 191 and a significant difference exists between the costs of financing the Account No. 191 balances and the carrying charges permitted under § 154.305(h) of this part.

(d) *Non-PGA clause option.* During an election for which a pipeline has elected and non-PGA clause option, the pipeline may file for rate changes to recover changes in purchased gas costs only under § 154.63 of this chapter. The pipeline must not file tariff sheets to include a PGA clause in its tariff during the three year election period.

(e) *Three-year filing requirement to establish new base tariff rate*—(1) *General requirement.* At least 30 days before the expiration of 36 months after the effective date of any perviously approved base tariff rate(s), a pipeline must file a tariff sheet(s) restating its rates to establish new base tariff rate(s).

(i) A pipeline must state its agreement that this filing will automatically be subject to refund until an agreement is reached or a Commission determination is made establishing new base tariff rate(s).

(ii) With this tariff sheet(s) the pipeline must file a study in the form and with the content prescribed by § 154.63 of this chapter, except Statements O and P, to support the new base tariff rate.

(A) If the pipeline has a Natural Gas Act section 5(a) case pending a final Commission order or has made a filing under § 154.63 of this chapter for which the proposed rates would not become effective before termination of the 36-month period, a study from that proceeding may be utilized.

(B) This study must be based upon actual costs for the 12 months of most recently available experience, provided that the 12-month period used ends not more than 4 months before the expiration of the 36-month period. Annualization for changes which actually occurred in the 12 months is permitted.

(C) This study must be served on a pipeline's jurisdictional customers and interested state commissions concurrently with the pipeline's filing with the Commission.

(2) *Effect of a Filing under § 154.63.* If a rate case under § 154.63 of this chapter is filed before the expiration of the 36-month period, a new 36-month period will begin when the rates proposed in the § 154.63 filing go into effect. Rates determined by the Commission in a general rate proceeding under § 154.63 of this chapter, or section 5(a) of the Natural Gas Act, or rates in a settlement agreement approved by the Commission will establish the new Base Tariff Rates when they become effective pursuant to a Commission order, and a new 36-month period will start.

(3) *Restatement of new base tariff rate.* If either as a result of agreement among a pipeline, its jurisdictional customers, interested state commissions, and the Commission staff, or as a result of a Commission determination after a hearing, it is found, based on the cost study prescribed in this paragraph, that the jurisdictional cost-of-service is less than jurisdictional revenues collected for the same 12-month period, as adjusted, a pipeline must:

(i) Restate its base tariff rate(s);

(ii) File with the Commission a revised tariff sheet(s) reflecting a reduction in its jurisdictional rates by an amount equal to the excess revenues agreed upon or determined; and

(iii) Refund to its jurisdictional customers any excess amounts collected subject to refund to the date of billing under the revised tariff sheet(s), with interest to that date.

(A) This refund obligation will be limited to the amount collected in excees of the prior or suspended base tariff rate, and

(B) Rate reductions, if any, below the old base tariff rate(s) are to be prospective from the date of the Commission's order determining new base tariff rate(s).

§ 154.304 Scheduled annual and quarterly PGA filings.

(a) *General rule.* A pipeline that elects a PGA clause under § 154.303(b) of this part must file under the schedule specified in paragraph (c) of this section:

(1) An annual PGA filing described in § 154.305 of this part that contains both a current adjustment to reflect any changes in the pipeline's purchased gas costs since the pipeline's last scheduled quarterly PGA filing and a surcharge rate adjustment to clear any ending balance(s) in the current deferral subaccount(s) of Account No. 191; and

(2) Three quarterly PGA filings described in § 154.308 of this subpart that contain current adjustments to track any changes in the pipeline's purchased gas costs since the pipeline's last scheduled PGA filing.

(b) *Exception to rate change filing requirement.* Except for the surcharge rate adjustment described in § 154.305(d) of this part, a pipeline may reflect a purchased gas adjustment in its rates only if the adjustment represents a dollar amount equal to at least 1 mill ($0.001) per MMBtu of jurisdictional sales.

(c) *Effective dates.* A pipeline must file its annual and quarterly PGA filings with the Commission to be effective as follows:

Annual Date: January 1—[Quarterly Dates: APR 1, JULY 1, OCT 1]

Alabama-Tennessee Natural Gas Company
Granite State Gas Transmission, Inc.
East Tennessee Natural Gas Company
Northern Natural Gas Company
Sea Robin Pipeline Company
Tennessee Gas Pipeline Company

Annual Date: February 1—[Quarterly Dates: MAY 1, AUG 1, NOV 1]

Lawrenceberg Gas Transmission Corporation
National Fuel Gas Supply Corporation
Texas Eastern Transmission Corporation
Texas Gas Transmission Corporation

Annual Date: March 1—[Quarterly Dates: JUNE 1, SEPT 1, DEC 1]

Algonquin Gas Transmission Company
Midwestern Gas Transmission Company, Southern Division
Natural Gas Pipeline Company of America
North Penn Gas Company
Panhandle Eastern Pipe Line Company

Annual Date: April 1—[Quarterly Dates: JULY 1, OCT 1, JAN 1]

Arkla Energy Resources, a Division of Arkla, Inc.
Commercial Pipeline Company, Inc.
Midwestern Gas Transmission Company, Northern Division
Williams Natural Gas Company
Northwest Pipline Corporation
Southern Natural Gas Company

Annual Date: May 1—[Quarterly Dates: AUG 1, NOV 1, FED 1]

ANR Pipeline Company
Columbia Gas Transmission Corporation
Florida Gas Transmission Company
Kentucky-West Virginia Gas Company
MIGC, Inc.

Annual Date: June 1—[Quarterly Dates: SEPT 1, DEC 1, MAR 1]

Consolidated Gas Transmission Corporation
Mississippi River Transmission Corporation
Pacific Interstate Transmission Company
Valero Interstate Transmission Company

Annual Date: July 1—[Quarterly Dates: OCT 1, JAN 1, APR 1]

Distrigas of Massachusetts Corporation
El Paso Natural Gas Company
Gas Gathering Corporation
South Georgia National Gas Company
Transwestern Pipeline Company

Annual Date: August 1—[Quarterly Dates: NOV 1, FEB 1, MAY 1]

Bayou Interstate Pipeline System
Transcontinental Gas Pipe Line Company
Western Gas Interstate Company
Williston Basin Interstate Pipeline Company

Annual Date: September 1—[Quarterly Dates: DEC 1, MAR 1, JUNE 1]

Carnegie Natural Gas Company
Equitable Gas Company
Locust Ridge Gas Company
Mid Louisiana Gas Company
Trunkline Gas Company

Annual Date: October 1—[Quarterly Dates: JAN 1, APR 1, JUL 1]

Colorado Interstate Gas Company
Raton Gas Transmission Company
Reliance Pipeline Company
Southwest Gas Corporation
United Gas Pipeline Company
West Texas Gas, Inc.

Annual Date: November 1—[Quarterly Dates: FEB 1, MAY 1, AUG 1]

Eastern Shore Natural Gas Company
Great Lakes Gas Transmission Company
Inter-City Minnestoa Pipeline, Ltd., Inc.
Taxas Gas Pipe Line Corporation
Valley Gas Transmission, Inc.

Annual Date: December 1—[Quarterly Dates: MAR 1, JUNE 1, SEPT 1]

KN Energy, Incorporated
Louisiana-Nevada Transit Company
Mountain Fuel Resources, Inc.
Western Transmission Corporation

§ 154.305 Annual PGA filing.

(a) *Filing requirements.* The annual filing must be filed with the Commission and posted under § 154.16 of this chapter at least 60 days before a pipeline's proposed annual effective date, as established under § 154.304(c) of this part. At the same time, the pipeline must serve its jurisdictional customers and interested state commissions with a copy of the filing. The copy of the filing served on the jurisdictional customers and interested state commissions must be in the hard copy format set forth in Exhibit C of the FERC Form No. 542–PGA unless otherwise agreed to by jurisdictional customers and interested state commissions. The filing must contain:

(1) Tariff sheets that conform to both the format specified in § 154.33(d) of this chapter and the following format:

NOTICE OF PURCHASE GAS COST ADJUSTMENT RATE CHANGE

Rate sched.	Base tariff rate [1]	Curr. adj.	Cum adj.	Surch. adj.	GRI adj.	Other adj.	Total

Estimated average cost of gas in last scheduled PGA: $X.XX Current estimated average cost of gas in latest PGA (rate currently being charged): $X.XX

[1] The base tariff rate is the effective rate on file with the Commission, excluding adjustments approved by the Commission.

(2) A report containing detailed computations which clearly show the derivation of the current adjustment and a surcharge rate to be applied to a pipeline's effective rates.

(i) The format in which this report must be submitted and the information that the report must contain are set forth in FERC Form No. 542–PGA, Purchased Gas Adjustment (PGA) Filing, available at the Commission's Division of Public Information, 825 North Capitol Street NE., Washington, DC 20426.

(ii) All data or summaries in the filing reflecting the books of account must be supported by accounting working papers, including reconciling schedules, which may be verified easily. All statements, schedules, and working papers must be prepared in accordance with the classifications provided in the Uniform System of Accounts. Upon request by the Commission staff, a pipeline must make available all working papers for staff examination. All working papers must be indexed and cross-referenced to the filing; and

(3) Any changes to an intracompany operating statement for all gas produced by a pipeline, as defined in § 270.203(b) of this chapter, on file with the Commission.

(b) *Treatment of change in cost of gas from various types of suppliers.* Except as provided in § 154.304(b) of this part, a pipeline must apply changes in the cost of purchased gas to its base tariff rates in the following manner:

(1) Supplier rate changes must be applied either as billed to a pipeline's two-part rates or applied to a pipeline's volumetric rates consistent with the pipeline's one-part rate design.

(2) Imported natural gas rate changes must be applied to a pipeline's rates consistent with the Commission's rate design precedents.

(c) *Projecting purchased gas costs to determine the current adjustment*—(1) *Method for projecting cost of purchased gas.* A pipeline must project its purchased gas costs based on:

(i) The best estimate of the quantities of natural gas a pipeline expects to purchase and to receive in noncurrent exchange transactions during the three months beginning on the effective date of the PGA;

(ii) The rate as of the effective date of the PGA, for each projected purchase and nonconcurrent exchange receipt of natural gas. However, if such rate cannot be determined, the rate used for the projection must be the rate in effect before the PGA effective date. The rate may be adjusted, if applicable, by the monthly ceiling price escalations allowed under the Natural Gas Policy Act of 1978; and

(iii) The best estimate of quantity and cost adjustments for storage injections and withdrawals.

(2) *Limitation on projecting cost of purchased gas.* A pipeline may only project its purchased gas costs based on gas supply attached to its system as of the effective date of the PGA.

(3) *Estimated sales quantities.* If a pipeline uses the unit-of-sales methodology, the pipeline's estimated sales volumes will be the pipeline's estimate of the volumes of natural gas the pipeline expects to sell during the three months beginning on the effective date of the PGA.

(d) *Computing the surcharge rate.* A pipeline must compute a surcharge rate to amortize a surcharge balance determined under paragraph (e) of this section. To compute a surcharge rate, the surcharge balance must be divided by the pipeline's estimated sales volumes for the 12-month period beginning on the annual PGA effective date. The resulting surcharge rate will be in effect for the 12-month period beginning on the annual PGA effective date.

(e) *Surcharge balance.* Subject to the conditions in paragraph (f) this section and §§ 154.306 and 154.307 of this part, the balance for determining the surcharge includes:

(1) The balances accumulated in the current deferral subaccount of Account No. 191 during the deferral period, as determined in paragraph (g) of this section; and

(2) Any other costs the Commission allows a pipeline to include in the surcharge balance.

(f) *Unpaid accrual restrictions.* (1) In each annual PGA filing, a pipeline must include a listing of each unpaid accrual of purchased gas costs which remains unpaid for three or more years from the month the cost was originally recognized in the pipeline's books and records. The pipeline must include a specific description of the circumstances which resulted in each unpaid accrual listed. The pipeline must obtain the Commission's approval to continue the recognition of the unpaid accruals gas a purchased as cost.

(2) If the Commission does not approve the continued recognition of any unpaid accruals described in paragraph (f)(1) of this section as purchased gas costs, the amounts must be credited to the refund subaccount of Account No. 191 as specified by the Commission order.

(g) *Balances in the current deferral subaccount in Account No. 191.* The accumulated subaccount balances of Account No. 191 may include:

(1) Monthly deferrals of under- or overrecovered gas costs computed under paragraph (g)(1) (i) or (ii) of this section, as applicable.

(i) If the unit-of-purchase methodology is adopted, monthly deferrals are the sum of the amounts determined by multiplying the difference between (A) and (B) by (C) where:

(A) Is the applicable effective base cost of gas rate plus the cumulative current adjustment rate in effect;

(B) Is the actual monthly unit cost of gas purchased; and

(C) Is the monthly guantity of gas purchased and prorated to the current adjustment rate in effect during the month.

(D) The actual unit cost of gas purchased is derived by dividing the sum of the total actual monthly cost of gas purchased determined in paragraph (g)(1)(iii) of this section and the adjustments determined in paragraph (g)(2) of this section, by the related purchase volumes.

(ii) If the unit-of-sales methodology is adopted, the monthly deferrals are the amounts determined by taking the difference between (A) and (B) where:

(A) Is the total actual monthly cost of gas purchased as determined under paragraph (g)(1)(iii) of this section, and

(B) Is the projected unit cost of purchased gas, determined under paragraph (c) of this section, that is recovered through the base cost of gas rate plus the cumulative current adjustment rate, multiplied by the actual quantities of gas sold under each current adjustment rate in effect during the month.

(iii) *Actual cost of gas purchased.* The actual cost of gas purchased used to calculate the monthy deferrals of under- or overrecovered purchased gas costs are the purchased gas costs, as defined in § 154.302(j) of this part, as adjusted for exchange transactions and transportation imbalances under paragraph (j) of this section. The actual cost of gas purchased under paragraph (g)(1)(iii) of this section must be attributable to gas quantities purchased and received in a month, that are paid for or are for amounts known within 60 days of the end of the month in which the purchases were made and received that have not yet been paid.

(2) Adjustments to a prior month's actual cost of gas purchased as determined under this paragraph.

(3) Transfers of any unamortized amounts remaining in a deferral subaccount of Account No. 191 after the related surcharge amortization period has expired.

(4) Carrying charges, determined in paragraph (h) of this section; and

(5) Transfers of any amounts remaining in a refund subaccount determined under paragraph (i) of this section, to be amortized as part of the surcharge balance.

(h) *Carrying charges*—(1) *General rule.* A pipeline must compute carrying charges on the Account No. 191 balance. After computing carrying charges, the pipeline must:

(i) Compound carrying charges on a calendar quarter basis, as specified in § 154.67(c)(2)(iii)(B) of this chapter; and

(ii) Debit carrying charges to Account No. 191 if the carrying charge base, specified in paragraph (h)(3) of this section, is a debit (positive) and credit carrying charges to Account No. 191 if the carrying charge base, specified in paragraph (h)(3) of this section is a credit (negative).

(2) *Method.* To compute carrying charges a pipeline must multiply the carrying charge rate specified in paragraph (h)(4) of this section by the appropriate carrying charge base specified in paragraph (h)(3) of this section.

(3) *Carrying charge base.* (i) The carrying charge base for the refund, revenue credits and billing adjustments subaccount will be the prior month's ending refund and revenue credit subaccount balance of Account No. 191 adjusted for any applicable deferred income taxes recorded consistent with § 154.303 (c)(3) of this part.

(ii) The carrying charge base for all other subaccounts of Account No. 191 will be the prior month's ending subaccounts' balances:

(A) Reduced for unpaid accruals;

(B) Adjusted for any applicable deferred income taxes as recorded in either Account No. 283, or Account No. 190 consistent with § 154.303 (c)(3) of this part.

(C) Increased or decreased for exchange transactions and transportation imbalances cost adjustments, determined in paragraph (j) of this section; and

(D) Adjusted for the difference, if any, between the rate used for storage gas and the rate that would be effective for storage gas if a rolling weighted average inventory costing methodology had been used.

(4) *Carrying charge rate.* A pipeline must compute a monthly carrying charge rate for carrying charges by:

(i) Stating on an annual basis the applicable calendar quarterly rate prescribed in § 154.67(c)(2)(iii)(A) of this chapter;

(ii) Dividing the annual rate by 365 or 366, if a leap year, to compute a daily interest rate, expressed to the nearest ten-thousandth of one percent; and

(iii) Multiplying the daily rate by the number of days in the applicable month, to compute a monthly rate, expressed to the nearest ten-thousandth of one percent.

(i) *Refunds*—(1) *General rule.* A pipeline that elects a PGA clause under § 154.303 of this subpart must return to its jurisdictional customers the jurisdictional portion, as determined under the pipeline's FERC gas tariff, of all refunds or revenue credits, including billing adjustments under § 270.101(e) and § 273.302 of this chapter, and of all interest computed on these amounts received from its suppliers for the pipeline's purchases of natural gas. The pipeline must return these amounts to its jurisdictional customers by:

(i) Crediting to a separately identified refund subaccount of Account No. 191 the jurisdictional portion of all refunds, revenue credits, the related interest received, and carrying charges computed under paragraph (h) of this section during a deferral period;

(ii) Disbursing to its jurisdictional customers in cash the total amount credited to the refund subaccount when the total refund subaccount balance reaches the lesser of:

(A) $2 million, or

(B) 1 cent per MMBtu of the pipeline's most recently available 12 months of actual jurisdictional sales.

(iii) The disbursement must be made by the pipeline within 30 days of receipt of refund or revenue credit which causes the refund subaccount balance to reach the level stated in paragraph (i)(1)(ii) (A) or (B) of this paragraph.

(2) *Disbursement calculation.* The pipeline must determine each jurisdictional customer's share of the cash disbursement by taking the ratio of that customer's latest 12 months of purchases from the pipeline, as of the date the level in paragraph (i)(1)(ii) (A) or (B) of this section is reached, to the pipeline's jurisdictional sales for the same 12-month period and multiplying the ratio by the total amount to be disbursed.

(3) *Debiting refund subaccount.* For any amounts disbursed in cash, the pipeline must debit the refund subaccount of Account No. 191. If there is a balance of refunds, revenue credits, and associated carrying charges remaining in the refund subaccount at the end of a deferral period, the pipeline must either:

(i) Disburse the amounts in cash in the manner described in paragraphs (h)(1) and (2) of this section, or

(ii) Transfer the amounts to the current deferral subaccount balance to be amortized as part of the surcharge balance determined under paragraphs (e) and (g) of this section.

(4) *Refund report.* When a pipeline files its annual PGA filing, the pipeline must also file a report with the Commission showing all computations of the refunds, revenue credits, and associated carrying charges disbursed in cash during the applicable deferral period.

(j) *Exchange transactions and transportation imbalances.*—(1) *General rule.* If a pipeline elects a unit-of-sales methodology, it must assign a cost to its exchange transactions and transportation imbalances by:

(i) Adjusting the purchase quantities for each month of a deferral period by adding the exchange-in quantities for the month and subtracting the exchange-out quantities for the month; and

(ii) Adjusting the purchased gas costs for each month of a deferral period by adding the costs assigned to the month's exchange-in quantities and subtracting the costs assigned to the month's exchange-out quantities.

(2) *Assigning costs.* For purposes of assigning costs to the monthly exchange-in or exchange-out quantities, a pipeline must use the weighted average cost of gas (WACOG) for the monthly cost of gas purchased, as that term is defined in § 154.302(j) of this part, exclusive of gas costs under § 154.302(j)(7) and (11), and adjustments for withdrawals from and injections to storage.

(3) *Adjustment.* The pipeline must use the first exchange-out quantities or exchange-in quantities of the current month to offset any net exchange imbalance that occurred in a prior month. If the cumulative imbalance at the end of the month was net exchange-in, the pipeline must balance with the first exchange-out quantities given by the pipeline. If the cumulative imbalance at the end of the month was net exchange-out, the pipeline must balance with the first exchange-in quantities received by the pipeline. The pipeline must assign the prior month's WACOG to the current month's balancing quantities. If the pipeline is unable to offset the prior month's exchange imbalances with a current month's exchange quantities, it must carry the imbalance forward through the deferral period until balancing occurs. The pipeline must assign to each month's balancing quantities the WACOG of the month when the imbalance occurred until balancing is achieved. The pipeline must assign the current month's WACOG to any quantities not used to offset a prior month's exchange imbalance.

§ 154.306 Assessment of past performance.

(a) *General rule.* (1) Prior Commission approval is required for a pipeline to recover through a surcharge its actual purchased gas costs (determined in paragraph (d) of this section) that exceed its computed projected purchased gas costs (determined in paragraph (e) of this section) for each test interval (described in paragraph (b) of this section) by two-percent.

(2) A pipeline must determine the amount of gas costs which requires specific Commission approval for surcharge recovery under paragraph (c) of this section.

(3) If the Commission denies a pipeline recovery of any underrecovered purchased gas costs as a result of this section, then the amounts denied recovery must be credited to Account No. 191 and charged to Account No. 426.5, "Other Deductions."

(b) *Test Intervals.* The pipeline must divide the deferral period into four test intervals. The first interval is the first four months of the deferral period. The second test interval is the three months following the first interval. The third interval is the three months following the second interval. The fourth interval is the remaining two months of the deferral period.

(c) *Gas Costs Requiring Specific Approval for Surcharge Recovery.* The amount of gas costs which require specific approval by the Commission for surcharge recovery is the difference obtained by subtracting (1) from (2) where:

(1) Is the actual cost of gas purchased in a test interval determined in paragraph (d) of this section; and

(2) Is the test amount determined by multiplying the computed projected gas costs determined in paragraph (e) of this section, by 1.02.

(d) *Actual cost of gas purchased.* The actual cost of gas purchased is the monthly amounts determined in § 154.305(g)(1) of this part for the gas purchased in the test interval:

(1) Less adjustments for exchange transactions and transportation imbalances; and

(2) Including only the gas cost components that were used to compute the projected average cost of gas that is compared in a test interval.

(e) *Computed projected cost of gas.* A pipeline must calculate its computed projected gas costs by multiplying:

(1) The volumes of natural gas purchased and/or received during a PGA effective period within a test interval by;

(2) A projected average rate derived by dividing the projected purchased cost of gas used to calculate a current adjustment for a PGA effective period by the related volumes of natural gas the pipeline projects to purchase during a PGA effective period.

§ 154.307 Affiliated entities test.

(a) *Categories of gas.* For purposes of applying the affiliated entities test, the following categories of gas are established:

(1) Gas produced in the Permian Basin which is subject to a maximum lawful ceiling price under sections 104, 106(a), or 109 of the NGPA.

(2) All other gas produced in the Permian Basin.

(3) Gas produced in Southern Louisiana, Mississippi, Alabama, and the Texas Gulf Coast which is subject to a maximum lawful ceiling price under sections 104, 106(a), or 109 of the NGPA.

(4) All other gas produced in Southern Louisiana, Mississippi, Alabama, and the Texas Gulf Coast.

(5) Gas produced in Arkansas, Oklahoma, Kansas, North Louisiana, and Texas other than the Gulf Coast which is subject to a maximum lawful ceiling price under sections 104, 106(a), or 109 of the NGPA.

(6) All other gas produced in Oklahoma, Kansas, North Louisiana and Texas other than the Gulf Coast.

(7) Gas produced in the Appalachian-Illinois Basin which is subject to a maximum lawful ceiling price under sections 104, 106(a), or 109 of the NGPA.

(8) All other gas produced in the Appalachian-Illinois Basin.

(9) Gas produced in the Rocky Mountains which is subject to a maximum lawful ceiling price under sections 104, 106(a), or 109 of the NGPA.

(10) All other gas produced in the Rocky Mountains.

(b) Pipelines that purchase natural gas that qualifies as a "first sale" under section 2 of the Natural Gas Policy Act of 1978 must submit schedule A1(2), Monthly Gas Purchases Record within 60 days of the first day of the purchase month for which the pipeline is reporting.

(c) *Computation of average prices.* For each of the categories of gas established in paragraph (a) of this section, the pipeline must compute:

(1) The weighted average price per MMBtu paid by all pipelines to non-affiliates in transactions during the deferral period for gas in the category in question purchased in first sales, and

(2) The weighted average price per MMBtu paid by the pipeline, during the deferral period, for gas in the category in question purchased from its affiliates and its production division in first sales.

(i) In making these computations, the pipeline must use the unadjusted data reported under Schedule A1(2) of FERC Form No. 542–PGA, Monthly Actual Gas Purchases Record.

(ii) To the extent any necessary data are unavailable when the pipeline must make its Annual PGA under § 154.304(c) of this part, the pipeline may estimate the unavailable data.

(d) *Computation of overpayments.* For each category of gas in which the average price determined in paragraph (b)(2) of this section is higher than the average price determined in paragraph (b)(1) of this section, the pipeline shall multiply:

(1) The quantity of gas, expressed in MMBtu, in that category which the pipeline purchased from its affiliates and its production division during a deferral period, by

(2) The differences between the average prices determined in paragraphs (b) (1) and (2) of this section for that category of gas.

(e) *Subtraction from surcharge balance.* (1) The pipeline must subtract from its surcharge balance under § 154.305(e) of this part the sum of the amounts determined under paragraph (d) of this section.

(2) If the Commission denies a pipeline recovery of any purchased gas costs as a result of this section, then the amounts denied recovery must be credited to Account No. 191 and charged to Account No. 426.5, "Other Deductions."

(f) *Adjustment to subtraction.* Within thirty days after the annual PGA filing, the pipeline must adjust the subtraction from the surcharge balance determined under this section to reflect relevant data reported under Schedule A(1)(2) of FERC Form No. 542–PGA which becomes available to the pipeline after the Annual PGA filing.

§ 154.308 Quarterly PGA filing.

(a) *Filing requirements.* The quarterly filing must be filed with the Commission and posted under § 154.16 of this chapter at least 30 days before a pipeline's proposed quarterly effective date, established under § 154.304(c) of this part. At the same time, the pipeline must serve its jurisdictional customers and interested state commissions with a copy of the quarterly filing. The copy of the filing served on the jurisdictional customers and interested state commissions must be in the hardcopy format set forth in Exhibit C of the FERC Form No. 542–PGA unless otherwise agreed to by the jurisdictional customers and interested state commissions.

(b) *Contents of the filing.* The pipeline must file:

(1) Tariff sheets that conform to both the format specified in § 154.33(d) of this chapter and the following format:

NOTICE OF PURCHASE GAS COST ADJUSTMENT RATE CHANGE

Rate sched.	Base tariff rate [1]	Curr. adj.	Cum. adj.	Surch. adj.	GRI adj.	Other adj.	Total

Estimated average cost of gas in last scheduled PGA $X.XX
Current estimated average cost of gas in latest PGA (rate currently being charged): $X.XX

[1] The base tariff rate is the effective rate on file with the Commission, excluding adjustments approved by the Commission.

(2) A report containing detailed computations which clearly show the derivation of the current adjustment to be applied to a pipeline's effective rates. The format in which this report must be submitted and the information that the report must contain are set forth in FERC Form No. 542–PGA, Purchased Gas Adjustment (PGA) Filing, available at the Commission's Division of Public Information, 825 North Capitol Street, NE., Washington, DC 20426.

(c) *Current adjustment.* A pipeline must compute a current adjustment for the quarterly filing in the manner described in § 154.305(c) of this part. A pipeline must not make an adjustment to the surcharge rate in effect until the pipeline's next scheduled annual PGA filing.

(d) *Challenges to quarterly filing.* Objections to a pipeline's purchasing practices reflected in a quarterly PGA filing will not be considered by the Commission at the time of the quarterly filing and must be raised at the time of the pipeline's next scheduled annual PGA filing. Mathematical, typographical or accounting errors that affect the correct computation of a current adjustment in a quarterly PGA filing may be challenged when a pipeline files the quarterly filing.

§ 154.309 Interim adjustment filing.

(a) *General rule.* A pipeline may elect a PGA clause under § 154.303 of this subpart that allows it to file interim adjustments to its base tariff rate(s) in addition to annual and quarterly PGA filings under §§ 154.305 and 154.308 of this subpart, subject to the conditions specified in this section.

(b) *Interim adjustment rate change.* (1) A pipeline must only file an interim rate adjustment based on a projected average cost of purchased gas that is less than the projected average cost of gas reflected in its last scheduled PGA filing. An interim adjustment rate change must only reflect known and measurable changes to the cost of gas established in a pipeline's last scheduled PGA filing.

(2) Known and measurable changes to the cost of gas as used in this section are those changes in costs that a pipeline has a reasonable basis for assuming will actually occur.

(c) *Filing and notice requirements.* (1) A pipeline must file an interim adjustment with the Commission and post it as required by § 154.16 of this chapter at least 24 hours before the effective date of the proposed interim adjustment. At the same time the pipeline files with the Commission, it must serve its jurisdictional customers and interested state commissions with a copy of the filing.

(2) *The filing.* The pipeline must file:

(i) Tariff sheets that conform to both the format specified in § 154.33(d) of this chapter and the following format:

NOTICE OF PURCHASE GAS COST ADJUSTMENT RATE CHANGE

Rate sched.	Base Tariff rate [1]	Curr. adj.	Cum. adj.	Surch. adj.	GRI adj.	Other adj.	Total

Estimated average cost of gas in last scheduled PGA $X.XX
Current estimated average cost of gas in latest PGA (rate currently being charged: $X.XX

[1] The base tariff rate is the effective rate on file with the Commission, excluding adjustments approved by the Commission.

(ii) A summary sheet showing the changes in purchased gas cost reflected in the interim adjustment. A suggested format for the summary sheet is shown in FERC Form No. 542–PGA, Purchased Gas Adjustment (PGA) Filing, available at the Commission's Division of Public Information, 825 North Capitol Street, NE., Washington, DC 20426. The summary sheet must contain sufficient detail to clearly show the derivation of the interim adjustment to be applied to the pipeline's existing rates.

(d) *Challenges to interim adjustment filing.* Objections a pipeline's purchasing practices reflected in an interim adjustment filing will not be considered by the Commission at the time of the interim adjustment filing and must be raised at the time of the pipeline's next scheduled annual PGA filing. Mathematical, typographical, or accounting errors that affect the correct computation of a rate adjustment in an interim adjustment filing may be challenged when a pipeline files the interim adjustment.

§ 154.310 Transition rules.

(a) *Definitions.* For purposes of this section, "new PGA data" means the first day of the first month that begins at least 90 days after a final rule in Docket No. RM86–14–000 is effective.

(b) *Filing requirement.* (1) Sixty days prior to the new PGA date, a pipeline must file tariff sheets pursuant to § 154.303 of this chapter. A pipeline may continue in effect until the new PGA date any flexible PGA tariff provisions that the pipeline already has in effect.

(2)(i) A pipeline must file tariff sheets described in paragraph (b)(2)(ii) of this section 30 days prior to the new PGA date to be effective on the new PGA date.

(ii) A pipeline must file tariff sheets in the format specified in paragraphs (b)(2)(iii) and (iv) of this section that contain:

(A) An initial current adjustment rate computed under paragraph (c) of this section, and

(B) A surcharge rate adjustment described in paragraph (d) of this section.

(iii) If the new PGA date is also the pipeline's scheduled annual or quarterly PGA effective date under § 154.304 of this part, the tariff sheet format must conform to the annual or quarterly PGA format specified in § 154.305 or § 154.308 of this part. The pipeline must submit a detailed report in the format and with the information set forth in the FERC Form No. 542–PGA for the annual or quarterly PGA.

(iv) If the new PGA date described in paragraph (b)(1) of this section is not a pipeline's scheduled annual or quarterly PGA effective date under § 154.304 of this part, the tariff sheet format must conform to the quarterly PGA format specified in § 154.308 of this part. The pipeline must also submit a detailed report in the format and with the information set forth in the FERC Form No. 542–PGA for the quarterly PGA.

(3) If a pipeline files tariff sheets pursuant to paragraph (b)(1)(ii) of this section, it must file to eliminate these provisions from its tariff as part of its first scheduled PGA under § 154.304 of this part after the new PGA date.

(c) *Initial current adjustment rate*—(1) *What to file.* (i) If a pipeline's annual PGA effective date is the same as the new PGA date, the pipeline must file an initial current adjustment rate as computed in accordance with § 154.302 (m) or (n) and § 154.305 (b) and (c) of this part, on the date described in paragraph (b)(2)(i) of this section.

(ii) If a pipeline's quarterly PGA effective date is the same as the new PGA date, the pipeline must file an initial current adjustment rate in accordance with § 154.302 (m) or (n) and § 154.305 (b) and (c) of this part, on the date described in paragraph (b)(2)(i) of this section.

(iii)(A) If a pipeline's annual or quarterly PGA effective date is not the same as the new PGA date, the pipeline must compute, for the appropriate time period, an initial current adjustment rate in accordance with § 154.302 (m) or (n) and § 154.305 (b) and (c) of this part on the date described in paragraph (b)(2)(i) of this section.

(B) This rate is to remain in effect only until the pipeline files a quarterly or annual PGA rate, whichever is first.

(iv) If a pipeline files an interim adjustment rate, described in § 154.309 of this part, before it files a quarterly or annual PGA filing, the projected average cost of gas in the interim adjustment rate must be less than the projected average cost of gas used to compute the initial current adjustment described in paragraph (c)(1)(iii) of this section.

(d) *Surcharge rate adjustment*—(1) *Definitions.* For purposes of this paragraph:

(i) "New surcharge rate amortization period" means the effective period for a new surcharge rate filed under paragraph (d)(3)(i) of this section;

(ii) "Existing surcharge rate amortization period" means the effective period for the surcharge rate included as a part of a pipeline's last PGA filing before the new PGA date.

(2) *General rule.* Thirty days before the end of either a new surcharge rate amortization period under paragraph (d)(3)(i) of this section or any existing surcharge rate amortization period, a pipeline must file a tariff sheet to be effective when the surcharge rate amortization period ends to remove either the new or existing surcharge rate from its tariff.

(3) *New surcharge rate effective on the new PGA date*—(i) *New surcharge rate.* If a pipeline's existing surcharge rate amortization period ends on the day before the new PGA date, the pipeline must file a new surcharge rate to be effective on the new PGA date under the procedures of paragraph (b)(2)(ii) of this section.

(ii) *Subsequent surcharge rates.* A subsequent surcharge rate will be filed:

(A) With a pipeline's second annual PGA filing if its first annual PGA filing effective date, described in § 154.304, is on the new PGA date, and if the pipeline files its new surcharge rate in accordance with paragraph (d)(3)(i) of this section.

(B) With its first annual PGA filing if a pipeline's first annual PGA effective date, described in § 154.304 of this part, is after the end of the new surcharge rate amortization period.

(C) With a pipeline's second annual PGA filing if its first annual PGA effective date, described in § 154.304 of this part, is during the new surcharge rate amortization period.

(4) *Existing surcharge continues beyond the new PGA date*—(i) *Existing surcharge rate.* If a pipeline's existing surcharge rate amortization period ends after the new PGA date, the pipeline must file and continue the existing surcharge rate under the procedures of paragraph (b)(2)(ii) of this section.

(ii) *Subsequent surcharge rates.* A subsequent surcharge rate will be filed:

(A) Thirty days before the end of the existing surcharge rate amortization period, to be effective on the day after the end of the existing surcharge rate amortization period if a pipeline's first annual PGA filing effective date, as described in § 154.304 of this part, is during the existing surcharge rate amortization period. The pipeline must file its next surcharge rate with its second annual PGA filing.

(B) With a pipeline's first annual PGA filing if its first annual PGA effective date,described in § 154.304 of this part, is after the end of the existing surcharge rate amortization period.

(5) *Length of surcharge rate amortization period.* (i) The period of time a pipeline accumulates deferrals (the deferral period) for the surcharge rates amortization periods under paragaphs (d)(3)(i) and (d)(4)(ii)(A) of this section will end three months before that surcharge rate amortization period's effective date.

(ii) The deferred period for all surcharge rates not defined in paragraph (d)(5)(i) of this section will end four months before that surcharge rate amortization period's effective date.

(iii) Subject to paragraph (d)(6) of this section, the new surcharge rate amortization period will remain in effect for the same length of time as the appropriate deferral period defined in paragraphs (d)(5)(i) and (ii) of this section.

(6) Limitation on surcharge rate amortization period (i) No surcharge rate amortization period can exceed a period of twelve months.

(ii) Beginning with each pipeline's second annual PGA filing the surcharge rate amortization period will be 12 months.

(7) *Determining the surcharge rate.* A pipeline must divide the dollar amount of deferrals accumulated in the current subaccount(s) of Account No. 191 in the deferral periods defined in paragraph (d)(5)(i) and (ii) of this section by the projected sales quantities of natutal gas in the appropriate surcharge rate amortization period.

(e) *Transition rule for electing unit-of-sales or unit-of-purchase methodology.* (1) Subject to paragraph (e)(2) of this section, the tariff sheets a pipeline files under paragraph (b)(1) of this section must maintain the unit-of-purchase or unit-of-sales methodology used by the pipeline before the effective date of a final rule in Docket No. RM86-14-000 to compute a current adjustment and monthly deferrals to Account No. 191.

(2) When a pipeline files its first request for a rate change under § 154.63 of this chapter after the new PGA date it must include with the filing:

(i) A restated average cost of purchased gas in its base tariff rates computed using either the unit-of-purchase methodology specified in § 154.302(m) of the unit-of-sales methodology specified in § 154. 302(n) of this part that the pipeline elects under § 154.303(c)(2)(ii) of this part, and

(ii) Revised tariff sheets to amend its PGA clause which indicate that the pipeline has elected to use either the unit-of-purchase or unit-of-sales methodology and which state that the pipeline will use the same methodology elected for computing both the current adjustment under the procedures specified in § 154.302(m) or (n) of this part, and for determining the monthly deferrals to Account No. 191 under the procedures specified in § 154.305(b)(1) of this part.

5. Section 154.42 is amended by revising paragraph (e)(2) to read as follows:

§ 154.42 Pricing of certain gas produced on or after December 1, 1978, by pipeline and pipeline affiliates.

(e) * * *

(2) *Pipeline rate proceeding.* The interim "pipeline rate proceeding" includes a proceeding under § 154.305, 154.308, and 154.309.

6. Section 154.52 is amended by revising paragraph (c) to read as follows:

§ 154.52 Exception to form and composition of tariff.

* * * * *

(c) Purchased gas cost tracking under special operating arrangements filed pursuant to this section shall conform to the requirements set forth in §§ 154.301 through 154.310.

§ 154.63 [Amended]

Section 154.63 is amended in paragraphs (b)(3) and (4) and in Schedule H(1)-2 of paragraph (f) by removing the reference to "§ 154.38(d)(4)" and inserting in its place "§ 154.303".

8. Section 154.206 is amended by revising paragraph (b)(l) (i) to read as follows:

§ 154.206 Filing to recover ANGTS charges incurred prior to delivery of Alaska natural gas.

(b) *Terms and conditions.* (1) * * *

(i) It may file any such adjustment at the same time it files its annual purchased gas adjustment pursuant to § 154.304 of this chapter and its quarterly purchased gas adjustment which becomes effective 6 months from the effective date of the annual purchased gas adjustment pursuant to § 154.308 of this chapter. By so doing the shippers will file to recover ANGTS charges on a semi-annual basis; or

* * * * *

9. Section 154.208 is amended by revising paragraph (b) (1) to read as follows:

§ 154.208 Filing to track changes in ANGTS charges.

* * * * *

(b) * * *

(1) It may coincide the proposed effective date of such rate adjustments with the proposed effective date of the shipper's rate adjustments for changes in purchased gas costs ("PGA") pursuant to §§ 154.305 or 154.308 of this chapter designated in § 154.206(b)(1)(i); or

* * * * *

§ 154.209 [Amended]

10. Section 154.209 is amended in paragraph (a)(2) by removing the reference to "§ 154.38(d)(4) (vi)" and inserting in its place "'§ 154.310".

§ 154.212 [Amended]

11. Section 154.212 is amended by removing the reference "§ 154.58(d)(4)" and inserting in its place "§ 154.301 through § 154.310".

PART 282—[AMENDED]

12. The authority citation for Part 282 is revisesd to read as follows:

Authority: Natural Gas Policy Act of 1987, Pub. L. 95-621, 92 Stat. 3350, 15 U.S.C. 3301-3432 (Supp. V 1981).

13. Section 282.501 is amended by revising paragraph (b) to read as follows:

§ 282.501 General rule.

(b) Each interstate pipeline shall derive a reduced PGA rate for each scheduled PGA period, as provided in § 282.503.

* * * * *

14. Section 282.503 is amended by revising paragraphs (a) (1), (2) introductory text, and (2)(i); (b)(1), (2)(i), (2)(ii) (3)(i) and (3)(iii); correctly designating (c)(i), (ii); introductory text, (A), (B), and (C), as (c)(1), (2) introductory text, (i), (ii), and (iii) respectively, and revising paragraphs (c)(1); and (d)(1) and (2) to read as follows:

§ 282.503 PGA reduction.

(a) *General rule.* (1) An interstate pipeline company which files purchased gas adjustment (PGA) rate changes with

the Commission under authority of §§ 154.301 through 154.310 shall, in the annual PGA filing, project the amount which the pipeline will recover during the annual period through incremental pricing surcharges (not including that portion which represents pipeline supplier incremental pricing surcharges). In each scheduled PGA filing the pipeline shall reduce its total projected gas acquisition costs (not including pipeline supplier incremental pricing surcharges) by the portion of the incremental pricing surcharges projected for the annual period which the pipeline expects to recover during the 3-month period covered by each scheduled PGA. The total projected gas acquisition cost, as reduced, shall be used to derive the pipeline's PGA rate for the coming quarter in the manner prescribed in the pipeline's effective PGA clause.

(2) The amount which an interstate pipeline projects it will recover through incremental pricing surcharges during an annual period shall be the lesser of: (i) The costs subject to incremental pricing, as described in paragraphs (a) through (k) of § 282.301, which the pipeline projects it will incur during the coming annual period; or

* * * * *

(b) *Projected MSAC of a non-exempt industrial boiler fuel facility.* (1) The projected MSAC of a non-exempt industrial boiler fuel facility for a coming annual period shall be calculated by a natural gas supplier in accordance with the following formula, in which the symbol "∧" indicates a projection:

$$\hat{M} = \frac{[(\hat{A}_1 - \hat{R}_1)\hat{V}]}{1+\hat{T}_1} + \frac{[(\hat{A}_2 - \hat{R}_2)\hat{V}]}{1+\hat{T}_2} + \ldots + \frac{[(\hat{A}_{12} - \hat{R}_{12})\hat{V}]}{1+\hat{T}_{12}}$$

where:

$_M$ = Projected MSAC of the non-exempt industrial boiler fuel facility.

$_A$ = Projected alternative fuel price ceiling for the non-exempt industrial boiler fuel facility, plus taxes, as determined in accordance with paragraph (b)(2) of this section.

$_R$ = Projected rate per million Btu's (excluding any incremental pricing surcharge), plus taxes, at which the non-exempt industrial boiler fuel facility will purchase natural gas, as determined in accordance with paragraph (b)(3) of this section.

$_V$ = Projected volume of natural gas (at 1,000 Btu's per cubic foot) that the non-exempt industrial boiler fuel facility will purchase from the natural gas supplier and use for boilder fuel, as estimated for each of the months "1" through "12" of the annual period.

$_T$ = Projected total percentage tax rate reflecting any state and local taxes applicable to an incremental pricing surcharge.

(2)(i) As a value for "$_A$" for each of the months "1" through "12" of the coming annual period, a natural gas supplier shall use the most recently established alternative fuel price ceiling applicable to the facility, plus taxes, unless the supplier elects to estimate the applicable alternative fuel price ceilings for each of the months of the annual period. In that case, the estimated ceilings, plus taxes, may be used as values for "$_A$".

(ii) If a local distribution company desires assistance in estimating applicable alternative fuel price ceilings for each of the months of the coming annual period, the interstate pipeline which supplies the local distribution company shall provide such assistance.

(3)(i) *Local distribution company.* As a value for "$_R$" for each of the months "1" through "12" of the coming annual period, a local distribution company shall use its effective rate per million Btu's at the time of projection, plus taxes, but exclusive of any incremental pricing surcharges, unless the local distribution company elects to adjust such rate to reflect general rate changes which it is known will occur during the annual period under authority of a state or local regulatory body. If the local distribution company elects to adjust the rate, the values used for "$_R$" may reflect the adjustments for the months of the annual period for which the adjustments are appropriate.

(ii) *Interstate pipeline.* As a value for "$_R$" for each of the months "1" through "12" of the coming annual period, an interstate pipeline shall use its effective contract rate per million Btu's at the time of projection, plus taxes but exclusive of any incremental pricing surcharges, unless the pipeline elects to adjust such rate to reflect rate changes which it is known will occur during the annual period.

(c) * * *

(1) The volumes of natural gas (at 1,000 Btu's per cubic feet) which the customer estimates it will purchase from the supplier during the coming annual period; and

* * * * *

(d) *Reporting*—(1) *Pipeline to request information.* Prior to the beginning of each of its annual periods, each interstate pipeline shall request that each of its sale-for-resale customers report to it the customer's projected MSAC in a timely fashion.

(2) *Pipeline customers to report.* Each natural gas supplier shall respond to the requests of interstate pipelines for projected MSAC's for a coming annual period in a timely fashion.

* * * * *

§ 282.505 [Amended]

15. Section 282.505 is amended by removing the reference "§ 154.58(d)(4)" and inserting in its place "§ 154.305".

16. Section 282.601 is revised to read as follows:

§ 282.601 FERC gas tariff provisions.

(a) *Incremental pricing surcharge provision.* Each interstate pipeline shall establish an incremental pricing surcharge provision in its FERC Gas Tariff. The incremental pricing surcharge provision shall provide for the passthrough of costs in accordance with the requirements of this part. For those interstate pipeline companies who have an effective incremental pricing provision in their FERC Gas Tariffs as of [the effective date of this rule] those provisions must be altered to conform to this § 282.601.

(b) *Revised PGA provision.* Each interstate pipeline shall revise its PGA provision, as established in accordance with § 154.303, to provide for a reduced PGA rate in accordance with the requirements of this part.

(c) *Filing dates.* The incremental pricing surcharge provisions and revised PGA provision shall be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 and served on all parties consistent with § 154.310. The provisions shall become effective consistent with the provision of § 154.310, unless disapproved in whole or in part by the Commission.

17. Section 282.602 is amended by revising paragraphs (a)(2), (d)(1), (2) introductory text, the beginning phrase of (2)(i) up to the second comma, and the

introductory texts of (2)(ii) and (2)(iii) to read as follows:

§ 282.602 Tariff sheets.

* * * * *

(a) * * *

(2) Revisions to the tariff sheets filed pursuant to paragraph (a)(1)(i) of this section shall be filed in accordance with each interstate pipeline's PGA filing schedule set forth in § 154.304, as necessary to revise the previously effective tariff sheet(s). Revisions to the tariff sheet(s) filed pursuant to paragraph (a)(i)(ii) of this section shall be filed in accordance with each interstate pipeline's scheduled annual PGA filing, as necessary to revise the previously effective tariff sheet(s).

* * * * *

(d) * * *

(1) Tariff sheets filed pursuant to paragraph (a) of this section shall be accompanied by data, as necessary, to show the computations showing the derivation of the reduced PGA rate and the incremental pricing surcharge set forth in such tariff sheets.

(2) With the filing of the pipeline's annual PGA, the pipeline shall file a supplement to the statement of the pipeline's current cost of purchased gas as required by §154.305.

(i) Such supplement shall identify, for the deferral period reflected in the annual PGA filing, * * *

(ii) Such supplement shall show for Account No. 192.1 for the deferral period reflected in the annual PGA filing:

(A) * * *

(iii) Such supplement shall show for Account No. 192.2 for the deferral period reflected in the annual PGA filing:

* * * * *

PART 375—[AMENDED]

18. The authority citation for Part 375 continues to read as follows:

Authority: Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Department of Energy Organization Act, 42 U.S.C. 7101–7532, Executive Order 12.009, 3 CFR Part 1977 Comp., p. 142; Administrative Procedure Act, 5 U.S.C. 553; Federal Power Act, 16 U.S.C. 7791–828c, as amended; Natural Gas Act, 15 U.S.C. 717–717w, as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301 et. seq.; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601 et. seq., as amended.

§ 375.307 [Amended]

19. Section 375.307 is amended in paragraph (b)(1) to remove the reference "§154.38(d)(4)(vi)" and inserting in its place "§ 154.303(e)".

PART 381—[AMENDED]

20. The authority citation for Part 381 is revised to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Executive Order 12009, 3 CFR Part 142 (1978); Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982); Federal Power Act, 16 U.S.C. 791–828c (1982); Public Utility Regulatory Policies Act, 16 U.S.C. 2601–2645 (1982); Interstate Commerce Act, 49 U.S.C. 1–27 (1976).

21. Section 381.205 is revised to read as follows:

§ 381.205 Pipeline tariff filings that track certain costs.

The fees established for tariff filings that track costs are:

(a) $1800 for an annual filing under § 154.305;

(b) $300 for a quarterly filing under § 154.308;

(c) $300 for an interim adjustment filing under § 154.309; and

(d) $300 for any other tariff filing that tracks costs.

[FR Doc. 87–11969 Filed 6–2–87; 8:45 am]
BILLING CODE 6717–01–M

federal register

Wednesday
June 3, 1987

Part III

Federal Election Commission

11 CFR Part 106 et al.

Public Financing of Presidential Primary and General Election Candidates; Final Rule and Announcement of Transmittal of Regulations to Congress

FEDERAL ELECTION COMMISSION

11 CFR Parts 106, 9001 Through 9007, 9012, and 9031 Through 9039

[Notice 1987-7]

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule and announcement of transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations governing publicly financed Presidential candidates. These regulations will be effective for the 1988 elections. Major areas of change include new provisions on the use of candidate credit cards, settled debts, sources of funds for making repayments, and winding down costs. The new rules specify certain categories of committee obligations that may not serve as the basis for receiving additional matching funds. They also provide procedures for seeking rehearing of Commission final determinations and stays of repayment determinations pending an appeal. Further information on these and other revisions is provided in the supplementary information which follows.

DATE: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d) and 26 U.S.C. 9009(c) and 9039(c).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revised rules to govern the public financing process for Presidential primary and general election candidates. A Notice of Proposed Rulemaking was published by the Commission on August 5, 1986 to seek comment on proposed revisions to these regulations. 51 FR 28154. Of the comments received, five addressed the public financing proposals.[1] In addition, the Commission held a public hearing on December 3, 1986 on the proposed rules at which one witness appeared.

Section 438(d) of Title 2, United States Code, and 26 U.S.C. 9009(c) and 9039(c), require that any rule or regulation prescribed by the Commission to carry out the provisions of Titles 2 and 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on May 26, 1987.

Explanation and Justification

In the course of this rulemaking, the Commission considered several proposals for change that it did not ultimately incorporate into the revised rules. The most extensive of these involved a re-examination of the current entitlement and repayment processes for Presidential primary candidates. This inquiry was largely initiated by certain comments received in response to the Notice of Proposed Rulemaking. Questions were raised regarding the Commission's authority to limit post-ineligibility entitlement, particularly for primary candidates who remain eligible through the date of nomination. Other issues included the Commission's method of calculating repayments for non-qualified campaign expenses that remain unpaid after the candidate's date of ineligibility and whether certain committee obligations such as repayments should increase the candidate's entitlement to matching funds. These issues received detailed consideration during this rulemaking. Their impact was contrasted with the Commission's present practice and analyzed under the current statute and case law. Following this analysis, the Commission determined to retain its current entitlement and repayment systems. Although the Commission remains open to suggestions that will improve its administration of the matching fund program and ease the burden of compliance for candidates, the Commission found the present practice to be more consistent with the spirit of the law and, in some cases, more streamlined in its application than the recommendations offered.

Two other issues that were raised for comment in the Notice of Proposed Rulemaking did not result in new regulations. One of these areas concerned expenditures made during the primary election period that benefit the candidate's general election campaign. The Commission determined not to add new regulations on this point, because the existing law and regulations are sufficient to support Commisssion action in an appropriate case.

The second point involved the potential impact of changes in primary dates in the 1988 election cycle on the application of the 10% and 20% rules. See 11 CFR 9033.5 and 9033.8. While these date changes could affect the continued funding of certain primary candidates, the Commission felt that a new rule may require legislative action. Therefore, the Commission will continue to apply the 10% and 20% rules in their current form.

One general change was made throughout these regulations. All time periods within which a candidate must act or respond to a Commission notification now run from the date of service of the Commission notice instead of the date it is received by the candidate. If the notice is mailed, 3 days will be added to the response time in accordance with 11 CFR 111.2(c).

It should be noted that the regulations appear here in numerical order rather than the order in which they will be used by the candidates, due to the numbering of the corresponding statutory provisions. Thus, § 106.2 and Parts 9031 through 9039 govern the public financing program for Presidential primary candidates while Parts 9001 through 9007 and 9012 apply to publicly funded general election candidates.

Section 106.2 State Allocation of Expenditures Incurred by Authorized Committees of Presidential Primary Candidates Receiving Matching Funds

Paragraph (a)(1) contains a new sentence that requires a candidate to produce supporting documentation to show that a particular allocation method or claim of exemption was reasonable if the Commission disputes it. As proposed in the August 5 Notice, the focus of this provision was on proving or disproving the appropriateness of a particular expenditure allocation. Under the revised standard, the candidate's response will be acceptable if he or she can demonstrate that a reasonable allocation method was applied to the expenditure in question.

When evaluating whether or not an office is a bona fide regional office, the Commission will consider factors such as the geographic proximity of the states covered, the timing of the primaries involved, and the amount of effort directly focussed on seeking the nomination in each state. The Commission also will consider these factors in determining whether the allocation method used for that office, such as the voting age population of each state, was reasonable under the circumstances.

In paragraph (b)(2)(i)(A), the last sentence has been modified to provide a clearer statement of when the cost of an

[1] These and other comments also addressed a set of proposals in the August 5 Notice concerning bank loans to candidates and political committees. The bank loan questions have now been made the subject of a separate rulemaking project. See 52 FR 2416 (January 22, 1987).

advertisement does not have to be allocated to a particular state.

Paragraph (b)(2)(iii) has been amended to specify the meaning of the term "subsistence." Thus, the exemption for expenses of an individual who remains in a state less than five consecutive days does not apply to expenses incurred by that individual which do not qualify as "subsistence." For example, if the individual makes expenditures for holding a meeting, those costs will be allocable to the state because they do not meet the definition of subsistence.

There are several changes in paragraph (b)(2)(iv), defining overhead expenditures of State and regional offices. First, the revisions state that only overhead expenditures of committee offices may be included in this figure, which is significant for calculating compliance and fundraising exemptions. Thus, if a program is conducted from a vendor's office, such as a phone bank, the overhead costs of that office may not be included in the computation under this section. In addition, the term "telephone service base charges" has been broadened in these rules to include intra-state phone calls as overhead expenditures unless the charges relate to a special program or activity such as voter registration or get out the vote efforts. Inter-state calls remain exempt from allocation under paragraph (b)(2)(v).

Several changes also appear in paragraph (c)(5), on compliance costs and fundraising expenditures. First, the regulations now include cross-references to the alternative allocation methods in the Commission's Financial Control and Compliance Manual. These references have been reworded from the language in the August 5 Notice to make clear that the allocation methods in the Manual are not the exclusive alternatives available to candidates. Second, this section now offers illustrative definitions of exempt compliance and fundraising costs. Of particular interest is the inclusion of matching fund submission preparation costs as exempt compliance costs. Initially, one-half of these costs were proposed as exempt fundraising expenses. The comments received in response to this proposal in the Notice of Proposed Rulemaking urged the Commission to treat the full amount of these preparation costs as a compliance expense because these costs are incurred to comply with the statutory and regulatory requirements for matchable contributions. In making this change, the Commission sought to limit the scope of this exemption to those costs directly related to compliance with the format and matchability requirements. This exemption does not cover costs associated with general contribution processing. While a portion of general contribution processing costs will also be exempt, the amount that is exempt will vary from campaign to campaign. In contrast, the full amount of submission preparation costs are exempted under this provision for all campaigns.

PART 9001—SCOPE

There is no change in Part 9001.

PART 9002—DEFINITIONS

There is no change in §§ 9002.1 through 9002.10.

Section 9002.11 Qualified Campaign Expense

Paragraph (b)(3) has been revised to explain how expenditures made by a general election candidate that further the election of other candidates for public office will be treated. It provides a mechanism for determining the extent to which such expenditures will be considered qualified campaign expenses. The language now found in paragraph (b)(3) was proposed for comment as new paragraph (d) in the Notice of Proposed Rulemaking.

There is no change in §§ 9002.12 through 9002.15.

PART 9003—ELIGIBILITY FOR PAYMENTS

Section 9003.1 Candidate and Committee Agreements

A new requirement has been added to paragraph (b)(4) of this section, which expands the definition of records to be produced at the audit. If the committee maintains its records of receipts and disbursements on computer, it must produce a computer tape containing that information upon request. If necessary, the committee will also be asked to explain the software capabilities of the system but will not be expected to produce the software itself.

Section 9003.2 Candidate Certifications

Paragraph (c) of this section, governing the use of the candidate's personal funds, contains two new subsections. Subsection (c)(7) states that repayments will not be subject to the $50,000 limit on expenditures from a candidate's personal funds. To ensure that the candidate's ability to make unlimited repayments does not lead to a disregard for the restrictions imposed on publicly funded campaigns, this subsection also provides that a knowing violation of the expenditure limits may cause the Commission to seek civil penalties in addition to any repayment determinations.

New subsection (c)(8) addresses the application of the $50,000 limit to disbursements made on a credit card for which the candidate is jointly or solely liable. Charges on the candidate's credit card will count against the $50,000 limit unless they are paid in full by the committee, including any finance charge billed, no later than 60 days after the closing date on the billing statement. The "closing date" is defined by this section as the date after which no further charges are included on that particular billing statement. In drafting this provision, the Commission considered several different dates from which the window for payment could start. One option was the payment due date, which was rejected because certain credit cards are due "upon receipt" and, therefore, not all credit cards set a definite date for payment on the billing statement. Other dates that were considered and rejected were the posting date or transaction date for a particular disbursement. Since there would be so many of these dates, they were considered to be too difficult for committees to track. Moreover, sometimes charges are not included on the next billing statement, which could interfere with the committee's efforts to comply with the limits. The closing date appeared to be the most ascertainable of the dates that could be used, and will allow both committees and the Commission to determine when payment must be made.

It should be noted that the committee must pay the credit card bill within 60 days after the closing date to avoid having the charges applied against the candidate's $50,000 limit. Even if the candidate initially pays the amount due, the time within which the committee must reimburse the candidate still runs from the closing date on the billing statement. To facilitate the treasurer's review of the disbursements and to ensure that the time limits are met, the committee may want to obtain a credit card specifically for the candidate's campaign charges, for which the bill is sent directly to the committee.

Section 9003.3 Allowable Contributions

In the Notice of Proposed Rulemaking, the Commission proposed a revision of paragraph (a)(1)(iii) of this section limiting the ability of candidates to transfer contributions designated for the primary election to the legal and accounting compliance fund for the

general election campaign. Under the proposed rule, candidates could transfer these contributions only after receiving a redesignation from the contributor or a reattribution to another contributor in combination with a redesignation for the general election. The comments on this proposed rule urged that the Commission permit a negative confirmation approach, under which a candidate would simply inform contributors of the impending transfer and would be permitted to redeposit the funds unless the contributor objected.

After considering the comments and testimony received on this point, the Commission determined to retain the proposed rule. This section requires publicly funded candidates to follow the procedures recently promulgated in §§ 110.1 and 110.2 for redesignation and reattribution of contributions. See 52 FR 760. Publicly funded candidates are required to comply with all regulations applicable to Title 2 candidates. Moreover, to permit a negative confirmation in this case would conflict with the Commission's efforts to make clear in the new regulations that only the contributor, and not the candidate, may make contribution designations.

Other changes in § 9003.3 are consistent with the revisions to § 106.2. Thus, overhead expenditures now include all telephone charges except for those related to a special program, such as a voter registration effort. (Note that there is no distinction in the general election provisions between intra- and inter-state calls, because there are no state expenditure limits in the general election.) See paragraphs (a)(2)(ii)(A), (b)(6)(i) and (c)(6)(i). In addition, this section now contains cross-references to the alternative allocation methods in the Financial Control and Compliance Manual for exempting compliance and fundraising costs. See paragraphs (a)(2)(ii)(A), (b)(9) and (c)(10).

Section 9003.4 Expenses Incurred Prior to the Beginning of the Expenditure Report Period or Prior to Receipt of Federal Funds

There are no changes in this section.

Section 9003.5 Documentation of Disbursements

A new paragraph (d) has been added to this section, setting forth the recordkeeping requirements for capital assets and other assets. The lists maintained under paragraph (d) will assist the candidate and the Commission in determining which assets must be included on the statement of net outstanding qualified campaign expenses and how to assess their value. See § 9004.9.

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

There are no changes in §§ 9004.1 through 9004.3.

Section 9004.4 Use of Payments

Paragraph (b)(2) has been broadened to state that the Commission will charge the full amount of debts incurred by a candidate against the expenditure limit, regardless of the amount for which the debts may have been settled.[2] Under this rule, a candidate may not reduce the amount of expenditures counting against the limit by settling debts. The only exception is for debt settlements that reasonably resolve a bona fide dispute with the creditor. Such disputes would include questions regarding the value of the goods or services received, compliance with the contract between the candidate and the vendor or whether the vendor had been authorized to provide goods or services to the committee, but do not include settlements reached due to the candidate's inability to pay. Bona fide disputes must be documented through correspondence, memoranda and any agreements entered into by the parties detailing the original amount of the obligation, the basis for the dispute and how the resolution was reached.

Paragraph (b)(4) has been revised to cross-reference the provision in § 9003.3 that allows candidates to use funds in their legal and accounting compliance fund to pay civil and criminal penalties. Candidates may also raise additional funds, not subject to the contribution limits, to pay such penalties.

New paragraph (b)(6) provides that no payments may be made to the candidate from accounts containing public funds except to reimburse the candidate for legitimate campaign expenses. Candidates may not receive a salary for services performed for the campaign nor may a candidate receive compensation for lost income while campaigning. This new provision also would prohibit payments to a candidate for personal expenses such as mortgage payments or a child's educational expenses. Thus, the candidate may only receive funds for expenses directly related to the campaign, such as his or her travel and subsistence costs.

New paragraph (c) specifies the sources of funds from which repayments may be made. There is no limit on the amount of a candidate's personal funds that may be used for this purpose, as provided in 11 CFR 9003.2(c). Funds raised to make repayments will be subject to the limitations and prohibitions of the Act and must be aggregated with any contributions previously received from a contributor.

Section 9004.6 Reimbursements for Transportation and Services Made Available to Media Personnel

Candidates may continue to bill the media under these rules for the costs of transportation and services provided to media personnel. The amount billed may equal 110% of the actual direct cost of providing such transportation and services. Although the full amount spent by the campaign for media services is a qualified campaign expense that counts against the overall expenditure limit, candidates may deduct the media reimbursements received from that overall limit up to 100% of the direct cost of providing the services. Thus, if the direct cost of a reporter's plane ride is $200, the campaign may bill the reporter $220 for the flight. If the campaign receives $150 from the reporter in return, it may only deduct $150 from expenses applied against the limit because the deduction is dependent upon the amount of reimbursements received. Conversely, if the campaign receives the full $220 from the reporter, it may only deduct $200 from the limit because the deduction may not exceed the direct cost to the campaign under the rules that were applicable to the 1984 election cycle.

There are two reasons why the 1984 rules allow campaigns to bill 110% of their direct costs to the media even though only 100% may be offset against the limit. First, the 110% figure eases the burden of accounting precisely for such costs in the heat of the campaign. In addition, this allowance permits reimbursements received from some media organizations to compensate for those that do not pay in full.

The revised rules expand the ability of campaigns to deduct media reimbursements from the overall limit if the reimbursements exceed the actual direct cost of providing the services. Paragraph (d)(1) now provides that committees may deduct an additional 3% of the direct cost of providing services to the media if reimbursements in that amount are received. The additional 3% is intended to cover the administrative cost to the campaign of making media travel arrangements, tracking which media personnel are accompanying the candidate on each leg of the campaign, and billing the media organizations for their share of the expenses. These administrative costs are not part of the direct cost of

[2] Note that all debts must be settled in accordance with the procedures of 11 CFR 114.10.

providing media transportation and services and may not be included in the calculation of direct costs for billing purposes, whether the committee uses its own staff to perform these tasks or hires a travel consultant and collection agency.

In practical terms, this new provision would continue to limit the amount billed to 110% of the direct cost of the services but would allow committees to deduct 103% rather than 100% of the direct costs from the expenditure limit if sufficient reimbursements are received. Thus, if a reporter is billed $220 for a $200 plane flight, and the reporter remitted the full $220, the committee could offset $206 rather than $200 against the limit. If the reporter pays less than the actual cost, such as $150, the offset is limited to the amount of the reporter's reimbursement. Note that this new provision does not increase the amount a campaign may bill for providing services, and only increases the size of the offset against the expenditure limit if the reimbursements exceed 100% of the direct cost to the campaign.

There are no changes in §§ 9004.7 and 9004.8.

Section 9004.9 Net Outstanding Qualified Campaign Expenses

In the August 5 Notice, it was proposed to add a requirement that statements filed under this section be signed by the treasurer. After further consideration, the Commission decided it was unnecessary to include this requirement as it is already set forth in § 104.14. Thus, all statements should be signed in accordance with § 104.14.

The definition of "cash on hand" in paragraph (a)(2) has been revised to follow the explanation of that term in the recent revision of § 110.1(b)(3)(ii)(A). See 52 FR 760, 770 (January 9, 1987).

A new subsection (a)(3) has been added to provide that the outstanding obligations included on the NOQCE statement may not include debts for non-qualified campaign expenses, repayment obligations, or amounts paid to secure a surety bond pending an appeal of a Commission repayment determination. These amounts may not serve as a basis for retaining federal funds that would otherwise be repaid to the U.S. Treasury under 11 CFR 9007.2(b)(3).

In paragraph (d)(1), the Commission has revised the concept of capital assets that must be included on the NOQCE statement. Under the new rule, the basic threshold for determining whether an item must be included on the NOQCE statement is the item's original purchase price, rather than its value at the end of the campaign. The regulations then permit campaigns to deduct a standard 40% depreciation percentage from the purchase price to ascertain the value of the item for the NOQCE statement. Campaigns may, however, provide documentation showing that a higher depreciation allowance should be given for a particular item. The documentation provided may include an independent appraisal of the item's value at the end of the campaign.

In the case of items purchased during the candidate's primary campaign, some commenters urged that the Commission permit committees to deduct 40% for the primary and another 40% for depreciation during the general election campaign. However, the Commission has decided, given the short duration of the general election campaign, that only one 40% deduction may be taken for items used in both campaigns. The value of items transferred from the primary to the general election campaign should be calculated based on the cost of the items less the 40% depreciation percentage.

Paragraphs (d) (1) and (2) also cross reference the new recordkeeping requirements for capital assets and other assets at § 9003.5(d).

Finally, new paragraph (e) establishes a requirement that committees demonstrate the commercial reasonableness of a determination that a debt of $500 or more owed to the committee is wholly or partially uncollectible. Accounts receivable of less than $500 may be written off as uncollectible without any showing that the decision not to pursue payment was commercially reasonable.

Former paragraph (e) has been redesignated as paragraph (f).

Section 9004.10 Sale of Assets Acquired for Fundraising Purposes

There is no change in this section.

PART 9005—CERTIFICATION BY COMMISSION

There are no changes in this Part.

PART 9006—REPORTS AND RECORDKEEPING

There are no changes in this Part.

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

Section 9007.1 Audits

Paragraph (e)(3) has been modified to reflect the Commission's revised Sunshine Act regulations. See 11 CFR Part 2. Since portions of final audit reports are considered by the Commission in open session, this subsection has been revised to indicate that the Commission will provide the candidate with a copy of the open session agenda document 24 hours before that document is released to the public.

Section 9007.2 Repayments

Throughout this section, the time periods within which the candidate must take action now run from the date of service instead of the date of the candidate's receipt of a Commission notice or determination. As indicated in paragraph (e) of this section, the time period for service by mail will be calculated in accordance with 11 CFR 111.2(c).

In paragraph (d)(2), the time within which the candidate must make repayment after the Commission's final determination has been extended from 20 to 30 days. This time period is now co-extensive with the time for filing a notice of appeal under 26 U.S.C. 9011(a), or for filing a petition for rehearing or a stay of the final repayment determination under 11 CFR 9007.5.

Section 9007.3 Extensions of Time

There are no changes in this section.

Section 9007.4 Additional Audits

There are no changes in this section.

Section 9007.5 Petitions for Rehearing; Stays of Repayment Determinations

This new section establishes procedures under which candidates may request reconsideration of Commission determinations. It also sets forth for the first time in the regulations the procedures the Commission will follow in considering stays of repayment determinations pending the candidate's appeal.

Paragraph (a) sets the standards a candidate must meet to file a petition for rehearing. The intent of these provisions is to ensure that such petitions are not filed as a dilatory tactic. Rather, this section provides a mechanism under which a candidate may respond to Commission arguments he or she did not previously have an opportunity to respond to. Candidates may also raise new information that could not have been brought to the Commission's attention earlier.

Under paragraph (b), candidates must raise all issues and arguments in support of their case at the appropriate stage of the Commission proceeding. By doing so, the Commission will have the opportunity to decide all issues before a matter goes to litigation. The Commission thereby hopes to narrow the issues that may otherwise result in litigation and ensure that it has

addressed all of the issues in a matter before a court is asked to rule on them.

Paragraph (c) establishes three avenues for seeking a stay of a Commission repayment determination pending the candidate's appeal of that determination. Candidates may place the amount at issue in an interest-bearing escrow account, may secure a surety bond guaranteeing payment of the amount in question plus interest, or may seek to qualify under the criteria set forth in paragraph (c)(2)(iii).

Stays are not automatic; rather, the candidate must demonstrate that he or she has met the conditions for granting a stay under one of the three options provided. If the candidate fails to do so, repayment must be made, notwithstanding the pending appeal. If the candidate is only contesting a portion of the Commission's repayment determination, the amount not at issue on appeal must be repaid within the time specified in 11 CFR 9007.2.

One goal of these stay procedures is to protect the public treasury in the event the Commission's repayment determination is upheld on appeal. Thus, for example, if the candidate chooses to establish an escrow account for the funds, all withdrawals from the account must be contingent on the joint signatures of the candidate or his or her agent and a representative of the Commission. Further, all amounts stayed must be repaid with interest if the Commission's determination is upheld.

Interest begins to accrue under these rules 30 days after the Commission's final repayment determination. This is the date by which repayment would have been due if the candidate had not appealed the final determination and sought a stay.

The criteria in paragraph (c)(2)(iii) follow the standards used by the Commission to date. They are augmented, however, in paragraph (c)(3) to provide further guidance on when an applicant has shown a strong likelihood of success on the merits of the appeal. This paragraph incorporates the approach taken by the United States Court of Appeals for the District of Columbia in *Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

Section 9007.6 Stale-dated Committee Checks

In past election cycles, questions have arisen regarding the appropriate disposition of checks written to creditors or to contributors that remain outstanding after the campaign is over. Sometimes the payee cannot be located, other times the payee declines to cash the check. This new section makes clear that committees should bring these checks to the Commission's attention in a timely fashion.

If the committee has made attempts to pay the funds as intended, and has been unsuccessful, the committee must remit a check payable to the U.S. Treasury for the amount outstanding. The amount so paid will not reduce or increase the committee's repayment obligation. Moreover, the committee may not use these funds for other purposes, such as to pay other obligations, because to do so could result in the receipt of a prohibited or excessive contribution from the original payee.

The Commission considered and rejected other possible dispositions of such funds, including a donation to a charitable organization, because these alternatives could be subject to varying interpretations, not all of which would be appropriate recipients of funds from a federally-funded campaign. Thus, the Commission determined to require that all such funds be paid to the Treasury.

PART 9012—UNAUTHORIZED EXPENDITURES AND CONTRIBUTIONS

Section 9012.6 has been deleted from this Part following the Supreme Court's decision in *NCPAC v. FEC*, 470 U.S. 480 (1985).

PART 9031—SCOPE

There are no changes in this Part.

PART 9032—DEFINITIONS

There are no changes in this Part.

PART 9033—ELIGIBILITY FOR PAYMENTS

Section 9033.1 Candidate and Committee Agreements

Paragraph (b)(5) has been amended to expand the definition of records that must be produced at the audit. If the committee maintains its records of receipts and disbursements on computer, it must produce a computer tape containing that information upon request. If necessary, the committee will also be asked to explain the software capabilities of the system but will not be expected to produce the software itself. Committees may also choose to submit computer tapes with their matching fund submissions but are not required to do so under this provision.

During the 1984 election cycle, the Commission received several requests from committees to change the person or the bank depository named as the recipient for committee matching funds. Paragraph (b)(7) now provides that these requests must be made in writing and must be signed by the candidate or committee treasurer before they will be effective.

There are no changes in §§ 9033.2 and 9033.3.

Section 9033.4 Matching Payment Eligibility Threshold Requirements

Two points were proposed for inclusion in this section in the August 5 Notice, both of which were removed from the final version of the regulations. First, the Notice proposed to extend the time within which the Commission would make threshold certifications during the Presidential election year from 15 to 30 business days. One commenter raised concerns that 30 business days could intrude significantly on the primary election schedule and that a delay of that duration could have a substantial impact on the candidates affected. The Commission agreed with this comment and returned to the original 15 day period, noting however that this target date for certifying eligibility has some flexibility under the regulations.

A second point the Commission considered was whether to provide opportunities to cure deficiencies in a threshold submission before the Commission initiates more formal proceedings to find the candidate ineligible or to find that particular contributions are non-matchable. As proposed in the Notice of Proposed Rulemaking, the Commission would provide a maximum of two opportunities to cure deficiencies in the submission. One commenter asked that the Commission make this provision mandatory, so that candidates would always have up to two opportunities to cure.

The Commission decided it was unnecessary to include this provision in the regulations. It is reflected, however, in the Commission's Guideline for Presentation in Good Order as an opportunity that the staff will provide in an appropriate case. The time for making a certification under the regulations will be tolled pending the Commission's receipt of the corrected submission items.

The final rule has been reorganized so that the time frames for Commission examination of threshold submissions are more clearly stated. In addition, the Commission has added a new paragraph (b) as a result of an issue raised in the Notice of Proposed Rulemaking. This issue concerned the potential effect of a candidate's past actions in an earlier publicly funded campaign on the Commission's eligibility certification for that candidate in a new election cycle.

New paragraph (b) provides notice that the Commission may consider relevant information in its possession, including the candidate's past actions, when determining the candidate's eligibility for matching funds.

Examples of factors the Commission may consider under this provision include a candidate's repudiation of an earlier candidate agreement in which he or she promised to pay any necessary repayments and civil penalties, or the appearance of patent irregularities suggesting the possibility of fraud in earlier matching fund submissions that seem to be recurring in the new request for certification. In some cases, the Commission may delay certification in the new election cycle until the earlier problem is resolved. The most egregious situations could result in a Commission denial of eligibility.

Section 9033.5 Determination of Ineligibility

There are no changes in this section.

Section 9033.6 Determination of Inactive Candidacy

There are no substantive changes in this section; however, the time within which a candidate may respond to a Commission notification has been changed to run from the date of service of the Commission's notice.

Section 9033.7 Determination of Active Candidacy

Paragraph (b) of this section has been amended to provide that the Commission may make a finding that a candidate is actively campaigning in a state more than 10 days after the candidate's certification under § 9033.5 that he or she will not be an active candidate in that primary. This provision will cover situations in which the candidate's certification is made earlier than the regulations require. If the candidate later appears to be pursuing the nomination in that state, and that activity occurs too late for the Commission to take action within the normal 10 day period, the Commission will act as soon as practicable to determine whether the candidate is actively campaigning in that state. No comments were received on this proposal in the August 5 notice.

Section 9033.8 Reestablishment of Eligibility

In response to one of the comments on the Notice of Proposed Rulemaking, the Commission has added a new sentence to paragraph (c) of this section. This new sentence provides that expenses incurred during the period a candidate was ineligible as a result of the 10% rule may be defrayed with matching funds as qualified campaign expenses if the candidate later re-establishes eligibility under this section. This approach is consistent with the Commission's treatment of contributions received during an ineligible period as being matchable after eligibility is reestablished.

Section 9033.9 Failure To Comply With Disclosure Requirements or Expenditure Limitations

There are no substantive changes in this section; however, the time within which a candidate may respond to a Commission notification now runs from date of service instead of date of receipt of the Commission's notice.

Section 9033.10 Procedures for Initial and Final Determinations

Two cross-references have been added to this section. Paragraph (a)(6) provides that these procedures apply to Commission inquiries regarding a candidate's statement of net outstanding campaign obligations. In addition, new paragraph (e) alerts candidates to the new procedures for filing a petition for rehearing of a final determination.

One commenter suggested that the Commission revise this section to include the relevant time periods for candidate responses to a Commission initial determination. This section contains the procedures for Commission determinations under six different substantive provisions. The response times vary under each of these provisions. For this reason, the Commission has determined that it would be less confusing to have the response times included in the substantive provisions rather than in this procedural section, to reduce the chance that a candidate would follow the wrong timetable.

Another point raised by that commenter was a suggestion to limit the time for making a Commission determination under this section. The Commission did not find that a self-imposed time limit would be appropriate for these determinations. In all cases, the Commission will continue to consider these issues as quickly as possible while allowing for full consideration of the circumstances of each case.

Section 9033.11 Documentation of Disbursements

A new paragraph (d) has been added to this section, setting forth the recordkeeping requirements for capital assets and other assets. The lists maintained under this paragraph will assist the candidate and the Commission in determining which assets must be included on the statement of net outstanding campaign obligations and how to assess their value. See section 9034.5.

PART 9034—ENTITLEMENTS

Section 9034.1 Candidate Entitlements

There are no changes in this section.

Section 9034.2 Matchable Contributions

The Notice of Proposed Rulemaking contained three proposed changes in this section. None of these proposals was retained in the final regulations.

First, the Commission deleted proposed paragraph (c)(3)(iii), which would have expressly prohibited the attribution of a partnership contribution to any non-partner, including a partner's spouse. This provision was deemed unnecessary in light of the Commission's recently promulgated revision of 11 CFR 110.1, under which partnership contributions may only be attributed to individual partners. Publicly financed candidates are subject to that regulation, as they are to all Title 2 regulations.

Second, in paragraph (c)(4), the Commission deleted the reference to traveller's checks, on the theory that such checks are an example of "similar negotiable instruments" already covered in that provision. Thus, traveller's checks submitted for matching must be accompanied by all required documentation at the time of their initial submission.

Paragraph (c)(4)(ii) does include, however, a new requirement to include the "name of the issuer of the negotiable instrument" for contributions covered by this paragraph. "Name of the issuer" means the name of the company, bank or agency that issued the negotiable instrument, such as the Postal Service or American Express, and not the name of the contributor. Since these contributions are not written on the contributor's bank account, the Commission needs additional information to help identify the negotiable instrument during the submission review process.

Finally, the Commission deleted proposed paragraph (c)(8), which would have required that written instruments made payable for more than $1,000 be accompanied by documentation showing that the excessive portion was either reattributed to another contributor or refunded to the original contributor. Upon further consideration of this proposal, the Commission decided to continue to match the legal

portion of such contributions and to take appropriate action through the enforcement process, if necessary, concerning any excessive amount.

Section 9034.3 Non-matchable Contributions

There are no changes in this section.

Section 9034.4 Use of Contributions and Matching Payments

The Commission received three comments in response to its proposal to limit winding down costs to qualified campaign expenses incurred before the candidate's date of ineligibility for goods and services received before that date. The main objective of that proposal was to ensure that candidates did not use matching funds for obligations incurred before their ineligibility date that are used to continue the candidates' campaign after that date.

One concern of the comments was that the proposal would force candidates to choose termination over continuing to campaign in order to receive winding down costs. To avoid this result, the Commission revised paragraph (a)(3) to allow for delayed payment of winding down costs if the candidate continues his or her campaign after the date of ineligibility. Only those winding down costs that relate to the period after the candidate has withdrawn or after the date of the nomination will be qualified campaign expenses.

Paragraph (a)(4), regarding payment of federal income taxes, has also been revised from the version that appeared in the August 5 notice. The final rule provides that payment of federal income taxes is a qualified campaign expense but does not count against either the state or overall expenditure limits. This result recognizes that federal taxes are payments to the U.S. Treasury and therefore may be exempted from any repayment consequences.

Paragraph (b)(2) has been amended to alert candidates to the new provision on debt settlements, which states that such settlements generally will not reduce the amount of expenditures counting against the limits.

Paragraph (b)(3) has been revised to include a parallel provision to the new section on winding down costs in paragraph (a)(3) of this section. Thus, paragraph (b)(3) now states that expenses incurred before the candidate's date of ineligibility for items or services to be provided after that date, such as expenses for continuing the candidate's campaign when he or she is no longer eligible for public funding, are not qualified campaign expenses. Expenses that meet the definition of winding down costs are exempted if they are incurred in accordance with paragraph (a)(3).

New paragraph (b)(5) treats any payment made to a candidate as a non-qualified campaign expense unless the payment is a reimbursement for legitimate campaign expenses. Candidates may not receive a salary for services performed for the campaign nor may a candidate receive compensation for lost income while campaigning. This new provision also would prohibit payments to a candidate for personal expenses such as mortgage payments or a child's educational expenses. Thus, the candidate may only receive funds for expenses directly related to the campaign, such as his or her travel and subsistence costs.

New paragraph (c) specifies the sources of funds from which repayments may be made. There is no limit on the amount of a candidate's personal funds that may be used for this purpose, as provided in 11 CFR 9035.2(a). Funds raised to make repayments will be subject to the limitations and prohibitions of the Act and must be aggregated with any contributions previously received from a contributor.

Former paragraph (c) of this section has been re-designated as paragraph (d).

Section 9034.5 Net Outstanding Campaign Obligations

The August 5 notice included a sentence in paragraph (a) of this section requiring treasurers to sign all statements of net outstanding campaign obligations ("NOCO Statements"). This sentence was removed from the final regulations as unnecessary since treasurers are required to sign all reports and statements filed with the Commission under 11 CFR 104.14.

The definition of "cash on hand" in paragraph (a)(2) has been revised to follow the explanation of that term in the recent revision of § 110.1(b)(3)(ii)(A). See 52 FR 760, 770 (January 9, 1987).

A new paragraph (b) has been added to provide that the outstanding obligations included on the NOCO statement may not include debts for non-qualified campaign expenses, repayment obligations, or amounts paid to secure a surety bond pending an appeal of a Commission repayment determination. These amounts will not serve as the basis for the candidate's additional entitlement to matching funds.

In paragraph (c)(1), the Commission has revised the concept of capital assets that must be included on the NOCO statement. Under the new rule, the basic threshold for determining whether an item must be included on the NOCO statement is the item's original purchase price, rather than its value at the end of the campaign. The regulations then permit campaigns to deduct a standard 40% depreciation percentage from the purchase price to ascertain the value of the item for the NOCO statement. Campaigns may, however, provide documentation showing that a higher depreciation allowance should be given for a particular item. The documentation provided may include an independent appraisal of the item's value at the end of the campaign.

Paragraphs (d) (1) and (2) also cross-reference the new recordkeeping requirements for capital assets and other assets at § 9033.11(d).

Finally, new paragraph (e) establishes a requirement that committees demonstrate the commercial reasonableness of a determination that a debt of $500 or more owed to the committee is wholly or partially uncollectible. Accounts receivable of less than $500 may be written off as uncollectible without any showing that the decision not to pursue payment was commercially reasonable.

Former paragraphs (c), (d) and (e) have been redesignated as paragraphs (e), (f) and (g). Paragraph (f) also now requires committees to include a brief explanation of changes in a NOCO statement from the one filed previously. This will help the Commission to track the committee's financial status more accurately.

Section 9034.6 Reimbursements for Transportation and Services Made Available to Media Personnel

Candidates may continue to bill the media under these rules for transportation and services provided to media personnel while they are travelling with the candidate. The amount billed may equal 110% of the actual direct cost of providing such transportation and services. Although the full amount spent by the campaign for media services is a qualified campaign expense that counts against the overall expenditure limit, candidates may deduct the media reimbursements received from that overall limit up to 100% of the direct cost of providing the services. Thus, if the direct cost of a reporter's plane ride is $200, the campaign may bill the reporter $220 for the flight. If the campaign receives $150 from the reporter in return, it may only deduct $150 from expenses applied against the limit because the deduction is dependent upon the amount of reimbursements received. Conversely, if the campaign receives the full $220 from

the reporter, it may only deduct $200 from the limit because the deduction may not exceed the direct cost to the campaign under the current rules.

There are two reasons why the current rules allow campaigns to bill 110% of their direct costs to the media even though only 100% may be offset against the limit. First, the 110% figure eases the burden of accounting precisely for such costs in the heat of the campaign. In addition, this allowance permits reimbursements received from some media organizations to compensate for those that do not pay in full.

The revised rules expand the ability of campaigns to deduct media reimbursements from the overall limit if the reimbursements exceed the actual direct cost of providing the service. Paragraph (d)(1) now provides that committees may deduct an additional 3% of the direct cost of providing services to the media if reimbursements in that amount are received. The additional 3% is intended to cover the administrative cost to the campaign of making media travel arrangements, tracking which media personnel are accompanying the candidate on each leg of the campaign, and billing the media organizations for their share of the expenses. These administrative costs are not part of the direct cost of providing media transportation and services and may not be included in the calculation of direct costs for billing purposes, whether the committee uses its own staff to perform these tasks or hires a travel consultant and collection agency.

In practical terms, this new provision would continue to limit the amount billed to 110% of the direct cost of the services but would allow committees to deduct 103% rather than 100% of the direct costs from the expenditure limit if sufficient reimbursements are received. Thus, if a reporter is billed $220 for a $200 plane flight, and the reporter remitted the full $220, the committee could offset $206 rather than $200 against the limit. If the reporter pays less than the actual cost, such as $150, the offset is limited to the amount of the reporter's reimbursement. Note that this new provision does not increase the amount a campaign may bill for providing services, and it only increases the size of the offset against the expenditure limit if the reimbursements exceed 100% of the direct cost to the campaign.

Section 9034.7 Allocation of Travel Expenditures

There are no changes in this section.

Section 9034.8 Joint Fundraising

Paragraph (c)(7)(i) has been amended to make clear that each contribution must be allocated according to the agreed upon formula rather than dividing the proceeds as a whole. This requirement is intended to ensure that committees do not "trade" contributions in order to maximize the matchability of their receipts. It also re-emphasizes that the only three exceptions to this allocation are those set forth in paragraphs (c)(7) (ii), (iii) and (iv).

A new sentence has been added to paragraph (c)(7)(iv) to clarify when a contribution is considered earmarked. Contributions should be made payable to the joint fundraising committee to avoid possible earmarking problems. However, committees may contact contributors for a written statement indicating that their contribution was intended as part of the general proceeds if it is made payable to one of the participants.

New paragraph (c)(8)(i)(C) requires that participants allocate the cost of a series of events on a per-event basis even if the participants remain the same throughout the series of joint fundraising activities.

Finally, paragraph (c)(9)(ii) has been revised to make clear that candidates must report their allocated share of joint fundraising expenses paid by the fundraising representative. These expenditures will count against the overall expenditure limit and may also, in appropriate cases, be allocated to a particular state.

Section 9034.9 Sale of Assets Acquired for Fundraising Purposes

There are no changes in this section.

PART 9035—EXPENDITURE LIMITATIONS

Section 9035.1 Campaign Expenditure Limitation

Paragraph (a)(2) has been added to state that the Commission will charge the full amount of debts incurred by a candidate against the expenditure limits, regardless of the amount for which the debts may have been settled.[3] Under this rule, a candidate may not reduce the amount of expenditures counting against the limits by settling debts. The only exception is for debt settlements that reasonably resolve a bona fide dispute with the creditor. Such disputes would include questions regarding the value of the goods or services received, compliance with the contract between the candidate and the vendor, or whether the vendor had been authorized to provide goods or services to the committee, but do not include settlements reached due to the candidate's inability to pay. Bona fide disputes must be documented through correspondence, memoranda and any agreements entered into by the parties, detailing the original amount of the obligation, the basis for the dispute and how the resolution was reached.

Paragraph (c) has been revised in several respects. First, a sentence has been added to cross-reference the alternative methods for calculating the compliance and fundraising exemptions found in the Commission's Financial Control and Compliance Manual. These references have been reworded from the language in the August 5 Notice to make clear that the allocation methods in the Manual are not the exclusive alternatives available to candidates. In addition, two new subparagraphs have been added to provide illustrative definitions of exempt compliance and fundraising costs. Of particular interest is the inclusion of matching fund submission preparation costs as exempt compliance costs. Initially, one-half of these costs were proposed as exempt fundraising expenses.

The comments received in response to this proposal in the Notice of Proposed Rulemaking urged the Commission to treat the full amount of these preparation costs as a compliance expense because these costs are incurred to comply with the statutory and regulatory requirements for matchable contributions. In making this change, the Commission sought to limit the scope of the exemption to those costs directly related to compliance with the format and matchability requirements. This exemption does not cover costs associated with general contribution processing. While a portion of general contribution processing costs will also be exempt, the amount that is exempt will vary from campaign to campaign. In contrast, the full amount of submission preparation costs are exempted under this provision for all campaigns.

Section 9035.2 Limitation on Expenditures from Personal or Family Funds

Paragraph (a)(1) has been revised to state that repayments will not be subject to the $50,000 limit on expenditures from a candidate's personal funds. To ensure that the candidate's ability to make unlimited repayments does not lead to a disregard for the restrictions imposed on publicly funded campaigns, this subsection also provides that a knowing

[3] Note that all debts must be settled in accordance with the procedures of 11 CFR 114.10.

violation of the expenditure limits may cause the Commission to seek civil penalties in addition to any repayment determinations.

New subsection (a)(2) addresses the application of the $50,000 limit to disbursements made on a credit card for which the candidate is jointly or solely liable. Charges on the candidate's credit card will count against the $50,000 limit unless they are paid in full by the committee, including any finance charge billed, no later than 60 days after the closing date on the billing statement. The "closing date" is defined by this section as the date after which no further charges are included on that particular billing statement. In drafting this provision, the Commission considered several different dates from which the window for payment could start. One option was the payment due date, which was rejected because certain credit cards are due "upon receipt" and, therefore, not all credit cards set a definite date for payment on the billing statement. Other dates that were considered and rejected were the posting date or transaction date for a particular disbursement. Since there would be so many of these dates, they were considered to be too difficult for committees to track. Moreover, sometimes charges are not included on the next billing statement, which could interfere with the committee's efforts to comply with the limits. The closing date appeared to be the most ascertainable of the dates that could be used, and will allow both committees and the Commission to determine when payment must be made.

It should be noted that the committee must pay the credit card bill within 60 days after the closing date to avoid having the charges applied against the candidate's $50,000 limit. Even if the candidate initially pays the amount due, the time within which the committee must reimburse the candidate still runs from the closing date on the billing statement. To facilitate the treasurer's review of the disbursements and to ensure that the time limits are met, the committee may want to obtain a credit card specifically for the candidate's campaign charges, for which the bill is sent directly to the committee.

PART 9036—REVIEW OF SUBMISSION AND CERTIFICATION OF PAYMENTS BY COMMISSION

Section 9036.1 Threshold Submission

The August 5 Notice included a sentence in paragraph (a) of this section requiring treasurers to sign all threshold submissions. This sentence was removed from the final regulations as unnecessary since treasurers are required to sign all reports and statements filed with the Commission under 11 CFR 104.14.

Three format requirements for threshold submissions that were proposed in the August 5 Notice were also deleted from the final rules as unnecessary. Proposed paragraph (b)(5) would have required a listing of refunded contributions regardless of whether they were submitted for matching. This proposed requirement was removed because the relevant information can be obtained either through the committee's reports or during the Commission's audit. Proposed paragraphs (b) (6) and (7) contained good order requirements for joint fundraising and entertainment event contributions. Since these requirements are already found in 11 CFR 9034.2(c) (5), (6) and (7), it was unnecessary to repeat them in this section.

Section 9036.2 Additional Submissions for Matching Fund Payments

In the August 5 Notice, the Commission proposed to revise paragraph (a) to be more explicit regarding the designation of dates for candidate submissions. Since this was not a substantive change, the Commission decided to retain the current language of this section and to continue to notify candidates of their designated submission dates when they are found eligible to receive matching funds.

The Notice of Proposed Rulemaking also included a proposed signature requirement for treasurers. As in § 9036.1, this sentence was removed as unnecessary since treasurers must sign all reports and statements in accordance with 11 CFR 104.14.

Paragraph (b)(1) has been amended to specify that only the matchable contributions from the threshold submission should be included in the candidate's first regular submission under this section. Since the Commission reviews all contributions submitted in the threshold submission, the nonmatchable contributions are identified for the committee's information. If the committee includes the nonmatchable contributions in its first submission, it will increase the error rate for the submission, which will in turn affect the committee's holdback percentage. See 11 CFR 9036.2(c)(1)(i).

Proposed subparagraph (b)(1)(iv), which would have required a listing of refunded contributions, was deleted from the final rules consistent with the deletion of that requirement from § 9036.1.

Paragraph (b)(2) has been revised slightly with respect to the procedures for letter requests. The changes make clear that a letter request must be fully documented on the next date on which the candidate is scheduled to make a regular submission, that is, two weeks after the letter request. This documentation must be submitted on that date even if the candidate has no new contributions to submit for matching at that time. The Commission will not accept future letter requests from the candidate until the last letter request has been documented. Moreover, a candidate's failure to document a letter request can lead to a Commission repayment determination under 11 CFR 9038.2 that the candidate has received matching funds in excess of his or her entitlement.

In paragraphs (c)(1)(ii) and (c)(2), the Commission has extended the time within which it will certify any additional amounts to which the candidate is entitled by an additional 5 business days. While many certifications will be completed in less time, this change will provide sufficient time for necessary data entry and other review tasks in large submissions. This change will have limited impact on candidates, however, since most of the funds requested in a submission will be certified shortly after receipt of the documentation. Only the amount not immediately paid under the "holdback" procedure will come under this extended time frame. See § 9036.2(c)(1)(i).

In addition, the Commission has lowered the error rate in paragraphs (c)(1)(ii) and (c)(2) that will lead to an expanded review. Under the revised rules, the Commission will review an expanded sample of submitted contributions for matchability when the projected dollar value of the non-matchable contributions contained in the submission exceeds 10% of the amount requested, instead of 15%.

Section 9036.3 Submission Errors and Insufficient Documentation

There are no changes in this section.

Section 9036.4 Commission Review of Submissions

Paragraph (c) has been revised to include the requirement that candidates notify the Commission when a contribution that has been submitted for matching does not qualify as a matchable contribution because it has been refunded.

Section 9036.5 Resubmissions

For the first time, the regulations now contain a cutoff date for resubmitting contributions. As provided in paragraph (b), no contributions may be resubmitted for matching later than the first Tuesday in September of the year following the Presidential election year. This date allows a substantial amount of time for committees to obtain any additional documentation but also puts committees on notice that all submission activity must be completed on time. It will also allow the Treasury Department to close out its public funding function before the end of that fiscal year. Note that the cutoff dates for initial submissions occur earlier in the year. See 11 CFR 9036.6.

Section 9036.6 Continuation of Certification

The revised rules extend the cutoff date by which all contributions must be initially submitted for matching and also set two cutoff dates rather than one. Instead of the fourth Monday in January, the final submission dates are the fourth Monday in February and the second Monday in March. These new dates reflect the Commission's experience in the 1984 election cycle, in which several committees requested a one month extension of the last submission date. By setting two dates, the Commission hopes to avoid the problem of having all campaigns make their last submission on the same date. Under the new rule, the last date for a committee will depend upon that committee's designated submission schedule.

PART 9037—PAYMENTS

There are no changes in this Part.

PART 9038—EXAMINATIONS AND AUDITS

Section 9038.1 Audit

The time periods for candidate responses in this section now run from the date of service rather than the date of receipt of the Commission's notice.

Paragraph (e)(3) has been modified to reflect the Commission's revised Sunshine Act regulations. See 11 CFR Part 2. Since portions of final audit reports are considered by the Commission in open session, this subsection has been revised to indicate that the Commission will provide the candidate with a copy of the open session agenda document 24 hours before that document is released to the public.

Section 9038.2 Repayments

A new basis for repayment has been added in paragraph (b)(1)(v). If matching funds have been paid to the candidate on the basis of debts included on the NOCO statement and the candidate settles the debts for less than the amount reflected on the NOCO statement, resulting in a matching fund entitlement of less than the amount paid, the Commission will seek a repayment of the excessive amount paid.

Paragraph (b)(2)(iii) has been revised to reflect the Commission's procedure for determining when a candidate no longer has matching funds in his or her account. After this point, the Commission will not examine committee expenditures to determine if federal funds were used for non-qualified campaign expenses. The approach adopted by the Commission for this purpose is to review the expenditures made after the committee has received its last matching fund payment, using the assumption that the federal funds are used on a 100% basis until they are spent.

Throughout this section, the time periods within which the candidate must take action now run from the date of service rather than the date of the candidate's receipt of a Commission notice or determination. As indicated in paragraph (e) of this section, the time period for service by mail will be calculated in accordance with 11 CFR 111.2(c).

In paragraph (d)(2), the time within which the candidate must make repayment after the Commission's final determination has been extended from 20 to 30 days. This time period is now coextensive with the time for filing a notice of appeal under 26 U.S.C. 9041(a), and for filing a petition for rehearing or a stay of the final repayment determination under 11 CFR 9038.5.

Section 9038.3 Liquidation of Obligations; Repayment

There are no changes in this section.

Section 9038.4 Extensions of Time

There are no changes in this section.

Section 9038.5 Petitions for Rehearing; Stays of Repayment Determinations

This new section establishes procedures under which candidates may request reconsideration of Commission determinations. It also sets forth for the first time in the regulations the procedures the Commission will follow in considering stays of repayment determinations pending the candidate's appeal.

Paragraph (a) sets the standards a candidate must meet to file a petition for rehearing. The intent of these provisions is to ensure that such petitions are not filed as a dilatory tactic. Rather, this section provides a mechanism under which a candidate may respond to Commission arguments he or she did not previously have an opportunity to respond to. Candidates may also raise new information that could not have been brought to the Commission's attention earlier.

Under paragraph (b), candidates must be sure to raise all issues and arguments in support of their case at the appropriate stage of the Commission proceeding. By doing so, the Commission will have the opportunity to respond to, and perhaps resolve, such arguments before a matter goes to litigation. The Commission thereby hopes to narrow the issues that may otherwise result in litigation and ensure that it has addressed all of the issues in a matter before a court is asked to rule on them.

Paragraph (c) establishes three avenues for seeking a stay of a Commission repayment determination pending the candidate's appeal of that determination. Candidates may place the amount at issue in an interest-bearing escrow account, may secure a surety bond guaranteeing payment of the amount in question plus interest, or may seek to qualify under the criteria set forth in paragraph (c)(2)(iii).

Stays are not automatic; rather, the candidate must demonstrate that he or she has met the conditions for granting a stay under one of the three options provided. If the candidate fails to do so, repayment must be made, notwithstanding the pending appeal. If the candidate is only contesting a portion of the Commission's repayment determination, the amount not at issue on appeal must be repaid within the time specified in 11 CFR 9038.2.

One goal of these stay procedures is to protect the public treasury in the event the Commission's repayment determination is upheld on appeal. Thus, for example, if the candidate chooses to establish an escrow account for the funds, all withdrawals from the account must be contingent on the joint signatures of the candidate or his or her agent and a representative of the Commission. Further, all amounts stayed must be repaid with interest if the Commission's determination is upheld. Interest begins to accrue under these rules 30 days after the Commission's final repayment determination. This is the date by which repayment would have been due if the candidate had not appealed the final determination and sought a stay.

The criteria in paragraph (c)(2)(iii) follow the standards used by the Commission to date. They are

augmented, however, in paragraph (c)(3) to provide further guidance on when an applicant has shown a strong likelihood of success on the merits of the appeal. This paragraph incorporates the approach taken by the United States Court of Appeals for the District of Columbia in *Washington Metropolitan Area Transit Commission* v. *Holiday Tours, Inc.*, 559 F.2d 841 (D.C. Cir. 1977).

Section 9038.6 Stale-dated Committee Checks

In past election cycles, questions have arisen regarding the appropriate disposition of checks written to creditors or to contributors that remain outstanding after the campaign is over. Sometimes the payee cannot be located, other times the payee declines to cash the check. This new section makes clear that committees should bring these checks to the Commission's attention in a timely fashion.

If the committee has made attempts to pay the funds as intended, and has been unsuccessful, the committee must remit a check payable to the U.S. Treasury for the amount outstanding. The amount so paid will not reduce or increase the committee's repayment obligation. Moreover, the committee may not use these funds for other purposes, such as to pay other obligations, because to do so could result in the receipt of a prohibited or excessive contribution from the original payee.

The Commission considered and rejected other possible dispositions of such funds, including a donation to a charitable organization, because these alternatives could be subject to varying interpretations, not all of which would be appropriate recipients of funds from a federally-funded campaign. Thus, the Commission determined to require that all such funds be paid to the Treasury.

PART 9039—REVIEW AND INVESTIGATION AUTHORITY

There are no changes in this Part.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules, if promulgated, will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities are affected by these rules. Further, any entities affected are already required to comply with the statutory requirements in these areas.

List of Subjects

11 CFR Part 106

Campaign funds, Political committees and parties, Political candidates.

11 CFR Parts 9001–9005

Campaign funds, Political candidates, Elections.

11 CFR Part 9006

Campaign funds, Reporting requirements, Political candidates, Elections.

11 CFR Part 9007

Campaign funds, Administrative practice and procedure, Political candidates.

11 CFR Part 9012

Political candidates, Political committees and parties, Elections.

11 CFR Parts 9031–9035

Campaign funds, Political candidates, Elections.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Political candidates.

11 CFR Parts 9037–9039

Campaign funds, Administrative practice and procedure, Political candidates.

PART 106—[AMENDED]

11 CFR Part 106 is amended as follows:

1. The authority citation for Part 106 is revised to read as follows:

Authority: 2 U.S.C. 441a(b), 441a(g)

2. Section 106.2 is revised to read as follows:

§ 106.2 State Allocation of Expenditures Incurred by Authorized Committees of Presidential Primary Candidates Receiving Matching Funds.

(a) *General.* (1) This section applies to Presidential primary candidates receiving or expecting to receive federal matching funds pursuant to 11 CFR Parts 9031 *et seq.* Except for expenditures exempted under 11 CFR 106.2(c), expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to a particular State shall be allocated to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid. In the event that the Commission disputes the candidate's allocation or claim of exemption for a particular expense, the candidate shall demonstrate, with supporting documentation, that his or her proposed method of allocation or claim of exemption was reasonable.

(2) Disbursements made prior to the time an individual becomes a candidate for the purpose of determining whether that individual should become a candidate pursuant to 11 CFR 100.7(b)(1) and 100.8(b)(1), i.e., payments for testing the waters, shall be allocable expenditures under this section if the individual becomes a candidate.

(b) *Method of allocating expenditures among states*—(1) *General allocation method.* Unless otherwise specified under 11 CFR 106.2(b)(2), an expenditure incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate in more than one State shall be allocated to each State on a reasonable and uniformly applied basis.

(2) *Specific allocation methods.* Expenditures that fall within the categories listed below shall be allocated based on the following methods. The method used to allocate a category of expenditures shall be based on consistent data for each State to which an allocation is made.

(i) *Media expenditures*—(A) *Print media.* Except for expenditures exempted under 11 CFR 106.2(c), allocation of expenditures for the publication and distribution of newspaper, magazine and other types of printed advertisements distributed in more than one State, including any commission charged for the purchase of print media, shall be made using relative circulation percentages in each State or an estimate thereof. For purposes of this section, allocation to a particular State will not be required if less than 3% of the total estimated readership of the publication is in that State.

(B) *Broadcast media.* Except for expenditures exempted under 11 CFR 106.2(c), expenditures for radio, television and similar types of advertisements purchased in a particular media market that covers more than one State shall be allocated to each State in proportion to the estimated audience. This allocation of expenditures, including any commission charged for the purchase of broadcast media, shall be made using industry market data.

(C) *Refunds for media expenditures.* Refunds for broadcast time or advertisement space, purchased but not used, shall be credited to the States on the same basis as the original allocation.

(D) *Limits on allocation of media expenditures.* No allocation of media expenditures shall be made to any State

in which the primary election has already been held.

(ii) *Salaries.* Except for expenditures exempted under 11 CFR 106.2(c), salaries paid to persons working in a particular State for five consecutive days or more, including advance staff, shall be allocated to each State in proportion to the amount of time spent in that State during a payroll period.

(iii) *Intra-state travel and subsistence expenditures.* Travel and subsistence expenditures for persons working in a State for five consecutive days or more shall be allocated to that State in proportion to the amount of time spent in each State during a payroll period. This same allocation method shall apply to intra-state travel and subsistence expenditures of the candidate and his family or the candidate's representatives. For purposes of this section, "subsistence" includes only expenditures for personal living expenses related to a particular individual travelling on committee business, such as food or lodging.

(iv) *Overhead expenditures*—(A) *Overhead expenditures of State offices.* Except for expenditures exempted under 11 CFR 106.2(c), overhead expenditures of committee offices located in a particular State shall be allocated to that State. For purposes of this section, overhead expenditures include, but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges. "Telephone service base charges" include any regular monthly charges for committee phone service, and charges for phone installation and intra-state phone calls other than charges related to a special use such as voter registration or get out the vote efforts. Inter-state calls are not included in "telephone service base charges."

(B) *Overhead expenditures of regional offices.* Except for expenditures exempted under 11 CFR 106.2(c), overhead expenditures of a committee regional office or any committee office with responsibilities in two or more States shall be allocated to each state on a reasonable and uniformly applied basis. For purposes of this section, overhead expenditures include but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges. "Telephone service base charges" include any regular monthly charges for committee phone service, and charges for phone installation and intra-state phone calls other than charges related to a special use such as voter registration or get out the vote efforts. Inter-state calls are not included in "telephone service base charges."

(v) *Expenditures for Inter-state telephone calls.* Expenditures for telephone calls between two States need not be allocated to any State.

(vi) *Public opinion poll expenditures.* Expenditures incurred for the taking of a public opinion poll covering only one State shall be allocated to that State. Except for expenditures incurred in conducting a nationwide poll, expenditures incurred for the taking of a public opinion poll covering two or more States shall be allocated to those States based on the number of people interviewed in each State.

(c) *Expenditures exempted from allocation*—(1) *National campaign expenditures*—(i) *Operating expenditures.* Expenditures incurred for administrative, staff, and overhead expenditures of the national campaign headquarters need not be allocated to any State. Overhead expenditures shall be defined as in 11 CFR 106.2(b)(2)(iv).

(ii) *National advertising.* Expenditures incurred for advertisements on national networks, national cable or in publications distributed nationwide need not be allocated to any State.

(iii) *Nationwide polls.* Expenditures incurred for the taking of a public opinion poll which is conducted on a nationwide basis need not be allocated to any State.

(2) *Media production costs.* Expenditures incurred for production of media advertising, whether or not that advertising is used in more than one State, need not be allocated to any State.

(3) *Expenditures for transportation and services made available to media.* Expenditures incurred by the candidate's authorized committee(s) to provide transportation and services for media personnel need not be allocated to any State. Reimbursement for such expenditures shall be made in accordance with 11 CFR 9034.6.

(4) *Inter-state travel.* Expenditures incurred for inter-state travel costs, such as travel between State campaigns or between State offices and national campaign headquarters, need not be allocated to any State.

(5) *Compliance costs and fundraising expenditures.* An amount equal to 10% of campaign workers' salaries and overhead expenditures in a particular State may be excluded from allocation to that State as an exempt compliance cost. An additional amount equal to 10% of such salaries and overhead expenditures in a particular State may be excluded from allocation to that State as exempt fundraising expenditures, but this exemption shall not apply within 28 calendar days of the primary election as specified in 11 CFR 110.8(c)(2). Any amounts excluded for fundraising expenditures shall be applied against the fundraising expenditure limitation under 11 CFR 100.8(b)(21). If the candidate wishes to claim a larger compliance or fundraising exemption for any person, the candidate shall establish allocation percentages for each individual working in that State. The candidate shall keep detailed records to support the derivation of each percentage in accordance with 11 CFR 106.2(e). Alternatively, the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates contains some other accepted allocation methods for calculating a compliance or fundraising exemption.

(i) Exempt compliance costs are those legal and accounting costs incurred solely to ensure compliance with 26 U.S.C. 9031 *et seq.*, 2 U.S.C. 431 *et seq.* and 11 CFR Chapter I, including the costs of preparing matching fund submissions. The costs of preparing matching fund submissions shall be limited to those functions not required for general contribution processing and shall include the costs associated with: Generating the matching fund submission list and the matching fund computer tape for each submission, edits of the contributor data base that are related to preparing a matching fund submission, making photocopies of contributor checks, and seeking additional documentation from contributors for matching purposes. The costs associated with general contribution processing shall include those normally performed for fundraising purposes, or for compliance with the recordkeeping and reporting requirements of 11 CFR Part 100 *et seq.*, such as data entry, batching contributions for deposit, and preparation of FEC reports.

(ii) Exempt fundraising expenditures are those expenses associated with the solicitation of contributions. They include printing and postage for solicitations, airtime for fundraising advertisements and the cost of meals and beverages for fundraising receptions or dinners.

(d) *Reporting.* All expenditures allocated under this section shall be reported on FEC Form 3P, page 3.

(e) *Recordkeeping.* All assumptions and supporting calculations for allocations made under this section shall be documented and retained for Commission inspection. For compliance and fundraising deductions that exceed the 10% exemptions under 11 CFR 106.2(c)(5), such records shall indicate which duties are considered compliance

or fundraising and the percentage of time each person spends on such activity.

11 CFR Subchapter E is amended as follows:

1. By revising Parts 9001 through 9007 to read as follows:

PART 9001—SCOPE

Sec.
9001.1 Scope.

Authority: 26 U.S.C. 9009(b).

§ 9001.1 Scope.

This subchapter governs entitlement to and use of funds certified from the Presidential Election Campaign Fund under 26 U.S.C. 9001 *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431–455 of Title 2, United States Code, and regulations prescribed thereunder (11 CFR Parts 100 through 115). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431–455 of Title 2 United States Code, or regulations prescribed thereunder (11 CFR Parts 100 through 115).

PART 9002—DEFINITIONS

Sec.
9002.1 Authorized committee.
9002.2 Candidate.
9002.3 Commission.
9002.4 Eligible candidates.
9002.5 Fund.
9002.6 Major party.
9002.7 Minor party.
9002.8 New party.
9002.9 Political committee.
9002.10 Presidential election.
9002.11 Qualified campaign expense.
9002.12 Expenditure report period.
9002.13 Contribution.
9002.14 Secretary.
9002.15 Political party.

Authority: 26 U.S.C. 9002 and 9009(b).

§ 9002.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, "authorized committee" means with respect to a candidate (as defined at 11 CFR 9002.2) of a political party for President and Vice President, any political committee that is authorized by a candidate to incur expenses on behalf of such candidate. The term "authorized committee" includes the candidate's principal campaign committee designated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate pursuant to 11 CFR 100.3(a)(3). If a party has nominated a Presidential and a Vice Presidential candidate, all political committees authorized by that party's Presidential candidate shall also be authorized committees of the Vice Presidential candidate and all political committees authorized by the Vice Presidential candidate shall also be authorized committees of the Presidential candidate.

(b) Any withdrawal of an authorization shall be in writing and shall be addressed and filed in the same manner provided for at 11 CFR 102.12 or 102.13.

(c) Any candidate nominated by a political party may designate the national committee of that political party as that candidate's authorized committee in accordance with 11 CFR 102.12(c).

(d) For purposes of this subchapter, references to the "candidate" and his or her responsibilities under this subchapter shall also be deemed to refer to the candidate's authorized committee(s).

§ 9002.2 Candidate.

(a) For the purposes of this subchapter, "candidate" means with respect to any presidential election, an individual who—

(1) Has been nominated by a major party for election to the Office of President of the United States or the Office of Vice-President of the United States; or

(2) Has qualified or consented to have his or her name appear on the general election ballot (or to have the names of electors pledged to him or her on such ballot) as the candidate of a political party for election to either such office in 10 or more States. For the purposes of this section, "political party" shall be defined in accordance with 11 CFR 9002.15.

(b) An individual who is no longer actively conducting campaigns in more than one State pursuant to 11 CFR 9004.8 shall cease to be a candidate for the purpose of this subchapter.

§ 9002.3 Commission.

"Commission" means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

§ 9002.4 Eligible candidates.

"Eligible candidates" means those Presidential and Vice Presidential candidates who have met all applicable conditions for eligibility to receive payments from the Fund under 11 CFR Part 9003.

§ 9002.5 Fund.

"Fund" means the Presidential Election Campaign Fund established by 26 U.S.C. 9006(a).

§ 9002.6 Major party.

"Major party" means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.6, "candidate" means, with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.7 Minor party.

"Minor party" means a political party whose candidate for the office of President in the preceding Presidential election received, as a candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office. For the purposes of 11 CFR 9002.7, "candidate" means with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

§ 9002.8 New party.

"New party" means a political party which is neither a major party nor a minor party.

§ 9002.9 Political committee.

For purposes of this subchapter, "political committee" means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the election of any candidate to the office of President or Vice President of the United States; except that for the purpose of 11 CFR 9012.6, the term "political committee" shall be defined in accordance with 11 CFR 100.5.

§ 9002.10 Presidential election.

"Presidential election" means the election of Presidential and Vice Presidential electors.

§ 9002.11 Qualified campaign expense.

(a) "Qualified campaign expense" means any expenditure, including a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred to further a candidate's campaign for election to the office of

President or Vice President of the United States;

(2) Incurred within the expenditure report period, as defined under 11 CFR 9002.12, or incurred before the beginning of such period in accordance with 11 CFR 9003.4 to the extent such expenditure is for property, services or facilities to be used during such period; and

(3) Neither the incurrence nor the payment of such expenditure constitutes a violation of any law of the United States, any law of the State in which such expense is incurred or paid, or any regulation prescribed under such Federal or State law, except that any State law which has been preempted by the Federal Election Campaign Act of 1971, as amended, shall not be considered a State law for purposes of this subchapter. An expenditure which constitutes such a violation shall nevertheless count against the candidate's expenditure limitation if the expenditure meets the conditions set forth at 11 CFR 9002.11(a) (1) and (2).

(b)(1) An expenditure is made to further a Presidential or Vice Presidential candidate's campaign if it is incurred by or on behalf of such candidate or his or her authorized committee. For purposes of 11 CFR 9002.11(b)(1), any expenditure incurred by or on behalf of a Presidential candidate of a political party will also be considered an expenditure to further the campaign of the Vice Presidential candidate of that party. Any expenditure incurred by or on behalf of the Vice Presidential candidate will also be considered an expenditure to further the campaign of the Presidential candidate of that party.

(2) An expenditure is made on behalf of a candidate if it is made by—

(i) Any authorized committee or any other agent of the candidate for the purpose of making an expenditure; or

(ii) Any person authorized or requested by the candidate, by the candidate's authorized committee(s), or by an agent of the candidate or his or her authorized committee(s) to make an expenditure; or

(iii) A committee which has been requested by the candidate, the candidate's authorized committee(s), or an agent thereof to make the expenditure, even though such committee is not authorized in writing.

(3) Expenditures that further the election of other candidates for any public office shall be allocated in accordance with 11 CFR 106.1(a) and will be considered qualified campaign expenses only to the extent that they specifically further the election of the candidate for President or Vice President. A candidate may make expenditures under this section in conjunction with other candidates for any public office, but each candidate shall pay his or her proportionate share of the cost in accordance with 11 CFR 106.1(a).

(4) Expenditures by a candidate's authorized committee(s) pursuant to 11 CFR 9004.6 for the travel and related ground service costs of media shall be qualified campaign expenses. Any reimbursement for travel and related services costs received by a candidate's authorized committee shall be subject to the provisions of 11 CFR 9004.6.

(5) Legal and accounting services which are provided solely to ensure compliance with 2 U.S.C. 431 *et. seq.*, or 26 U.S.C. 9001, *et seq.*, shall be qualified campaign expenses which may be paid from payments received from the Fund. If federal funds are used to pay for such services, the payments will count against the candidate's expenditure limitation. Payments for such services may also be made from an account established in accordance with 11 CFR 9003.3 or may be provided to the committee in accordance with 11 CFR 100.7(b)(14) and 100.8(b)(15). If payments for such services are made from an account established in accordance with 11 CFR 9003.3, the payments do not count against the candidate's expenditure limitation. If payments for such services are made by a minor or new party candidate from an account containing private contributions, the payments do not count against that candidate's expenditure limitation. The amount paid by the committee shall be reported in accordance with 11 CFR Part 9006. Amounts paid by the regular employer of the person providing such services pursuant to 11 CFR 100.7(b)(14) and 100.8(b)(15) shall be reported by the recipient committee in accordance with 11 CFR 104.3(h).

(c) Expenditures incurred either before the beginning of the expenditure report period or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9004.4(a). Expenditures described under 11 CFR 9004.4(b) will not be considered qualified campaign expenses.

§ 9002.12 Expenditure report period.

"Expenditure report period" means, with respect to any Presidential election, the period of time described in either paragraph (a) or (b) of this section, as appropriate.

(a) In the case of a major party, the expenditure report period begins on September 1 before the election or on the date on which the major party's presidential nominee is chosen, whichever is earlier; and the period ends 30 days after the Presidential election.

(b) In the case of a minor or new party, the period will be the same as that of the major party with the shortest expenditure report period for that Presidential election as determined under paragraph (a) of this section.

§ 9002.13 Contribution.

"Contribution" has the same meaning given the term under 2 U.S.C. 431(8), 441b and 441c, and under 11 CFR 100.7, and 11 CFR Parts 114 and 115.

§ 9002.14 Secretary.

"Secretary" means the Secretary of the Treasury.

§ 9002.15 Political party.

"Political party" means an association, committee, or organization which nominates or selects an individual for election to any Federal office, including the office of President or Vice President of the United States, whose name appears on the general election ballot as the candidate of such association, committee, or organization.

PART 9003—ELIGIBILITY FOR PAYMENTS

Sec.
9003.1 Candidate and committee agreements.
9003.2 Candidate certifications.
9003.3 Allowable contributions.
9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.
9003.5 Documentation of disbursements.

Authority: 26 U.S.C. 9003 and 9009(b).

§ 9003.1 Candidate and committee agreements.

(a) *General.* (1) To become eligible to receive payments under 11 CFR Part 9005, the Presidential and Vice Presidential candidates of a political party shall agree in a letter signed by the candidates to the Commission that they and their authorized committee(s) shall comply with the conditions set forth in 11 CFR 9003.1(b).

(2) Major party candidates shall sign and submit such letter to the Commission within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more states pursuant to 11 CFR 9002.2(a)(2). The Commission, on written request by a minor or new party candidate, at any time prior to the date of the general

election, may extend the deadline for filing such letter except that the deadline shall be a date prior to the date of the general election.

(b) *Conditions.* The candidates shall:

(1) Agree that they have the burden of proving that disbursements made by them or any authorized committee(s) or agent(s) thereof are qualified campaign expenses as defined in 11 CFR 9002.11.

(2) Agree that they and their authorized committee(s) shall comply with the documentation requirements set forth at 11 CFR 9003.5.

(3) Agree that they and their authorized committee(s) shall provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidates or the authorized committee(s) of the candidates and the campaign if requested by the Commission.

(4) Agree that they and their authorized committee(s) shall keep and furnish to the Commission all documentation relating to receipts and disbursements including any books, records (including bank records for all accounts), all documentation required by this subchapter including those required to be maintained under 11 CFR 9003.5, and other information the Commission may request. The records provided at the time of the audit shall also include production of magnetic computer tapes containing all information required by law to be maintained regarding the committee's receipts and disbursements, if the committee maintains its records on computer. Upon request, documentation explaining the computer system's software capabilities shall also be provided.

(5) Agree that they and their authorized committee(s) shall permit an audit and examination pursuant to 11 CFR Part 9007 of all receipts and disbursements including those made by the candidate, all authorized committees and any agent or person authorized to make expenditures on behalf of the candidate or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR Part 9007.

(6) Submit the name and mailing address of the person who is entitled to receive payments from the Fund on behalf of the candidates; the name and address of the depository designated by the candidates as required by 11 CFR Part 103 and 11 CFR 9005.2; and the name under which each account is held at the depository at which the payments from the Fund are to be deposited.

(7) Agree that they and their authorized committee(s) shall comply with the applicable requirements of 2 U.S.C. 431 *et seq.*, 26 U.S.C. 9001 *et seq.*, and the Commission's regulations at 11 CFR Parts 100–115, and 9001–9012.

(8) Agree that they and their authorized committee(s) shall pay any civil penalties included in a conciliation agreement entered into under 2 U.S.C. 437g against the candidates, any authorized committees of the candidates or any agent thereof.

§ 9003.2 Candidate certifications.

(a) *Major party candidates.* To be eligible to receive payments under 11 CFR Part 9005, each Presidential and Vice Presidential candidate of a major party shall, under penalty of perjury, certify to the Commission:

(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which they will be entitled under 11 CFR Part 9004.

(2) That no contributions have been or will be accepted by the candidate or his or her authorized committee(s); except as contributions specifically solicited for, and deposited to, the candidate's legal and accounting compliance fund established under 11 CFR 9003.3(a); or except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Minor and new party candidates.* To be eligible to receive any payments under 11 CFR Part 9005, each Presidential and Vice Presidential candidate of a minor or new party shall, under penalty of perjury, certify to the Commission:

(1) That the candidate and his or her authorized committee(s) have not incurred and will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1.

(2) That no contributions to defray qualified campaign expenses have been or will be accepted by the candidate or his or her authorized committee(s) except to the extent that the qualified campaign expenses incurred exceed the aggregate payments received by such candidate from the Fund under 11 CFR 9004.2.

(c) *All candidates.* To be eligible to receive any payment under 11 CFR 9004.2, the Presidential candidate of each major, minor or new party shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his or her personal funds, or the personal funds of his or her immediate family, in connection with his or her campaign for the office of President in excess of $50,000 in the aggregate.

(1) For purposes of this section, the term "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(2) Expenditures from personal funds made under this paragraph shall not apply against the expenditure limitations.

(3) For purposes of this section, the terms "personal funds" and "personal funds of his or her immediate family" mean:

(i) Any assets which, under applicable state law, at the time he or she became a candidate, the candidate had legal right of access to or control over, and with respect to which the candidate had either:

(A) Legal and rightful title, or

(B) An equitable interest.

(ii) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which the candidate is a beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

(iii) A candidate may use a portion of assets jointly owned with his or her spouse as personal funds. The portion of the jointly owned assets that shall be considered as personal funds of the candidate shall be that portion which is the candidate's share under the instrument(s) of conveyance or ownership. If no specific share is indicated by any instrument of conveyance or ownership, the value of one-half of the property used shall be considered as personal funds of the candidate.

(4) For purposes of this section, expenditures from personal funds made by a candidate of a political party for the office of Vice President shall be considered to be expenditures made by the candidate of such party for the office of President.

(5) Contributions made by members of a candidate's family from funds which do not meet the definition of personal funds under 11 CFR 9003.2(c)(3) shall not

count against such candidate's $50,000 expenditure limitation under 11 CFR 9003.2(c).

(6) Personal funds expended pursuant to this section shall be first deposited in an account established in accordance with 11 CFR 9003.3 (b) or (c).

(7) The provisions of this section shall not operate to limit the candidate's liability for, nor the candidate's ability to pay, any repayments required under 11 CFR Part 9007. If the candidate or his or her committee knowingly incurs expenditures in excess of the limitations of 11 CFR 110.8(a), the Commission may seek civil penalties under 11 CFR Part 111 in addition to any repayment determinations made on the basis of such excessive expenditures.

(8) Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear. For purposes of this section, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement.

(d) *Form.* Major party candidates shall submit the certifications required under 11 CFR 9003.2 in a letter which shall be signed and submitted within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such letter within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more States pursuant to 11 CFR 9002.2(a)(2). The Commission, upon written request by a minor or new party candidate made at any time prior to the date of the general election, may extend the deadline for filing such letter, except that the deadline shall be a date prior to the day of the general election.

§ 9003.3 Allowable contributions.

(a) *Legal and accounting compliance fund—major party candidates*—(1) *Sources.* (i) A major party candidate may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A legal and accounting compliance fund may be established by such candidate prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States.

(A) All solicitations for contributions to this fund shall clearly state that such contributions are being solicited for this fund.

(B) Contributions to this fund shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114, and 115.

(ii) Funds remaining in the primary election account of a candidate, which funds are in excess of any amount required to be reimbursed to the Presidential Primary Matching Payment Account under 11 CFR 9038.2, may be transferred to the legal and accounting compliance fund without regard to the contribution limitations of 11 CFR Part 110 and used for any purpose permitted under this section.

(iii) Contributions that are made after the beginning of the expenditure report period but which are designated for the primary election, and contributions that exceed the contributor's limit for the primary election, may be deposited in the legal and accounting compliance fund if the candidate obtains the contributor's redesignation, or a reattribution to a joint contributor, in accordance with 11 CFR 110.1. The contributions so received and deposited shall be subject to the contribution limitations applicable for the general election, pursuant to 11 CFR 110.1(b)(2)(i).

(2) *Uses.* (i) Contributions to the legal and accounting compliance fund shall be used only for the following purposes:

(A) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.*, and 26 U.S.C. 9001 *et seq.*, in accordance with 11 CFR 9003.3(a)(2)(ii);

(B) To defray in accordance with 11 CFR 9003.3(a)(2)(ii)(A), that portion of expenditures for payroll, overhead, and computer services related to ensuring compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*;

(C) To defray any civil or criminal penalties imposed pursuant to 2 U.S.C. 437g or 26 U.S.C. 9012;

(D) To make repayments under 11 CFR 9007.2;

(E) To defray the cost of soliciting contributions to the legal and accounting compliance fund; and

(F) To make a loan to an account established pursuant to 11 CFR 9003.4 to defray qualified campaign expenses incurred prior to the expenditure report period or prior to receipt of federal funds, provided that the amounts so loaned are restored to the legal and accounting compliance fund.

(ii)(A) Expenditures for payroll (including payroll taxes), overhead and computer services, a portion of which are related to ensuring compliance with Title 2 and Chapter 95 of Title 26, shall be initially paid from the candidate's federal fund account under 11 CFR 9005.2 and may be later reimbursed by the compliance fund. For purposes of 11 CFR 9003.3(a)(2)(i)(B), a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 10% of the payroll and overhead expenditures of his or her national campaign headquarters and state offices. Overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts. In addition, a candidate may use contributions to the compliance fund to reimburse his or her federal fund account an amount equal to 70% of the costs (other than payroll) associated with computer services. Such costs include but are not limited to rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies. If the candidate wishes to claim a larger compliance exemption for payroll or overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered necessary to ensure compliance with Title 2 or Chapter 95 of Title 26. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance and the percentage of time each person spends on such activity. If the candidate wishes to claim a larger compliance exemption for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by persons other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function. The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries

and overhead expenditures that may be considered exempt compliance costs.

(B) Reimbursement from the compliance fund may be made to the separate account maintained for federal funds under 11 CFR 9005.2 for legal and accounting compliance services disbursements that are initially paid from the separate federal funds account. Such reimbursement must be made prior to any final repayment determination by the Commission pursuant to 11 CFR 9007.2. Any amounts so reimbursed to the federal fund account may not subsequently be transferred back to the legal and accounting compliance fund.

(iii) Amounts paid from this account for the purposes permitted by 11 CFR 9003.3(a)(2)(i) (A) through (E) shall not be subject to the expenditure limits of 2 U.S.C. 441a(b) and 11 CFR 110.8. (See also 11 CFR 100.8(b)(15)). When the proceeds of loans made in accordance with 11 CFR 9003.2(a)(2)(i)(F) are expended on qualified campaign expenses, such expenditures shall count against the candidate's expenditure limit.

(iv) Contributions to or funds deposited in the legal and accounting compliance fund may not be used to retire debts remaining from the Presidential primaries, except that, if after payment of all expenses relating to the general election, there are excess campaign funds, such funds may be used for any purpose permitted under 2 U.S.C. 439a and 11 CFR Part 113, including payment of primary election debts.

(3) *Deposit and disclosure.* (i) Amounts received pursuant to 11 CFR 9003.3(a)(1) shall be deposited and maintained in an account separate from that described in 11 CFR 9005.2 and shall not be commingled with any money paid to the candidate by the Secretary pursuant to 11 CFR 9005.2.

(ii) The receipts to and disbursements from this account shall be reported in a separate report in accordance with 11 CFR 9006.1(b)(2). All contributions made to this account shall be recorded in accordance with 11 CFR 102.9. Disbursements made from this account shall be documented in the same manner provided in 11 CFR 9003.5.

(b) *Contributions to defray qualified campaign expenses—major party candidates.* (1) A major party candidate or his or her authorized committee(s) may solicit contributions to defray qualified campaign expenses to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(2) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only to defray qualified campaign expenses and to defray the cost of soliciting contributions to such account. All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR 9006.1.

(3) A candidate may make transfers to this account from his or her legal and accounting compliance fund.

(4) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114 and 115 and shall be aggregated with all contributions made by the same persons to the candidate's legal and accounting compliance fund under 11 CFR 9003.3(a) for the purposes of such limitations.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104 and 11 CFR 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

(i) For purposes of 11 CFR 9003.3(b)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts.

(ii) For purposes of 11 CFR 9003.3(b)(6) costs associated with computer services include, but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under 11 CFR 9003.3(b) (5) or (6) for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(b)(6) for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(9) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

(c) *Contributions to defray qualified campaign expenses minor and new party candidates.* (1) A minor or new party candidate may solicit contributions to defray qualified campaign expenses which exceed the amount received by such candidate from the Fund, subject to the limits of 11 CFR 9003.2(b).

(2) The contributions received under this section shall be subject to the limitations and prohibitions of 11 CFR Parts 110, 114 and 115.

(3) Such contributions may be deposited in a separate account or may be deposited with federal funds received under 11 CFR 9005.2. Disbursements from this account shall be made only for the following purposes:

(i) To defray qualified campaign expenses;

(ii) To make repayments under 11 CFR 9007.2;

(iii) To defray the cost of soliciting contributions to such account;

(iv) To defray the cost of legal and accounting services provided solely to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.*

(4) All disbursements from this account shall be documented in accordance with 11 CFR 9003.5 and shall be reported in accordance with 11 CFR Part 104 and § 9006.1.

(5) Any costs incurred for soliciting contributions to this account shall not be considered expenditures to the extent that the aggregate of such costs does not exceed 20 percent of the expenditure limitation under 11 CFR 9003.2(a)(1). These costs shall, however, be reported as disbursements in accordance with 11 CFR Part 104 and § 9006.1. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices as exempt fundraising costs.

(6) Any costs incurred for legal and accounting services which are provided solely to ensure compliance with 2 U.S.C 431 *et seq.* and 26 U.S.C. 9001 *et seq.* shall not count against the candidate's expenditure limitation. For purposes of this section, a candidate may exclude from the expenditure limitation an amount equal to 10% of the payroll (including payroll taxes) and overhead expenditures of his or her national campaign headquarters and state offices. In addition, a candidate may exclude from the expenditure limitation an amount equal to 70% of the costs (other than payroll) associated with computer services.

(i) For purposes of 11 CFR 9003.3(c)(6), overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies and all telephone charges except for telephone charges related to a special use such as voter registration and get out the vote efforts.

(ii) For purposes of 11 CFR 9003.3(c)(6) costs associated with computer services include but are not limited to, rental and maintenance of computer equipment, data entry services not performed by committee personnel, and related supplies.

(7) If the candidate wishes to claim a larger compliance or fundraising exemption under 11 CFR 9003.3(c)(6) for payroll and overhead expenditures, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(8) If the candidate wishes to claim a larger compliance exemption under 11 CFR 9003.3(c)(6) for costs associated with computer services, the candidate shall establish allocation percentages for each computer function that is considered necessary, in whole or in part, to ensure compliance with 2 U.S.C. 431 *et seq.* and 26 U.S.C. 9001 *et seq.* The allocation shall be based on a reasonable estimate of the costs associated with each computer function, such as the costs for data entry services performed by other than committee personnel and processing time. The candidate shall keep detailed records to support such calculations. The records shall indicate which computer functions are considered compliance-related and shall reflect which costs are associated with each computer function.

(9) The candidate shall keep and maintain a separate record of disbursements made to defray exempt legal and accounting costs under 11 CFR 9003.3(c) (6) and (7) and shall report such disbursements in accordance with 11 CFR Part 104 and 11 CFR 9006.1.

(10) The Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding contains some accepted alternative allocation methods for determining the amount of salaries and overhead expenditures that may be considered exempt compliance costs or exempt fundraising costs.

§ 9003.4 Expenses incurred prior to the beginning of the expenditure report period or prior to receipt of Federal funds.

(a) *Permissible expenditures.* (1) A candidate may incur expenditures before the beginning of the expenditure report period, as defined at 11 CFR 9002.12, if such expenditures are for property, services or facilities which are to be used in connection with his or her general election campaign and which are for use during the expenditure report period. Such expenditures will be considered qualified campaign expenses. Examples of such expenditures include but are not limited to: Expenditures for establishing financial accounting systems, expenditures for organizational planning and expenditures for polling.

(2) A candidate may incur qualified campaign expenses prior to receiving payments under 11 CFR Part 9005.

(b) *Sources.* (1) A candidate may obtain a loan which meets the requirements of 11 CFR 100.7(b)(11) for loans in the ordinary course of business to defray permissible expenditures described in 11 CFR 9003.4(a). A candidate receiving payments equal to the expenditure limitation in 11 CFR 110.8 shall make full repayment of principal and interest on such loans from payments received by the candidate under 11 CFR Part 9005 within 15 days of receiving such payments.

(2) A major party candidate may borrow from his or her legal and accounting compliance fund for the purposes of defraying permissible expenditures described in 11 CFR 9003.4(a). All amounts borrowed from the legal and accounting compliance fund must be restored to such fund after the beginning of the expenditure report period either from federal funds received under 11 CFR Part 9005 or private contributions received under 11 CFR 9003.3(b). For candidates receiving federal funds, restoration shall be made within 15 days after receipt of such funds.

(3) A minor or new party candidate may defray such expenditures from contributions received in accordance with 11 CFR 9003.3(c).

(4)(i) A candidate who has received federal funding under 11 CFR Part 9031 *et seq.*, may borrow from his or her primary election campaign an amount not to exceed the residual balance projected to remain in the candidate's primary account(s) on the basis of the formula set forth at 11 CFR 9038.3(c). A major party candidate receiving payments equal to the expenditure limitation shall reimburse amounts borrowed from his or her primary campaign from payments received by the candidate under 11 CFR Part 9005 within 15 days of such receipt.

(ii) A candidate who has not received federal funding during the primary campaign may borrow at any time from his or her primary account(s) to defray such expenditures, provided that a major party candidate receiving payments equal to the expenditure limitation shall reimburse all amounts borrowed from his or her primary campaign from payments received by the candidate under 11 CFR Part 9005 within 15 days of such receipt.

(5) A candidate may use personal funds in accordance with 11 CFR 9003.2(c), up to his or her $50,000 limit, to defray such expenditures.

(c) *Deposit and disclosure.* Amounts received or borrowed by a candidate under 11 CFR 9003.4(b) to defray expenditures permitted under 11 CFR 9003.4(a) shall be deposited in a separate account to be used only for such expenditures. All receipts and disbursements from such account shall be reported pursuant to 11 CFR 9006.1(a) and documented in accordance with 11 CFR 9003.5.

§ 9003.5 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or authorized committee(s) are qualified campaign expenses as defined in 11 CFR 9002.11. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission at its request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in 11 CFR 9003.5(b).

(b) *Documentation required.* (1) For disbursements in excess of $200 to a payee, the candidate shall present either:

(i) A receipted bill from the payee that states the purpose of the disbursement; or

(ii) If such a receipt is not available, a cancelled check negotiated by the payee, and

(A) One of the following documents generated by the payee: A bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in 11 CFR 9003.5(b)(1)(ii)(A) are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) If neither a receipted bill as specified in 11 CFR 9003.5(b)(1)(i) nor the supporting documentation specified in 11 CFR 9003.5(b)(1)(ii) is available, a cancelled check negotiated by the payee that states the purpose of the disbursement.

(iv) Where the supporting documentation required in 11 CFR 9003.5(b)(1) (i), (ii) or (iii) is not available, the candidate or committee may present a cancelled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office;

(B) Evidence that the disbursement is covered by a pre-established written campaign committee policy, such as a per diem policy.

(2) For all other disbursements the candidate shall present:

(i) A record disclosing the full name and mailing address of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A cancelled check negotiated by the payee that states the full name and mailing address of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section:

(i) "Payee" means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $500 or less advanced for travel and/or subsistence and if the individual is the recipient of the goods or services purchased.

(ii) "Purpose" means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets*—(1) *Capital assets.* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded $2000 when acquired by the campaign. The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, "capital asset" shall be defined in accordance with 11 CFR 9004.9(d)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds $5000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9004.9(d)(2).

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

Sec.

9004.1 Major parties.
9004.2 Pre-election payments for minor and new party candidates.
9004.3 Post-election payments.
9004.4 Use of payments.
9004.5 Investment of public funds.
9004.6 Reimbursements for transportation and services made available to media personnel.
9004.7 Allocation of travel expenditures.
9004.8 Withdrawal by candidate.
9004.9 Net outstanding qualified campaign expenses.
9004.10 Sale of assets acquired for fund-raising purposes.

Authority: 26 U.S.C. 9004 and 9009(b).

§ 9004.1 Major parties.

The eligible candidates of each major party in a Presidential election shall be entitled to equal payments under 11 CFR Part 9005 in an amount which, in the aggregate, shall not exceed $20,000,000 as adjusted by the Consumer Price Index in the manner described in 11 CFR 110.9(c).

§ 9004.2 Pre-election payments for minor and new party candidates.

(a) *Candidate of a minor party in the preceding election.* An eligible candidate of a minor party is entitled to preelection payments:

(1) If he or she received at least 5% of the total popular vote as the candidate of a minor party in the preceding election whether or not he or she is the same minor party's candidate in this election.

(2) In an amount which is equal, in the aggregate, to a proportionate share of the amount to which major party candidates are entitled under 11 CFR 9004.1.

The aggregate amount received by a minor party candidate shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor party Presidential candidate in the preceding Presidential election bears to the average number of popular votes received by all major party candidates in that election.

(b) *Candidate of a minor party in the current election.* The eligible candidate

of a minor party whose candidate for the office of President in the preceding election received at least 5% but less than 25% of the total popular vote is eligible to receive pre-election payments. The amount which a minor party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the minor party's candidate in the preceding Presidential election; however, the amount to which the minor party candidate is entitled under this section shall be reduced by the amount to which the minor party's Presidential candidate in this election is entitled under 11 CFR 9004.2(a), if any.

(c) *New party candidate.* A candidate of a new party who was a candidate for the office of President in at least 10 States in the preceding election may be eligible to receive preelection payments if he or she received at least 5% but less than 25% of the total popular vote in the preceding election. The amount which a new party candidate is entitled to receive under this section shall be computed pursuant to 11 CFR 9004.2(a) based on the number of popular votes received by the new party candidate in the preceding election. If a new party candidate is entitled to payments under this section, the amount of the entitlement shall be reduced by the amount to which the candidate is entitled under 11 CFR 9004.2(a), if any.

§ 9004.3 Post-election payments.

(a) *Minor and new party candidates.* Eligible candidates of a minor party or of a new party who, as candidates, receive 5 percent or more of the total number of popular votes cast for the office of President in the election shall be entitled to payments under 11 CFR Part 9005 equal, in the aggregate, to a proportionate share of the amount allowed for major party candidates under 11 CFR 9004.1. The amount to which a minor or new party candidate is entitled shall bear the same ratio to the amount received by the major party candidates as the number of popular votes received by the minor or new party candidate in the Presidential election bears to the average number of popular votes received by the major party candidates for President in that election.

(b) *Amount of entitlement.* The aggregate payments to which an eligible candidate shall be entitled shall not exceed an amount equal to the lower of:

(1) The amount of qualified campaign expenses incurred by such eligible candidate and his or her authorized committee(s), reduced by the amount of contributions which are received to defray qualified campaign expenses by such eligible candidate and such committee(s); or

(2) The aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR 9004.1, reduced by the amount of contributions received by such eligible candidates and their authorized committees to defray qualified campaign expenses in the case of a deficiency in the Fund.

(c) *Amount of entitlement limited by pre-election payment.* If an eligible candidate is entitled to payment under 11 CFR 9004.2, the amount allowable to that candidate under this section shall also be limited to the amount, if any, by which the entitlement under 11 CFR 9004.3(a) exceeds the amount of the entitlement under 11 CFR 9004.2.

§ 9004.4 Use of payments.

(a) *Qualified campaign expenses.* An eligible candidate shall use payments received under 11 CFR Part 9005 only for the following purposes:

(1) A candidate may use such payments to defray qualified campaign expenses;

(2) A candidate may use such payments to repay loans that meet the requirements of 11 CFR 100.7(a)(1) or 100.7(b)(11) or to otherwise restore funds (other than contributions received pursuant to 11 CFR 9003.3(b) and expended to defray qualified campaign expenses) used to defray qualified campaign expenses;

(3) A candidate may use such payments to restore funds expended in accordance with 11 CFR 9003.4 for qualified campaign expenses incurred by the candidate prior to the beginning of the expenditure report period.

(4) *Winding down costs.* The following costs shall be considered qualified campaign expenses:

(i) Costs associated with the termination of the candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies; or

(ii) Costs incurred by the candidate prior to the end of the expenditure report period for which written arrangement or commitment was made on or before the close of the expenditure report period.

(b) *Non-qualified campaign expenses.* (1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR 9003.2 shall not be considered a qualified campaign expense. The Commission will calculate the amount of expenditures attributable to these limitations using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such obligations were later settled and paid, unless the committee can demonstrate that the lower amount paid reflects a reasonable settlement of a bona fide dispute with the creditor.

(3) *Expenditures incurred after the close of the expenditure report period.* Any expenditures incurred after the close of the expenditure report period, as defined in 11 CFR 9002.12, are not qualified campaign expenses except to the extent permitted under 11 CFR 9004.4(a)(4).

(4) *Civil or criminal penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR Part 9005. Penalties may be paid from contributions in the candidate's legal and accounting compliance fund, in accordance with 11 CFR 9003.3(a)(2)(i)(C). Additional amounts may be received and expended to pay such penalties, if necessary. These funds shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR Part 104.

(5) *Solicitation expenses.* Any expenses incurred by a major party candidate to solicit contributions to a legal and accounting compliance fund established pursuant to 11 CFR 9003.3(a) are not qualified campaign expenses and cannot be defrayed from payments received under 11 CFR Part 9005.

(6) *Payments to candidate.* Payments made to the candidate by his or her committee, other than to reimburse funds advanced by the candidate for qualified campaign expenses, are not qualified campaign expenses.

(c) *Repayments.* Repayments may be made only from the following sources: Personal funds of the candidate (without regard to the limitations of 11 CFR 9003.2(c)), contributions and federal funds in the committee's account(s), and any additional funds raised subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended.

§ 9004.5 Investment of public funds.

Investment of public funds or any other use of public funds to generate income is permissible, provided that an

amount equal to all net income derived from such investments, less Federal, State and local taxes paid on such income, shall be repaid to the Secretary. Any net loss resulting from the investment of public funds will be considered a non-qualified campaign expense and an amount equal to the amount of such net loss shall be repaid to the United States Treasury as provided under 11 CFR 9007.2(b)(2)(i).

§ 9004.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, typewriters) made available to media personnel, such expenditures will be considered qualified campaign expenses subject to the overall expenditure limitations of 11 CFR 9003.2 (a)(1) and (b)(1).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each individual shall not exceed either: The individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

(d)(1) The committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9003.2 (a)(1) and (b)(1) the amount of reimbursements received for the actual cost of transportation and services provided under paragraph (a) of this section. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursements received equal to 3% of the actual cost of tranportation and services provided under this section as the administrative cost to the committee of providing such services to media personnel and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation. Amounts reimbursed that exceed the amount actually paid by the committee for transportation and services provided under paragraph (a) of this section plus the amount of administrative costs permitted by this section shall be repaid to the Treasury. Amounts paid by the committee for transportation, services and administrative costs for which no reimbursement is received will be considered qualified campaign expenses subject to the overall expenditure limitation in accordance with paragraph (a) of this section.

(2) For the purposes of this section, "administrative costs" shall include all costs incurred by the committee for making travel arrangements for media personnel and for seeking reimbursements, whether performed by committee staff or independent contractors.

§ 9004.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR Part 106, expenditures for travel relating to a Presidential or Vice Presidential candidate's campaign by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9004.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from the stop through each subsequent campaign-related stop to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses shall be qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, travelling for campaign purposes shall be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers travelling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9004.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

§ 9004.8 Withdrawal by candidate.

(a) Any individual who is not actively conducting campaigns in more than one State for the office of President or Vice President shall cease to be a candidate under 11 CFR 9002.2.

(b) An individual who ceases to be a candidate under this section shall:

(1) No longer be eligible to receive any payments under 11 CFR 9005.2 except to defray qualified campaign expenses as provided in 11 CFR 9004.4.

(2) Submit a statement, within 30 calendar days after he or she ceases to be a candidate, setting forth the information required under 11 CFR 9004.9(c).

§ 9004.9 Net outstanding qualified campaign expenses.

(a) *Candidates receiving post-election funding.* A candidate who is eligible to receive post-election payments under 11 CFR 9004.3 shall file, no later than 20 calendar days after the date of the election, a preliminary statement of that candidate's net outstanding qualified campaign expenses. The candidate's net outstanding qualified campaign expenses under this section equal the difference between 11 CFR 9004.9(a) (1) and (2).

(1) The total of:

(i) All outstanding obligations for qualified campaign expenses as of the date of the election; plus

(ii) An estimate of the amount of qualified campaign expenses that will be incurred by the end of the expenditure report period; plus

(iii) An estimate of necessary winding down costs as defined under 11 CFR 9004.4(a)(4); less

(2) The total of:

(i) Cash on hand as of the close of business on the day of the election, including: All contributions dated on or before that date; currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveller's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value;

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the campaign in the form of credits, refunds of deposits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(3) The amount submitted as the total of outstanding campaign obligations under paragraph (a)(1) of this section shall not include any accounts payable for nonqualified campaign expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR Part 9007 or any amounts paid to secure a surety bond under 11 CFR 9007.5(c).

(b) *All candidates.* Each candidate, except for individuals who have withdrawn pursuant to 11 CFR 9004.8, shall submit a statement of net outstanding qualified campaign expenses no later than 30 calendar days after the end of the expenditure report period. The statement shall contain the information required by 11 CFR 9004.9(a) (1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the last day of the expenditure report period.

(c) *Candidates who withdraw.* An individual who ceases to be a candidate pursuant to 11 CFR 9004.8 shall file a statement of net outstanding qualified campaign expenses no later than 30 calendar days after he or she ceases to be a candidate. The statement shall contain the information required under 11 CFR 9004.9(a) (1) and (2), except that the amount of outstanding obligations under 11 CFR 9004.9(a)(1)(i) and the amount of cash on hand, assets and receivables under 11 CFR 9004.9(a)(2) shall be complete as of the day on which the individual ceased to be a candidate.

(d)(1) *Capital assets.* For purposes of this section, the term "capital asset" means any property used in the operation of the campaign whose purchase price exceeded $2000 when acquired by the campaign. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9004.9(d)(2). A list of all capital assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(1). The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation, except that items acquired after the date of ineligibility must be valued at their fair market value on the date acquired. If the candidate wishes to claim a higher depreciation percentage for an item, he or she must list that capital asset on the statement separately and demonstrate, through documentation, the fair market value of each such asset.

(2) *Other assets.* The term "other assets" means any property acquired by the campaign for use in raising funds or as collateral for campaign loans. "Other assets" must be included on the candidate's statement of net outstanding qualified campaign expenses if the aggregate value of such assets exceeds $5000. The value of "other assets" shall be determined by the fair market value of each item on the last day of the expenditure report period or the day on which the individual ceased to be a candidate, whichever is earlier, unless the item is acquired after these dates, in which case the item shall be valued on the date it is acquired. A list of other assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(2).

(e) *Collectibility of accounts receivable.* If the committee determines that an account receivable of $500 or more, including any credit, refund, return or rebate, is not collectible in whole or in part, the committee shall demonstrate through documentation that the determination was commercially reasonable. The documentation shall include records showing the original amount of the account receivable, copies of correspondence and memoranda of communications with the debtor showing attempts to collect the amount due, and an explanation of how the lesser amount or full writeoff was determined.

(f) *Review of candidate statement*—(1) *General.* The Commission will review the statement filed by each candidate under this section. The Commission may request further information with respect to statements filed pursuant to 11 CFR 9004.9(b) during the audit of that candidate's authorized committee(s) under 11 CFR Part 9007.

(2) *Candidate eligible for post-election funding.* (i) If, in reviewing the preliminary statement of a candidate eligible to receive post-election funding, the Commission receives information indicating that substantial assets of that candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding qualified campaign expenses has been otherwise overstated in relation to campaign assets, the Commission may decide to temporarily postpone its certification of funds to that candidate pending a final determination of whether the candidate is entitled to all or a portion of the funds for which he or she is eligible based on the percentage of votes the candidate received in the general election.

(ii) *Initial determination.* In making a determination under 11 CFR 9004.9(f)(2)(i), the Commission will notify the candidate within 10 business days after its receipt of the statement of its initial determination that the

candidate is not entitled to receive the full amount for which the candidate may be eligible. The notice will give the legal and factual reasons for the initial determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given the opportunity to revise the statement or to submit, within 10 business days, written legal or factual materials to demonstrate that the candidate has net outstanding qualified campaign expenses that entitle the candidate to post-election funds. Such materials may be submitted by counsel if the candidate so desires.

(iii) *Final determination.* The Commission will consider any written legal or factual materials submitted by the candidate before making its final determination. A final determination that the candidate is entitled to receive only a portion or no post-election funding will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(iv) If the candidate demonstrates that the amount of outstanding qualified campaign expenses still exceeds campaign assets, the Commission will certify the payment of post-election funds to which the candidate is entitled.

(v) *Petitions for rehearing.* The candidate may file a petition for rehearing of a final determination under this section in acccordance with 11 CFR 9007.5(a).

§ 9004.10 Sale of assets acquired for fundraising purposes.

(a) *General.* A minor or new party candidate may sell assets donated to the campaign or otherwise acquired for fundraising purposes subject to the limitations and prohibitions of 11 CFR 9003.2, Title 2, United States Code, and 11 CFR Parts 110 and 114. This section will only apply to major party candidates to the extent that they sell assets acquired either for fundraising purposes in connection with his or her legal and accounting compliance fund or when it is necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b).

(b) *Sale after end of expenditure report period.* A minor or new party candidate, or a major party candidate in the event of a deficiency in the payments received from the Fund due to the application of 11 CFR 9005.2(b), whose outstanding debts exceed the cash on hand after the end of the expenditure report period as determined under 11 CFR 9002.12, may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of Title 2, United States Code and 11 CFR Parts 110 and 114.

PART 9005—CERTIFICATION BY COMMISSION

Sec.
9005.1 Certification of payments for candidates.
9005.2 Payments to eligible candidates from the fund.

Authority: 26 U.S.C. 9005 and 9009(b).

§ 9005.1 Certification of payments for candidates.

(a) *Certification of payments for major party candidates.* Not later than 10 days after the Commission determines that the Presidential and Vice Presidential candidates of a major party have met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1 and 9003.2, the Commission shall certify to the Secretary that payment in full of the amounts to which such candidates are entitled under 11 CFR Part 9004 should be made pursuant to 11 CFR 9005.2.

(b) *Certification of pre-election payments for minor and new party candidates.* (1) Not later than 10 days after a minor or new party candidate has met all applicable conditions for eligibility to receive payments under 11 CFR 9003.1, 9003.2 and 9004.2, the Commission will make an initial determination of the amount, if any, to which the candidate is entitled. The Commission will base its determination on the percentage of votes received in the official vote count certified in each State. In notifying the candidate, the Commission will give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based.

(2) The candidate may submit, within 15 days after the Commission's initial determination, written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(c) *Certification of minor and new party candidates for post-election payments.* (1) Not later than 30 days after the general election, the Commission will determine whether a minor or new party candidate is eligible for post-election payments.

(2) The Commission's determination of eligibility will be based on the following factors:

(i) The candidate has received at least 5% or more of the total popular vote based on unofficial vote results in each State;

(ii) The candidate has filed a preliminary statement of his or her net outstanding qualified campaign expenses pursuant to 11 CFR 9004.9(a); and

(iii) The candidate has met all applicable conditions for eligibility under 11 CFR 9003.1 and 9003.2.

(3) The Commission will notify the candidate of its initial determination of the amount, if any, to which the candidate is entitled, give the legal and factual reasons for its determination and advise the candidate of the evidence on which the determination is based. The Commission will also notify the candidate that it will deduct a percentage of the amount to which the candidate is entitled based on the unofficial vote results when the Commission certifies an amount for payment to the Secretary. This deduction will be based on the average percentage differential between the unofficial and official vote results for all candidates who received public funds in the preceding Presidential general election.

(4) The candidate may submit within 15 days after the Commission's initial determination written legal or factual materials to demonstrate that a redetermination is appropriate. Such materials may be submitted by counsel if the candidate so desires.

(5) The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination of certification by the Commission will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation on which the determination is based.

(d) All certifications made by the Commission pursuant to this section shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under 11 CFR Part 9007 and judicial review under 26 U.S.C. 9011.

§ 9005.2 Payments to eligible candidates from the fund.

(a) Upon receipt of a certification from the Commission under 11 CFR 9005.1 for payment to the eligible Presidential and Vice Presidential candidates of a political party, the Secretary shall pay to such candidates out of the Fund the amount certified by the Commission. Amounts paid to a candidate shall be under the control of that candidate.

(b)(1) If at the time of a certification from the Commission under 11 CFR 9005.1, the Secretary determines that the monies in the Fund are not, or may not be, sufficient to satisfy the full entitlements of the eligible candidates of all political parties, he or she shall withhold an amount which is determined to be necessary to assure that the eligible candidates of each political party will receive their pro rata share.

(2) Amounts withheld under 11 CFR 9005.2(b)(1) shall be paid when the Secretary determines that there are sufficient monies in the Fund to pay such amounts, or pro rata portions thereof, to all eligible candidates from whom amounts have been withheld.

(c) Payments received from the Fund by a major party candidate shall be deposited in a separate account maintained by his or her authorized committee, unless there is a deficiency in the Fund as provided under 11 CFR 9005.2(b)(1). In the case of a deficiency, the candidate may establish a separate account for payments from the Fund or may deposit such payments with contributions received pursuant to 11 CFR 9003.3(b). The account(s) shall be maintained at a State bank, federally chartered depository institution or other depository institution, the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(d) No funds other than the payments received from the Treasury, reimbursements, or income generated through use of public funds in accordance with 11 CFR 9004.5, shall be deposited in the account described in 11 CFR 9005.2(c). "Reimbursements" shall include, but are not limited to, refunds of deposits, vendor refunds, reimbursements for travel expenses under 11 CFR 9004.6 and 9004.7 and reimbursements for legal and accounting costs under 11 CFR 9003.3(a)(2)(ii)(B).

PART 9006—REPORTS AND RECORDKEEPING

Sec.
9006.1 Separate reports.
9006.2 Filing dates.

Authority: 9006 and 9009(b).

§ 9006.1 Separate reports.

(a) The authorized committee(s) of a candidate shall report all expenditures to further the candidate's general election campaign in reports separate from reports of any other expenditures made by such committee(s) with respect to other elections. Such reports shall be filed pursuant to the requirements of 11 CFR Part 104.

(b) The authorized committee(s) of a candidate shall file separate reports as follows:

(1) One report shall be filed which lists all receipts and disbursements of:

(i) Contributions and loans received by a major party candidate pursuant to 11 CFR Part 9003 to make up deficiencies in Fund payments due to the application of 11 CFR Part 9005;

(ii) Contributions and loans received pursuant to 11 CFR 9003.2(b)(2) by a minor, or new party for use in the general election;

(iii) Receipts for expenses incurred before the beginning of the expenditure report period pursuant to 11 CFR 9003.4;

(iv) Personal funds expended in accordance with 11 CFR 9003.2(c); and

(v) Payments received from the Fund.

(2) A second report shall be filed which lists all receipts of and disbursements from, contributions received for the candidate's legal and accounting compliance fund in accordance with 11 CFR 9003.3(a).

§ 9006.2 Filing dates.

The reports required to be filed under 11 CFR 9006.1 shall be filed during an election year on a monthly or quarterly basis as prescribed at 11 CFR 104.5(b)(1). During a nonelection year, the candidate's principal campaign committee may elect to file reports either on a monthly or quarterly basis in accordance with 11 CFR 104.5(b)(2).

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

Sec.
9007.1 Audits.
9007.2 Repayments.
9007.3 Extensions of time.
9007.4 Additional audits.
9007.5 Petitions for rehearing; stays of repayment determinations.
9007.6 Stale-dated committee checks.

Authority: 26 U.S.C. 9007 and 9009(b).

§ 9007.1 Audits.

(a) *General.* (1) After each Presidential election, the Commission will conduct a thorough examination and audit of the receipts, disbursements, debts and obligations of each candidate, his or her authorized committee(s), and agents of such candidates or committees. Such examination and audit will include, but will not be limited to, expenditures pursuant to 11 CFR 9003.4 prior to the beginning of the expenditure report period, contributions to and expenditures made from the legal and accounting compliance fund established under 11 CFR 9003.3(a), contributions received to supplement any payments received from the Fund, and qualified campaign expenses.

(2) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

(3) Information obtained pursuant to any audit and examination conducted under 11 CFR 9007.1(a) (1) and (2) may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 CFR 9007.2.

(b) *Conduct of fieldwork.* (1) The Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork will be conducted at a site provided by the committee.

(i) *Office space and records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9003.1(b)(6).

(ii) *Availability of committee personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to provide staff, records or office space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9010(c) to enforce the candidate and committee agreement made under 11 CFR 9003.1(b). Before seeking judicial intervention, the Commission will notify

the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have ten (10) calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreements.

(iv) If, in the course of the audit process, a dispute arises over the documentation sought or other requirements of the candidate agreement, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement within 10 days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternative(s).

(2) Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

(i) *Entrance conference.* At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the United States Treasury, will also be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.

(ii) *Review of records.* During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held from time to time during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the Commission staff anticipates that it may present to the Commission for approval. Commission staff will advise committee representatives at this conference of the projected timetable regarding the issuance of an audit report, the committee's opportunity to respond thereto, and the Commission's initial and final repayment determinations under 11 CFR 9007.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b) (1) and (2). Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

(i) Committee response to audit findings;

(ii) Financial activity of the committee subsequent to the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1);

(iii) Committee responses to Commission repayment determinations made under 11 CFR 9007.2.

(4) The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. The provisions of 11 CFR 9007.1(b)(1) and

(2) will apply to any additional fieldwork conducted.

(c) *Preparation of interim audit report.* (1) After the completion of the fieldwork conducted pursuant to 11 CFR 9007.1(b)(1), the Commission will issue an interim audit report to the candidate and his or her authorized committee. The interim audit report may contain Commission findings and recommendations regarding one or more of the following areas:

(i) An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, Presidential Election Campaign Fund Act and Commission regulations;

(ii) Accuracy of statements and reports filed with the Commission by the candidate and committee;

(iii) Compliance of the candidate and committee with applicable statutory and regulatory provisions in those instances where the Commission has not instituted any enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR Part 111; and

(iv) Preliminary calculations regarding future repayments to the United States Treasury.

(2) The candidate and his or her authorized committee will have an opportunity to submit in writing within 30 calendar days of service of the interim report, legal and factual materials disputing or commenting on the contents of the interim report. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with 11 CFR 9007.1(c)(2) before approving and issuing an audit report to be released to the public. The contents of the publicly-released audit report may differ from that of the interim report since the Commission will consider timely submissions of legal and factual materials by the candidate or committee in response to the interim report.

(d) *Preparation of publicly-released audit report.* An audit report prepared subsequent to an interim report will be publicly released pursuant to 11 CFR 9007.1(e). This report will contain Commission findings and recommendations addressed in the interim audit report but may contain adjustments based on the candidate's response to the interim report. In addition, this report will contain an initial repayment determination made by the Commission pursuant to 11 CFR 9007.2(c)(1) in lieu of the preliminary calculations set forth in the interim report.

(e) *Public release of audit report.* (1) After the candidate and committee have had an opportunity to respond to a written interim report of the Commission, the Commission will make public the audit report prepared subsequent to the interim report, as provided in 11 CFR 9007.1(d).

(2) If the Commission determines, on the basis of information obtained under the audit and examination process, that certain matters warrant enforcement under 2 U.S.C. 437g and 11 CFR Part 111, those matters will not be contained in the publicly-released report. In such cases, the audit report will indicate that certain other matters have been referred to the Commission's Office of General Counsel.

(3) The Commission will provide the candidate and the committee with copies of the agenda document containing those portions of the final audit report to be considered in open session 24 hours prior to releasing the agenda document to the public. The Commission will also provide the candidate and committee with copies of the final audit report 24 hours before releasing the report to the public.

(4) Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based in part on follow-up fieldwork conducted under 11 CFR 9007.1(b)(3) and will be placed on the public record.

§ 9007.2 Repayments.

(a) *General.* (1) A candidate who has received payments from the Fund under 11 CFR Part 9005 shall pay the United

States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9007.1 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the close of the expenditure report period.

(3) Once the candidate receives notice of the Commission's final repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(b) *Bases for repayment.* The Commission may determine that an eligible candidate of a political party who has received payments from the Fund must repay the United States Treasury under any of the circumstances described below.

(1) *Payments in excess of candidate's entitlement.* If the Commission determines that any portion of the payments made to the candidate was in excess of the aggregate payments to which such candidate was entitled, it will so notify the candidate, and such candidate shall pay to the United States Treasury an amount equal to such portion.

(2) *Use of funds for non-qualified campaign expenses.* (i) If the Commission determines that any amount of any payment to an eligible candidate from the Fund was used for purposes other than those described in paragraphs (b)(2)(i) (A) through (C) of this section, it will notify the candidate of the amount so used, and such candidate shall pay to the United States Treasury an amount equal to such amount.

(A) To defray qualified campaign expenses;

(B) To repay loans, the proceeds of which were used to defray qualified campaign expenses; and

(C) To restore funds (other than contributions which were received and expended by minor or new party candidates to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

(ii) Examples of Commission repayment determinations under 11 CFR 9007.2(b)(2) include, but are not limited to the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agent(s) have incurred expenses in excess of the aggregate payments to which an eligible major party candidate is entitled;

(B) Determinations that amounts spent by a candidate, a candidate's authorized committee(s) or agent(s) from the Fund were not documented in accordance with 11 CFR 9003.5;

(C) Determinations that any portion of the payments made to a candidate from the Fund was expended in violation of State or Federal law; and

(D) Determinations that any portion of the payments made to a candidate from the Fund was used to defray expenses resulting from a violation of State or Federal law, such as the payment of fines or penalties.

(iii) In the case of a candidate who has received contributions pursuant to 11 CFR 9003.3 (b) or (c), the amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for nonqualified campaign expenses as the amount of payments certified to the candidate from the Fund bears to the total amount of deposits of contributions and federal funds, as of December 31 of the Presidential election year.

(3) *Surplus.* If the Commission determines that a portion of payments from the Fund remains unspent after all qualified campaign expenses have been paid, it shall so notify the candidate, and such candidate shall pay the United States Treasury that portion of surplus funds.

(4) *Income on investment of payments from the fund.* If the Commission determines that a candidate received any income as a result of investment or other use of payments from the Fund pursuant to 11 CFR 9004.5, it shall so notify the candidate and such candidate shall pay to the United States Treasury an amount equal to the amount determined to be income, less any Federal, State or local taxes on such income.

(5) *Unlawful acceptance of contributions by an eligible candidate of a major party.* If the Commission determines that an eligible candidate of a major party, the candidate's authorized committee(s) or agent(s) accepted contributions to defray qualified campaign expenses (other than contributions to make up deficiencies in payments from the Fund, or to defray expenses incurred for legal and accounting services in accordance with 11 CFR 9003.3(a)), it shall notify the candidate of the amount of contributions so accepted, and the candidate shall pay to the United States Treasury an amount equal to such amount.

(c) Repayment determination procedures. The Commission repayment determination will be made in accordance with the procedures set forth at 11 CFR 9007.2 (c)(1) through (c)(4).

(1) *Initial determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report pursuant to 11 CFR 9007.1(d) and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days after service of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of written materials.* If the candidate disputes the Commission's initial repayment determination(s), he or she shall have an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the candidate within this 30 day period in making its final repayment determination(s). Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral presentation.* A candidate who has submitted written materials under 11 CFR 9007.2(c)(2) may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under 11 CFR 9007.2(c)(2). The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(4) *Final determination.* In making its final repayment determination(s), the Commission will consider any submission made under 11 CFR

9007.2(c)(2) and any oral presentation made under 11 CFR 9007.2(c)(3). A final determination that a candidate must repay a certain amount will be accompanied by a written statement of reasons for the Commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment period.* (1) Within 90 calendar days of service of the notice of the Commission's initial repayment determination(s), the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate submits written materials under 11 CFR 9007.2(c)(2) disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 30 calendar days after service of the notice of the Commission's final repayment determination(s), the candidate shall repay to the United States Treasury amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(e) *Computation of time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9007.2(b) after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any initial or final repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding qualified campaign expenses submitted pursuant to 11 CFR 9004.9, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in any previously-submitted statement of net outstanding qualified campaign expenses. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9007.2(f).

(h) *Limit on repayment.* No repayment shall be required from the eligible candidates of a political party under 11 CFR 9007.2 to the extent that such repayment, when added to other repayments required from such candidates under 11 CFR 9007.2, exceeds the amount of payments received by such candidates under 11 CFR 9005.3.

(i) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a final repayment determination in accordance with 11 CFR 9007.5(a). The candidate may request a stay of a final repayment determination in accordance with 11 CFR 9007.5(c) pending the candidate's appeal of that repayment determination.

§ 9007.3 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR Part 9007 will not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR Part 9007 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the application for extension that good cause exists for his or her request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a candidate who has applied for such extension in a timely manner. The length of time of any extension granted hereunder shall be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application.

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR Part 9007, the Commission may, on the candidate's showing of excusable neglect:

(1) Permit such candidate to exercise his or her right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR Part 9007.

§ 9007.4 Additional audits.

In accordance with 11 CFR 104.16(c), the Commission, pursuant to 11 CFR 111.10, may upon affirmative vote of four members conduct an audit and field investigation of any committee in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

§ 9007.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final repayment determination or a final determination that a candidate is not entitled to all or a portion of post-election funding under 11 CFR 9004.9(f), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days following service of the Commission's final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the earlier determination process.

(2) If a candidate files a timely petition under this section challenging a Commission final repayment determination, the time for repayment will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9007.2(d)(2) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the initial determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9011(a). An issue is not timely raised in a petition for rehearing if it could have

been raised earlier in response to the Commission's initial determination.

(c) *Stay of repayment determination pending appeal.* (1)(i) The candidate may apply to the Commission for a stay of all or a portion of the amount determined to be repayable under this section or under 11 CFR 9007.2 pending the candidate's appeal of that repayment determination pursuant to 26 U.S.C. 9011(a). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's final repayment determination under 11 CFR 9007.2(c)(4).

(2) The Commission's approval of a stay request will be conditioned upon the candidate's presentation of evidence in the stay request that he or she:

(i) Has placed the entire amount at issue in a separate interest-bearing account pending the outcome of the appeal and that withdrawals from the account may only be made with the joint signatures of the candidate or his or her agent and a Commission representative; or

(ii) Has posted a surety bond guaranteeing payment of the entire amount at issue plus interest; or

(iii) Has met the following criteria:

(A) He or she will suffer irreparable injury in the absence of a stay; and, if so, that

(B) He or she has made a strong showing of the likelihood of success on the merits of the judicial action.

(C) Such relief is consistent with the public interest; and

(D) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the candidate has made a strong showing of the likelihood of success on the merits under paragraph (c)(2)(iii)(B) of this section, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's final repayment determination under 11 CFR 9007.2(c)(4) and shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

§ 9007.6 Stale-dated committee checks.

If the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

2. By revising Part 9012 to read as follows:

PART 9012—UNAUTHORIZED EXPENDITURES AND CONTRIBUTIONS

Sec.

9012.1 Excessive expenses.
9012.2 Unauthorized acceptance of contributions.
9012.3 Unlawful use of payments received from the fund.
9012.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the Commission; refusal to furnish books and records.
9012.5 Kickbacks and illegal payments.

Authority: 26 U.S.C. 9012.

§ 9012.1 Excessive expenses.

(a) It shall be unlawful for an eligible candidate of a political party for President and Vice President in a Presidential election or the candidate's authorized committee(s) knowingly and willfully to incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under 11 CFR Part 9004 with respect to such election.

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to incur expenses with respect to a presidential nominating convention in excess of the expenditure limitation applicable with respect to such committee under 11 CFR Part 9008, unless the incurring of such expenses is authorized by the Commission under 11 CFR 9008.7(a)(3).

§ 9012.2 Unauthorized acceptance of contributions.

(a) It shall be unlawful for an eligible candidate of a major party in a Presidential election or any of his or her authorized committees knowingly and willfully to accept any contribution to defray qualified campaign expenses, except to the extent necessary to make up any deficiency in payments received from the Fund due to the application of 11 CFR 9005.2(b), or to defray expenses which would be qualified campaign expenses but for 11 CFR 9002.11(a)(3).

(b) It shall be unlawful for an eligible candidate of a political party (other than a major party) in a Presidential election or any of his or her authorized committees knowingly and willfully to accept and expend or retain contributions to defray qualified campaign expenses in an amount which exceeds the qualified campaign expenses incurred in that election by that eligible candidate or his or her authorized committee(s).

§ 9012.3 Unlawful use of payments received from the fund.

(a) It shall be unlawful for any person who receives any payment under 11 CFR Part 9005, or to whom any portion of any payment so received is transferred, knowingly and willfully to use, or authorize the use of, such payment or any portion thereof for any purpose other than—

(1) To defray the qualified campaign expenses with respect to which such payment was made; or

(2) To repay loans the proceeds of which were used, or otherwise to restore funds (other than contributions to defray qualified campaign expenses which were received and expended) which were used, to defray such qualified campaign expenses.

(b) It shall be unlawful for the national committee of a major or minor party which receives any payment under 11 CFR Part 9008 to use, or authorize the use of, such payment for any purpose other than a purpose authorized by 11 CFR 9008.6.

§ 9012.4 Unlawful misrepresentations and falsification of statements, records or other evidence to the commission; refusal to furnish books and records.

It shall be unlawful for any person knowingly and willfully—

(a) To furnish any false, fictitious, or fraudulent evidence, books or information to the Commission under 11 CFR Parts 9001–9008, or to include in any evidence, books or information so furnished any misrepresentation of a material fact, or to falsify or conceal any evidence, books or information relevant to a certification by the Commission or any examination and audit by the Commission under 11 CFR Parts 9001 *et seq.*; or

(b) To fail to furnish to the Commission any records, books or information requested by the Commission for purposes of 11 CFR Parts 9001 *et seq.*

§ 9012.5 Kickbacks and illegal payments.

(a) It shall be unlawful for any person knowingly and willfully to give or accept any kickback or any illegal payment in connection with any qualified campaign expenses of any eligible candidate or his or her authorized committee(s).

(b) It shall be unlawful for the national committee of a major or minor party knowingly and willfully to give or accept any kickback or any illegal payment in connection with any expense incurred by such committee with respect to a Presidential nominating convention.

11 CFR is amended by revising Subchapter F to read as follows:

SUBCHAPTER F—PRESIDENTIAL ELECTION CAMPAIGN FUND: PRESIDENTIAL PRIMARY MATCHING FUND

Part
9031 Scope.
9032 Definitions.
9033 Eligibility for payment.
9034 Entitlements.
9035 Expenditure limitations.
9036 Review of submission and certification of payments by commission.
9037 Payments.
9038 Examinations and audits.
9039 Review and investigation authority.

SUBCHAPTER F—PRESIDENTIAL ELECTION CAMPAIGN FUND: PRESIDENTIAL PRIMARY MATCHING FUND

PART 9031—SCOPE

Sec.
9031.1 Scope.

Authority: 26 U.S.C. 9031 and 9039(b).

§ 9031.1 Scope.

This subchapter governs entitlement to and use of funds certified from the Presidential Primary Matching Payment Account under 26 U.S.C. 9031 *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431–455 of Title 2, United States Code, and regulations prescribed thereunder (11 CFR Parts 100 through 115). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431–455 of Title 2, United States Code, or regulations prescribed thereunder (11 CFR Parts 100 through 115).

PART 9032—DEFINITIONS

Sec.
9032.1 Authorized committee.
9032.2 Candidate.
9032.3 Commission.
9032.4 Contribution.
9032.5 Matching payment account.
9032.6 Matching payment period.
9032.7 Primary election.
9032.8 Political committee.
9032.9 Qualified campaign expense.
9032.10 Secretary.
9032.11 State.

Authority: 26 U.S.C. 9032 and 9039(b).

§ 9032.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, "authorized committee" means with respect to candidates (as defined at 11 CFR 9032.2) seeking the nomination of a political party for the office of President, any political committee that is authorized by a candidate to solicit or receive contributions or to incur expenditures on behalf of the candidate. The term "authorized committee" includes the candidate's principal campaign committee designated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate in writing pursuant to 11 CFR 100.3(a)(3).

(b) Any withdrawal of an authorization shall be in writing and shall be addressed and filed in the same manner provided for at 11 CFR 102.12 or 102.13.

(c) For the purposes of this subchapter, references to the "candidate" and his or her responsibilities under this subchapter shall also be deemed to refer to the candidate's authorized committee(s).

(d) An expenditure by an authorized committee on behalf of the candidate who authorized the committee cannot qualify as an independent expenditure.

(e) A delegate committee, as defined in 11 CFR 100.5(e)(5), is not an authorized committee of a candidate unless it also meets the requirements of 11 CFR 9032.1(a). Expenditures by delegate committees on behalf of a candidate may count against that candidate's expenditure limitation under the circumstances set forth in 11 CFR 110.14.

§ 9032.2 Candidate.

"Candidate" means an individual who seeks nomination for election to the office of President of the United States. An individual is considered to seek nomination for election if he or she—

(a) Takes the action necessary under the law of a State to qualify for a caucus, convention, primary election or runoff election;

(b) Receives contributions or incurs qualified campaign expenses;

(c) Gives consent to any other person to receive contributions or to incur qualified campaign expenses on his or her behalf; or

(d) Receives written notification from the Commission that any other person is receiving contributions or making expenditures on the individual's behalf and fails to disavow that activity by letter to the Commission within 30 calendar days after receipt of notification.

§ 9032.3 Commission.

"Commission" means the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

§ 9032.4 Contribution.

For purposes of this subchapter, "contribution" has the same meaning given the term under 2 U.S.C. 431(8)(A) and 11 CFR 100.7, except as provided at 11 CFR 9034.4(b)(4).

§ 9032.5 Matching payment account.

"Matching payment account" means the Presidential Primary Matching Payment Account established by the Secretary of the Treasury under 26 U.S.C. 9037(a).

§ 9032.6 Matching payment period.

"Matching payment period" means the period beginning January 1 of the calendar year in which a Presidential general election is held and may not exceed one of the following dates:

(a) For a candidate seeking the nomination of a party which nominates its Presidential candidate at a national convention, the date on which the party nominates its candidate.

(b) For a candidate seeking the nomination of a party which does not make its nomination at a national convention, the earlier of—

(1) The date the party nominates its Presidential candidate, or

(2) The last day of the last national convention held by a major party in the calendar year.

§ 9032.7 Primary election.

(a) "Primary election" means an election held by a State or a political party, including a runoff election, or a nominating convention or a caucus—

(1) For the selection of delegates to a national nominating convention of a political party;

(2) For the expression of a preference for the nomination of Presidential candidates;

(3) For the purposes stated in both paragraphs (1) and (2) of this section; or

(4) To nominate a Presidential candidate.

(b) If separate primary elections are held in a State by the State and a political party, the primary election for

the purposes of this subchapter will be the election held by the political party.

§ 9032.8 Political committee.

"Political committee" means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or incurs qualified campaign expenses for the purpose of influencing, or attempting to influence, the nomination of any individual for election to the office of President of the United States.

§ 9032.9 Qualified campaign expense.

(a) "Qualified campaign expense" means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred by or on behalf of a candidate or his or her authorized committees from the date the individual becomes a candidate through the last day of the candidate's eligibility as determined under 11 CFR 9033.5;

(2) Made in connection with his or her campaign for nomination; and

(3) Neither the incurrence nor payment of which constitutes a violation of any law of the United States or of any law of any State in which the expense is incurred or paid, or of any regulation prescribed under such law of the United States or of any State, except that any State law which has been preempted by the Federal Election Campaign Act of 1971, as amended, will not be considered a State law for purposes of this subchapter.

(b) An expenditure is made on behalf of a candidate, including a Vice Presidential candidate, if it is made by—

(1) An authorized committee or any other agent of the candidate for purposes of making an expenditure;

(2) Any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate to make the expenditure; or

(3) A committee which has been requested by the candidate, by an authorized committee of the candidate, or by an agent of the candidate to make the expenditure, even though such committee is not authorized in writing.

(c) Expenditures incurred either before the date an individual becomes a candidate or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a). Expenditures described under 11 CFR 9034.4(b) will not be considered qualified campaign expenses.

§ 9032.10 Secretary.

For purposes of this subchapter, "Secretary" means the Secretary of the Treasury.

§ 9032.11 State.

"State" means each State of the United States, Puerto Rico, the Canal Zone, the Virgin Islands, the District of Columbia, and Guam.

PART 9033—ELIGIBILITY FOR PAYMENTS

Sec.

9033.1 Candidate and committee agreements.
9033.2 Candidate and committee certifications; threshold submission.
9033.3 Expenditure limitation certification.
9033.4 Matching payment eligibility threshold requirements.
9033.5 Determination of ineligibility date.
9033.6 Determination of inactive candidacy.
9033.7 Determination of active candidacy.
9033.8 Reestablishment of eligibility.
9033.9 Failure to comply with disclosure requirements or expenditure limitations.
9033.10 Procedures for initial and final determinations.
9033.11 Documentation of disbursements.

Authority: 26 U.S.C. 9033 and 9039(b).

§ 9033.1 Candidate and committee agreements.

(a) *General.* (1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall agree in a letter signed by the candidate to the Commission that the candidate and the candidate's authorized committee(s) will comply with the conditions set forth in 11 CFR 9033.1(b). The candidate may submit the letter containing the agreements required by this section at any time after January 1 of the year immediately preceding the Presidential election year.

(2) The Commission will not consider a candidate's threshold submission until the candidate has submitted a candidate agreement that meets the requirements of this section.

(b) *Conditions.* The candidate shall agree that:

(1) The candidate has the burden of proving that disbursements by the candidate or any authorized committee(s) or agents thereof are qualified campaign expenses as defined at 11 CFR 9032.9.

(2) The candidate and the candidate's authorized committee(s) will comply with the documentation requirements set forth in 11 CFR 9033.11.

(3) The candidate and the candidate's authorized committee(s) will provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidate or authorized committee(s) of the candidate and the campaign if requested by the Commission.

(4) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation for matching fund submissions, any books, records (including bank records for all accounts) and supporting documentation and other information that the Commission may request.

(5) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section including those required to be maintained under 11 CFR 9033.11, and other information that the Commission may request. The records provided at the time of the Commission's audit shall also include production of magnetic computer tapes containing all information required by law to be maintained regarding the committee's receipts and disbursements, if the committee maintains its records on computer. Upon request, documentation explaining the computer systems software capabilities shall also be provided.

(6) The candidate and the candidate's authorized committee(s) will permit an audit and examination pursuant to 11 CFR Part 9038 of all receipts and disbursements including those made by the candidate, all authorized committee(s) and any agent or person authorized to make expenditures on behalf of the candidate or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR Parts 9038 and 9039.

(7) The candidate and the candidate's authorized committee(s) will submit the name and mailing address of the person who is entitled to receive matching fund payments on behalf of the candidate and the name and address of the national or State bank designated by the candidate as a campaign depository as required by 11 CFR Part 103 and 11 CFR 9037.3. Changes in the information required by this paragraph shall not be effective until submitted to the Commission in a letter signed by the candidate or the Committee treasurer.

(8) The candidate and the candidate's authorized committee(s) will prepare

matching fund submissions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(9) The candidate and the candidate's authorized committee(s) will comply with the applicable requirements of 2 U.S.C. 431 *et seq.*; 26 U.S.C. 9031 *et seq.* and the Commission's regulations at 11 CFR Parts 100–115, and 9031–9039.

(10) The candidate and the candidate's authorized committee(s) will pay any civil penalties included in a conciliation agreement imposed under 2 U.S.C. 437g against the candidate, any authorized committee of the candidate or any agent thereof.

§ 9033.2 Candidate and committee certifications; threshold submission.

(a) *General.* (1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall make the certifications set forth in 11 CFR 9033.2(b) to the Commission in a written statement signed by the candidate. The candidate may submit the letter containing the required certifications at any time after January 1 of the year immediately preceding the Presidential election year.

(2) The Commission will not consider a candidate's threshold submission until the candidate has submitted candidate certifications that meet the requirements of this section.

(b) *Certifications.* (1) The candidate shall certify that he or she is seeking nomination by a political party to the Office of President in more than one State. For purposes of this section, in order for a candidate to be deemed to be seeking nomination by a political party to the office of President, the party whose nomination the candidate seeks must have a procedure for holding a primary election, as defined in 11 CFR 9032.7, for nomination to that office. For purposes of this section, the term "political party" means an association, committee or organization which nominates an individual for election to the office of President. The fact that an association, committee or organization qualifies as a political party under this section does not affect the party's status as a national political party for purposes of 2 U.S.C. 441a(a)(1)(B) and 441a(a)(2)(B).

(2) The candidate and the candidate's authorized committee(s) shall certify that they have not incurred and will not incur expenditures in connection with the candidate's campaign for nomination, which expenditures are in excess of the limitations under 11 CFR Part 9035.

(3) The candidate and the candidate's authorized committee(s) shall certify:

(i) That they have received matchable contributions totalling more than $5,000 in each of at least 20 States; and

(ii) That the matchable contributions are from individuals who are residents of the State for which their contributions are submitted.

(iii) A maximum of $250 of each individual's aggregate contributions will be considered as matchable contributions for the purpose of meeting the thresholds of this section.

(iv) For purposes of this section, contributions of an individual who maintains residences in more than one State may only be counted toward the $5,000 threshold for the State from which the earliest contribution was made by that contributor.

(c) *Threshold submission.* To become eligible to receive matching payments, the candidate shall submit documentation of the contributions described in 11 CFR 9033.2(b)(3) to the Commission for review. The submission shall follow the format and requirements of 11 CFR 9036.1.

§ 9033.3 Expenditure limitation certification.

(a) If the Commission makes an initial determination that a candidate or the candidate's authorized committee(s) have knowingly and substantially exceeded the expenditure limitations at 11 CFR Part 9035 prior to that candidate's application for certification, the Commission may make an initial determination that the candidate is ineligible to receive matching funds.

(b) The Commission will notify the candidate of its initial determination, in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate may submit, within 20 calendar days after service of the Commission's notice, written legal or factual materials, in accordance with 11 CFR 9033.10(b), demonstrating that he or she has not knowingly and substantially exceeded the expenditure limitations at 11 CFR Part 9035.

(c) A final determination of the candidate's ineligibility will be made by the Commission in accordance with the procedures outlined in 11 CFR 9033.10(c).

(d) A candidate who receives a final determination of ineligibility under 11 CFR 9033.3(c) shall be ineligible to receive matching fund payments under 11 CFR 9034.1.

§ 9033.4 Matching payment eligibility threshold requirements.

(a) The Commission will examine the submission made under 11 CFR 9033.1 and 9033.2 and either—

(1) Make a determination that the candidate has satisfied the minimum contribution threshold requirements under 11 CFR 9033.2(c); or

(2) Make an initial determination that the candidate has failed to satisfy the matching payment threshold requirements. The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate may, within 30 calendar days after service of the Commission's notice, satisfy the threshold requirements or submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she has satisfied those requirements. A final determination by the Commission that the candidate has failed to satisfy threshold requirements will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

(b) In evaluating the candidate's submission under 11 CFR 9033.1 and 9033.2, the Commission may consider other information in its possession, including but not limited to past actions of the candidate in an earlier publicly-financed campaign, that is relevant to a determination regarding the candidate's eligibility for matching funds.

(c) The Commission will make its examination and determination under this section as soon as practicable. During the Presidential election year, the Commission will generally complete its review and make its determination within 15 business days.

§ 9033.5 Determination of ineligibility date.

The candidate's date of ineligibility shall be whichever date by operation of 11 CFR 9033.5 (a), (b) or (c) occurs first. After the candidate's date of ineligibility, he or she may only receive matching payments to the extent that he or she has met outstanding campaign obligations as defined in 11 CFR 9034.5.

(a) *Inactive candidate.* The ineligibility date shall be the day on which an individual ceases to be a candidate because he or she is not actively conducting campaigns in more than one State in connection with seeking the Presidential nomination. This date shall be the earliest of—

(1) The date the candidate publicly announces that he or she will not be actively conducting campaigns in more than one State; or

(2) The date the candidate notifies the Commission by letter that he or she is not actively conducting campaigns in more than one State; or

(3) The date which the Commission determines under 11 CFR 9033.6 to be

the date that the candidate is not actively seeking election in more than one State.

(b) *Insufficient votes.* The ineligibility date shall be the 30th day following the date of the second consecutive primary election in which such individual receives less than 10 percent of the number of popular votes cast for all candidates of the same party for the same office in that primary election, if the candidate permitted or authorized his or her name to appear on the ballot, unless the candidate certifies to the Commission at least 25 business days prior to the primary that he or she will not be an active candidate in the primary involved.

(1) The Commission may refuse to accept the candidate's certification if it determines under 11 CFR 9033.7 that the candidate is an active candidate in the primary involved.

(2) For purposes of this paragraph, if the candidate is running in two primary elections in different States on the same date, the highest percentage of votes the candidate receives in any one State will govern. Separate primary elections held in more than one State on the same date are not deemed to be consecutive primaries. If two primary elections are held on the same date in the same State (e.g., a primary to select delegates to a national nominating convention and a primary for the expression of preference for the nomination of candidates for election to the office of President), the highest percentage of votes a candidate receives in either election will govern. If two or more primaries are held in the same State on different dates, the earliest primary will govern.

(c) *End of matching payment period.* The ineligibility date shall be the last day of the matching payment period for the candidate as specified in 11 CFR 9032.6.

(d) *Reestablishment of eligibility.* If the Commission has determined that a candidate is ineligible under 11 CFR 9033.5 (a) or (b), the candidate may reestablish eligibility to receive matching funds under 11 CFR 9033.8.

§ 9033.6 Determination of inactive candidacy.

(a) *General.* The Commission may, on the basis of the factors listed in 11 CFR 9033.6(b) below, make a determination that a candidate is no longer actively seeking nomination for election in more than one State. Upon a final determination by the Commission that a candidate is inactive, that candidate will become ineligible as provided in 11 CFR 9033.5.

(b) *Factors considered.* In making its determination of inactive candidacy, the Commission may consider, but is not limited to considering, the following factors:

(1) The frequency and type of public appearances, speeches, and advertisements;

(2) Campaign activity with respect to soliciting contributions or making expenditures for campaign purposes;

(3) Continued employment of campaign personnel or the use of volunteers;

(4) The release of committed delegates;

(5) The candidate urges his or her delegates to support another candidate while not actually releasing committed delegates;

(6) The candidate urges supporters to support another candidate.

(c) *Initial determination.* The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b) and will advise the candidate of the date on which active campaigning in more than one State ceased. The candidate may, within 15 business days after service of the Commission's notice, submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she is actively campaigning in more than one State.

(d) *Final determination.* A final determination of inactive candidacy will be made by the Commission in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.7 Determination of active candidacy.

(a) Where a candidate certifies to the Commission under 11 CFR 9033.5(b) that he or she will not be an active candidate in an upcoming primary, the Commission may, nevertheless, on the basis of factors listed in 11 CFR 9033.6(b), make an initial determination that the candidate is an active candidate in the primary involved.

(b) The Commission will notify the candidate of its initial determination within 10 business days of receiving the candidate's certification under 11 CFR 9033.5(b) or, if the timing of the activity does not permit notice during the 10 day period, as soon as practicable following campaign activity by the candidate in the primary state. The Commission's initial determination will be made in accordance with the procedures outlined in 11 CFR 9033.10(b). Within 10 business days after service of the Commission's notice the candidate may submit, in accordance with 11 CFR 9033.10(b), written legal or factual materials to demonstrate that he or she is not an active candidate in the primary involved.

(c) A final determination by the Commission that the candidate is active will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.8 Reestablishment of eligibility.

(a) *Candidates found to be inactive.* A candidate who has become ineligible under 11 CFR 9033.5(a) on the basis that he or she is not actively campaigning in more than one State may reestablish eligibility for matching payments by submitting to the Commission evidence of active campaigning in more than one State. In determining whether the candidate has reestablished eligibility, the Commission will consider, but is not limited to considering, the factors listed in 11 CFR 9033.6(b). The day the Commission determines to be the day the candidate becomes active again will be the date on which eligibility is reestablished.

(b) *Candidates receiving insufficient votes.* A candidate determined to be ineligible under 11 CFR 9033.5(b) by failing to obtain the required percentage of votes in two consecutive primaries may have his or her eligibility reestablished if the candidate receives at least 20 percent of the total number of votes cast for candidates of the same party for the same office in a primary election held subsequent to the date of the election which rendered the candidate ineligible.

(c) The Commission will make its determination under 11 CFR 9033.8 (a) or (b) without requiring the individual to reestablish eligibility under 11 CFR 9033.1 and 2. A candidate whose eligibility is reestablished under this section may submit, for matching payment, contributions received during ineligibility. Any expenses incurred during the period of ineligibility that would have been considered qualified campaign expenses if the candidate had been eligible during that time may be defrayed with matching payments.

§ 9033.9 Failure to comply with disclosure requirements or expenditure limitations.

(a) If the Commission receives information indicating that a candidate or his or her authorized committee(s) has knowingly and substantially failed to comply with the disclosure requirements of 2 U.S.C. 434 and 11 CFR Part 104, or that a candidate has knowingly and substantially exceeded the expenditure limitations at 11 CFR Part 9035, the Commission may make an initial determination to suspend payments to that candidate.

(b) The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate will be given an opportunity, within 20 calendar days after service of the Commission's notice, to comply with the above cited provisions or to submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she is not in violation of those provisions.

(c) Suspension of payments to a candidate will occur upon a final determination by the Commission to suspend payments. Such final determination will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

(d)(1) A candidate whose payments have been suspended for failure to comply with reporting requirements may become entitled to receive payments if he or she subsequently files the required reports and pays or agrees to pay any civil or criminal penalties resulting from failure to comply.

(2) A candidate whose payments are suspended for exceeding the expenditure limitations shall not be entitled to receive further matching payments under 11 CFR 9034.1.

§ 9033.10 Procedures for initial and final determinations.

(a) *General.* The Commission will follow the procedures set forth in this section when making an initial or final determination based on any of the following reasons.

(1) The candidate has knowingly and substantially exceeded the expenditure limitations of 11 CFR Part 9035 prior to the candidate's application for certification, as provided in 11 CFR 9033.3;

(2) The candidate has failed to satisfy the matching payment threshold requirements, as provided in 11 CFR 9033.4;

(3) The candidate is no longer actively seeking nomination in more than one state, as provided in 11 CFR 9033.6;

(4) The candidate is an active candidate in an upcoming primary despite the candidate's assertion to the contrary, as provided in 11 CFR 9033.7;

(5) The Commission receives information indicating that the candidate has knowingly and substantially failed to comply with the disclosure requirements or exceeded the expenditure limits, as provided in 11 CFR 9033.9; or

(6) The Commission receives information indicating that substantial assets of the candidate's authorized committee have been undervalued or not included in the candidate's statement of net outstanding campaign obligations or that the amount of outstanding campaign obligations has been otherwise overstated in relation to campaign assets, as provided in 11 CFR 9034.5(g).

(b) *Initial determination.* If the Commission makes an initial determination that a candidate may not receive matching funds for one or more of the reasons indicated in 11 CFR 9033.10(a), the Commission will notify the candidate of its initial determination. The notification will give the legal and factual reasons for the determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given an opportunity to comply with the requirements at issue or to submit, within the time provided by the relevant section as referred to in 11 CFR 9033.10(a), written legal or factual materials to demonstrate that the candidate has satisfied those requirements. Such materials may be submitted by counsel if the candidate so desires.

(c) *Final determination.* The Commission will consider any written legal or factual materials timely submitted by the candidate before making its final determination. A final determination that the candidate has failed to satisfy the requirements at issue will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Effect on other determinations.* If the Commission makes an initial determination under this section, but decides to take no further action at that time, the Commission may use the legal and factual bases on which the initial determination was based in any future repayment determination under 11 CFR Part 9038 or 9039. A determination by the Commission under this section may be independent of any Commission decision to institute an enforcement proceeding under 2 U.S.C. 437g.

(e) *Petitions for rehearing.* Following a final determination under this section, the candidate may file a petition for rehearing in accordance with 11 CFR 9038.5(a).

§ 9033.11 Documentation of disbursements.

(a) *Burden of proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or committee(s) are qualified campaign expenses as defined in 11 CFR 9032.9. The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in 11 CFR 9033.11(b).

(b) *Documentation required.* (1) For disbursements in excess of $200 to a payee, the candidate shall present either:

(i) A receipted bill from the payee that states the purpose of the disbursement, or

(ii) If such a receipt is not available, a cancelled check negotiated by the payee, and

(A) One of the following documents generated by the payee: A bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in 11 CFR 9033.11(b)(1)(ii)(A) are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) If neither a receipted bill as specified in 11 CFR 9033.11(b)(1)(i) nor the supporting documentation specified in 11 CFR 9033.11(b)(1)(ii) is available, a cancelled check negotiated by the payee that states the purpose of the disbursement.

(iv) Where the supporting documentation required in 11 CFR 9033.11(b)(1) (i), (ii) or (iii) is not available, the candidate or committee may present a cancelled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office;

(B) Evidence that the disbursement is covered by a preestablished written campaign committee policy, such as a per diem policy.

(2) For all other disbursements the candidate shall present:

(i) A record disclosing the identification of the payee, the amount,

date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A cancelled check negotiated by the payee that states the identification of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section,

(i) "Payee" means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives $500 or less advanced for travel and/or subsistence and if he or she is the recipient of the goods or services purchased.

(ii) "Purpose" means the identification of the payee, the date and amount of the disbursement, and a description of the goods or services purchased.

(c) *Retention of records.* The candidate shall retain records, with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, matching fund submissions, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

(d) *List of capital and other assets*—(1) *Capital assets.* The candidate or committee shall maintain a list of all capital assets whose purchase price exceeded $2,000 when acquired by the campaign. The list shall include a brief description of each capital asset, the purchase price, the date it was acquired, the method of disposition and the amount received in disposition. For purposes of this section, "capital asset" shall be defined in accordance with 11 CFR 9034.5(c)(1).

(2) *Other assets.* The candidate or committee shall maintain a list of other assets acquired for use in fundraising or as collateral for campaign loans, if the aggregate value of such assets exceeds $5,000. The list shall include a brief description of each such asset, the fair market value of each asset, the method of disposition and the amount received in disposition. The fair market value of other assets shall be determined in accordance with 11 CFR 9034.5(c)(2).

PART 9034—ENTITLEMENTS

Sec.
9034.1 Candidate entitlements.
9034.2 Matchable contributions.
9034.3 Non-matchable contributions.
9034.4 Use of contributions and matching payments.
9034.5 Net outstanding campaign obligations.
9034.6 Reimbursements for transportation and services made available to media personnel.
9034.7 Allocation of travel expenditures.
9034.8 Joint fundraising.
9034.9 Sale of assets acquired for fundraising purposes.

Authority: 26 U.S.C. 9034 and 9039(b).

§ 9034.1 Candidate Entitlements.

(a) A candidate who has been notified by the Commission under 11 CFR 9036.1 that he or she has successfully satisfied eligibility and certification requirements is entitled to receive payments in an amount equal to the amount of each matchable campaign contribution received by the candidate, except that a candidate who has become ineligible under 11 CFR 9033.5 may not receive further matching payments regardless of the date of deposit of the underlying contributions if he or she has no net outstanding campaign obligations as defined in 11 CFR 9034.5.

(b) If on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR 9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited on or before December 31 of the Presidential election year provided that on the date of payment there are remaining net outstanding campaign obligations, i.e., the sum of the contributions received on or after the date of ineligibility plus matching funds received on or after the date of ineligibility is less than the candidate's net outstanding campaign obligations. This entitlement will be equal to the lesser of:

(1) The amount of contributions submitted for matching; or

(2) The remaining net outstanding campaign obligations.

(c) A candidate whose eligibility has been reestablished under 11 CFR 9033.8 or who after suspension of payments has met the conditions set forth at 11 CFR 9033.9(d) is entitled to receive payments for matchable contributions for which payments were not received during the ineligibility or suspension period.

(d) The total amount of payments to a candidate under this section shall not exceed 50% of the total expenditure limitation applicable under 11 CFR Part 9035.

§ 9034.2 Matchable contributions.

(a) Contributions meeting the following requirements will be considered matchable campaign contributions.

(1) The contribution shall be a gift of money made: By an individual; by a written instrument and for the purpose of influencing the result of a primary election.

(2) Only a maximum of $250 of the aggregate amount contributed by an individual may be matched.

(3) Before a contribution may be submitted for matching, it must actually be received by the candidate or any of the candidate's authorized committees and deposited in a designated campaign depository maintained by the candidate's authorized committee.

(4) The written instrument used in making the contribution must be dated, physically received and deposited by the candidate or authorized committee on or after January 1 of the year immediately preceding the calendar year of the Presidential election, but no later than December 31 following the matching payment period as defined under 11 CFR 9032.6. Donations received by an individual who is testing the waters pursuant to 11 CFR 100.7(b)(1) and 100.8(b)(1) may be matched when the individual becomes a candidate if such donations meet the requirements of this section.

(b) For purposes of this section, the term "written instrument" means a check written on a personal, escrow or trust account representing or containing the contributor's personal funds; a money order; or any similar negotiable instrument.

(c) The written instrument shall be: Payable on demand; and to the order of, or specifically endorsed without qualification to, the Presidential candidate, or his or her authorized committee. The written instrument shall contain: The full name and signature of the contributor(s); the amount and date of the contribution; and the mailing address of the contributor(s).

(1) In cases of a check drawn on a joint checking account, the contributor is considered to be the owner whose signature appears on the check.

(i) To be attributed equally to other joint tenants of the account, the check or other accompanying written document shall contain the signature(s) of the joint tenant(s). If a contribution on a joint account is to be attributed other than equally to the joint tenants, the check or other written documentation shall also indicate the amount to be attributed to each joint tenant.

(ii) In the case of a check for a contribution attributed to more than one person, where it is not apparent from the face of the check that each contributor is a joint tenant of the account, a written statement shall accompany the check

stating that the contribution was made from each individual's personal funds in the amount so attributed and shall be signed by each contributor.

(2) Contributions in the form of checks drawn on an escrow or trust account are matchable contributions, provided that:

(i) The contributor has equitable ownership of the account; and

(ii) The check is accompanied by a statement, signed by each contributor to whom all or a portion of the contribution is being attributed, together with the check number, amount and date of contribution. This statement shall specify that the contributor has equitable ownership of the account and the account represents the personal funds of the contributor.

(3) Contributions in the form of checks written on partnership accounts or accounts of unincorporated associations or businesses are matchable contributions, so long as:

(i) The check is accompanied by a statement, signed by each contributor to whom all or a portion of the contribution is being attributed, together with the check number, amount and date of contribution. This statement shall specify that the contribution is made with the contributor's personal funds and that the account on which the contribution is drawn is not maintained or controlled by an incorporated entity; and

(ii) The aggregate amount of the contributions drawn on a partnership or unincorporated association or business does not exceed $1,000 to any one Presidential candidate seeking nomination.

(4) Contributions in the form of money orders, cashier's checks, or other similar negotiable instruments are matchable contributions, provided that:

(i) At the time it is initially submitted for matching, such instrument is signed by each contributor and is accompanied by a statement which specifies that the contribution was made in the form of a money order, cashier's check, traveller's check, or other similar negotiable instrument, with the contributor's personal funds;

(ii) Such statement identifies the date and amount of the contribution made by money order, cashier's check, traveller's check, or other similar negotiable instrument, the check or serial number, and the name of the issuer of the negotiable instrument; and

(iii) Such statement is signed by each contributor.

(5) Contributions in the form of the purchase price paid for the admission to any activity that primarily confers private benefits in the form of entertainment to the contributor (i.e., concerts, motion pictures) are matchable. The promotional material and tickets for the event shall clearly indicate that the ticket purchase price represents a contribution to the Presidential candidate.

(6) Contributions in the form of a purchase price paid for admission to an activity that is essentially political are matchable. An "essentially political" activity is one the principal purpose of which is political speech or discussion, such as the traditional political dinner or reception.

(7) Contributions received from a joint fundraising activity conducted in accordance with 11 CFR 9034.8 are matchable, provided that such contributions are accompanied by a copy of the joint fundraising agreement when they are submitted for matching.

§ 9034.3 Non-matchable contributions.

A contribution to a candidate other than one which meets the requirements of 11 CFR 9034.2 is not matchable. Contributions which are not matchable include, for example:

(a) In-kind contributions of real or personal property;

(b) A subscription, loan, advance, or deposit of money, or anything of value;

(c) A contract, promise, or agreement, whether or not legally enforceable, such as a pledge card or credit card transaction, to make a contribution for any such purposes (but a gift of money by written instrument is not rendered unmatchable solely because the contribution was preceded by a promise or pledge);

(d) Funds from a corporation, labor organization, government contractor, political committee as defined in 11 CFR 100.5 or any group of persons other than those under 11 CFR 9034.2(c)(3);

(e) Contributions which are made or accepted in violation of 2 U.S.C. 441a, 441b, 441c, 441e, 441f, or 441g;

(f) Contributions in the form of a check drawn on the account of a committee, corporation, union or government contractor even though the funds represent personal funds earmarked by a contributing individual to a Presidential candidate;

(g) Contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value, such as a watch;

(h) Contributions in the form of the purchase price paid for or otherwise induced by a chance to participate in a raffle, lottery, or a similar drawing for valuable prizes;

(i) Contributions which are made by persons without the necessary donative intent to make a gift or made for any purpose other than to influence the result of a primary election; and

(j) Contributions of currency of the United States or currency of any foreign country.

§ 9034.4 Use of contributions and matching payments.

(a) *Qualified campaign expenses*—(1) *General.* Except as provided in 11 CFR 9034.4(b)(3), all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses), which were used to defray qualified campaign expenses.

(2) *Testing the waters.* Even though incurred prior to the date an individual becomes a candidate, payments made for the purpose of determining whether an individual should become a candidate, such as those incurred in conducting a poll, shall be considered qualified campaign expenses if the individual subsequently becomes a candidate and shall count against that candidate's limits under 2 U.S.C. 441a(b). See 11 CFR 100.8(b)(1).

(3) *Winding down costs.* (i) Costs associated with the termination of political activity, such as the costs of complying with the post election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies, shall be considered qualified campaign expenses. A candidate may receive and use matching funds for these purposes either after he or she has notified the Commission in writing of his or her withdrawal from the campaign for nomination or after the date of the party's nominating convention, if he or she has not withdrawn before the convention.

(ii) If the candidate has become ineligible due to the operation of 11 CFR 9033.5(b), he or she may only receive matching funds to defray costs incurred before the candidate's date of ineligibility, for goods and services to be received before the date of ineligibility and for which written arrangement or commitment was made on or before the candidate's date of ineligibility, until the candidate is eligible to receive winding down costs under paragraph (a)(3)(i) of this section.

(4) *Taxes.* Federal income taxes paid by the committee on non-exempt function income, such as interest,

dividends and sale of property, shall be considered qualified campaign expenses. These expenses shall not, however, count against the state or overall expenditure limits of 11 CFR 9035.1(a).

(b) *Non-qualified campaign expenses*—(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR Part 9035 shall not be considered a qualified campaign expense. The Commission will calculate the amount of expenditures attributable to the limitations in accordance with 11 CFR 9035.1(a)(2).

(3) *Post-ineligibility expenditures.* Any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses except to the extent permitted under 11 CFR 9034.4(a)(3). Any expenses incurred before the candidate's date of ineligibility for goods and services to be received after the candidate's date of ineligibility are not qualified campaign expenses.

(4) *Civil or criminal penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from contributions or matching payments. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR Part 104.

(5) *Payments to candidate.* Payments made to the candidate by his or her committee, other than to reimburse funds advanced by the candidate for qualified campaign expenses, are not qualified campaign expenses.

(c) *Repayments.* Repayments may be made only from the following sources: Personal funds of the candidate (without regard to the limitations of 11 CFR 9035.2(a)), contributions and matching payments in the committee's account(s), and any additional funds raised subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971, as amended.

(d) *Transfers to other campaigns.* If a candidate has received matching funds and is simultaneously seeking nomination or election to another Federal office, no transfer of funds between his or her principal campaign committees or authorized committees may be made. See 2 U.S.C. 441a(a)(5)(C) and 11 CFR 110.3(a)(2)(v).

§ 9034.5 Net outstanding campaign obligations.

(a) Within 15 calendar days after the candidate's date of ineligibility, as determined under 11 CFR 9033.5, the candidate shall submit a statement of net outstanding campaign obligations. The candidate's net outstanding campaign obligations under this section equal the difference between paragraphs (a) (1) and (2) of this section:

(1) The total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility as determined under 11 CFR 9033.5, plus estimated necessary winding down costs as defined under 11 CFR 9034.4(a)(3), less

(2) The total of:

(i) Cash on hand as of the close of business on the last day of eligibility (including all contributions dated on or before that date whether or not submitted for matching; currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveller's checks; certificates of deposit; treasury bills; and any other committee investments valued at fair market value);

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the campaign in the form of credits, refunds of deposits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(b) The amount submitted as the total of outstanding campaign obligations under paragraph (a)(1) of this section shall not include any accounts payable for nonqualified campaign expenses nor any amounts determined or anticipated to be required as a repayment under 11 CFR Part 9038 or any amounts paid to secure a surety bond under 11 CFR 9038.5(c).

(c)(1) *Capital assets.* For purposes of this section, the term "capital asset" means any property used in the operation of the campaign whose purchase price exceeded $2000 when acquired by the campaign. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under 11 CFR 9034.5(c)(2). A list of all capital assets shall be maintained by the Committee in accordance with 11 CFR 9033.11(d). The fair market value of capital assets may be considered to be the total original cost of such items when acquired less 40%, to account for depreciation, except that items acquired after the date of ineligibility must be valued at their fair market value on the date acquired. If the candidate wishes to claim a higher depreciation percentage for an item, he or she must list that capital asset on the statement separately and demonstrate, through documentation, the fair market value of each such asset.

(2) *Other assets.* The term "other assets" means any property acquired by the campaign for use in raising funds or as collateral for campaign loans. "Other assets" must be included on the candidate's statement of net outstanding campaign obligations if the aggregate value of such assets exceeds $5,000. The value of "other assets" shall be determined by the fair market value of each item on the candidate's date of ineligibility or on the date the item is acquired if acquired after the date of ineligibility. A list of other assets shall be maintained by the committee in accordance with 11 CFR 9033.11(d)(2).

(d) *Collectibility of accounts receivable.* If the committee determines that an account receivable of $500 or more, including any credit, refund, return or rebate, is not collectible in whole or in part, the committee shall demonstrate through documentation that the determination was commercially reasonable. The documentation shall include records showing the original amount of the account receivable, copies of correspondence and memoranda of communications with the debtor showing attempts to collect the amount due, and an explanation of how the lesser amount or full writeoff was determined.

(e) Contributions received from joint fundraising activities conducted under 11 CFR 9034.8 may be used to pay a candidate's outstanding campaign obligations.

(1) Such contributions shall be deemed monies available to pay outstanding campaign obligations as of the date these funds are received by the fundraising representative committee and shall be included in the candidate's statement of net outstanding campaign obligations.

(2) The amount of money deemed available to pay a candidate's net outstanding campaign obligations will equal either—

(i) An amount calculated on the basis of the predetermined allocation formula, as adjusted for 2 U.S.C. 441a limitations; or

(ii) If a candidate receives an amount greater than that calculated under 11 CFR 9034.5(e)(2)(i), the amount actually received.

(f) The candidate shall submit a revised statement of net outstanding campaign obligations with each submission for matching funds payments filed after the candidate's date of ineligibility. The revised statement shall reflect the financial status of the campaign as of the close of business on the last business day preceding the date of submission for matching funds. The revised statement shall also contain a brief explanation of each change in the committee's assets and obligations from the previous statement.

(g)(1) If the Commission receives information indicating that substantial assets of the candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding campaign obligations has been otherwise overstated in relation to campaign assets, the Commission may decide to temporarily suspend further matching payments pending a final determination whether the candidate is entitled to receive all or a portion of the matching funds requested.

(2) In making a determination under 11 CFR 9034.5(g)(1), the Commission will follow the procedures for initial and final determinations under 11 CFR 9033.10 (b) and (c). The Commission will notify the candidate of its initial determination within 15 business days after receipt of the candidate's statement of net outstanding campaign obligations. Within 15 business days after service of the Commission's notice, the candidate may submit written legal or factual materials to demonstrate that he or she has net outstanding campaign obligations that entitle the campaign to further matching payments.

(3) If the candidate demonstrates that the amount of outstanding campaign obligations still exceeds campaign assets, he or she may continue to receive matching payments.

(4) Following a final determination under this section, the candidate may file a petition for rehearing in accordance with 11 CFR 9038.5(a).

§ 9034.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, and typewriters) made available to media personnel, such expenditures will be considered qualified campaign expenses subject to the overall expenditure limitations of 11 CFR 9035.1(a).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each individual shall not exceed either: The individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

(d)(1) The committee may deduct from the amount of expenditures subject to the overall expenditure limitation of 11 CFR 9035.1(a) the amount of reimbursements received for the actual cost of transportation and services provided under paragraph (a) of this section. The committee may also deduct from the overall expenditure limitation an additional amount of reimbursements received equal to 3% of the actual cost of transportation and services provided under this section as the administrative cost to the committee of providing such services to media personnel and seeking reimbursement for them. If the committee has incurred higher administrative costs in providing these services, the committee must document the total cost incurred for such services in order to deduct a higher amount of reimbursements received from the overall expenditure limitation. Amounts paid by the committee for transportation, services and administrative costs for which no reimbursement is received will be considered qualified campaign expenses subject to the overall expenditure limitation in accordance with paragraph (a) of this section.

(2) For the purposes of this section, "administrative costs" shall include all costs incurred by the committee for making travel arrangements for media personnel and for seeking reimbursements, whether performed by committee staff or independent contractors.

§ 9034.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR Part 106, expenditures for travel relating to the campaign of a candidate seeking nomination for election to the office of President by any individual, including a candidate, shall, pursuant to the provisions of 11 CFR 9034.7(b), be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accomodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family

members conduct campaign-related activities, their travel expenses will be treated as qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, traveling for campaign purposes will be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

§ 9034.8 Joint Fundraising.

(a) *General*—(1) *Permissible participants.* Presidential primary candidates who receive matching funds under this subchapter may engage in joint fundraising with other candidates, political committees or unregistered committees or organizations.

(2) *Use of funds.* Contributions received as a result of a candidate's participation in a joint fundraising activity under this section may be—

(i) Submitted for matching purposes in accordance with the requirements of 11 CFR 9034.2 and the Federal Election Commission's Guideline for Presentation in Good Order;

(ii) Used to pay a candidate's net outstanding campaign obligations as provided in 11 CFR 9034.5;

(iii) Used to defray qualified campaign expenses;

(iv) Used to defray exempt legal and accounting costs; or

(v) If in excess of a candidate's net outstanding campaign obligations or expenditure limit, used in any manner consistent with 11 CFR 113.2, including repayment of funds under 11 CFR Part 9038.

(b) *Fundraising representatives*—(1) *Establishment or selection of fundraising representative.* The participants in a joint fundraising effort under this section shall either establish a separate committee or select a participating committee, to act as fundraising representative for all participants. The fundraising representative shall be a reporting political committee and an authorized committee of each candidate.

(2) *Separate fundraising committee as fundraising representative.* A separate fundraising committee established by the participants to act as fundraising representative for all participants shall—

(i) Be established as a reporting political committee under 11 CFR 100.5;

(ii) Collect contributions;

(iii) Pay fundraising costs from gross proceeds and funds advanced by participants; and

(iv) Disburse net proceeds to each participant.

(3) *Participating committee as fundraising representative.* A participant selected to act as fundraising representative for all participants shall—

(i) Be a political committee as defined in 11 CFR 100.5;

(ii) Collect contributions; however, other participants may also collect contributions and then forward them to the fundraising representative as required by 11 CFR 102.8;

(iii) Pay fundraising costs from gross proceeds and funds advanced by participants; and

(iv) Disburse net proceeds to each participant.

(4) *Independent fundraising agent.* The participants or the fundraising representative may hire a commercial fundraising firm or other agent to assist in conducting the joint fundraising activity. In that case, however, the fundraising representative shall still be responsible for ensuring that the recordkeeping, reporting and documentation requirements set forth in this subchapter are met.

(c) *Joint fundraising procedures.* Any joint fundraising activity under this section shall be conducted in accordance with the following requirements:

(1) *Written agreement.* The participants in a joint fundraising activity shall enter into a written agreement, whether or not all participants are political committees under 11 CFR 100.5. The written agreement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The participants shall also use the formula to allocate the expenses incurred for the fundraising activity. The fundraising representative shall retain the written agreement for a period of three years and shall make it available to the Commission on request.

(2) *Funds advanced for fundraising costs.* (i) Except as provided in 11 CFR 9034.8(c)(2)(ii), the amount of funds advanced by each participant for fundraising costs shall be in proportion to the allocation formula agreed upon under 11 CFR 9034.8(c)(1).

(ii) A participant may advance more than its proportionate share of the fundraising costs; however, the amount advanced which is in excess of the participant's proportionate share shall not exceed the amount that participant could legally contribute to the remaining participants. See 11 CFR 102.12(c)(2) and Part 110.

(3) *Fundraising notice.* In addition to any notice required under 11 CFR 110.11, a joint fundraising notice shall be included with every solicitation for contributions.

(i) This notice shall include the following information:

(A) The names of all committees participating in the joint fundraising activity whether or not such committees are political committees under 11 CFR 100.5;

(B) The allocation formula to be used for distributing joint fundraising proceeds;

(C) A statement informing contributors that, notwithstanding the stated allocation formula, they may designate their contributions for a particular participant or participants; and

(D) A statement informing contributors that the allocation formula may change if a contributor makes a contribution which would exceed the amount that contributor may give to any participant.

(ii) If one or more participants engage in the joint fundraising activity solely to satisfy outstanding debts, the notice shall also contain a statement informing contributors that the allocation formula may change if a participant receives sufficient funds to pay its outstanding debts.

(4) *Separate depository account.* (i) The participants or the fundraising representative shall establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds. All contributions deposited into the separate depository account must be permissible under Title 2, United States Code. Each political committee shall amend its Statement of

Organization to reflect the account as an additional depository.

(ii) The fundraising representative shall deposit all joint fundraising proceeds in the separate depository account within ten days of receipt as required by 11 CFR 103.3. The fundraising representative may delay distribution of the fundraising proceeds to the participants until all contributions are received and all expenses are paid.

(iii) For contribution reporting and limitation purposes, the date of receipt of a contribution by a participating political committee is the date that the contribution is received by the fundraising representative. The fundraising representative shall report contributions in the reporting period in which they are received. Participating political committees shall report joint fundraising proceeds in accordance with 11 CFR 9034.8(c)(9) when such funds are received from the fundraising representative.

(5) *Recordkeeping requirements.* (i) The fundraising representative and participating committees shall screen all contributions received to insure that the prohibitions and limitations of 11 CFR Parts 110 and 114 are observed. Participating political committees shall make their contributor records available to the fundraising representative to enable the fundraising representative to carry out its duty to screen contributions.

(ii) The fundraising representative shall collect and retain contributor information with regard to gross proceeds as required under 11 CFR 102.8 and shall also forward such information to participating political committees.

(iii) The fundraising representative shall retain the records required under 11 CFR 9033.11 regarding fundraising disbursements for a period of three years. Commercial fundraising firms or agents shall forward such information to the fundraising representative.

(6) *Contribution limitations.* Except to the extent that the contributor has previously contributed to any of the participants, a contributor may make a contribution to the joint fundraising effort which contribution represents the total amount that the contributor could contribute to all of the participants under the applicable limits of 11 CFR 110.1 and 110.2.

(7) *Allocation of gross proceeds.* (i) The fundraising representative shall allocate proceeds according to the formula stated in the fundraising agreement. Each contribution received shall be allocated among the participants in accordance with the allocation formula, unless the circumstances described in paragraphs (c)(7) (ii), (iii) or (iv) of this section apply. Funds may not be distributed or reallocated so as to maximize the matchability of the contributions.

(ii) If distribution according to the allocation formula extinguishes the debts of one or more participants or if distribution under the formula results in a violation of the contribution limits of 11 CFR 110.1(b), the fundraising representative may reallocate the surplus funds. Candidates seeking to extinguish outstanding debts shall not reallocate in reliance on the receipt of matching funds to pay the remainder of their debts; rather, all funds to which a participant is entitled under the allocation formula shall be deemed funds available to pay the candidate's outstanding campaign obligations as provided in 11 CFR 9034.5(c).

(iii) Reallocation shall be based upon the remaining participants' proportionate shares under the allocation formula. If reallocation results in a violation of a contributor's limit under 11 CFR 110.1, the fundraising representative shall return to the contributor the amount of the contribution that exceeds the limit.

(iv) Earmarked contributions which exceed the contributor's limit to the designated participant under 11 CFR Part 110 may not be reallocated by the fundraising representative without the written permission of the contributor. A written instrument made payable to one of the participants shall be considered an earmarked contribution unless a written statement by the contributor indicates that it is intended for inclusion in the general proceeds of the fundraising activity.

(8) *Allocation of expenses and distribution of net proceeds.* (i) If participating committees are not affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity and are not committees of the same political party:

(A) After gross contributions are allocated among the participants under 11 CFR 9034.8(c)(7), the fundraising representative shall calculate each participant's share of expenses based on the percentage of the total receipts each participant had been allocated. To calculate each participant's net proceeds, the fundraising representative shall subtract the participant's share of expenses from the amount that participant has been allocated from gross proceeds.

(B) A participant may only pay expenses on behalf of another participant subject to the contribution limits of 11 CFR Part 110.

(C) The expenses from a series of fundraising events or activities shall be allocated among the participants on a per-event basis regardless of whether the participants change or remain the same throughout the series.

(ii) If participating committees are affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity or if participants are party committees of the same political party, expenses need not be allocated among those participants. Payment of such expenses by an unregistered committee or organization on behalf of an affiliated political committee may cause the unregistered organization to become a political committee.

(iii) Payment of expenses may be made from gross proceeds by the fundraising representative.

(9) *Reporting of receipts and disbursements*—(i) *Reporting receipts.* (A) The fundraising representative shall report all funds received in the reporting period in which they are received. Each Schedule A filed by the fundraising representative under this section shall clearly indicate that the contributions reported on that schedule represent joint fundraising proceeds.

(B) After distribution of net proceeds, each participating political committee shall report its share of net proceeds received as a transfer-in from the fundraising representative. Each participating political committee shall also file a memo Schedule A itemizing its share of gross receipts as contributions from original contributors to the extent required under 11 CFR 104.3(a).

(ii) *Reporting disbursements.* The fundraising representative shall report all disbursements in the reporting period in which they are made. Each participant shall report in a memo schedule B his or her total allocated share of these disbursements in the same reporting period in which net proceeds are distributed and reported and include the amount on page 4 of Form 3–P, under "Expenditures Subject to Limit."

§ 9034.9 Sale of assets acquired for fundraising purposes.

(a) *General.* A candidate may sell assets donated to the campaign or otherwise acquired for fundraising purposes (See 11 CFR 9034.5(b)(2)), subject to the limitations and prohibitions of Title 2, United States Code and 11 CFR Parts 110 and 114.

(b) *Sale after end of matching payment period.* A candidate whose outstanding debts exceed his or her cash on hand after the end of the matching payment period as determined under 11 CFR 9032.6 may dispose of assets

acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public, provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of Title 2, United States Code and 11 CFR Parts 110 and 114.

PART 9035—EXPENDITURE LIMITATIONS

Sec.
9035.1 Campaign expenditure limitation.
9035.2 Limitation on expenditures from personal or family funds.

Authority: 26 U.S.C. 9035 and 9039(b).

§ 9035.1 Campaign expenditure limitation.

(a)(1) No candidate or his or her authorized committee(s) shall knowingly incur expenditures in connection with the candidate's campaign for nomination, which expenditures, in the aggregate, exceed $10,000,000 (as adjusted under 2 U.S.C. 441a(c)), except that the aggregate expenditures by a candidate in any one State shall not exceed the greater of: 16 cents (as adjusted under 2 U.S.C. 441a(c)) multiplied by the voting age population of the State (as certified under 2 U.S.C. 441a(e)); or $200,000 (as adjusted under 2 U.S.C. 441a(c)).

(2) The Commission will calculate the amount of expenditures attributable to the overall expenditure limit or to a particular state using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such obligations were settled and paid, unless the committee can demonstrate that the lower amount paid reflects a reasonable settlement of a bona fide dispute with the creditor.

(b) Each candidate receiving or expecting to receive matching funds under this subchapter shall also allocate his or her expenditures in accordance with the provisions of 11 CFR 106.2.

(c) A candidate may exclude from the overall expenditure limitation of 11 CFR 9035.1 an amount equal to 10% of salaries and overhead expenditures of his or her national campaign headquarters and state offices as an exempt legal and accounting compliance cost under 11 CFR 100.8(b)(15). For purposes of this section overhead expenditures include, but are not limited to rent, utilities, office equipment, furniture, supplies, and telephone base service charges. An additional amount of 10% of such salaries and overhead expenditures may be excluded from the overall expenditure limitation of 11 CFR 9035.1 as exempt fundraising expenditures but this exemption shall not apply within 28 days of the primary election as specified in 11 CFR 110.8(c)(2). Any amount excluded for fundraising expenditures shall be applied against the fundraising expenditure limitation under 11 CFR 100.8(b)(21). If the candidate wishes to claim a larger compliance or fundraising exemption for any person, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity. Alternatively, the Commission's Financial Control and Compliance Manual for Presidential Primary Candidates contains some other accepted allocation methods for calculating a compliance or fundraising exemption.

(1) Exempt compliance costs are those legal and accounting costs incurred solely to ensure compliance with 26 U.S.C. 9031 *et seq.*, 2 U.S.C. 431 *et seq.*, and 11 CFR Chapter I, including the costs of preparing matching fund submissions. The costs of preparing matching fund submissions shall be limited to those functions not required for general contribution processing and shall include the costs associated with: Generating the matching fund submission list and the matching fund computer tape for each submission, edits of the contributor data base that are related to preparing a matching fund submission, making photocopies of contributor checks, and seeking additional documentation from contributors for matching purposes. The costs associated with general contribution processing shall include those normally performed for fundraising purposes, or for compliance with the recordkeeping and reporting requirements of 11 CFR Part 100 *et seq.*, such as data entry, batching contributions for deposit, and preparation of FEC reports.

(2) Exempt fundraising expenses are those expenses associated with the solicitation of contributions. They include printing and postage for solicitations, air time for fundraising advertisements and the cost of meals and beverages for fundraising receptions or dinners.

(d) The expenditure limitations of 11 CFR 9035.1 shall not apply to a candidate who does not receive matching funds at any time during the matching payment period.

§ 9035.2 Limitation on expenditures from personal or family funds.

(a)(1) No candidate who has accepted matching funds shall knowingly make expenditures from his or her personal funds, or funds of his or her immediate family, in connection with his or her campaign for nomination for election to the office of President which exceed $50,000, in the aggregate. This section shall not operate to prohibit any member of the candidate's immediate family from contributing his or her personal funds to the candidate, subject to the limitations of 11 CFR Part 110. The provisions of this section also shall not limit the candidate's liability for, nor the candidate's ability to pay, any repayments required under 11 CFR Part 9038. If the candidate or his or her committee knowingly incurs expenditures in excess of the limitations of 11 CFR 110.8(a), the Commission may seek civil penalties under 11 CFR Part 111 in addition to any repayment determinations made on the basis of such excessive expenditures.

(2) Expenditures made using a credit card for which the candidate is jointly or solely liable will count against the limits of this section to the extent that the full amount due, including any finance charge, is not paid by the committee within 60 days after the closing date of the billing statement on which the charges first appear. For purposes of this section, the "closing date" shall be the date indicated on the billing statement which serves as the cutoff date for determining which charges are included on that billing statement.

(b) For purposes of this section, the term "immediate family" means a candidate, spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(c) For purposes of this section, "personal funds" has the same meaning as specified in 11 CFR 110.10.

PART 9036—REVIEW OF SUBMISSION AND CERTIFICATION OF PAYMENTS BY COMMISSION

Sec.
9036.1 Threshold submission.
9036.2 Additional submissions for matching fund payments.
9036.3 Submission errors and insufficient documentation.
9036.4 Commission review of submissions.
9036.5 Resubmissions.
9036.6 Continuation of certification.

Authority: 26 U.S.C. 9036 and 9039(b).

§ 9036.1 Threshold submission.

(a) *Time for submission of threshold submission.* At any time after January 1 of the year immediately preceding the Presidential election year, the candidate may submit a threshold submission for matching fund payments in accordance with the format for such submissions set forth in 11 CFR 9036.1(b). The candidate may submit the threshold submission simultaneously with or subsequent to his or her submission of the candidate agreement and certifications required by 11 CFR 9033.1 and 9033.2.

(b) *Format for threshold submission.* (1) For each State in which the candidate certifies that he or she has met the requirements of the certifications in 11 CFR 9033.2(b), the candidate shall submit an alphabetical list of contributors showing:

(i) Each contributor's full name and residential address;

(ii) The occupation and name of employer for individuals whose aggregate contributions exceed $200 in the calendar year;

(iii) The date of deposit of each contribution into the designated campaign depository;

(iv) The full dollar amount of each contribution submitted for matching purposes;

(v) The matchable portion of each contribution submitted for matching purposes;

(vi) The aggregate amount of all matchable contributions from that contributor submitted for matching purposes;

(vii) A notation indicating which contributions were received as a result of joint fundraising activities.

(2) The candidate shall submit a full-size photocopy of each check or written instrument and of supporting documentation in accordance with 11 CFR 9034.2 for each contribution that the candidate submits to establish eligibility for matching funds. For purposes of the threshold submission, the photocopies shall be segregated alphabetically by contributor within each State, and shall be accompanied by and referenced to copies of the relevant deposit slips.

(3) The candidate shall submit bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statements, which indicate that the contributions submitted were deposited into a designated campaign depository.

(4) For each State in which the candidate certifies that he or she has met the requirements to establish eligibility, the candidate shall submit a listing, alphabetically by contributor, of all checks returned by the bank to date as unpaid (e.g., stop payments, non-sufficient funds) regardless of whether the contribution was submitted for matching. This listing shall be accompanied by a full-size photocopy of each unpaid check, and copies of the associated debit memo and bank statement.

(5) The candidate shall submit all contributions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(6) Contributions that are not submitted in compliance with this section shall not count toward the threshold amount.

(c) *Threshold certification by commission.* (1) After the Commission has determined under 11 CFR 9033.4 that the candidate has satisfied the eligibility and certification requirements of 11 CFR 9033.1 and 9033.2, the Commission will notify the candidate in writing that the candidate is eligible to receive primary matching fund payments as provided in 11 CFR Part 9034.

(2) If the Commission makes a determination of a candidate's eligibility under 11 CFR 9036.1(a) in a Presidential election year, the Commission shall certify to the Secretary, within 10 calendar days after the Commission has made its determination, the amount to which the candidate is entitled.

(3) If the Commission makes a determination of a candidate's eligibility under 11 CFR 9036.1(a) in the year preceding the Presidential election year, the Commission will notify the candidate that he or she is eligible to receive matching fund payments; however, the Commission's determination will not result in a payment of funds to the candidate until after January 1 of the Presidential election year.

§ 9036.2 Additional submissions for matching fund payments.

(a) *Time for submission of additional submissions.* The candidate may submit additional submissions for payments to the Commission on dates to be determined and published by the Commission.

(b) *Format for additional submissions.* The candidate may obtain additional matching fund payments subsequent to the Commission's threshold certification and payment of primary matching funds to the candidate by filing an additional submission for payment. All additional submissions for payments filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(1) The first submission for matching funds following the candidate's threshold submission shall contain all the matchable contributions included in the threshold submission and any additional contributions to be submitted for matching in that submission. This submission shall contain all the information required for the threshold submission except that:

(i) The candidate is not required to resubmit the candidate agreement and certifications of 11 CFR 9033.1 and 9033.2;

(ii) The candidate is required to submit an alphabetical list of contributors, but not segregated by State as required in the threshold submission;

(iii) The candidate is required to submit a listing, alphabetical by contributor, of all checks returned unpaid, but not segregated by State as required in the threshold submission;

(iv) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed $200 in the calendar year, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432 (c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

(v) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list.

(2) Following the first submission under 11 CFR 9036.2(b)(1), candidates may request additional matching funds on dates prescribed by the Commission by making a letter request in lieu of making a full submission as required under 11 CFR 9036.2(b)(1), however, letter requests may not be submitted after the candidate's date of ineligibility. Letter requests shall state an amount of matchable contributions not previously submitted for matching and shall provide bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statement, demonstrating that the committee has received the funds for which matching payments are requested. The amount requested for matching may include contributions received up to the last business day preceding the date of the request. On the next submission date as designated for that committee after a letter request has been made, the committee shall submit the

documentation required under 11 CFR 9036.2(b)(1) for all contributions included in the letter request, as well as any contributions submitted for matching in that full submission. A committee may not submit two consecutive letter requests, but the committee may choose to make a full regular submission on a date designated by the Commission as a letter request date for that committee.

(c) *Certification of additional payments by Commission.* (1)(i) When a candidate who is eligible under 11 CFR 9033.4 submits an additional submission for payment in the Presidential election year, the Commission may certify to the Secretary within 5 business days after the Commission's receipt of information submitted by the candidate under 11 CFR 9036.2(a), an amount based on the holdback procedure described in the Federal Election Commission's Guideline for Presentation in Good Order. If the candidate makes a letter request, the Commission may certify to the Secretary an amount which is less than that requested based upon the ratio of verified matchable contributions to total deposits for that committee in the committee's last regular submission.

(ii) The Commission will certify to the Secretary any additional amount to which the eligible candidate is entitled, if any, within 20 business days after the Commission's receipt of information submitted by the candidate under 11 CFR 9036.2(a), unless the projected dollar value of the nonmatchable contributions contained in the submission exceeds 10% of the amount requested. In the latter case, the Commission will certify any additional amount within 25 business days. See 11 CFR 9036.4 for Commission procedures for certification of additional payments.

(2) After a candidate's date of ineligibility, the Commission will certify to the Secretary, within 20 business days after receipt of a submission by the candidate under 11 CFR 9036.2(a), an amount to which the ineligible candidate is entitled in accordance with 11 CFR 9034.1(b), unless the projected dollar value of the nonmatchable contributions contained in the submission exceeds 10% of the amount requested. In the latter case, the Commission will certify any amount to which the ineligible candidate is entitled within 25 business days.

(d) *Additional submissions submitted in non-Presidential election year.* The candidate may submit additional contributions for review during the year preceding the Presidential election year; however, the amount of each submission made during this period must exceed $50,000. Additional submissions filed by a candidate in a non-Presidential election year will not result in payment of matching funds to the candidate until after January 1 of the Presidential election year.

§ 9036.3 Submission errors and insufficient documentation.

Contributions which are otherwise matchable may be rejected for matching purposes because of submission errors or insufficient supporting documentation. Contributions, other than those defined in 11 CFR 9034.3 or in the form of money orders, cashier's checks, or similar negotiable instruments, may become matchable if there is a proper resubmission in accordance with 11 CFR 9036.5 and 9036.6. Insufficient documentation or submission errors include but are not limited to:

(a) Discrepancies in the written instrument, such as:

(1) Instruments drawn on other than personal accounts of contributors and not signed by the contributing individual;

(2) Signature discrepancies; and

(3) Lack of the contributor's signature, the amount or date of the contribution, or the listing of the committee or candidate as payee.

(b) Discrepancies between listed contributions and the written instrument or supporting documentation, such as:

(1) The listed amount requested for matching exceeds the amount contained on the written instrument;

(2) A written instrument has not been submitted to support a listed contribution;

(3) The submitted written instrument cannot be associated either by accountholder identification or signature with the listed contributor; or

(4) A discrepancy between the listed contribution and the supporting bank documentation or the bank documentation is omitted.

(c) Discrepancies within or between contributor lists submitted, such as:

(1) The address of the contributor is omitted or incomplete or the contributor's name is alphabetized incorrectly, or more than one contributor is listed per item;

(2) A discrepancy in aggregation within or between submissions which results in a request that more than $250 be matched for that contributor, or a listing of a contributor more than once within the same submission; or

(3) A written instrument has been previously submitted and matched in full or is listed twice in the same submission.

(d) The omission of information, supporting statements, or documentation required by 11 CFR 9034.2.

§ 9036.4 Commission review of submissions.

(a) *Non-acceptance of submission for review of matchability.* The Commission will make an initial review of each submission made under 11 CFR Part 9036 to determine if it substantially meets the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order. If the Commission determines that a submission does not substantially meet these requirements, it will not review the matchability of the contributions contained therein. In such a case, the Commission will return the submission to the candidate and request that it be corrected in accordance with the format requirements. If the candidate makes a corrected submission within 3 business days after the Commission's return of the original, the Commission will review the corrected submission prior to the next regularly-scheduled submission date. Corrected submissions made after this three day period will be reviewed subsequent to the next regularly-scheduled submission date.

(b) *Acceptance of submission for review of matchability.* If the Commission determines that a submission made under 11 CFR Part 9036 satisfies the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order, it will review the matchability of the contributions contained therein. The Commission, in conducting its review, may utilize statistical sampling techniques. Based on the results of its review, the Commission may calculate a matchable amount for the submission which is less than the amount requested by the candidate. If the Commission certifies for payment to the Secretary an amount that is less than the amount requested by the candidate in a particular submission, or reduces the amount of a subsequent certification to the Secretary by adjusting a previous certification made under 11 CFR 9036.2(c)(1), the Commission will notify the candidate in writing of the following:

(1) The amount of the difference between the amount requested and the amount to be certified by the Commission;

(2) The amount of each contribution and the corresponding contributor's name for each contribution that the Commission has rejected as nonmatchable and the reason that it is not matchable; or if statistical sampling

is used, the estimated amount of contributions by type and the reason for rejection;

(3) The amount of contributions that have been determined to be matchable and that the Commission will certify to the Secretary for payment; and

(4) A statement that the candidate may supply the Commission with additional documentation or other information in the resubmission of any rejected contribution under 11 CFR 9036.5 in order to show that a rejected contribution is matchable under 11 CFR 9034.2.

(c) *Adjustment of amount to be certified by Commission.* The candidate shall notify the Commission as soon as possible if the candidate or the candidate's authorized committee(s) has knowledge that a contribution submitted for matching does not qualify under 11 CFR 9034.2 as a matchable contribution, such as a check returned to the committee for insufficient funds or a contribution that has been refunded, so that the Commission may properly adjust the amount to be certified for payment.

(d) *Commission audit of submissions.* The Commission may determine, for the reasons stated in 11 CFR Part 9039, that an audit and examination of contributions submitted for matching payment is warranted. The audit and examination shall be conducted in accordance with the procedures of 11 CFR Part 9039.

§ 9036.5 Resubmissions.

(a) *Alternative resubmission methods.* Upon receipt of the Commission's notice of the results of the submission review pursuant to 11 CFR 9036.4(b), a candidate may choose to:

(1) Resubmit the entire submission; or

(2) Make a written request for the identification of the specific contributions that were rejected for matching, and resubmit those specific contributions.

(b) *Time for presentation of resubmissions.* If the candidate chooses to resubmit any contributions under 11 CFR 9036.5(a), the contributions shall be resubmitted on dates to be determined and published by the Commission. The candidate may not make any resubmissions later than the first Tuesday in September of the year following the Presidential election year.

(c) *Format for resubmissions.* All resubmissions filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order. In making a presentation of resubmitted contributions, the candidate shall follow the format requirements as specified in 11 CFR 9036.2(b)(1), except that:

(1) The candidate need not provide photocopies of written instruments, supporting documentation and bank documentation unless it is necessary to supplement the original documentation.

(2) Each resubmitted contribution shall be referenced to the submission in which it was first presented.

(3) Each list of resubmitted contributions shall reflect the aggregate amount of contributions submitted for matching from each contributor as of the date of the original submission.

(4) Each list of resubmitted contributions shall reflect the aggregate amount of contributions submitted for matching from each contributor as of the date of the resubmission.

(5) Each list of resubmitted contributions shall only contain contributions previously submitted for matching and no new or additional contributions.

(6) Each resubmission shall be accompanied by a statement that the candidate has corrected his or her contributor records (including the data base for those candidates maintaining their contributor list on computer).

(d) *Certification of resubmitted contributions.* Contributions that the Commission determines to be matchable will be certified to the Secretary within 15 business days. If the candidate chooses to request the specific contributions rejected for matching pursuant to 11 CFR 9036.5(a)(2), the amount certified shall equal only the matchable amount of the particular contribution that meets the standards on resubmission, rather than the amount projected as being nonmatchable based on that contribution due to the sampling techniques used in reviewing the original submission.

(e) *Initial determinations.* If the candidate resubmits a contribution for matching and the Commission determines that the rejected contribution is still nonmatchable, the Commission will notify the candidate in writing of its determination. The Commission will advise the candidate of the legal and factual reasons for its determination and of the evidence on which that determination is based. The candidate may submit written legal or factual materials to demonstrate that the contribution is matchable within 30 calendar days after service of the Commission's notice. Such materials may be submitted by counsel if the candidate so desires.

(f) *Final determinations.* The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination by the Commission that a contribution is not matchable will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

§ 9036.6 Continuation of certification.

Candidates who have received matching funds and who are eligible to continue to receive such funds may continue to submit additional submissions for payment to the Commission on dates specified in the Federal Election Commission's Guideline for Presentation in Good Order. The Commission will notify each candidate of the last date on which contributions may be submitted for the first time for matching in the year following the election. The last date for first-time submissions will be either the last Monday in February or the second Monday in March of the year following the election, depending on the submission schedule the Commission has designated for the candidate. No contribution will be matched if it is submitted after the last submission date designated for that candidate, regardless of the date the contribution was deposited.

PART 9037—PAYMENTS

Sec.

9037.1 Payments of Presidential primary matching funds.
9037.2 Equitable distribution of funds.
9037.3 Deposits of Presidential primary matching funds.

Authority: 26 U.S.C. 9037 and 9039(b).

§ 9037.1 Payments of Presidential primary matching funds.

Upon receipt of a written certification from the Commission, but not before the beginning of the matching payment period, the Secretary will promptly transfer the amount certified from the matching payment account to the candidate.

§ 9037.2 Equitable distribution of funds.

In making such transfers to candidates of the same political party, the Secretary will seek to achieve an equitable distribution of funds available in the matching payment account, and the Secretary will take into account, in seeking to achieve an equitable distribution of funds available in the matching payment account, the sequence in which such certifications are received.

§ 9037.3 Deposits of Presidential primary matching funds.

Upon receipt of any matching funds, the candidate shall deposit the full amount received into a checking account maintained by the candidate's principal campaign committee in the depository designated by the candidate.

PART 9038—EXAMINATIONS AND AUDITS

Sec.
9038.1 Audit.
9038.2 Repayments.
9038.3 Liquidation of obligations; repayment.
9038.4 Extensions of time.
9038.5 Petitions for rehearing; stays of repayment determinations.
9038.6 Stale-dated committee checks.

Authority: 26 U.S.C. 9038 and 9039(b).

§ 9038.1 Audit.

(a) *General.* (1) The Commission will conduct an audit of the qualified campaign expenses of every candidate and his or her authorized committee(s) who received Presidential primary matching funds. The audit may be conducted at any time after the date of the candidate's ineligibility.

(2) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

(3) Information obtained pursuant to any audit and examination conducted under 11 CFR 9038.1(a) (1) and (2) may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 CFR 9038.2.

(b) *Conduct of fieldwork.* (1) The Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee.

(i) *Office space and records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9033.1(b)(6).

(ii) *Availability of committee personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to provide staff, records or office space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the Commission may seek judicial intervention under 2 U.S.C. 437d or 26 U.S.C. 9040(c) to enforce the candidate and committee agreement made under 11 CFR 9033.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have 10 calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreement.

(iv) If, in the course of the audit process, a dispute arises over the documentation sought or other requirements of the candidate agreement, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement, within 10 calendar days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternative(s).

(2) Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

(i) *Entrance conference.* At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the United States Treasury, will also be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.

(ii) *Review of records.* During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held from time to time during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.

(iii) *Exit conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the Commission staff anticipates that it may present to the Commission for approval. Commission staff will advise committee representatives at this conference of the projected timetable regarding the issuance of an audit report, the committee's opportunity to respond thereto, and the Commission's initial and final repayment determinations under 11 CFR 9038.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to 11 CFR 9038.1(b) (1) and (2). Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

(i) Committee responses to audit findings;

(ii) Financial activity of the committee subsequent to the fieldwork conducted pursuant to 11 CFR 9038.1(b)(1);

(iii) Committee responses to Commission repayment determinations made under 11 CFR 9038.2.

(4) The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. The provisions of 11 CFR 9038.1(b) (1) and (2) shall apply to any additional fieldwork conducted.

(c) *Preparation of interim audit report.* (1) After the completion of the fieldwork conducted pursuant to 11 CFR 9038.1(b)(1), the Commission will issue an interim audit report to the candidate and his or her authorized committee. The interim audit report may contain Commission findings and recommendations regarding one or more of the following areas:

(i) An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, Primary Matching Payment Account Act and Commission regulations;

(ii) Eligibility of the candidate to receive primary matching payments;

(iii) Accuracy of statements and reports filed with the Commission by the candidate and committee;

(iv) Compliance of the candidate and committee with applicable statutory and regulatory provisions except for those instances where the Commission has instituted an enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR Part 111; and

(v) Preliminary calculations regarding future repayments to the United States Treasury.

(2) The candidate and his or her authorized committee will have an opportunity to submit, in writing, within 30 calendar days after service of the interim report, legal and factual materials disputing or commenting on the contents of the interim report. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with 11 CFR 9038.1(c)(2) before approving and issuing an audit report to be released to the public. The contents of the publicly-released audit report may differ from that of the interim report since the Commission will consider timely submissions of legal and factual materials by the candidate or committee in response to the interim report.

(d) *Preparation of publicly-released audit report.* An audit report prepared subsequent to an interim report will be publicly released pursuant to 11 CFR 9038.1(e). This report will contain Commission findings and recommendations addressed in the interim audit report but may contain adjustments based on the candidate's response to the interim report. In addition, this report will contain an initial repayment determination made by the Commission pursuant to 11 CFR 9038.2(c)(1) in lieu of the preliminary calculations set forth in the interim report.

(e) *Public release of audit report.* (1) After the candidate and committee have had an opportunity to respond to a written interim report of the Commission, the Commission will make public the audit report prepared subsequent to the interim report, as provided in 11 CFR 9038.1(d).

(2) If the Commission determines, on the basis of information obtained under the audit and examination process, that certain matters warrant enforcement under 2 U.S.C. 437g and 11 CFR Part 111, those matters will not be contained in the publicly-released report. In such cases, the audit report will indicate that certain other matters have been referred to the Commission's Office of General Counsel.

(3) The Commission will provide the candidate and the committee with copies of the agenda document containing those portions of the final audit report to be considered in open session 24 hours prior to releasing the agenda document to the public. The Commission will also provide the candidate and committee with copies of the final audit report 24 hours before releasing the report to the public.

(4) Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based, in part, on follow-up fieldwork conducted under 11 CFR 9038.1(b)(3), and will be placed on the public record.

§ 9038.2 Repayments.

(a) *General.* (1) A candidate who has received payments from the matching payment account shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9038.1 and Part 9039 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the end of the matching payment period.

(3) Once the candidate receives notice of the Commission's final repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(b) *Bases for repayment*—(1) *Payments in excess of candidate's entitlement.* The Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Examples of such excessive payments include, but are not limited to, the following:

(i) Payments made to the candidate after the candidate's date of ineligibility where it is later determined that the candidate had no net outstanding campaign obligations as defined in 11 CFR 9034.5;

(ii) Payments or portions of payments made to the candidate which are later determined to have been excessive due to the operation of the Commission's expedited payment procedures as set forth in the Federal Election Commission's Guideline For Presentation In Good Order;

(iii) Payments or portions of payments made on the basis of matched contributions later determined to have been non-matchable;

(iv) Payments or portions of payments made to the candidate which are later determined to have been excessive due to the candidate's failure to include funds received by a fundraising representative committee under 11 CFR 9034.8 on the candidate's statement of net outstanding campaign obligations under 11 CFR 9034.5; and

(v) Payments or portions of payments made to the candidate on the basis of the debts reflected in the candidate's statement of net outstanding campaign obligations, which debts are later settled for an amount less than that stated in the statement of net outstanding campaign obligations.

(2) *Use of funds for non-qualified campaign expenses.* (i) The Commission may determine that amount(s) of any payments made to a candidate from the matching payment account were used for purposes other than those set forth in paragraphs (b)(2)(i) (A)–(C) of this section:

(A) Defrayal of qualified campaign expenses;

(B) Repayment of loans which were used to defray qualified campaign expenses; and

(C) Restoration of funds (other than contributions which were received and expended to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

(ii) Examples of Commission repayment determinations under 11 CFR 9038.2(b)(2) include, but are not limited to, the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agents have made expenditures in excess of the limitations set forth in 11 CFR 9035;

(B) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended in violation of state or federal law; and

(C) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended for expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.

(iii) The amount of any repayment sought under this section shall bear the same ratio to the total amount determined to have been used for non-qualified campaign expenses as the amount of matching funds certified to the candidate bears to the total amount of deposits of contributions and matching funds, as of the candidate's date of ineligibility. To determine at what point committee accounts no longer contain matching funds for the purpose of seeking repayment for non-qualified campaign expenses, the Commission will review committee expenditures from the date of the last matching fund payment to the candidate, using the assumption that the

last payment has been expended on a last-in, first-out basis.

(3) *Failure to provide adequate documentation.* The Commission may determine that amount(s) spent by the candidate, the candidate's authorized committee(s), or agents were not documented in accordance with 11 CFR 9033.11. The amount of any repayment sought under this section shall be determined by using the formula set forth in 11 CFR 9038.2(b)(2)(iii).

(4) *Surplus.* The Commission may determine that the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus.

(c) *Repayment determination procedures.* Commission repayment determinations will be made in accordance with the procedures set forth at 11 CFR 9038.2(c) (1) through (4), of this section.

(1) *Initial determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report, pursuant to 11 CFR 9038.1(d), and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days after service of the notice, such initial determination will be considered a final determination of the Commission.

(2) *Submission of written materials.* If the candidate disputes the Commission's initial repayment determination(s), he or she shall have an opportunity to submit in writing, within 30 calendar days after service of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the candidate within this 30 day period in making its final repayment determination(s). Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral presentation.* A candidate who has submitted written materials under 11 CFR 9038.2(c)(2) may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under 11 CFR 9038.2(c)(2). The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(4) *Final determination.* In making its final repayment determination(s), the Commission will consider any submission made under 11 CFR 9038.2(c)(2) and any oral presentation made under 11 CFR 9038.2(c)(3). A final determination that a candidate must repay a certain amount will be accompanied by a written statement of reasons for the Commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment period.* (1) Within 90 calendar days after service of the notice of the Commission's initial repayment determination(s), the candidate shall repay to the Secretary amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate submits written materials under 11 CFR 9038.2(c)(2) disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 30 calendar days after service of the notice of the Commission's final repayment determination(s), the candidate shall repay to the Secretary amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 days in which to make repayment.

(e) *Computation of time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9038.2(b) after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-discovered assets.* If, after any initial or final repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding campaign obligations submitted pursuant to 11 CFR 9034.5, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in any previously-submitted statement of net outstanding campaign obligations. Newly-discovered assets may serve as a basis for additional repayment determinations under 11 CFR 9038.2(f).

(h) *Petitions for rehearing; stays pending appeal.* The candidate may file a petition for rehearing of a final repayment determination in accordance with 11 CFR 9038.5(a). The candidate may request a stay of a final repayment determination in accordance with 11 CFR 9038.5(c) pending the candidate's appeal of that repayment determination.

§ 9038.3 Liquidation of obligations; repayment.

(a) The candidate may retain amounts received from the matching payment account for a period not exceeding 6 months after the matching payment period to pay qualified campaign expenses incurred by the candidate.

(b) After all obligations have been liquidated, the candidate shall so inform the Commission in writing.

(c)(1) If on the last day of candidate eligibility the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus, the candidate shall within 30 calendar days of the ineligibility date repay to the Secretary an amount which represents the amount of matching funds contained in the candidate's surplus. The amount shall be an amount equal to that portion of the surplus which bears the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to the total deposits made to the candidate's accounts.

(2) For purposes of this section, total deposits shall be considered all deposits to all candidate accounts minus transfers between accounts, refunds, rebates, reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts.

(3) Notwithstanding the payment of any amounts to the United States Treasury under this section, the

Commission may make surplus repayment determination(s) which require repayment in accordance with 11 CFR 9038.2.

§ 9038.4 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR Part 9038 shall not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR Part 9038 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the application for extension that good cause exists for his or her request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a candidate who has applied for such extension in a timely manner. The length of time of any extension granted hereunder will be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application.

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR Part 9038 the Commission may, on the candidate's showing of excusable neglect:

(1) Permit such candidate to exercise his or her right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR Part 9038.

§ 9038.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final determination under 11 CFR 9033.10 or 9034.5(g) or the Commission's final repayment determination under 11 CFR 9038.2(c)(4), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days after service of the Commission's final determination;

(ii) Raise new questions of law or fact that would materially alter the Commission's final determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the earlier determination process.

(2) If a candidate files a timely petition under this section challenging a Commission final repayment determination, the time for repayment of the amount at issue will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9038.2(d)(2) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the initial determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9041(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's initial determination.

(c) *Stay of repayment determination pending appeal.* (1)(i) The candidate may apply to the Commission for a stay of all or a portion of the amount determined to be repayable under this section or under 11 CFR 9038.2 pending the candidate's appeal of that repayment determination pursuant to 26 U.S.C. 9041(a). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a), or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's final repayment determination under 11 CFR 9038.2(c)(4).

(2) The Commission's approval of a stay request will be conditioned upon the candidate's presentation of evidence in the stay request that he or she:

(i) Has placed the entire amount at issue in a separate interest-bearing account pending the outcome of the appeal and that withdrawals from the account may only be made with the joint signatures of the candidate or his or her agent and a Commission representative; or

(ii) Has posted a surety bond guaranteeing payment of the entire amount at issue plus interest; or

(iii) Has met the following criteria:

(A) He or she will suffer irreparable injury in the absence of a stay; and, if so, that

(B) He or she has made a strong showing of the likelihood of success on the merits of the judicial action.

(C) Such relief is consistent with the public interest; and

(D) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the candidate has made a strong showing of the likelihood of success on the merits under paragraph (c)(2)(iii)(B) of this section, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's final repayment determination under 11 CFR 9038.2(c)(4) and shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

§ 9038.6 Stale-dated committee checks.

If the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such outstanding checks, payable to the United States Treasury.

PART 9039—REVIEW AND INVESTIGATION AUTHORITY

Sec.
9039.1 Retention of books and records.
9039.2 Continuing review.
9039.3 Examinations and audits; investigations.

Authority: 26 U.S.C. 9039.

§ 9039.1 Retention of books and records.

The candidate and his or her authorized committee(s) shall keep all books, records and other information required under 11 CFR 9033.11, 9034.2 and Part 9036 for a period of three years pursuant to 11 CFR 102.9(c) and shall furnish such books, records and information to the Commission on request.

§ 9039.2 Continuing review.

(a) In reviewing candidate submissions made under 11 CFR Part 9036 and in otherwise carrying out its responsibilities under this subchapter, the Commission may routinely consider information from the following sources:

(1) Any and all materials and communications which the candidate and his or her authorized committee(s) submit or provide under 11 CFR Part 9036 and in response to inquiries or requests of the Commission and its staff;

(2) Disclosure reports on file with the Commission; and

(3) Other publicly available documents.

(b) In carrying out the Commission's responsibilities under this subchapter, Commission staff may contact representatives of the candidate and his or her authorized committee(s) to discuss questions and to request documentation concerning committee activities and any submission made under 11 CFR Part 9036.

§ 9039.3 Examinations and audits; investigations.

(a) *General.* (1) The Commission will consider information obtained in its continuing review under 11 CFR 9039.2 in making any certification, determination or finding under this subchapter. If the Commission decides by an affirmative vote of four of its members that additional information must be obtained in connection with any such certification, determination or finding, it will conduct a further inquiry. A decision to conduct an inquiry under this section may be based on information that is obtained under 11 CFR 9039.2, received by the Commission from outside sources, or otherwise ascertained by the Commission in carrying out its supervisory responsibilities under the Presidential Primary Matching Payment Account Act and the Federal Election Campaign Act.

(2) An inquiry conducted under this section may be used to obtain information relevant to candidate eligibility, matchability of contributions and repayments to the United States Treasury. Information obtained during such an inquiry may be used as the basis, or partial basis, for Commission certifications, determinations and findings under 11 CFR Parts 9033, 9034, 9036 and 9038. Information thus obtained may also be the basis of, or be considered in connection with, an investigation under 2 U.S.C. 437g and 11 CFR Part 111.

(3) Before conducting an inquiry under this section, the Commission will attempt to obtain relevant information under the continuing review provisions of 11 CFR 9039.2. Matching payments will not be withheld pending the results of an inquiry under this section unless the Commission finds patent irregularities suggesting the possibility of fraud in materials submitted by, or in the activities of, the candidate or his or her authorized committee(s).

(b) *Procedures.* (1) The Commission will notify the candidate of its decision to conduct an inquiry under this section. The notice will summarize the legal and factual basis for the Commission's decision.

(2) The Commission's inquiry may include, but is not limited to, the following:

(i) A field audit of the candidate's books and records;

(ii) Field interviews of agents and representatives of the candidate and his or her authorized committee(s);

(iii) Verification of reported contributions by contacting reported contributors;

(iv) Verification of disbursement information by contacting reported vendors;

(v) Written questions under order;

(vi) Production of documents under subpoena;

(vii) Depositions.

(3) The provisions of 2 U.S.C. 437g and 11 CFR Part 111 will not apply to inquiries conducted under this section except that the provisions of 11 CFR 111.12 through 111.15 shall apply to any orders or subpoenas issued by the Commission.

Dated: May 26, 1987.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 87-12281 Filed 6-2-87; 8:45 am]

BILLING CODE 6715-01-M

federal register

Wednesday
June 3, 1987

Part IV

Environmental Protection Agency

40 CFR Parts 260, 265, and 270

Permitting Mobile Hazardous-Waste Treatment Units and Delisting Hazardous Wastes; Tentative Response to Petition; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 265, and 270

[FRL-3169-9]

Permitting Mobile Hazardous-Waste Treatment Units and Delisting Hazardous Wastes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Tentative response to petition; Proposed rule.

SUMMARY: This notice provides the Environmental Protection Agency's (EPA) tentative response to a petition submitted by the Hazardous Waste Treatment Council (HWTC) under section 7004(a) of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6974(a)) and 40 CFR 260.20. The HWTC petition requested that EPA propose modified permitting procedures and other regulations to facilitate the use of mobile treatment units (MTUs) in the treatment of hazardous wastes. The notice also addresses recommendations on MTU permitting developed by the National Hazardous Waste Forum on Transportable Treatment Units, held in February and April 1986.

In this response, EPA is proposing specific language under § 270.66 to expedite permitting of MTUs. In addition, the Agency is proposing alternative delisting procedures under §§ 270.22 and 270.32(f), under which delisting can occur as part of the permitting process. This incorporation of delisting into the permitting process would be available for all types of facilities.

This notice also solicits comment on HWTC's request that certain "low-risk" treatment technologies be conditionally exempted from permitting, and it tentatively denies other parts of the petition.

Finally, EPA proposes to amend the definition of "designated facility" in 40 CFR 260.10.

DATE: EPA will accept comments from the public until August 3, 1987.

ADDRESSES: Members of the public must submit an original and two copies of all their comments to: EPA RCRA Docket (S-212), 401 M Street SW., Washington, DC 20460. Communications should identify the docket number F-87-PMTU-FFFF. The EPA RCRA docket is located at the U.S. Environmental Protection Agency, Sub-basement, 401 M Street SW., Washington, DC 20460. The docket is open from 9:00-4:00 Monday through Friday, except for Federal holidays. To review docket materials, the public must make an appointment by calling 475-9327. The public may copy a maximum of 50 pages from any one regulatory docket at no cost. Additional copies cost $.20 per page.

FOR FURTHER INFORMATION CONTACT: RCRA hotline at (800) 424-9346 (in Washington, DC, call 382-3000) or Robin Anderson, (202) 382-4498, Office of Solid Waste (WH-563), U.S. Environmental Protection Agency, Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

Preamble Outline

I. Authority
II. Background
A. RCRA Permitting and MTUs
B. National Hazardous Waste Forum on Transportable Treatment Units
C. Hazardous Waste Treatment Council Petition
1. Permitting Procedures
2. Delisting
3. Regulatory Exclusions
D. RCRA Regulations Governing Petitions
III. Analysis of EPA Tentative Response
A. Summary of Response
B. Permitting Procedures for MTUs
1. EPA Proposal
2. HWTC Alternative
3. Definition of Facility and Corrective Action
C. Delisting Procedures
1. Background
2. Current Procedures
3. Proposed Approach
4. Specific Information Requirements
5. Establishing Permit Conditions for Delisting
6. Public Notice and Comment
7. Modification to the General Rulemaking Petition Process
8. Other Regulatory Changes
D. Regulatory Exclusions
1. Background
2. Units Suggested for Exclusion from RCRA Permitting
3. Conditions for Exclusion
4. Evaluation of Risk Posed by Suggested Units
5. Permit Modification Approach
IV. Other Issues
A. Class Permits
b. Permits by Rule
C. Preconstruction Ban
D. Other MTU Activities
1. MTUs at RCRA Permitted Facilities
2. Activities at Interim Status Facilities
3. Regulatory Exclusions from RCRA Permitting
V. Definition of Designated Facility
VI. State Authority
A. Applicability of Rules in Authorized States
B. Effect on State Authorizations
VII. Regulatory Analysis
A. Regulatory Impact Analysis
B. Regulatory Flexibility Act
C. Paperwork Reduction Act

I. Authority

This tentative response is issued under the authority of sections 2002, 3001, 3004, 3005, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912, 6921, 6294, 6295, and 6974.

II. Background

A. RCRA Permitting and MTUs

Subtitle C of RCRA creates a cradle-to-grave waste management system designed to ensure that hazardous waste is identified and safely transported, stored, treated, and disposed of. Section 3001 of RCRA requires EPA to identify which wastes are hazardous, while sections 3002 and 3003 require EPA to promulgate standards for generators and transporters of hazardous waste. In addition, section 3004 requires owners and operators of treatment, storage, and disposal facilities to comply with standards "necessary to protect human health and the environment." These standards are generally implemented through permits issued by EPA or authorized states.

Under section 3005(a) of RCRA, facilities that treat, store, or dispose of hazardous wastes must be permitted in accordance with the section 3004 standards. However, recognizing that permitting could be a lengthy process, Congress created "interim status" for facilities that were in existence on the effective date of EPA's permitting regulations (November 19, 1980) or on the date of any statutory or regulatory change which subjects a facility to the RCRA permit requirements. Under section 3005(e), owners and operators of hazardous waste treatment, storage, and disposal facilities in existence on that date (i.e., on November 19, 1980 or on the date of any statutory or regulatory change that subjects the facility to RCRA permitting) who submit a Part A permit application and a section 3010 notification are treated as having been issued permits. Until an authorized state or EPA takes final action on their permit applications, these facilities must comply with the interim status standards established by EPA.

Permits must be issued according to the procedures established in 40 CFR Parts 124 and 270. Under these procedures, EPA must develop a draft permit applying the section 3004 standards (as codified in 40 CFR Parts 264 and 269), give local notice of the draft permit, allow a 45-day comment period, and hold a local hearing, if requested, before it may issue a permit. In addition to applying Part 264 standards to the specific unit in which hazardous waste is managed, the permit must also include a schedule of compliance for addressing the corrective

action requirements of section 3004(u) of RCRA. This section requires facilities seeking a permit after November 8, 1984 to address releases of hazardous waste or hazardous constituents from "solid waste management units" elsewhere on the facility.

"Hazardous wastes" are defined by EPA in 40 CFR Part 261. In particular, wastes are considered hazardous if they exhibit one or more of the hazardous waste characteristics or are specifically listed; in addition, any mixture of a solid waste and a listed hazardous waste and any residue derived from the treatment, storage, or disposal of a listed hazardous waste is also considered a hazardous waste.[1] However, persons may petition the Agency under §§ 260.20 and 260.22 to exclude or delist a waste produced by a particular facility. If a listed waste, mixture containing a listed waste, or a treatment residue derived from a listed waste meets the criteria spelled out in these regulations, EPA will delist it from the list of hazardous wastes.

Taken together, EPA's hazardous waste regulations provide comprehensive protection from risks associated with the treatment, storage, and disposal of hazardous waste. These regulations, however, were primarily developed with stationary units in mind. EPA recognizes that they are not well suited, in certain respects, to mobile treatment units (MTUs), which are designed to move from facility to facility treating waste on-site. In particular, the regulations now require MTUs to undergo a full-scale permitting procedure at each site of operation, requiring basic issues of unit design and operation to be readdressed at each location. EPA believes that this requirement provides a significant disincentive to the use of MTUs and, more broadly, to the treatment of hazardous wastes. In addition, the current delisting regulations make it difficult for potential users of MTUs (or any other treatment technology) to know whether a specific treatment will yield a waste that will not need to be regulated as a hazardous waste. This uncertainty also discourages hazardous waste treatment. Therefore, in today's notice, which responds to a petition from the Hazardous Waste Treatment Council (HWTC), EPA proposes to amend its regulations to expedite MTU permitting and to integrate the delisting procedure into the permit review process.

These amendments are important because of the need for alternatives to land disposal of hazardous waste—established as national policy in the RCRA Hazardous and Solid Waste Amendments (HSWA) of 1984—and the anticipated lack of hazardous waste treatment capacity. In particular, the HSWA ban on land disposal of untreated solvents and dioxins (51 FR 40572, November 7, 1986) places an immediate strain on treatment capacity. This strain will increase significantly in the next few years as the land disposal restrictions apply to the other hazardous wastes. In addition, the corrective action authorities of HSWA (sections 3004(u), 3004(v), and 3008(h) of RCRA) not only add to the volume of hazardous wastes that must be managed, but create a need for innovative and flexible strategies for the treatment of these wastes. Similarly, the expanded Superfund program under the Superfund Amendments and Reauthorization Act of 1986, with its emphasis on alternative treatment technologies and permanent remedies, will place new demands on the nation's treatment capacity.

EPA believes that mobile treatment technologies, if appropriately used and regulated, can play a significant role in achieving the goals of HSWA. Mobile technologies can be adapted to the full range of treatment processes, from simple physical pretreatment in tanks to full-scale incineration. They may involve single tank trucks that can be quickly put into operation at a site, or, in the case of certain incinerators, they may consist of several large modules that can take a few months to install. The time they remain at a site may vary from a few weeks to years, depending on the type of unit and nature of the treatment operation.

These mobile technologies provide significant flexibility to industry in selecting among treatment technologies, in pretreating wastes before treatment at on-site units, and in reducing waste volume before shipping. They are also particularly well adapted to cleanup activities, corrective action, and closure of hazardous waste facilities. At the same time, they may greatly reduce the risks inherent in the transport of hazardous waste to off-site facilities. For these reasons, EPA believes that MTUs have an important role to play in the treatment of hazardous waste and serve as an important complement to stationary treatment facilities. The purpose of today's proposal is to remove regulatory impediments to their use in treating RCRA hazardous wastes.

B. National Hazardous Waste Forum on Transportable Treatment Units

One of the Agency's first steps in developing a strategy toward MTUs was the commissioning of a National Hazardous Waste Forum to explore RCRA permitting and other issues. In October 1985, EPA's Office of Solid Waste awarded a grant to the Center for Environmental Management at Tufts University to convene a national forum on emerging or troublesome hazardous waste management issues. The Forum established a steering committee representing government, industry, and public interest groups to select issues for discussion. One of the issues chosen was the use of mobile treatment units (also called transportable or portable treatment units) and the potential impediments to their siting and permitting. To address these issues, the steering committee established a National Hazardous Waste Management Forum on Transportable Treatment Units.

The Forum, which met in February and April 1986, presented its conclusions to the Office of Solid Waste in a July 1986 report. The report stated that there are "many serious barriers" to the increased use of MTUs to treat RCRA hazardous wastes. It cited two requirements as particular impediments: That an MTU must obtain a complete site-specific RCRA permit before it can operate at any site and that facilities at which an MTU operates are subject to section 3004(u) corrective action requirements. To address these and other issues, the Forum recommended that EPA: (1) Establish a state-wide permitting system for MTUs (providing for a single state permit for a given unit, but requiring public hearings before operation at any specific site), with an option for either a national permit or a national technology review; (2) divorce the corrective action requirements of section 3004(u) from MTU permits, so that generators using MTUs to treat their wastes would not be subject to corrective action (this would be done by redefining "facility" so that the permitting requirements for an MTU would apply to the MTU unit and not to the site at which it operates); (3) modify the delisting procedures so that treatment residues could be delisted as part of the permitting process; and (4) exempt from permitting or issue permits-by-rule for certain treatment processes involving "low safety hazard and/or minimum environmental discharge."

The final report of the National Hazardous Waste Forum is included in the RCRA docket which is located at the

[1] Mixtures of solid waste or characteristic hazardous waste or residues derived from the treatment, storage, or disposal of characteristic waste are also considered hazardous, unless these mixtures or residues no longer exhibit any of the hazardous waste characteristics.

address listed at the beginning of this notice.

C. Hazardous Waste Treatment Council Petition

On January 15, 1986, shortly before the Forum's first meeting, HWTC petitioned EPA under section 7004(a) of RCRA and 40 CFR 260.20 to issue regulations to facilitate the issuance of RCRA permits to "portable hazardous waste treatment units" or MTUs. HWTC subsequently provided a more detailed request on April 25, 1986, that EPA modify its procedures for delisting hazardous wastes, and on August 27, September 17, and December 15, 1986 submitted substantial revisions of its petition. The original petition and subsequent correspondence with the HWTC are included in the RCRA docket.

In its petition, HWTC asserted that the current RCRA regulations discourage the use of MTUs by requiring RCRA permits for each site of operation, instead of for each MTU. HWTC argued that the permitting process is duplicative for units that travel from site to site and is excessively time-consuming and burdensome, especially considering the short period of time that MTUs may operate at a single site (from a few weeks to a few years). In particular, HWTC cited the corrective action and public hearing requirements as burdensome, arguing that these requirements would effectively prevent MTUs from treating RCRA hazardous wastes. As a result, HWTC argued that EPA's regulations prohibit the use of promising and flexible treatment technologies and discourage the treatment of hazardous wastes.

The HWTC petition requested modification in several major areas: permitting procedures and standards, delisting, and regulatory exemptions. A discussion of HWTC's recommendations in each of these areas is presented below.

1. *Permitting procedures.* In its initial petition in January 1986, HWTC recommended that EPA develop (1) permits-by-rule for specific technologies; (2) statewide or areawide permits for specific MTUs that, once granted, would allow the unit to operate without being subject to public notice requirements at each site of operation; (3) class permits for MTUs, establishing shortened forms and expedited review procedures; and (4) a regulatory amendment divorcing the corrective action requirements of section 3004(u) from the MTU permit. As in the National Hazardous Waste Forum report, corrective action would be separated from permit requirements by a redefinition of the term "facility," so that the permit applied only to the MTU, not to the property on which it operated.

In a later submission on August 25, 1986, HWTC substantially revised its petition. In this document, HWTC petitioned EPA to issue a separate Subpart of Part 270 for MTUs, establishing two sets of conditions for MTUs operating at RCRA sites: Type I conditions, which would be unit-specific and would not change from site to site, and Type II conditions, which would be site-specific and would be issued at each site where the unit operated. Corrective action and public hearing requirements would apply at each site of operation (although public hearings would be consolidated where possible).

2. *Delisting.* HWTC argues that the current delisting procedures discourage the use of MTUs, because under these procedures (according to HWTC) a waste generator cannot know if a treated waste will be considered nonhazardous until months after the permit is issued and operation has begun. If a generator cannot be assured that a waste will be treated by the MTU to nonhazardous levels and thus be exempt from further RCRA controls, he or she may have little incentive to contract for an MTU. To address this situation, HWTC recommended two regulatory changes. In the short term, HWTC believes that EPA should establish procedures for integrating delisting decisions into the permitting process, so that the permit would prescribe specific treatment standards defining the residue as nonhazardous. In the long term, EPA should develop self-implementing treatment standards for specific wastes, prescribing the levels of treatment that would render the waste nonhazardous.

3. *Regulatory exclusions.* HWTC also petitioned EPA to exclude certain specific treatment technologies that they believe have a low potential for release of hazardous substances to the environment from permitting under § 270.1(c)(2). Section 270.1(c)(2) currently exempts treatment in totally enclosed treatment systems, wastewater treatment tank systems, and elementary neutralization units. HWTC recommended adding to this list eight physical treatment technologies involving volume reduction, materials sizing and preparation, and phase separation.

D. RCRA Regulations Governing Petitions

EPA's process for addressing rulemaking petitions under RCRA is specified in 40 CFR 260.20. These regulations require that the Administrator publish in the **Federal Register** a tentative decision on the petition and solicit public comment. The tentative decision may be in the form of an advanced notice of proposed rulemaking, a proposed rule, or a tentative determination to deny. Upon written request of any interested person, the Administrator may, at his or her discretion, hold an infomal public hearing to consider oral comments. After evaluating all public comments, EPA will make a final decision by publishing in the **Federal Register** a regulatory amendment or a final denial of the petition.

This notice constitutes EPA's tentative decision on HWTC's petition.

III. Analysis of EPA Tentative Response

A. Summary of Response

EPA has tentatively decided to grant HWTC's request for developing special MTU permitting procedures by proposing a new § 270.66. In particular, this section would allow owners or operators of MTUs to obtain a state-wide permit for specific MTUs or groups of identical MTUs. This permit would prescribe conditions applicable to the design and operation of the unit. These conditions would apply state-wide, and the permit could be issued for a particular unit even if specific sites of operation had not been identified. Because the permit will not contain site-specific conditions, such as corrective action, it is not a section 3005(a) RCRA permit. The permit would be issued according to the procedures of 40 CFR Part 124 to the maximum extent possible, including public notice and opportunity for hearing. MTUs holding a state-wide MTU permit would be allowed to operate at a specific facility within the state once site-specific conditions were added to the permit and a final RCRA operating permit was issued to the facility in accordance with 40 CFR Part 124. Site-specific conditions would include such requirements as location standards, the contingency plan and security procedures, and corrective action at sites of operation.

EPA has also tentatively decided to grant HWTC's request to add an alternative delisting procedure, which will be incorporated into the permitting process under § 270.22 and § 270.32(e). This alternative delisting mechanism coud be used by stationary treatment units as well as by MTUs. The proposed incorporation of the delisting procedure into the permitting process, which modifies and elaborates on HWTC's petition, would require the same technical showing as the current delisting procedures.

Under the proposed amendment, a permit applicant could submit infomation necessary to delist the treatment residue, including information on the waste feed, likely constituents in the treated waste, and the actual (or proposed) waste sampling and analysis procedures with his or her application. The delisting authority would then review the information and set delisting levels for the hazardous constituents in the treated residue. These levels would be included in the draft permit for public comment. If actual waste residue data were included as part of the permit application, these data would be available for review by the public. If, however, the permit application did not include the actual waste residue data, the draft permit would include a requirement that the treated waste be sampled and analyzed to verify that the prescribed levels were met.

Once the permit is issued, the permittee could handle the treated residue as nonhazardous if it met the constituent levels and all other conditions set in the permit. However, the permittees who did not originally submit actual waste data would be required to submit confirmatory data to the delisting authority to ensure that the levels in fact were met and that the approved sampling an analysis plan was followed. Permittees who submitted actual waste data in the application would be required by the delisting authority to submit confirmatory data only in limited cases where the potential for waste or treatment variability was great.

With respect to the third component of the petition, the Agency is requesting comment on whether the eight technologies cited in the petition could be operated without a permit in a manner that is protective of human health and the environment. EPA is also asking what conditions, if any, should be imposed on any exemption for these units to ensure adequate environmental and public health protection.

EPA anticipates that this proposal will significantly simplify the permitting procedures for MTUs and will provide a delisting procedure which will facilitate the use of MTUs as well as stationary hazardous waste units. This proposal will encourage treatment as an alternative to land disposal and will simplify remedial actions, and, thus, serve the purposes of HSWA. For these reasons, the Agency believes that this rule will provide a net benefit to human health and the environment.

B. Permitting Procedures for MTUS

1. *EPA proposal.* Today's proposal would establish a two-stage permitting process for MTUs. Design and operating conditions would be addressed in a state-wide MTU permit, while site-specific conditions would be contained in RCRA permits issued to the facilities at which the MTU would operate. This approach would allow EPA or an authorized state to address the general permit conditions for the MTU once, eliminating duplicative reviews, while satisfying the statutory requirement of local notice and corrective action at each site of operation. The details of EPA's proposal are discussed in the following sections.

a. *Procedures for issuing state-wide mobile treatment and site-specific operating permits.* Under today's proposal, EPA or an authorized state would approve the state-wide mobile treatment permit, using the 40 CFR Part 124 procedures to the extent possible. Under the proposed procedures, the MTU owner or operator would submit a permit application (including Parts A and B) for a specific unit or set of identical units to EPA or the authorized state, stating that he or she was seeking a state-wide permit. EPA or the state would prepare a draft state-wide permit with supporting material, which would be published for comment using procedures similar to those described in 40 CFR 124.10. (Section 124.10(c)(2)(ii) requires notice in local newspapers and radio stations for RCRA permits; for state-wide mobile treatment permits, the regulating agency would be required to provide reasonable state-wide notice, as well as local notice in the vicinity of any sites where an operating permit was being sought.) The regulating agency would also be required to hold a public hearing, if requested, as provided in § 124.12(a)(3). However, the Agency or the state could, at its discretion, hold a single state-wide hearing or several hearings throughout the state.

Before a permitted MTU could operate at a specific facility in a state, however, EPA or the authorized state would have to issue the facility a RCRA permit which would include as a component of the permit the general conditions of the state-wide permit and site-specific conditions. This operating permit would be issued according to the procedures of 40 CFR Part 124. EPA or the state would publish for local comment the draft site-specific conditions, together with the state-wide permit, and would provide the public an opportunity for a local hearing before issuing an operating permit.

Today's proposal would allow an MTU owner or operator to obtain a state-wide MTU permit even in the absence of specific sites of operations. EPA anticipates, however, that in many cases the owner/operator will have identified at least one potential site at the time of permit application. Furthermore, in some cases, an MTU owner/operator may wish to test waste streams from potential customers to determine their treatability and whether they meet delisting standards. In these cases, the owner/operator may find it advantageous to obtain a final section 3005(a) permit for the property where the MTU is stored. The owner/operator will then be able to perform treatability studies under the terms of the permit issued at that site.

Where the owner/operator has identified one or more potential sites of operators within a state, he or she could apply simultaneously for the state-wide permit and the site-specific RCRA permits. In this case, EPA or the state agency should be able to consolidate public hearings to a certain degree. For example, if a single site were identified in a permit application, and a hearing on state-wide and site-specific conditions were requested, it might often be possible to hold one hearing on state-wide and site-specific conditions in the vicinity of the proposed site of operation. If several sites were identified, it might be possible to consolidate the hearings at a single location depending upon the proximity of the sites.

The purpose of EPA's proposed approach is to allow one-time review and permitting of the basic design and operating conditions of an MTU. These conditions would be spelled out in the state-wide mobile treatment permit and would be included in the facility-specific permits allowing the unit to operate at specific sites. In issuing the final RCRA operating permit at a specific site, the regulating agency would only address such questions as location standards, the contingency plan, and corrective action for solid waste management units located on the specific facility.

Under today's proposal, however, EPA or the authorized state, in issuing the site-specific RCRA permit, would provide opportunity for comment on the state-wide as well as the site-specific conditions. Section 7004 of RCRA requires that EPA provide *local* notice and opportunity for comment before a permit is issued. The Agency questions whether the procedures for issuing state-wide mobile treatment permits provide adequate opportunity for local comment where the specific sites of operation have not been identified in the permit application. Therefore, today's proposal would allow for local comment on all aspects of the draft permit, including the

state-wide conditions, before RCRA permits for specific sites are issued.

EPA recognizes that this requirement may be of concern to MTU or facility owner/operators, because it appears to provide the permitting authority and the public an opportunity to revisit issues that, in theory, had already been decided in the approval of the state-wide permit. EPA does not believe, however, that this concern should override the clear Congressional directive in RCRA that members of the public be provided the opportunity to comment on facilities permitted to operate in their neighborhoods. Furthermore, EPA believes that in practice this requirement will be of limited significance, except in the most controversial cases. Where public comment has been solicited on state-wide conditions in the initial approval procedures, and where the state-wide permit conditions conform fully with the Part 264 requirements, EPA believes that it will be unusual for major substantive issues regarding state-wide conditions to be raised that had not already been adequately addressed and resolved.

As an alternative to this approach, HWTC suggested that a single state-wide permit be issued to a mobile unit, which would be modified through the major-modification procedures of § 270.41 before the unit could operate at specific sites. The major modification procedure as proposed by HWTC would include all the procedural and substantive safeguards of permit issuance. In addition, the HWTC proposal would allow the public to comment on state-wide as well as site-specific conditions during the permit modification process. EPA has tentatively rejected this alternative, because it appears to provide few if any advantages over the proposed approach and because it appears to contradict the requirement in § 3005(a) of RCRA that final operating permits be issued to "facilities" i.e., a specific site rather than equipment or particular hazardous waste management units). This issue is discussed more fully later in this preamble.

b. *State-wide permit information requirements.* Under today's proposal, MTU owners and operators desiring approval of a state-wide permit would be required to submit both a Part A and a Part B application providing information on general design and operating conditions. Proposed § 270.66(c) specifies the information requirements for each of these applications. Except for minor variations necessary to reflect the specifics of MTU operation, these requirements are the same as the information requirements for permit applications for stationary units.

The Part A application for a state-wide permit would include: The activities that require the application to obtain a permit; the address where the units are stored when not in use; the SIC codes that best describe the products or services provided by facilities at which the MTU owner/operator intends to operate; the MTU operator's name, address, telephone number, ownership status, and related information; whether the mobile units are new or existing; a scale drawing of the unit; a description of the processess to be used for the treatment, storage, and disposal of hazardous wastes and the design capacity for these items; and the class codes, to the extent they are known, of the hazardous wastes that can be treated by the MTU and for which the permit is requested. Finally, in the case of multiple units, the Part A would have to include a certification by a registered professional engineer that the units were identical.

The following information would be required in the Part B permit application: The chemical and physical properties (to the extent they are known) of the waste to be handled; a waste analysis plan; an inspection schedule, with respect to inspection of all monitoring, safety, emergency, and operating equipment that are part of the MTU and will be used at all locations: a description of percautions to prevent ignition or reaction of ignitable reactive, or incompatible wastes; a closure plan, with closure cost estimates and financial assurance for closure of the MTU; documentation of liability coverage; § 270.16 information requirements for tanks that are part of the MTU, and § 270.19 and § 270.62 information requirements for incinerators, if applicable. In addition, the permit applicant would be required to provide any other information the permitting authority deems necessary.

EPA requests comment on whether these elements are appropriate for an application for a state-wide MTU permit and whether additional items should be included. In particular, EPA requests comment on information specific to MTU operations that should be added.

c. *Site-specific RCRA permit information requirements.* Before the MTU could operate at a specific site, a RCRA permit would be required for that site. The permit applicant would have to submit a separate Part A and B application for that site either together with the original statewide permit application, or subsequently. Both the owner/operator of the MTU and the facility owner would sign the permit application. The information required in the site-specific application is specified in proposed § 270.66(e).

The Part A for each site of operation would require all the information currently required under § 270.13 as it applies to the facility where the unit will operate. In other words, the applicant would provide such information as the name and address of the facility, a scale drawing and photograph of the facility, and a specification of the particular wastes to be treated at that facility. In addition, the application would include information on the schedule or duration of activities at the facility, to the extent it was known at the time of the permit application.

The Part B application would require general information on the facility, such as a facility description, a topographic map, and information on location, as well as information specific to the operation of the MTU that was not included in the state-wide permit. Specific information would include a description of security procedures; information on inspections with respect to structures installed at the facility and equipment not included in the unit-specific application; a contingency plan; information on procedures to prevent hazards in unloading, runoff, and other requirements in § 270.14(b)(8); information on interim closure of the MTU before it leaves the facility and on closure of any structures or equipment left at the location; and information on containers, tanks, surface impoundments, or waste-piles used to store or treat wastes in conjunction with the MTU. In addition, in the case of incinerators, the permit applicant could also provide data in lieu of a trial burn, if appropriate.

EPA solicits comments on the appropriateness of these information requirements in permitting the operation of MTUs at specific sites. In particular, EPA is concerned about whether any additional items specific to MTU operation should be added, such as procedures for installation or transportation of the unit.

d. *Permit conditions.* The site-specific RCRA operating permit with the state-wide permit conditions included would impose the same conditions as a permit for a stationary facility conducting comparable activities.

The state-wide permit would include the general duties and requirements of § 270.30 and § 270.31 (e.g., proper operation and maintenance, inspection and entry, monitoring and records); it would require discrete identification

numbers for each unit covered under the permit (as discussed later, a state-wide permit might apply to several identical units); it would impose the notice requirements of § 264.12; the waste analysis requirements of § 264.13; the personnel training requirements of § 264.16; the requirements relating to ignitable, reactive, and incompatible wastes of § 264.17; and the manifest, recordkeeping, and reporting requirements of Part 264 Subpart E. In addition, it would impose Subpart G closure requirements, as they apply to the final closure of the MTU, and Subpart H financial responsibility requirements, as applicable to closure of the MTU and liability for MTU operations. Finally, Subpart J tank and Subpart O incinerator standards or incinerator trial burn standards of § 270.62 would apply, as appropriate. EPA has proposed the addition of 40 CFR Part 264 Subpart X, which applies to miscellaneous units (November 7, 1986, 51 FR 40726–40739), and 40 CFR Part 269 Subpart C, which would limit volatile organic emissions from hazardous waste management facilities (February 5, 1987, 52 FR 3748). These conditions would also apply, if applicable, when they become final.

The site-specific conditions in the final operating permit would establish all applicable requirements not already addressed in the state-wide permit. These would generally include security procedures, preparedness and contingency plan requirements, and specific standards for activities at the facility carried on in connection with the MTU treatment. Examples of such activities are interim closure of the MTU at the location and final closure of any structures or equipment remaining on the site; financial assurance for such closures; standards for tanks and containers built at the facility in connection with operation of the MTU, but not already permitted in the state-wide permit; standards for waste piles created in connection with MTU activities; and incinerator operating conditions (if necessary). In addition, the final RCRA operating permit would include a schedule of compliance for any corrective action at the facility determined to be necessary by the permitting authority under section 3004(u) of RCRA, and the facility owner would have to comply with financial assurance requirements for corrective action.

Finally, the site-specific portion of the RCRA permit would establish the permit term. Unless otherwise specified in the final permit, the MTU could operate at the site at any time during the life of the site-specific permit without a permit modification. However, at the discretion of the regulating agency, the permit might require that the permittee notify the regulating agency or state or local officials, including local emergency response officials, before arrival and operation of the unit at the facility.

EPA therefore is not proposing specific time limits for operation of an MTU at a site. The National Hazardous Waste Forum recommended such a time limit to prevent the establishment of permanent treatment facilities under special procedures developed for mobile units. EPA does not believe that this restriction is necessary. The National Forum's proposal was based on the assumption that facilities at which an MTU operated would be relieved of the section 3004(u) corrective action requirements. Therefore, it was necessary to ensure that facility owners engaged in long-term treatment could not use MTU permitting procedures as a way to avoid corrective action. Under EPA's proposal, the facility at which the MTU operated would be subject to the requirements of section 3004(u), regardless of the amount of time the unit remained on site, and the unit would be permitted to operate at that site only after full opportunity for public comment under the current permitting procedures. Therefore, EPA believes that there is no need to establish a regulatory time limit for operation of an MTU at a site, other than the current 10-year limit on all RCRA permits.

EPA solicits comments on this issue, as well as on the proposed state-wide and site-specific permit conditions.

e. *Scope of mobile treatment permit.* Proposed § 270.66 applies specifically to MTUs. In the proposal, MTUs are defined as "any device or equipment, or combination of devices or equipment, that treats hazardous waste and that is designed to be transported and operated at more than one site." This definition does not specify the type of unit that might qualify for a mobile treatment permit under § 270.66, as long as it is designed for the treatment of hazardous waste. Thus, a mobile treatment tank, incinerator, or any other treatment unit could qualify as a MTU. However, any permit issued under § 270.66 would have to adhere to the Part 264 and other standards appropriate for that type of unit.

Several members of the regulated community has asked whether a mobile unit could ever qualify as a tank, because § 260.10 defines tanks as "stationary devices." EPA confirms that a mobile tank would qualify as a tank under § 260.10, and would be subject to the Subpart J tank standards of Part 264, as long as it was intended to be stationary during operation and it otherwise met the definition of a tank. In some cases, of course, mobile units might not fall into the definitions of tanks, containers, or incinerators. In these cases, they would be permitted under Subpart X standards for miscellaneous units, which EPA proposed on November 7, 1986 (51 FR 40726–40739).

Today's proposal specifies that EPA or an authorized state may issue a state-wide permit for either a specific MTU or identical units. In some cases, manufacturers of MTUs may produce a number of identical units. EPA believes that an MTU owner or operator should be able to receive a single state-wide permit covering several identical units, and that no useful purpose is served by requiring the paperwork of a separate permit for each unit. However, the general permit would be required to specify the number and identity of units permitted, and each unit would require a discrete identifying number. In addition, the Part A would have to include a certificate by a registered professional engineer that the units were identical. (EPA has not proposed a definition of "identical" in this rulemaking. It recognizes, however, that trivial differences will always exist between different units. For the purposes of this rule, it intends "identical" to mean identical in design, size, operation, and all other conditions that might affect treatment of hazardous waste, emissions, or any other factors that would relate to the performance or safety of the unit. The Agency solicits comments on the appropriate definition of "identical" for the purposes of this rule.)

EPA recognizes that manufacturers and operators of fixed treatment units share many of the concerns and interests of mobile unit owner/operators. The use of specific treatment devices might also be facilitated if a manufacturer could receive approval of state-wide conditions of those devices. EPA's proposal does not extend to fixed units, however, because the Agency believes that current regulations provide adequate flexibility for the permitting of fixed units at specific sites and that any permitting impediments are best addressed through development of guidance and model permits. However, the Agency requests comments on this issue.

f. *Closure requirements.* The "closure" of MTUs raises special issues that EPA has addressed in this proposed rulemaking. As explained earlier, the

MTU itself will be subject to the applicable closure requirements of Part 264, and the permit applicant will be required to submit a closure plan as part of the permit application. In addition, any structures, equipment, or hazardous waste left on-site will be subject to the closure requirements and financial assurance as part of the operating permit for the specific site.

In addition, the MTU will undergo an "interim" closure every time it leaves a specific site and moves to another. These proposed regulations do not specify conditions of interim closure before an MTU can leave a facility at which it is operating. EPA believes that this question is best handled as part of the specific permit conditions for the facility. However, the Agency anticipates that MTU "interim" closures will generally be consistent with the tank or incinerator closure standards (§§ 264.197 or 264–351). Under today's proposal, if an MTU fails to meet these standards, it becomes a hazardous waste generator and transporter subject to all applicable requirements under Parts 262 and 263, including the manifesting requirements.

g. *Trial burns for incinerators.* One promising mobile technology is incineration. Mobile incinerators have already been used successfully to treat solid waste, including RCRA hazardous waste, and this technology appears to be particularly well suited to cleanups and remedial action. A major issue that EPA and the states must address in issuing permits to mobile incinerators, however, is whether trial burns are needed as each site of operation to establish operating conditions.

Under today's proposal, the state-wide MTU permit would generally establish operating conditions for the shakedown before trial burns at each site and for the trial burn itself, as required in § 270.62, to the maximum extent possible. The final operating conditions would be established as part of the site-specific permit. However, MTU permit applicants may provide data in lieu of a trial burn under § 270.19(c) when they apply for a site-specific permit, just as they may in the case of stationary incinerators. EPA believes that data developed during operation of the unit handling similar wastes at previous sites will often be adequate in lieu of trial burn data, and that trial burns at specific sites may often be unnecessary. Particularly as experience is gained with mobile treatment in general and with the operation of specific units, EPA believes it will be possible to eliminate the need for site-specific trial burns to establish operating conditions.

h. *Corrective action.* Under section 3004(u) of RCRA, all permits issued after the effective date of the 1984 amendments must address corrective action for releases of hazardous waste or hazardous constituents from solid waste management units on the facility. As explained earlier, this requirement would apply at each facility where the MTU owner/operator is permitted to operate. EPA's corrective action program has been described extensively in a draft strategy entitled the National RCRA Corrective Action Strategy. This strategy was noticed in the **Federal Register** on October 23, 1986 (51 FR 37608) and is available from the RCRA Hotline at the address provided at the beginning of this notice. Therefore, only a brief description of corrective action requirements is provided here.

Before a final operating permit is issued under proposed § 270.66, EPA or an authorized state would conduct a RCRA facility assessment (RFA) to identify possible releases from solid waste management units within the property boundary of the facility at which the MTU is located. Where possible releases subject to section 3004(u) requirements have been identified, the permitting authority would include a schedule of compliance in the permit requiring an investigation of the releases and, if necessary, corrective action. The corrective action portion of the permit, like other site-specific conditions, would be subject to public comment before permit issuance.

i. *Permit modifications.* Under today's proposal, state-wide permits for MTUs could be modified according to the procedures of § 270.41 or § 270.42. If the state-wide permit conditions were modified, the new conditions would apply at all sites to which the permit applied in the future. However, the modifications would not apply at the sites that had already been permitted, unless the operating permits issued for those sites were modified as well. EPA solicits comments on how permit modification regulations should apply to state-wide MTU permits.

EPA is now concluding regulatory negotiations on permit modifications with representatives of industry, public interest groups, and the states, and will shortly be proposing amendments to the current modification procedures. The amended procedures will not specifically apply to modifications in state-wide MTU permits. As part of the rulemaking, however, EPA will solicit comment on how the amended requirements might apply to state-wide permit modifications. These modifications might range from addition of identical units to the permit, change in storage address, to changes in basic operation or design. Readers of today's notice are encouraged to comment on the permit modification amendments when they are proposed, particularly as they apply to MTU state-wide permits and the use of MTUs at already permitted sites. Interested persons may ensure that they are notified of the publication of the permit modification proposal by contacting the RCRA Hotline at the telephone number at the beginning of this notice or by requesting notification in comments submitted on today's proposal.

j. *Duration of permit.* Section 270.50 states that permits are effective for a fixed term not to exceed ten calendar years, and that a permit shall not be extended by modification beyond the maximum duration. These requirements will apply to state-wide MTU permits and to the site-specific RCRA operating permits.

HWTC suggested an amendment to the permit duration requirement under § 270.50 to allow separate application of expiration dates to state-wide and site-specific conditions. However, the expiration date of each site-specific permit could not exceed the unexpired term of the basic part of the permit. EPA believes that this regulatory change is unnecessary and that, under the regulations as proposed, the term of treatment at a specific site can be defined as a site-specific condition.

2. *HWTC alternative.* EPA's proposed approach to MTU permitting is close to the approach suggested by HWTC in its August 25 petition. There are, however, at least two significant differences. Under EPA's approach, a state-wide permit is issued to the MTU prescribing design and operating conditions, but the final RCRA operating permit for the facility is not issued until the site-specific conditions are added to the state-wide permit for the site at which the unit operates. Under the HWTC approach, a state-wide "RCRA permit" would be issued to the MTU; this permit would be modified through the procedures of § 270.41 to add site-specific conditions for each site of operation. In addition, a separate "corrective action" permit would be issued to each site owner addressing § 3004(u) requirements for that site. Therefore, the HWTC approach differs from EPA's proposal in two respects: (1) It allows the addition of new sites to an MTU permit through the permit modification process, and (2) it requires the issuance of two separate permits at

each facility, clearly distinguishing the legal responsibilities of the MTU owner/operator, who is solely liable for the operation, from those of the facility owner, who is solely liable for corrective action at the facility.

EPA has tentatively rejected the HWTC permit modification approach because it believes that the proposal runs counter to the requirement in section 3005(a) of RCRA that permits be issued to "facilities." Given that section 3005(a) specifically states that permits are issued to "facilities," the Agency does not believe it is appropriate to issue a section 3005(a) permit where no "facility" (which by definition refers to a site of operation) has been identified. In addition, the Agency believes that the approval of site-specific operating conditions at a new site constitutes permit issuance under sections 3005(a) and 7004(b), not permit modification.

As an alternative, the Agency is proposing an approach that provides essentially the same advantages as the HWTC approach, but is more consistent with the statutory framework. The main advantage of the permit modification approach would appear to be the requirement under § 124.5 that, when a permit modification is requested, EPA and the public may only address the terms of the modification, not other permit conditions. The suggested HWTC approach, however, would eliminate this advantage by allowing public comment on all portions of the MTU permit. Therefore, the procedures would be identical to those in the EPA proposal, with only the semantic difference that they would be called permit modifications rather than permit issuances. (The situation would be different if the facility at which the MTU were to operate was already permitted to handle hazardous waste. In this case, the facility's permit could be modified to incorporate the MTU—a change that in some cases might not be significant enough to require the full procedural safeguards of the major modification process. This issue, which is now being addressed by EPA in regulatory negotiations on RCRA permit modifications, is discussed more fully in section IV.D.1 of this preamble.)

EPA has also tentatively rejected the HWTC "corrective action" permit approach. Again, the Agency believes that this approach is inconsistent with the statutory concept of "facility" and the requirement that all RCRA permits address section 3004(u) corrective action. Under the HWTC approach, the site-specific permit for the MTU would not be issued to a "facility," but rather to a unit, and it would not address section 3004(u) corrective action on the facility. For this reason, EPA does not believe it would constitute a legitimate RCRA permit and therefore the Agency does not favor this approach.

However, one major advantage of the "corrective action" permit approach, as described by HWTC, is that it clearly divides the legal responsibilities of the MTU operator and the facility owner. HWTC is concerned that, if a single permit is issued to both, the MTU owner or operator will become liable for section 3004(u) corrective action on solid waste management units and other activities unrelated to MTU operations and over which the MTU owner/operator has no control. A similar issue arises when an MTU is brought onto the facility to carry out corrective action and is made part of a facility's permit through modification.

Although EPA recognizes HWTC's concerns, the Agency does not believe that issuing two separate, unrelated permits at the same facility is necessary or is the most appropriate means of resolving this issue. Instead, EPA believes that it is more appropriate to delineate the limits of the MTU operator's RCRA responsibilities in the permit itself (and eventually as part of the corrective action regulations). Under the proposed approach, therefore, the site-specific permit would specify the corrective action and other responsibilities that rest solely with the facility owner. Thus, the permit would generally limit the obligations of the MTU owner/operator to the MTU operation and related activities (including corrective action for releases from the MTU). Except as specified in the permit, EPA reserves the right to take enforcement action against either owner or operator pursuant to CERCLA, RCRA or any other legal authority. The limitation of liability stated in the RCRA permit does not affect any potential liability under any other authority.

This approach recognizes that, where the facility owner and the unit operator are different persons, only the facility owner may in many cases be able to undertake corrective action. This is particularly true on portions of a site that are unconnected with current hazardous waste management activities under control of the MTU operator. The proposed limitation in the operators' liability, therefor, is a necessary element of any MTU permitting scheme, because without it MTU owners are unlikely to operate at any RCRA hazardous waste facilities. As a result, EPA and facility owners would find it difficult if not impossible to carry out a section 3004(u) corrective action program if operators of MTUs brought on site to address corrective action were held liable for the operation of permitted units elsewhere on the site. At the same time, EPA believes that its approach does not in any way sacrifice the enforceability of permits, because facility owners would remain liable for any activities at the site (including MTU operations) and MTU owners/operators would be responsible for releases resulting from their operations.

EPA requests comment on the merits of this approach, as well as on the "corrective action" permit alternative proposed by HWTC.

3. *Definition of facility and corrective action.* Both the National Hazardous Waste Forum and the January 15 HWTC petition recommended that EPA redefine "facility" in 40 CFR 260.10. Section 3005(a) of RCRA requires each owner or operator of a "facility" for the treatment, storage, or disposal of hazardous waste to obtain a permit. In the July 26, 1982, land disposal regulation, EPA defined the term to mean all contiguous land and structures under the control of the owner/operator engaged in hazardous waste management (47 FR 32288–9, July 26, 1982). Therefore, a permit issued to a "facility" applies to the entire property surrounding the hazardous waste management unit, not merely to the unit itself.

The January 25 HWTC petition and the National Hazardous Waste Forum report proposed amending this site-based definition to specify that a "process unit" could also be a "facility" under the regulations. Under the definition proposed by the HWTC petition, a hazardous waste management facility would not always be defined strictly in terms of its location, but in the case of mobile units the facility would be the equipment or "process unit" used for the treatment, storage, or disposal of hazardous waste without any reference to the property on which it operated. An MTU or "facility," therefore, could be issued a general permit to operate without reference to sites of operation. The specific sites of operation would not have to be identified in the permit, and the site owner would not incur RCRA responsibilities.

In practical terms, the most important results of this change would be eliminating the need for corrective action under section 3004(u) of RCRA and, according to HWTC, for local notice and opportunity for hearing at the sites of operation. Under HWTC's argument, if the permit applied solely to the MTU, then the site owner/operator would not be subject to corrective

action at other solid waste management units on his or her site. (To prevent the use of MTUs as a way to avoid corrective action for long-term treatment, the National Forum report and the HWTC petition restricted MTU operation without corrective action to 90 days at generator sites or 4 years for remedial action.) In addition, HWTC argued that local notice and opportunity for a hearing would not be required at each site of operation. A change in the definition of "facility", therefore, would provide a major incentive for on-site treatment by generators not already subject to RCRA permitting requirements. Without this change, according to HWTC, generators not already in the RCRA permitting universe would effectively be prevented from treating their wastes by MTUs or any other method, because few would be willing to accept the corrective action requirements of section 3004(u) as the price for on-site treatment.

EPA recognizes that a redefinition of "facility" would provide a major incentive to on-site treatment by generators. However, it has tentatively rejected the HWTC proposal because of the importance of the definition of "facility" to the RCRA permit program and because EPA believes that the proposal is contrary to Congressional intent. Although the definition of "facility" is found in the regulations, not the statute, subsequent RCRA amendments that use and depend on the site-based regulatory definition of "facility" incorporate that definition into the statute. The corrective action requirements of section 3004(u), added to RCRA in 1984, are based upon Congressional understanding that "facility" means the entire site under the control of the owner or operator engaged in hazardous waste management, not just the individual hazardous waste management unit (see 50 FR 28712, July 15, 1985). For this reason, EPA does not believe that it has the authority to redefine the term "facility" as suggested in the HWTC petition.

In addition, redefining "facility" to include equipment as well as sites will not relieve the MTU of local notice and opportunity for a hearing. Under section 7004(b)(2), local notice and opportunity for hearing must be provided before a permit can be issued to any "facility." Thus, a permit could not be issued to an MTU "facility," whether defined as a site or equipment, until there had been notice and opportunity for hearing in each locality in which it would be permitted to operate.

HWTC discussed in alternative approach to permitting MTUs in a letter to EPA on May 21, 1986. Under this approach, EPA would issue a special Part 270 regulation for MTUs specifically exempting their sites of operation from the corrective action requirements. HWTC cited as a justification for this approach the language of the Conference Report to HSWA, which encouraged EPA "to use its existing authority to develop a permit program for mobile treatment units." EPA has tentatively rejected this suggestion because it does not believe that the Conference Report language should be interpreted as overriding the section 3004(u) requirements, or other site-specific requirements explicitly included in the statute. Rather, EPA believes that this legislative history indicates Congressional support for regulatory changes to better accommodate mobile technology, consistent with the statutory framework, an approach followed by EPA in developing today's tentative response.

Despite this tentative decision, EPA recognizes the breadth of support for a redefinition of facility, reflected both in the treatment industry's petition and in the National Hazardous Waste Forum's report. In addition, the Agency recognizes the importance of encouraging hazardous waste treatment, particularly as land disposal restrictions go into effect, and the important role that MTUs could provide in treating generators' waste. Therefore, EPA solicits comment on the corrective action and facility definition issue. In particular, EPA solicits information on the extent to which corrective action requirements are likely to be a barrier to the use of MTUs at generators' facilities that would be interested in using MTUs, and the extent to which generator sites are likely to have solid waste management units requiring corrective action.

C. Delisting Procedures

1. *Background.* A vital part of the hazardous waste program is the list of hazardous wastes. EPA lists wastes as hazardous if the Agency can demonstrate that the waste typically and frequently meets the criteria for listing (see 40 CFR 261.11(a)(1) through 261.11(a)(3)).

Individual listed waste streams may vary depending on raw materials, industrial processes, and other factors. Thus, while a listed waste typically is hazardous, a specific waste from an individual facility may not be, even though it meets the listing description. For this reason, 40 CFR 260.20 and 260.22 of the hazardous waste regulations provide an exclusion or "delisting" procedure. This procedure allows persons to demonstrate that a specific waste from a particular generating facility is not hazardous because it does not meet any of the criteria for which it was listed, that factors (including additional constituents) other than those for which the waste was originally listed could not cause the waste to be hazardous, and that, therefore, the waste should not be regulated as a hazardous waste.

2. *Current procedures.* Under the existing regulations, persons who generate or manage listed hazardous waste may petition the Agency for a regulatory amendment to exclude or "delist" their waste from regulation (see 40 CFR 260.20 and 260.22). To be successful, the petitioner must demonstrate that the waste is not hazardous. HSWA modified the hazardous waste identification and listing procedures under section 3001 by adding paragraph (f), which establishes specific criteria and procedures for evaluating delisting petitions. These statutory provisions were codified in the July 15, 1985, Final Codification Rule (50 FR 28702) and alter the substantive standard by which delisting petitions are evaluated. The amendments set forth a two-step delisting evaluation procedure. First, the Agency must consider the factors for which the waste was originally listed; then, the Agency must examine factors other than those for which the waste was listed (including additional constituents) in cases where the Administrator has a reasonable basis to believe that such other factors could cause the waste to be hazardous. The amendments also establish that the Administrator must provide notice and opportunity for public comment on the Agency's proposed decision (including evaluation of these additional factors) before granting or denying a petition.

In submitting a delisting petition, applicants must provide the Agency with the information set forth in §§ 260.20(b) and 260.22(i), including: (1) A description of the manufacturing process or processes and feed materials producing the waste, and an assessment of whether such processes, operations, or feed materials can or might produce a waste that is not covered by the demonstration; (2) a description of the waste and an estimate of the average and maximum monthly and annual quantities of waste generated; (3) pertinent data on, and a decision of, factors considered by the Agency in listing the waste, demonstrating the nonhazardous nature of the waste; (4)

representative sampling and testing of the waste on a minimum of four samples, including the name of the laboratory performing the sampling and testing, the names and qualifications of the persons sampling and testing the waste, sampling and testing dates, a description of the methodologies and equipment used to collect representative samples, and a description of the tests performed and the instruments used in performing the tests, including the model numbers of the instruments used in performing the tests: (5) appropriate Quality Assurance/Quality Control (QA/QC) data and documentation; (6) a signed certification statement; and (7) other general information, including the petitioner's name and address, facility location, and a statement of the petitioner's interest, need, and justification for the proposed action.

For the Agency to determine whether other factors (including additional constituents) could cause the waste to be hazardous, petitions must also include the following additional information (described in detail in "Petitions to Delist Hazardous Waste: A Guidance Manual," NTIS, PB 85-194488): (1) Data on whether the waste exhibits any of the four hazardous waste characteristics identified in Subpart C of Part 261; and (2) a complete list of raw materials, intermediates, by-products, and products used or produced in the processes at the plant or facility generating the waste; a list of those raw materials, intermediates, by-products, and products that are discharged into or likely to be present in the waste, as well as approximate quantities for each material entering the waste; and, a list of those raw materials, intermediates, by-products, and products that are not discharged into or likely to be present in the waste and the basis for this belief; [2] or (3) representative analytical data on at least four representative samples for *all* constituents listed in Appendix VIII of Part 261 that are likely to be present in the waste at significant levels, and for those Appendix VIII hazardous constituents for which no testing is done, an explanation of why these constituents would not be expected to be present in the waste or, if present, why they would not pose a toxicological hazard.

Delisting petitions are evaluated by the Office of Solid Waste at EPA headquarters in Washington, DC or at the state level in those states that have authorized delisting programs. (To date, Georgia is the only state authorized for the RCRA delisting program.) Typically, the data required to support a delisting decision are developed by the hazardous waste generator or treater.

As discussed earlier, the permit application process can be an involved and time-consuming procedure that can take several years to complete. Once the permit is secured (which may encompass some type of demonstration—e.g. a trial burn for incinerators), the owner or operator must produce a representative quantity of residue, and then sample and analyze the residue before attempting to demonstrate through a delisting petition that the residue is non-hazardous. Alternatively, data required for delisting may be available (e.g., obtained during interim status) and such data can be submitted for delisting purposes. The delisting process, from the date a complete petition is received to final determination, typically will take eight months or longer. Thus, treatment unit owners may find it difficult to assure potential clients that the treatment process will produce a non-hazardous (delistable) treatment residue, and therefore they may face substantial difficulty in marketing their treatment technology.

To correct this problem, today's proposal includes an alternative mechanism to delist a waste from regulation, by incorporating the current delisting process into the permit process. EPA's proposed method for doing this is discussed below.

3. *Proposed approach.* Today's proposal would allow owners or operators of hazardous waste units (both MTU's as well as stationary treatment units) the option of petitioning for a delisting through the RCRA permit process at the time that they submit the Part B of their Part 270 permit application. (Of course, delisting may still be conducted under the procedures currently in place.) In this case, the delisting portion of the application would be submitted to the state, or if the state were not authorized for delisting, to the EPA regional office. This approach would allow delisting and permit decisions to be made concurrently. The specific information requirements which would have to be met to delist a hazardous waste through the permit process are the same as currently required under the existing delisting procedure; these requirements are set out in proposed § 270.22, and discussed in this proposal under the heading "Specific Information Requirements."

Under the Agency's proposed approach, delisting petitions would be reviewed according to the existing delisting criteria. Although the petitions would be part of the permitting process, they would be reviewed and acted upon by the appropriate delisting authority (i.e., EPA or state authorized for delisting); however, the notice and comment procedures of the permitting process would apply (§ 124.10). (See section III.C.6. for a discussion on the notice and comment procedures.) Owners and operators of MTUs could file their petitions as part of a state-wide or site-specific RCRA permit application (see proposed § 270.66), and decisions concerning both the permit and the hazardous or non-hazardous nature of the treatment residue would be made at the same time.

In states that are authorized for delisting, such delistings would be granted as part of the state's permitting process. However, for the delisting component of the state-issued permit to be valid nationwide, the applicant would have to submit a similar delisting petition to EPA under § 260.20 and § 260.22. In cases where the state is not authorized to conduct the delisting process but is otherwise authorized for RCRA or HSWA permitting, the delisting portion would be reviewed by EPA, and a permit that includes the delisting would be issued jointly with the RCRA base permit. Because the delisting is performed by EPA, it would be effective nationally. However, regardless of the state's authorization status, unless a state similarly exercises its own delisting provision consistent with the Federal action, the Federal decision to exclude the waste from regulation will not be effective in that state since the state program can impose requirements that are more stringent than the Federal requirements. Therefore, as a practical matter, the applicant may not be able to benefit from the Federal delisting until the State law allows the Federal decision to be implemented. In a state that does not have a provision for delisting or has no way to adopt Federal delisting decisions, EPA will not review the delisting petition (unless the waste is involved in interstate commerce) since EPA's decision will have no effect in that state.

Under today's proposal, petitioners could request delisting as part of their permit application in one of two ways, depending on whether or not they had actual waste treatment residue data. The two approaches are discussed below.

[2] Based on this information, the Agency may require analytical testing of the waste for those additional constituents likely to be present in the waste when the information appears to indicate their presence at significant levels.

The first approach, contained in proposed § 270.22(a), would be appropriate for those persons who already had samples of the treated waste residue and can provide waste residue analysis information at the time of permit application. This, for example, would be the case for interim status facilities or for facilities that had sent their waste to a permitted MTU for a treatability study. Pilot plant data would normally not meet the data requirements under § 270.22(a). However, the applicant may be able to demonstrate that the pilot plant data satisfy the requirement for actual data on the waste to be delisted.

Under the first approach, the permit applicant would submit all the information that is currently required for delisting under 40 CFR 260.20 and 260.22 (see section on "Current Procedures"). EPA (or the state if the state had delisting authority) would review the delisting information and treatment residue constituent levels, decide if the levels met the delisting criteria, and publish a proposed delisting decision in the draft permit for public comment. EPA (or the state if the state had delisting authority) would consider and address all comments and then grant or deny the delisting petition; this decision would be incorporated in the final permit.

The second approach, described in proposed § 270.22(b), would be available to persons who do not have actual waste treatment residue data. This might be the case for a new treatment unit or for a treatment unit new to a site. Under this approach, the applicant would submit (in addition to the generally required information): Waste feed data, information on the hazardous constituents that are likely to be present in the treatment residue, and a detailed description of the sampling and analysis plan that would be used to measure constituent levels. (Information requirements under this option are discussed in more detail below under "Specific Information Requirements.") The delisting authority would use this information to set delisting levels for the constituents identified in the waste and to set sampling and analysis requirements. These conditions would be published for comment in the draft permit and, if approved, incorporated into the final permit.

After the permit had been issued, the permittee would conduct the sampling and analysis that was required as part of the permit to determine the levels of constituents present in the waste. If these levels met the conditions laid out in the permit, the permittee could handle the treatment residue as nonhazardous. However, if the permittee found that the treatment residue did not meet the delistable levels or that new constituents existed in the residue, the waste would have to be handled as hazardous. In these circumstances, the permittee would have to seek a delisting for the residue through the permit modification process or the standard delisting procedures.

The Agency's primary objective in proposing this consolidation of the permitting and delisting procedures is to expedite the delisting process. The proposed system will provide owners and operators of facilities (including MTUs) that treat hazardous waste and seek to have their treatment residues classified as nonhazardous with a process by which they can avoid the time delays inherent in the current procedure and know in advance what requirements they must meet to achieve delisting.

The Agency perceives several advantages to integrating delisting into the permitting process: (1) It provides equivalent safeguards to the delisting process as currently allowed; (2) it provides a logical process for delisting the waste since permit reviews are designed to examine the nature of a waste stream, the process used to treat it, and the operating conditions of the treatment system, which are also fundamental elements of the delisting review; (3) it allows the applicant to know the constituent levels that must be achieved before an expensive unit is built or leased; (4) it speeds the time necessary for delisting decisions, since the delisting application is not delayed while awaiting permitting, construction, and operational activities; (5) it provides the public and the permit-issuing authority an opportunity to review and comment on the hazardous and nonhazardous nature of the treatment residue as well as the treatment technology and its performance before the permit is issued; and (6) it allows the Agency to use the permitting system's extensive procedures for modifying and terminating permits and/or permit conditions to ensure the permit holder's continued adherence to the delisting conditions.

This proposal addresses the procedures of delisting but does not affect the technical criteria for delisting. EPA is evaluating its delisting standards and criteria as part of a separate effort. In particular, the Agency is reviewing the relationship of delisting levels to its definition of hazardous waste and treatment levels required by the HSWA land disposal restrictions. EPA will be soliciting comments on these and other issues as a part of this separate effort.

The following sections present and explain the regulatory changes that are proposed today to integrate delisting into the permit process.

4. *Specific information requirements.* As explained earlier, today's proposal would establish two approaches for permit applicants seeking to delist a waste treatment residue as part of the permitting process. Under proposed § 270.22(a), permit applicants who had all of the information, including the actual waste residue analysis, would submit this information as is currently required under § 260.20(b) and § 260.22.

Under proposed § 270.22(b), permit applicants who do not have the treatment residue data available could defer submittal of this information until after issuance of the permit. In this case, the applicant would have to provide, at a minimum: (1) All information required under § 260.20(b) (e.g., the applicant's name and address, proposed action, and statement of need for delisting); (2) a description of the manufacturing process or other operations, a description of feed materials producing the waste, and an assessment of whether such processes, operations, or feed materials can or may produce a waste that is not covered by the demonstration; (3) a description of the waste and an estimate of the average and maximum monthly and annual quantities of waste generated; (4) a description of the methodologies and equipment that will be used to obtain the representative samples and a description of the tests to be performed and the instruments to be used in performing the tests, including the model numbers of the instruments to be used in performing the tests; (5) a description of the sample handling and preparation techniques, including techniques that will be used for extraction, containerization, and preservation of the samples; (6) such supplemental information as the delisting authority finds necessary and appropriate to determine whether the residues from the treatment process will be nonhazardous; and (7) a detailed sampling and analysis plan that will indicate to the Agency the representativeness of the samples to be collected. As part of these data requirements, permit applicants would also be required to furnish information on the hazardous constituents that might be present in the treatment residue (i.e., a complete list of raw materials, intermediates, by-products, and products that are likely to be used in the various processes that generate the waste). The delisting authority may

waive or reduce the level of detail for any of these items, if appropriate.

5. *Establishing permit conditions for delisting.* Proposed § 270.32(e) establishes the following permit conditions. In those cases where the delisting applicant supplies all the delisting information, as required under § 270.22(a), the permit would establish maximum levels for the constituents identified in the waste residue. In addition, EPA (or the state if the state had delisting authority) could, in its discretion, require further sampling and analysis and reporting of these results as a permit condition. This would be particularly appropriate if the waste feed or process conditions were likely to vary somewhat. The permit would also require that the waste would have to be handled as hazardous if it failed to meet the permitted levels.

When the delisting applicant is unable to furnish actual waste residue data and thus must apply for a delisting under § 270.22(b), the permit would establish maximum levels for the constituents anticipated to be present in the waste residue. These levels would be based on the information provided by the applicant on the waste feed and intended treatment process (proposed § 270.32(e)(2)). In addition, the permit would set conditions for sampling and analysis of the treated waste to ensure that no additional toxic constituents are present in the waste at significant levels and that the constituent levels set in the permit have been met such that the treated waste is in fact nonhazardous. These data might include, but would not be limited to: (1) Representative samples of the total concentrations of all Appendix VIII hazardous constituents likely to be present in the treatment residue; [3] (2) concentrations of total oil and grease; (3) leachable concentrations using the Extraction Procedure (EP) or Organic Waste Extraction Procedure (OWEP) of the EP toxic metals plus nickel; (4) leachable concentrations using a distilled water leach test for cyanide; (5) representative QA/QC procedures (including reporting spike concentrations and present recoveries), and (6) the characteristics of ignitability, corrosivity, and reactivity. In addition, the permit could require periodic sampling, analysis, and reporting, where the delisting authority deemed it necessary.

[3] In determining which constituents are likely to be present in the waste, the petitioner would have to provide justification of which other Appendix VIII hazardous constituents are not expected to be present, or if present, why they would not pose a toxicological hazard.

Once the permit holder has determined that the waste residue meets the delisting levels in the permit, the permit holder and other persons would be able to handle the residue as a non-hazardous waste. However, if the constituent levels are not met, if a previously undetected hazardous constituent is found in the waste residue, or if the permittee does not meet any of the other permit conditions related to delisting, the permittee would have to handle the waste residue as hazardous and seek delisting through the permit modification process or current delisting procedures.

The permit would also require the permittee to report the testing results to the delisting authority within 90 days after treatment of the first batch of waste, and the permittee would have to submit a certificate that is signed by or on behalf of the permittee that attests to the truth, accuracy, and completeness of the information submitted to the delisting authority. The delisting authority would review the data to verify that the waste met all of the permit conditions (e.g., met the maximum allowable levels set in the permit). If the delisting authority found that the permit conditions relating to delisting had not been met, it would notify the facility in writing that the waste must be managed as hazardous. In addition, EPA (or the state if the state had delisting authority) might take enforcement action against the treatment facility if it had managed any of the waste as nonhazardous.

6. *Public notice and comment.* Section 3001(f)(2)(A) of RCRA states that the Administrator shall publish, to the maximum extent practicable, a proposal to grant or deny a delisting petition in the **Federal Register** within one year after receiving a complete petition. Section 3001(f) was essentially a statutory codification of the publication requirements for delisting under 40 CFR 260.20(c) and (e). Under these regulations the Administrator publishes both the proposed and final petition determinations in the **Federal Register**. In addition, upon written request of an interested party, the Administrator may, at his or her discretion, hold an informal public hearing to consider oral comments on the tentative decision (see 40 CFR 260.20(d)). Section 3001(f) was added becasue of Congress' concern that the Agency was granting delisting decisions without first soliciting public comment. (See 50 FR 28717, July 15, 1985.)

The alternative delisting procedure proposed today would employ the local notice and comment procedures of the permitting process, spelled out in § 124.10, as well as publication in the **Federal Register**. Under this proposed procedure, § 124.10 regulations would apply to all delistings that are incorporated into the permitting process. The regulations direct the Regional Administrator or State Director to give public notice concerning the tentative denial or approval of a permit application in a daily or weekly major local newspaper of general circulation and to broadcast this information over local radio stations. In addition, notice must be given to persons on a mailing list composed of interested individuals from the community, including participants from past permit proceedings; the public must be notified of the opportunity to be placed on the mailing list through periodic publication in the public press, environmental bulletins, or state law journals (40 CFR 124.10(c)(1)(viii)). The EPA region or state authority must allow at least 45 days for public comment on the draft permit. Furthermore, 40 CFR 124.12 states that the State Director or Regional Administrator shall hold a public hearing whenever he or she receives written notice of opposition to a draft permit and a request for a hearing within the 45-day comment period. Accordingly, use of the permitting procedures eliminates the administrative discretion with respect to granting a hearing afforded by the delisting procedures under 40 CFR 260.20(d).

In addition, to provide an opportunity for comment nationally and to comply with section 3001(f), EPA would publish a **Federal Register** notice on its proposed delisting decision at the time it issued the draft permit. The **Federal Register** would state that EPA was proposing to issue or deny a delisting petition submitted as part of a permit application; it would identify the petitioner, the facility, and the waste for which delisting was sought; and it would indicate whether EPA was proposing to grant or deny the petition. Finally, the notice would identify an EPA contact from whom further information could be obtained and to whom comments should be submitted.

7. *Modification to the general rulemaking petition process.* The final regulatory change necessitated by today's delisting proposal concerns: (1) The appropriate authority to receive a delisting petition and, (2) the notice and comment provisions to be used in the general rulemaking petition process. In particular, § 260.20(a) and (b) states that any petition that is submitted to modify or revoke any provision in Parts 260

through 266 and 268 [4] should be submitted to the Administrator. However, when a delisting petition is submitted as part of the permit process, the petition should be submitted to the Director as defined in 40 CFR 270.2. Therefore, these two paragraphs have been modified accordingly.

With respect to the notice and comment provisions, 40 CFR 260.20(c) and (e) state that the Administrator will publish in the **Federal Register** a notice of (1) his initial determination, in the form of an advanced notice of proposed rulemaking, a proposed rule, or a tentative determination to deny the petition, and (2) his final decision. In addition, 40 CFR 260.20(d) specifies when the Administrator may hold an informal public hearing. However, as indicated in the previous section, the delisting procedure proposed today would employ the local notice and comment procedures used in the permitting process in addition to publication in the **Federal Register** (See 40 CFR 124.10). Sections 260.20(c), (d), and (e) have been modified to reflect this change.

8. *Other regulatory changes.* This notice also proposes two minor technical changes to § 260.22(a) and (b). This amendment would indicate that alternate procedures exist, as set out in the permitting process under § 270.22 and § 270.32(f), for seeking a determination that a treatment residue is non-hazardous.

D. Regulatory Exclusions

1. *Background.* The HWTC petition included a "conditional" exclusion for specific treatment processes from the RCRA permitting requirements. HWTC amended its petition on September 17 and December 15, 1986, with suggested preamble and regulatory language that detailed the conditions of the exemption. The units recommended for the exclusions are used for volume reduction, materials sizing and preparation, and phase separation. These units might be containers or tanks, and they could be stationary units as well as MTUs.

As discussed below, EPA believes that any exemption from the requirement that facilities that treat, store, or dispose of hazardous waste obtain a RCRA permit must be justified on the basis that the exempted activities pose a minimal risk to human health and the environment and thus regulation under section 3004 of RCRA is unnecessary. Although EPA would consider exemptions from the RCRA permit requirements under section 3005 for minimal risk treatment activities, the Agency has insufficient information at the present time on the potential risks posed by the treatment units described in the petition. The Agency, therefore, is deferring a decision on whether to exclude these treatment activities and solicits comments and information on these units to aid EPA's decision on this issue.

The HWTC petition presents two reasons for exempting these units. First, HWTC claims that these units pose a minimal risk during operation and therefore the RCRA permitting process is unnecessary to ensure adequate protection to human health and the environment. The Council states that the units are in widespread use, are of a standardized configuration, operate in a tank or container, and have low or extremely low potential for release. However, HWTC recommends certain operational and procedural requirements to ensure that the units are operated in a protective manner.

Second, HWTC states that industry needs the flexibility provided by permitting exemptions to meet anticipated treatment requirements. These include the new land disposal restriction program, RCRA corrective action, and the revised toxicity characteristic (proposed on June 13, 1986, 51 FR 21648), which are expected to bring a large quantity of waste under Subtitle C of RCRA.

The types of units discussed by HWTC are frequently used for "pretreatment"—for example, the preparation of wastes for chemical, biological, or thermal treatment. Treatment of hazardous waste is usually not a one-step process, and the precise treatment process often depends on the characteristics of the waste. Waste treatment systems may require modification during operation to accommodate any variations in the waste characteristics or for other reasons. In many cases, this will involve the introduction of new treatment steps to prepare the waste. Under current regulations, owners and operators wishing to use any of these treatment processes for hazardous waste, or to add them to an existing treatment train, must first: have interim status; obtain a change during interim status (40 CFR 270.72); obtain a RCRA permit; or obtain a permit modification.

HWTC argues that the permitting process inhibits owners/operators from using the most appropriate treatment process because of the time necessary for a RCRA permit or permit modification. Owners and operators may choose either to transport the waste to facilities with permits or to store the waste while awaiting permit modification. This course of action may increase the risk of release, they argue. Applicants may also choose not to treat the waste in the most effective manner (e.g., they may carry out thermal treatment of vast quantities of water), rather than undergo a permit modification to incorporate a new treatment unit (e.g., a dewatering unit) in the treatment process. Thus, HWTC argues that allowing the exclusions will result in greater environmental protection, increased treatment capacity, and attainment of effective treatment at a lower cost.

EPA acknowledges that RCRA permitting is a complex and time-consuming process and that permitting may be a disincentive to the use of some of these treatment methods. The Agency also recognizes that these treatment methods provide waste handlers necessary flexibility in treating wastes and that they have an important role in meeting such HSWA requirements as corrective action and the land disposal restrictions. The Agency, however, is not convinced that permitting exclusions are the most appropriate means of increasing flexibility in the RCRA permit process.

Although the permitting exclusion suggested by HWTC would facilitate the use of these technologies, the Agency believes that the exclusion has several shortcomings. Specifically, the exemption of activities from permitting also excludes owners/operators from corrective action, closure, financial responsibility, contingency plans, and the public participation requirements under RCRA. Thus, EPA must balance the loss of this protection against any potential gains to human health and the environment created by the exclusions (i.e., waste will be treated rather than stored or disposed of without treatment). The Agency also has reservations about whether treatment processes can be excluded from permitting on the grounds that they pose a minimal risk to human health and the environment when numerous standards and conditions must be met prior to qualification as an exempt activity. Becuase of these and other issues discussed below, EPA is soliciting comments on the proposed approach as well as recommendations for alternate methods of expediting the use of low-risk technologies.

[4] Section 260.20 indicates that rulemaking petitions may be submitted to modify or revoke any provision in Parts 260 through 265. Since this provision was promulgated, two new chapters—Part 266 and 268 have been added. Therefore, § 260.20(a) has been revised to reflect these additions.

2. *Units suggested for exclusion from RCRA permitting.* The specific treatment processes that HWTC recommended for exclusion from the permitting requirements are blending units, phase separation units, dewatering units, distillation units, carbon adsorption units, size reduction units, and soil cleaning units. (Of course, if any of these units are part of a recycling activity, they are currently exempt from regulation. See 40 CFR 261.6(c)(1). However, EPA has recently proposed air emissions standards that would apply to recycling activities at facilities otherwise subject to RCRA permit requirements (February 5, 1987, 52 FR 3748).) The exclusions would not include chemical, biological, or physical degradations. HWTC proposed definitions for the units it believes should be given a conditional exemption. These definitions are provided below:

- "Blending unit" means a liquid blending tank, pug mill, ribbon blender, or a plow blender, or similar device used to blend waste.
- "Carbon adsorption unit" means a tank or container which uses granular or powdered activated carbon, in a pressure or packed process to remove contaminants from a liquid waste stream.
- "Dewatering unit" means a rotary or belt filter, or a filter press to remove water from a semi-solid waste.
- "Distillation unit" means a unit that separates miscible liquids and recovers the separated liquids by condensation without discharge of vapors to the atmosphere.
- "Evaporation unit" means a unit that physically separates a liquid from a dissolved or suspended solid by the application of energy to volatilize the liquid where the volatilized liquid is captured and condensed so that it is not released into the environment.
- "Phase separation unit" means a process that separates solids and/or one or more liquid phases and/or organic constituents from inorganic wastes, in heated or unheated tanks or containers, a centrifuge, or a pressure vessel in which compressed gas is used to enhance or induce phase separation. [This definition specifically includes supercritical fluid extraction.]
- "Size reduction unit" means a grinder, a shredder, a crusher, or similar equipment whose purpose and function is to reduce the size of waste particles.
- "Soil cleaning unit" means any unit that removes contaminants from soil or sludge by flushing waste with an extracting solution.

The Agency solicits comments regarding the treatment methods identified by the HWTC for exclusion from permitting. Comments are also requested regarding whether the definitions provided are adequate. In addition, the Agency requests comments on whether any of the specific treatment processes in the above list pose a significant risk to human health and the environment and, therefore, should not be considered by the Agency for exclusion from permitting. The issue of risk is discussed in greater detail below.

3. *Conditions for exclusion.* HWTC suggested that the exemptions for the treatment processes be contingent on the owner and operator complying with certain operational and procedural requirements. These requirements, which are intended to be self-implementing, are less than those required for a RCRA permit, but they do incorporate many of the RCRA permitting requirements; they include those requirements that HWTC believes are necessary to ensure that the units pose a de minimis risk during normal operation. However, the Agency has reservations about whether any activity that must meet numerous conditions before qualifying for an exemption can be justifiably excluded from the RCRA permit process under section 3005. The operational and procedural requirements recommended by HWTC are described below.

First, HWTC suggests that the exclusions be limited to activities conducted in tanks or containers that handle solely non-reactive wastes (but not the dioxin-containing wastes F020, F021, F022, F023, F026, and F027). Second, the units could not manage wastes that exceeded 20 ppm volatile organic compounds, unless the units were enclosed and under negative pressure. Third, the units would be subject to the general facility standards of Part 264. These requirements include an EPA identification number, notices, waste analysis, security, inspections, personnel training, location standards, and the general requirements for ignitable and incompatible wastes. Finally, the units would be subject to the standards for containers and tanks under Part 264 Subparts I and J, respectively. (Presumably, the units would also be subject to EPA's proposed air emission standards in 40 CFR Part 269, when they become final.)

The Agency solicits comments as to whether the conditions specified above are the appropriate operating requirements, assuming that an exclusion is developed for these units. In particular, the Agency is concerned that these units may be sources of air emissions, either through process vents or indirectly through ancillary equipment. Therefore, the Agency requests comments on the 20 ppm volatility limit, including a discussion of why this level would or would not be appropriate and whether this level is protective for all waste that might be treated by these technologies. The Agency also solicits comments on how the term "volatile organic compound" would be defined, and what test methods should be used in determining 20 ppm volatility. In addition, EPA solicits comments on the requirement that units failing the 20 ppm volatility test be enclosed and under negative pressure. Enclosing a unit containing volatile organics and putting it under negative pressure would cause air emissions unless air emission controls are used. Comments are also requested on whether the conditions suggested by HWTC can effectively be imposed through general regulations, or whether the oversight provided by the permit process is necessary.

HWTC also suggested that excluded activities comply with recordkeeping requirements and provide notification similar to the Part A of a permit application. The notification requirement would allow the Agency to know where treatment is occurring so that periodic inspection and enforcement action, if necessary, could be taken to ensure proper operation. HWTC also recommended that EPA maintain a file on the excluded units that would be open to the public.

HWTC recommended that facilities planning to operate such an excluded unit be required to notify the Agency before such activity would occur. If the unit were to be installed as a permanent unit, then only one notification would be required. If the unit were an MTU, then notification would be required for each site at which it operated. Specifically, the notification would include the name and/or type of the unit, the names of the owner/operator of the unit, the location where the unit is operated, the name of the owner/operator of the hazardous waste management facility or the name of the generator at the location of operation, identification of the wastes being treated in the unit, and the signature of the owner/operator of the unit. HWTC believes that the notification requirement will provide sufficient reporting and documentation of the treatment units that are conditionally exempt. A failure to notify would be a regulatory violation and would result in a loss of authority to operate the unit at a facility until rectified.

HWTC further recommended that owner/operators be required to

maintain records on the units to provide greater assurance that the units were in compliance with the operational requirements under Subparts B, I, and J of 40 CFR Part 264. The owner/operator would be required to maintain on file a waste analysis plan as required by 40 CFR 264.13, an inspection schedule and inspection records as required by 40 CFR 264.15; a personnel training plan and personnel job description and training records as required by 40 CFR 264.16; and the information required by 40 CFR 270.15 and 270.16, as applicable.

The Agency acknowledges that these provisions would significantly improve enforcement of the regulatory exclusions, and it solicits comments on their appropriateness. However, the Agency remains concerned that technologies that require regulations of this detail may not be appropriate for exclusion from permitting.

4. *Evaluation of risk posed by suggested units.* EPA believes that any treatment, storage, or disposal units that are excluded from permitting under RCRA must be able to be performed in a manner protective of human health and the environment without review by the permitting authority or the public. In reaching a decision that a specific technology does not require a permit, EPA must address two separate considerations: (1) Risk assessment and (2) risk managment. Risk assessment uses facts to determine the effects of exposure to people and the environment. Risk management is the process of accepting the most appropriate alternative, considering the results of the risk assessment, engineering options, and social and economic concerns. Risk assessments take into account whether particular chemicals are linked to detrimental effects (hazard identification), the quantities that must be present in order to pose a problem (dose-response assessment), the extent of exposure with and without adding controls to the technolgoy (exposure assessment), and the extent of the problem (i.e., type of disease caused, number of cases). One method of performing risk assessments identifies the routes of releases (fugitive and process emissions and spills), the amounts and composition of releases, and determines the concentration of the constituents at the point of exposure, considering the toxicity of the constitutents. This approach to risk assessment is being used to compare the risks generated from methods of land disposal with alternate treatment techniques by modelling waste streams through each treatment system.

In the case of units handling volatile organics, there is also the potential release of these organics, which would contribute to ambient ozone levels. These risks, which were recently addressed in EPA's proposal to control air emissions at hazardous waste management facilities under section 3004(h), should also be considered in any assessment of the risks from these excluded units.

EPA does not have sufficient information about the technologies described in the HWTC petition to enable the Agency to assess potential for releases to the environment and whether the operation of these units is inherently low risk or whether EPA permitting and public involvement are necessary to ensure safe operation. To make this assessment, EPA seeks data related to the issues discussed above. The Agency also requests comment on the following specific questions.

1. Do any of the units that fall under the proposed definitions pose a potential risk of release if they are not controlled through the permitting process? For example, do super-critical fluid extraction units pose a threat to release because they operate at elevated temperatures and pressures?

2. What criteria should be applied to determine the level of control necessary for these and any other technologies? What types of controls are normally used (e.g., pad) or can be used to minimize release?

3. Are specific operating requirements, such as those suggested by HWTC, appropriate? The petition request would exempt the units from corrective action, closure, financial assurances for operation and closure, and contingency plans. Are standards needed to address these factors?

4. Are the limitations suggested by HWTC adequate for the management of hazardous waste in the eight technologies for which an exemption is requested? For example, what is the basis for limiting the volatile organic content to 20 ppm at open units? Are there compounds that would pose unacceptable risk at 20 ppm?

5. Is the treatment of hazardous waste in these units sufficiently safe that EPA oversight and public involvement through the permitting process is not necessary?

In particular, EPA would request more data on each of the eight types of units in the following areas:

Technology

1. A general description of the treatment process, with a process diagram, if available.

2. A description of the operation of the system, including start-up, shutdown, routine operation, and maintenance.

3. A description of how the waste is transferred in and out of the unit including alternative methods (poured, pumped, piped, shoveled, conveyor belts, troughs).

Releases

1. Identified release points (e.g. hose of the filling tank, changing filters, shutdown, clogging, leaking connections).

2. Frequency of releases, extent of releases, and methods of reducing frequency and extent of releases.

3. The exposure pathways of release (i.e., to air, surface water, ground water, soil, etc.).

Wastes

1. Wastes not amenable to the treatment method.

2. Wastes that require additional control requirements because of toxicity, volatility, solubility, degradation rate, and potential for migration.

Exposure

1. Potential for migration of a release, including actual incidents.

2. Amounts of releases that present an acceptable level of risk.

5. *Permit modification approach.* An alternative to the HWTC approach would be to allow permitted facilities to add new units of the types described by HWTC through a streamlined permit modification process. EPA is considering just this approach in its regulatory negotiations on RCRA permit modifications with representatives of the states, industry, and public interest groups. The Agency solicits comments on the permit modification approach as an alternative to regulatory exclusions, both in response to this proposal and to the Agency's proposal on permit modification requirements, when it is published.

IV. Other Issues

A. Class Permits

In its January petition, HWTC recommended that EPA develop a rule authorizing "class permits" for at least some types of MTUs. This rule, which would be similar to the Agency's January 20, 1984 proposal for "class permits" for tanks and containers (49 FR 29524), would standardize permit conditions for MTUs and establish a standard Part B application form.

EPA recognizes the value of a standardized application form for at least some categories of MTUs and

believes that such a form could streamline the permitting process, offering significant resource savings to applicants and permit writers. EPA, however, believes that the advantages of a class permit rule can be achieved without the burden of rulemaking and that any forms developed for MTUs should be issued as guidance rather than in rules. EPA has begun work to develop a proposed form specifically for mobile treatment tanks and will make it available for public comment when it is completed.

B. Permits by Rule

HWTC also petitioned that EPA amend 40 CFR Part 270 to allow permit applicants or manufacturers of MTUs to petition EPA to promulgate rules that would become the RCRA permit for a specific MTU or class of MTUs. The rule would require the owner/operator of the MTU to comply with the Part 264 standards of waste analysis, inspections, contingency plans, closure, and similar requirements, and it would impose specific conditions appropriate for the unit. Under the HWTC proposal, EPA would publish the proposed rule in the **Federal Register** for comment, but site-specific public notice, hearings, and corrective action would not be required. After the rule became effective, authorized states would be required to incorporate the rule into their programs, unless a state's permit requirements were demonstrated to be: (i) "More stringent" than the Federal requirements, (ii) not an unreasonable burden on interstate commerce, and (iii) consistent with the intent of RCRA to provide treatment alternatives. HWTC suggested that the permit-by-rule approach would be most appropriate for "inherently low risk management units."

The Agency has tentatively decided to deny the permit-by-rule approach. EPA believes that the proposal is inconsistent with public participation requirements of section 7004(b)(2), which are designed to provide citizens in the vicinity of hazardous waste facilities with information about the facility and an opportunity to be heard before the Agency's final decision to issue a permit (126 Cong. Rec. H1098–1100, Feb. 20, 1980). While the HWTC petition would require the permit applicant to comply with all of the substantive requirements of 40 CFR Part 264, the permit-by-rule approach would not provide an opportunity for local notice and comment. Moreover, the proposed permit-by-rule procedure would act to override the authority of an authorized state to issue a RCRA permit for MTUs, and, as proposed by HWTC, is inconsistent with the requirement that sites where the MTUs operate undergo corrective action.

C. Preconstruction Ban

Section 3005(a) of RCRA, as amended by HSWA, requires owners and operators of all hazardous waste treatment, storage, and disposal facilities to obtain a RCRA permit before constructing a new RCRA facility. In its petition, HWTC expressed concern that this requirement, codified at 40 CFR 270.10(f), could be interpreted as prohibiting the construction of an MTU before permit issuance. Consequently, HWTC recommended that EPA amend § 270.10(f) to provide that, while an MTU may be constructed before permit issuance, it may not treat hazardous waste at a location until a permit has been issued.

EPA tentatively denies this aspect of the petition because it believes that the statute and current regulations already allow the construction of MTUs or MTU modules before permit issuance. EPA interprets the definition of "physical construction" in 40 CFR 270.2, as applied to MTUs, to mean that MTUs can be prefabricated off-site and transported to a treatment site without requiring a permit. However, construction at the site itself, such as pouring concrete foundations, connecting the MTU to physical structures on-site (e.g., utility connections), and pretesting the unit on-site with nonhazardous wastes cannot occur until the RCRA permit is issued. Once a RCRA permit has been issued authorizing the use of the MTU at specified sites, the owner or operator of the MTU may locate and operate the MTU at those sites according to the schedules of operation or terms of the permit.

The National Hazardous Waste Forum agreed with this interpretation in its report and also recommended against any specific regulatory amendments to clarify the applicability of the preconstruction ban to MTUs. Nevertheless, EPA solicits comment on its tentative denial and welcomes comments justifying the need for a regulatory amendment to address this issue.

D. Other MTU Activities

1. *MTUs at RCRA permitted facilities.* In many circumstances, MTU owner/operators may wish to operate at facilities that already have RCRA permits. In these cases, the facility permit would have to be modified to allow operation of the MTU at that site. If the MTU already held a state-wide permit, the state-wide conditions could become the basis of the permit modification.

Under current regulations, the introduction of an MTU at a permitted facility would require a major permit modification of the facility's permit, regardless of the type of unit or the nature or duration of the activities. EPA recognizes that this requirement may significantly limit the flexibility of hazardous waste management facilities in handling wastes, particularly the pretreatment of wastes to prepare the waste for final treatment, treatability studies, and remedial action. For example, many treatment facilities that accept a variety of wastes do not know ahead of time whether treatment will be necessary to render a specific shipment of waste suitable for final treatment, or what form of pretreatment will be best. These facilities would have to go through the major permit modification procedure, which at a minimum would require several months, before they could bring a mobile unit on-site to perform the necessary treatment. This lack of flexibility in some cases might actually increase risks, because it could necessitate long-term storage while pretreatment units were permitted.

As a result, EPA is reviewing the general question of how best to handle the introduction of new treatment processes (both mobile and fixed) at permitted facilities. Under some circumstances (for example, for low-risk technologies), the Agency believes that it might be appropriate to allow the addition of new treatment units to a permit through an expedition modification process. This issue is being addressed as part of the Agency's regulatory negotiation on RCRA permit modifications. EPA encourages comments on the application of permit modification procedures to mobile treatment units both in response to today's proposal, and to the permit modification proposal under development.

2. *Activities at interim status facilities.* Section 270.72 prescribes changes that can be made at interim status facilities without triggering the permit requirements. These include changes in or additions of treatment processes at a hazardous waste management facility during interim status, if the owner or operator submits a revised Part A permit application, together with a justification for the changes. EPA or the authorized state must approve the changes as being necessary (i) to prevent a threat to human health or the environment in an emergency situation, or (ii) to comply with Federal regulations or state or local laws (§ 270.72(c)).

In certain circumstances, MTUs may be allowed to operate at interim status facilities under this authority. For example, an MTU might be used at an interim status land disposal facility to treat liquids banned from disposal, to treat wastes prohibited from land disposal according to treatment standards issued under Part 268, or to treat wastes in accordance with a section 3008(h) order or an approved closure plan. In these cases, the activity might be approved as necessary to comply with Federal regulations and, therefore, could take place under interim status. Similarly, the use of an MTU for treatability studies at an interim status facility to determine whether a specific treatment could meet BDAT (best demonstrated available technology) in accordance with the land disposal restrictions, or to select a remedial measure in anticipation of Agency action under section 3008(h) or section 3004(u) would be likely to qualify as an acceptable change in interim status.

Section 270.72(e), however, limits the scope of activities that can take place at interim status facilities by prohibiting changes that require a capital expenditure equalling or exceeding 50% of the construction of a comparable new hazardous waste management facility. Therefore, under current regulations, an MTU could not operate at an interim status facility, even if its operation were necessary to comply with Federal or other regulations or in the case of an emergency, if its cost were more than half of the cost of constructing a new facility. The facility would first have to receive a RCRA permit authorizing the use of the MTU. EPA recognizes that this requirement may unnecessarily restrict the flexibility of interim status facilities complying with Federal or other requirements, including section 3008(h) orders and closure plans. Therefore, EPA is proposing in a separate rulemaking that the reconstruction ban be lifted for certain activities necessary to comply with Federal, state or local regulations.

3. *Regulatory exclusions from RCRA permitting.* Under current regulations, §§ 264.1(g) and 270.1(c)(2)(v) exclude owners and operators of elementary neutralization units and wastewater treatment units from RCRA permit requirements. As long as an MTU meets the regulatory definition of these terms in § 260.10, it is not subject to RCRA permitting requirements.

V. Definition of Designated Facility

EPA is also proposing a minor revision relating to the manifesting of hazardous wastes to elementary neutralization units and wastewater treatment units (as those terms are defined in 40 CFR 260.10). If wastes are introduced directly into these units without prior storage, the units are not required to obtain a permit or comply with the interim status requirements under the hazardous waste rules. This is because the Agency has exempted these units from the substantive requirements of Part 264, the permit requirements of Part 270, and the interim status requirements of Part 265. (See 40 CFR 264.1(g)(6) and 270.1(c)(2), and 40 CFR 265.1(c)(10). However, EPA's manifest system regulations require that a generator send hazardous waste only to a "designated facility." As provided in § 260.10, a designated facility must have an EPA permit or a permit from an authorized state, comply with the interim status requirements, or be a facility regulated under the special provisions of § 261.6(c)(2).

Consequently, these two rules are in conflict. Elementary neutralization units and wastewater treatment units (other than publicly owned treatment works (POTWs) that are permitted-by-rule under § 270.60) meet none of the conditions of a designated unit and, under present rules, are unable to receive hazardous waste from off-site being transported under the provisions of 40 CFR Part 263. Accordingly, the Agency is amending the regulations so that elementary neutralization units and wastewater treatment units that do not store before treatment can receive hazardous wastes from off-site.

The proposal would first amend the definition of "designated facility" under § 260.10 so that elementary neutralization waste and wastewater treatment units that are exempt from regulation would be considered a designated facility. In addition, § 265.19 is added to Subpart B of Part 265, which states that elementary neutralization units and wastewater treatment units that receive hazardous wastes from off-site without storing them are required to obtain an identification number pursuant to § 262.12, and to comply with the manifest requirements under §§ 265.71, 265.72 and 265.76.

VI. State Authority

A. Applicability of Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer and enforce the RCRA program within the state. (See 40 CFR Part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3008, 7003, and 3013 of RCRA, although authorized states have primary enforcement responsibility.

Prior to the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final authorization administered its hazardous waste program entirely in lieu of EPA administering the Federal program in that state. The Federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in the state that the state was authorized to permit. When new, more stringent Federal requirements were promulgated or enacted, the state was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized state until the state adopted the requirements as state law.

In contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by HSWA take effect in authorized states at the same time that they take effect in nonauthorized states. EPA is directed to carry out those requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA-related provisions as state law to retain final authorization, HSWA provisions apply in authorized states in the interim.

B. Effect on State Authorizations

EPA believes that today's announcement proposes standards that would not be effective in authorized states since the requirements would not be imposed pursuant to the Hazardous and Solid Waste Amendments of 1984. Thus, EPA is proposing that the requirements would be applicable only in those states that did not have interim or final authorization. In authorized states, the requirements would not be applicable until the state revises its program to adopt equivalent requirements under state law. However, HWTC has suggested that the requirements proposed today should be characterized as HSWA-imposed standards because of the HSWA legislative history encouraging EPA to develop expedited permitting procedures for MTUs and the need for MTUs in implementing the goals of HSWA. Although EPA disagrees with this characterization, the Agency solicits comments on the approach suggested by HWTC.

It should be noted that authorized states are only required to modify their programs when EPA promulgates Federal standards than are more stringent or broader in scope that the existing Federal standards. For those

Federal program changes that are less stringent to reduce the scope of the Federal program, states are not required to modify their programs. This is a result of section 3009 of RCRA which allows states to impose standards in addition to those in the Federal program. The amendments proposed in today's rule are considered to be less stringent than or reduce the scope of the existing Federal requirements. Therefore, authorized states would not be required to modify their programs to adopt requirements equivalent or substantially equivalent to the provisions listed above.

VII. Regulatory Analysis

A. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and, if so must prepare a Regulatory Impact Analysis. The notice published today is not major because the rule will not result in an annual effect on the economy of $100 million or more; will not resut in increased costs or prices; will not have significant adverse effects on competition, employment, investment, productivity, or innovation; and will not significantly disrupt domestic or export markets. Therefore, EPA is not developing a Regulatory Impact Analysis in connection with this proposed rule.

The proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flelxibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et. seq., EPA is required to determine whether a regulation will have a significant impact on a substantial number of small entities. For any rule which has such an impact, EPA must prepare a regulatory flexibility analysis. No regulatory flexibility analysis is required where the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The amendments proposed today merely provide additional flexibility for hazardous waste treatment, storage, and disposal facilities to respond to new requirements and do not affect the compliance burdens of the regulated community. Therefore, pursuant to 5 U.S.C. 601(b), I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), EPA must estimate the paperwork burden created by any information collection request contained in a proposed or final rule. This proposal does not impose new information requirements but instead changes the procedures for submittal of information currently required. The proposal in fact will result in a decreased burden for the applicant by eliminating submitted duplicate information for multiple sites at which the MTU will operate. The information collection requirements contained in this proposal have been previouly approved by OMB and were assigned OMB control number 3510–3.

List of Subjects

40 CFR Part 260

Hazardous waste, Delisting, Designated facility.

40 CFR Part 265

Hazardous waste, Reporting and recordkeeping requirements, Waste treatment and disposal.

40 CFR Part 270

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Permit application requirements, Waste treatment and disposal.

Dated: May 21, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed to amend Title 40 of the Code of Federal Regulations as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for Part 260 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001 through 3007, 3010, 3014, 3015, 3017, 3018, 1019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921 through 6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974).

2. Section 260.10 is amended by revising the definition of "designated facility" to read as follows:

§ 260.10 Definitions.

* * * * *

"Designated facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit (or a facility with interim status) in accordance with the requirements of Parts 270 and 124 of this chapter, a permit from a State authorized in accordance with Part 271 of this chapter, or that is regulated under § 261.6(c)(2), § 265.19, or Subpart F of Part 266 of this chapter and that has been designated on the manifest by the generator pursuant to § 262.20.

* * * * *

3. Section 260.20 is revised to read as follows:

§ 260.20 General.

(a) Any person may petition the Administrator to modify or revoke any provision in Parts 260 through 266 and 268 of this chapter. In addition, any person may petition the Director (as that term is defined in 40 CFR 270.2) to exclude a waste at a particular facility where the petition is submitted as part of the permit application. This section sets forth the general requirements which apply to all such petitions. Section 260.21 sets forth the additional requirements for petitions to add a testing or analytical method to Part 261, 264, or 265. Section 260.22 or 270.22 sets forth the additional requirements for petitions to exclude a waste at a particular facility from §261.3 of this chapter or the lists of hazardous wastes in Subpart D of Part 261.

(b) Each petition must be submitted to the Administrator or the Director (where the petition is submitted as part of the permit application) by certified mail and must include:

(1) The petitioner's name and address;

(2) A statement of the petitioner's interest in the proposed action;

(3) A description of the proposed action, including (where appropriate) suggested regulatory or permit language; and

(4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information.

(c) Except as provided in paragraph (f) of this section, the Administrator will make a tentative decision to grant or deny a petition and will publish notice of such tentative decision, either in the form of an advanced notice of proposed rulemaking, a proposed rule, or a tentative determination to deny the petition, in the **Federal Register** for written public comment.

(d) Except as provided in paragraph (f) of this section, the Administrator, upon written request of any interested party, may, at his discretion hold an informal public hearing to consider oral comments on the tentative decision. A person requesting a hearing must state the issues to be raised and explain why written comments would not suffice to communicate the person's views. The

Administrator may in any case decide on his own motion to hold an informal public hearing.

(e) Except as provided in paragraph (f) of this section, the Administrator, after evaluating all public comments, will make a final decision by publishing in the **Federal Register** a regulatory amendment or a denial of the petition.

(f) Any petition that is submitted to the Director (as that term is defined in 40 CFR 270.2) to exclude a waste at a particular facility where the petition is submitted as part of the permit application will follow the notice and comment procedures specified at 40 CFR Part 124. In addition, at the time the Director publishes notice of the draft permit, in accordance with 40 CFR 124.10, the Director shall publish a **Federal Register** notice:

(1) Stating that the Director is proposing to issue a delisting petition submitted as part of a permit application;

(2) Identifying whether the Director's proposed decision is to grant or deny the petition;

(3) Identifying the petitioner, the facility, and the waste for which delisting was sought;

(4) Identifying the name, address, and telephone number of an Agency contact from whom further information may be obtained, including a copy of the Director's proposed delisting decision; and

(5) Announcing a public comment period of at least 30 days.

4. Section 260.22 is amended by revising the introductory text of paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 260.22 Petitions to amend Part 261 to exclude a waste produced at a particular facility.

(a) Any person seeking to exclude a waste at a particular generating facility from the lists in Subpart D of Part 261 may either petition for a regulatory amendment under this section and § 260.20, or may use the procedures specified in §§ 270.22 and 270.32(e), in the case of a treatment unit or facility which meets the requirements of those provisions. To be successful:

* * * * *

(b) The procedures in this section and in § 260.20 may also be used to petition the Administrator for regulatory amendments to exclude from § 261.3 (a)(2)(ii) or (c) a waste which is described in those sections and is a waste that is listed in Subpart D, or that contains a waste listed in Subpart D, or that is derived from a waste listed in Subpart D, unless the waste is a treatment residue which has been determined to be nonhazardous pursuant to §§ 270.22 and 270.32(e).

* * *

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

5. The authority citation for Part 265 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3004, 3005, and 3015, Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935).

6. In § 265.1, paragraph (c)(10) is revised to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(c) * * *

(10) The owner or operator of an elementary neutralization unit or a wastewater treatment unit is defined in § 260.10 of this chapter, except as provided in § 265.19 of this Subpart.

* * * * *

7. Subpart B of Part 265 is amended by adding § 265.19 to read as follows:

§ 265.19 Special requirements for elementary neutralization units and wastewater treatment units.

Owners or operators of elementary neutralization units and wastewater treatment units that receive hazardous waste from off-site without storing them before treatment are subject to the following requirements:

(a) Section 262.12 of this chapter, and

(b) Sections 265.11, 265.72, and 265.76 (dealing with the use of the manifest discrepancies, and the unmanifested waste report of this chapter).

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

8. The authority citation for Part 270 continues to read as follows:

Authority: Secs. 1006, 2002, 3005, 3007, 3019, and 7004 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974).

9. In Part 270, § 270.22 is added to Subpart B to read as follows:

§ 270.22 Specific information requirements for delisting hazardous waste.

Owners and operators of facilities or units (including mobile treatment units, as defined under § 270.66) that treat hazardous waste and seek to have such treatment residues delisted through the permitting process must provide the following types of information together with their application for a permit or a permit modification to the Director:

(a) All information required under § 260.20(b) and § 260.22; or

(b) If data on the actual waste is unknown, then the applicant must submit information required for delisting to the best of his or her ability. At a minimum this information shall include the following:

(1) All information required under § 260.20(b);

(2) A description of the manufacturing process or other operations and feed materials producing the waste and an assessment of whether such processes, operations, or feed materials can or may produce a waste that is not covered by the demonstration;

(3) A description of the waste and an estimate of the average and maximum monthly and annual quantities of waste generated;

(4) A description of the methodologies and equipment that will be used to obtain the representative samples, a description of the tests to be performed and of the instruments, including model numbers, to be used in performing the tests;

(5) A description of the sample handling and preparation techniques, including techniques that will be used for extraction, containerization and preservation of the samples;

(6) A detailed sampling and analysis plan that will indicate how the facility will collect and analyze representative samples of the treatment residue;

(7) A description of the types of materials that will be used in the various processes and the identity of the toxic contaminants that are expected to be present in the waste at levels of regulatory concern;

(8) Such supplemental information as the Director finds necessary and appropriate to enable the Director to determine if the residues from the treatment process will be nonhazardous; and

(9) The information requirements under this section and level of detail may be waived at the discretion of the Director.

10. In § 270.32, paragraph (e) is redesignated as paragraph (f), and a new paragraph (e) is added to read as follows:

§ 270.32 Establishing permit conditions.

* * * * *

(e) For permits that incorporate standards for delisting of waste residue, the permittee must demonstrate to the

satisfaction of the Director that the waste will be nonhazardous pursuant to §§ 260.20(a) (1) and (2). If the permittee is successful, the Director must establish permit conditions for this portion of the permit as follows:

(1) In cases where applicants provide all the data required under § 260.20(b) and § 260.22, in accordance with § 270.22(a), the Director shall set permit conditions as follows:

(i) Maximum levels for the hazardous constituents identified in the actual waste. If the contaminants in the waste exceed these levels, the waste must be handled as hazardous.

(ii) Sampling, analysis, and reporting requirements as deemed necessary by the Director.

(2) In the case where the applicant has insufficient information on the waste to support a delisting petition under § 270.22(a) and applies under § 270.22(b), the Director shall set permit conditions as follows:

(i) Identification of the hazardous constituents likely to be present in the treatment residue as well as the maximum levels of those hazardous constituents (on the basis of information received on the waste feed and the treatment process).

(ii) Sampling, analysis, and reporting requirements sufficient to provide the Director with all information required under § 260.22 which was not supplied at the time of the permit application, as well as requirements for periodic sampling, analysis, and reporting as deemed necessary by the Director.

(iii) The permittee must handle the waste as hazardous until he or she has analyzed it in accordance with the sampling and analysis requirements of § 270.32(e)(1)(ii) above and determined that the constituent levels do not exceed the maximum levels prescribed in § 270.32(e)(1)(i).

(iv) The permittee must submit all sampling and analysis data required under § 270.32(e)(2)(ii) to support the delisting within 90 days from the time of treatment of the first batch of waste, or later if approved by the Director.

(v) Together with the information required under § 270.32(e)(2)(iii), the permittee must submit the following statement signed by the permittee or by a person authorized to sign a permit application or report for the permittee under § 270.11:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this demonstration and all attached documents, and that, based on my inquiry of those invididuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(vi) The Director will review the data submitted in accordance with § 270.32(e)(2)(iv) to determine if the delisting conditions have been met. In the event that the delisting conditions specified in the permit are not met, the Director will notify the facility owner/operator that the waste must be handled as a hazardous waste.

* * * * *

11. In Part 270, § 270.66 is added to Subpart F to read as follows:

§ 270.66 Mobile treatment units.

(a) *Applicability.* For the purposes of this section a "mobile treatment unit" is any device or equipment, or combination of devices or equipment, that treats hazardous waste and that is designed to be transported and operated at more than one site.

(b) *State-wide mobile treatment permits.* (1) The Director may issue a state-wide permit to a mobile treatment unit owner and operator for a specific mobile treatment unit and any identical units. The permit will specify general operating and unit-specific conditions that will apply at any facility in the State at which the permitted unit operates. However, the unit may not operate at a facility in the State that does not have a RCRA permit or interim status until site-specific conditions have been added to the state-wide mobile treatment permit, as specified in § 270.66(d), and issued as a final RCRA permit in accordance with the procedures of 40 CFR Part 124.

(2) State-wide mobile treatment permits must be approved in accordance with the permitting procedures of 40 CFR Part 124 except that the local notice and hearing requirements of § 124.10(c)(2)(ii) and § 124.12(a)(3) do not apply. The Director shall provide reasonable notice of the draft permit throughout the State and opportunity for one or more public hearings.

(3) The final state-wide permit issued to a mobile treatment unit will establish general operating and unit-specific conditions that will apply at each site at which the unit operates. The permit shall:

(i) Incorporate expressly or by reference all of the conditions listed in § 270.30 and § 270.31.

(ii) Assign an identification number for the permit, with additional identifying numbers for each unit operating under the permit.

(iii) Require compliance with:

(A) Sections 264.12, 264.13, 264.16, 264.17, and 264 Subpart E (if applicable);

(B) Section 264.15, with respect to the inspection of all monitoring, safety, emergency, and operating equipment that are part of the mobile treatment unit and will be operated at all locations;

(C) Part 264 Subpart G, with respect to final closure of the mobile treatment unit, and Subpart H, with respect to financial assurance for final closure of the mobile treatment unit;

(D) Part 265 Subpart J, with respect to treatment and waste feed tanks that are part of the mobile treatment unit;

(E) Part 264 Subpart O and § 270.62, if applicable;

(F) Part, 264 Subpart X, if applicable; and

(G) Part, 269 Subpart C, if applicable.

(iv) Include any other conditions the Director determines to be necessary to protect human health and the environment.

(4) With the approval of the permit applicant, the Director may waive any of these permit conditons in the state-wide permit. However, any waived conditions must be included in all site-specific RCRA operating permits for the mobile unit issued in accordance with § 270.66(d).

(5) The state-wide mobile treatment permit may be modified after approval by the Director under the procedures of § 270.41 or § 270.42.

(c) *Application for a state-wide mobile treatment permit.* An applicant for a state-wide mobile treatment permit under this section must submit the following information to the Director:

(1) A Part A permit application containing:

(i) Identifying numbers or other means of identification for each of the units for which a permit is requested.

(ii) The information required in § 270.13(a).

(iii) The address of the location where the mobile treatment unit will be stored when not in use.

(iv) The information required by § 270.13(c), as it applies to the types of sites at which the applicant proposes to operate.

(v) The information required by § 270.13(d) and (g), as it applies to the mobile treatment unit or units.

(vi) The information required by § 270.13(i).

(vii) The class codes of the hazardous wastes listed or designated under 40 CFR Part 261 that can be treated by the mobile treatment unit and for which a permit is requested.

(viii) Where the application is for more than one unit, a certification by a requistered professional engineer that the units are identical.

(2) A Part B permit application containing:

(i) A general description of the unit.

(ii) The information required by § 270.14(b)(2), to the extent it is known.

(iii) The information required by § 270.14(b)(3).

(iv) The information required by 270.14(b)(5), with respect to the inspection of all monitoring, safety, emergency, and operating equipment that are part of the mobile treatment unit and will be used at all locations.

(v) The information required by § 270.14(b)(9) and (12).

(vi) The information required by §270./14(b)(13) and (15) of this Part, with respect to the final closure of the mobile treatment unit.

(vii) The information required by § 270.14(b)(17) and (18).

(viii) The information required by § 270.16, with respect to any treatment and waste feed tanks that are part of the mobile treatment unit.

(ix) The information required by § 270.19 and § 270.62, as applicable.

(x) Any other information the Director may reasonably need to establish state-wide permit conditions that will protect health and the environment.

(d) *Site-specific operating permit.* (1) A mobile treatment unit may not operate under this section until a site-specific operating permit has been issued for the facility at which the unit will operate. A site-specific operating permit includes both the state-wide permit conditions and the site-specific conditions that are applicable to the site at which the unit will operate. The site-specific permit must be issued in accordance with the procedures of 40 CFR Part 124. The owener or operator of a mobile treatment unit or of the facility at which a unit will operate may request approval of a site-specific operating permit as part of the state-wide permit application.

(2) If approval of site-specific conditions is requested in the application for a state-wide permit, the Director shall provide local notice and opportunity for hearing, pursuant to 40 CFR Part 124, on both the state-wide and the site-specific conditons at each site at which the unit will operate. The draft permit must indicate which conditons are state-wide and which are site-specific. The Director may consolidate hearings as long as the location of the consolidated hearing is convenient to the population centers nearest to the proposed sites.

(3) If approval of a site-specific operating permit is requested for a mobile treatment unit to which a state-wide permit has been issued, the Director shall publish for local comment, in accordance with the permit issuance procedures of 40 CFR Part 124, the state-wide mobile treatment permit together with draft site-specific permit conditons. The terms of the mobile treatment permit shall be incorporated into the final site-specific operating permit unless the Director detemines that they are inadequate to protect human health and the environment at the site.

(4) The final permit issued under this section shall include all applicable permit requirements of Parts 264, 269, and 270 not already included in the state-wide permit and shall specifically:

(i) Identify by number each unit permitted to operate at the site.

(ii) Identify the duration of the permit for that specific site. The term of the permit must not exceed ten years.

(iii) With respect to the operations of the mobile treatment unit and related activities, require compliance with:

(A) The security standards of § 264.14 and the inspection requirements of § 264.15, to the extent that they are not already covered in the state-wide permit.

(B) The location standards of § 264.18, the preparedness and prevention requirements of Part 264 Subpart C, and the contingency plan and emergency procedure requirements of Part 264 Subpart D.

(C) The financial assurance requirements of Part 264 Subpart H as they apply to closure at the site of operation.

(D) The requirements of Part 264 Subpart I; Subpart J, with respect to storage and pretreatment tanks at the location that are not part of the mobile treatment unit and covered by the state-wide permit; and Subpart L, if applicable.

(E) The corrective action requirements of § 264.100, as they apply to releases of hazardous wastes or hazardous constituents from the mobile treatment unit or from associated activities at the facility conducted by the mobile treatment owner and operator.

(iv) Require that the facility owner comply with:

(A) The corrective action requirements of § 264.100, as they apply to releases of hazardous waste or hazardous constituents from solid waste management units on the facility.

(B) The financial assurance requirements of Part 264 Subpart H as they apply to corrective action.

(C) All appropriate permitting requirements for hazardous waste management units on the facility that are not under the control of the mobile treatment unit owner and operator.

(v) Incorporate expressly or by reference the statewide mobile treatment permit for the unit or units to be located at the facility.

(vi) Include any other conditions the Director determines to be necessary to protect human health and the environment.

(e) *Application for a site-specific operating permit.* An applicant for a site-specific operating permit under this section must submit to the Director all applicable information required in § 270.13, § 270.14, and § 270.62 that has not already been submitted in the state-wide mobile treatment permit application. This information shall include:

(1) A Part A permit application containing:

(i) The information required in § 270.13, as it applies to the facility seeking the permit.

(ii) The schedule of operations at the facility, to the extent it is known at the time of permit application.

(2) A Part B application containing:

(i) The information required in § 270.14(b)(1), (b)(4), (b)(6), (b)(7), (b)(8), (b)(10), (b)(11), (b)(14), and (b)(19).

(ii) The information required in § 270.16 with respect to storage and pretreatment tanks at the location that are not covered in the state-wide permit conditions, and the information on containers in § 270.15 and waste piles in § 270.17, if applicable.

(iii) The inspection information required in § 270.14(b)(5) with respect to structures installed at the location and equipment not covered in the state-wide permit conditions.

(iv) The information required in § 270.14(b)(13) and (b)(15), with respect to interim closure of the mobile treatment unit and final closure of any structures or equipment left at the location.

(v) Any other information the Director may reasonably need to establish site-specific conditions that will protect human health and the environment.

(3) A copy or the identifying number of the state-wide mobile treatment permit for each mobile unit to be located at the facility, if the units have been issued final state-wide permits. If the units have not been issued final state-wide mobile treatment permits, permit applications under this section must also contain the information required in § 270.66(c).

(f) *Conditions applicable to all mobile treatment units*—(1) *Treatment schedule and notices.* Unless otherwise specified in the site-specific permit, a mobile treatment unit may operate at the site specified in the permit at any time during the life of the permit and may return repeatedly to the site without the

issuance of a new permit or permit modification. The permit may include the requirement that the owner or operator of the mobile treatment unit provide notice to the Director, state or local officials, or local emergency response officials before arrival and operation of the unit at the facility.

(2) *Manifests.* A mobile tank unit that does not meet the requirements of 40 CFR 264.197 or a mobile incinerator that does not meet the requirements of 40 CFR 264.315 before leaving a site, must comply with the requirements of 40 CFR Parts 262 and 263.

[FR Doc. 87-12365 Filed 6-2-87; 8:45 am]

BILLING CODE 6560-50-M

federal register

Wednesday
June 3, 1987

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29

Occupant Restraint in Normal and Transport Category Rotorcraft; Notice of Proposed Rulemaking

Proposed Advisory Circulars on Dynamic Evaluation of Normal and Transport Category Rotocraft Seats; Notice

DEPARTMENT OF TRANSPORTATION

14 CFR Parts 27 and 29

[Docket No. 25287; Notice No. 87-4]

Occupant Restraint in Normal and Transport Category Rotorcraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the rotorcraft airworthiness standards in Parts 27 and 29 of the Federal Aviation Regulations (FAR). These proposals would add two dynamic crash impact design requirement conditions for seat and occupant restraint systems, increase the static design load factors for seating devices and items of mass in the cabin or adjacent to the cabin as prescribed, prescribe a shoulder harness for each occupant, and add human impact injury criteria for the dynamic crash impact conditions. These proposals are intended to significantly improve occupant proection levels in a survivable emergency landing impact.

DATE: Comments must be received on or before December 30, 1987.

ADDRESSES: Comments on the notice may be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25287; 800 Independence Avenue, SW., Washington, DC 20591, or delivered in triplicate to: FAA Rules Docket, Room 915-G, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked: "Docket No. 25287." Comments may be examined in Room 915-G between 8:30 a.m. and 5 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. J.H. Major, Regulations Program Management (ASW-111), Helicopter Policy and Procedures Staff, Aircraft Certification Division, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, commercial telephone (817) 624-5117 or FTS 734-5117.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic impact that might result from adopting the proposals contained in this notice are also invited. Substantive comments should be accompanied by cost estimates and benefit estimates. Comments should identify the regulatory docket or notice number and be submitted in triplicate to the address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rule Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25287." The postcard will be date/time stamped and returned to the commenter.

The FAA is also proposing improved seat safety standards for normal, utility, acrobatic, and transport airplanes. These proposals are contained in separate notices. The transport airplane proposals are contained in Notice No. 86-11, "Improved Seat Safety Standards" (51 FR 25982; July 17, 1986). The normal, utility, and acrobatic airplanes are contained in Notice No. 86-19 (51 FR 44878; December 12, 1986). To avoid possible confusion, comments that apply to those notices, as well as to this notice, must be submitted separately to their respective docket.

Availability of NPRM

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

Background

Several proposals to increase occupant restraint standards were presented and discussed during the Rotorcraft Regulatory Review Conference held in New Orleans, Louisiana, from December 10-14, 1979. These proposals would increase the occupant inertia force restraint standards for minor crash conditions specified in §§ 27.561(b) and 29.561(b) from a range of values from 4 to 20g's forward. The present standard is 4g's forward. Inertia forces for other load directions would also be increased by these proposals. Several of the proposals would also add a new 3g aft seat load standard. Other proposals would also add more stringent design standards for restraining items of mass that could injure a rotorcraft occupant.

A recent change to §§ 27.785 and 29.785 requires new rotorcraft designs to include a safety belt and harness for each crewmember seat or for each seat adjacent to a crewmember seat (front seat occupants) of normal and transport category helicopters (Amdts. 27-21 and 29-24, 49 FR 44422; November 6, 1984). In addition, § 91.14(a) (1), (2), and (3), as amended by Amdt. 91-191 (50 FR 46872; November 13, 1985), requires the pilot-in-command of an aircraft, which includes rotorcraft, to brief passengers on the use of safety belts and shoulder harnesses and to notify passengers to fasten safety belts and shoulder harnesses when they are installed in the aircraft. The U.S. Congress has requested the FAA to improve aircraft occupant protection. The National Transportation Safety Board (NTSB) has urged the FAA to include a requirement for a safety belt and harness at all seat locations for normal category rotorcraft. Foreign airworthiness authorities have also identified improved occupant protection as a high priority safety issue.

The FAA has along recognized the need for occupant injury data or information that would be derived from a review of rotorcraft accident reports and, hence, the agency has established an aircraft crash dynamics program. The FAA announced and outlined the agency's crash dynamics program for airplanes and rotorcraft on September 21, 1984 (49 FR 37111). This program should provide additional data to support any further increase in the level of occupant protection in a survivable rotorcraft impact. Subsequent to this announcement, the FAA issued an advisory circular (AC 21-22) entitled "Injury Criteria for Human Exposure to Impact," on June 20, 1985. Since the AC is only advisory, this NPRM proposes to adopt some of the same impact injury criteria contained in AC 21-22. Those impact injury criteria would be a part of the pass/fail mandatory type certification standards for the occupant restraint system. As a part of the crash dynamics program, Report No. DOT/FAA/CT-85/11, "Analysis of Rotorcraft Crash Dynamics for Development of

Improved Crashworthiness Design Criteria," dated June 1985, has been published. A copy of this report is contained in the regulatory docket. Report No. DOT/FAA/CT-85/11 contains subjective rotorcraft crash scenario data derived from an analysis of certain normal and transport category civil rotorcraft accidents that occurred in the U.S. from 1974 to 1978. At the time of the evaluation, this was the most recent 5-year period in which complete NTSB records were available. Those accident cases containing sufficient data to establish impact conditions and typical crash scenarios were analyzed by an evaluation team as described in the report.

A major goal of this research was to define typical crash conditions or scenarios for U.S. civil helicopters. The goal was achieved and survivable impact conditions have been identified in the study. This study suggests areas where potential and significant improvements in occupant safety could be made. The data are considered sufficient to justify this proposed rulemaking action for improving occupant protection in a normal and transport category rotorcraft emergency landing impact. As indicated in the report, the occupant may be protected from excessive vertical impact loads by energy management or "controlled stroking" of the seating device and from excessive longitudinal impact loads and possible secondary impact with the structure by proper occupant restraint.

On October 1, 1985, the NTSB forwarded to the FAA three recommendations, A85-69, -70, and -71, to promulgate standards for improved occupant protection in a rotorcraft crash landing. The NTSB referred to the U.S. Army Crash Survival Design Guide, USARTL TR 79-22 and to Report No. DOT/FAA/CT-85/11 for the basis of the improvement that could be achieved in normal and transport category rotorcraft. Two recommendations, A85-69 and -71, would, in part, impose crash design guidelines and multiaxis dynamic tests of seats for civil helicopters. The Army conducted research activities that led to development in the 70's of an aircraft crash survival design guide. The latest standard is USARTL TR 79-22, Aircraft Crash Survival Design Guide, dated 1980. Energy attenuating seats and shoulder harnesses are an integral part of meeting these military standards. In a recent letter to the FAA, the Aerospace Industries Association of America, Inc. (AIA), supports, in part the NTSB recommendations for improved occupant protection design standards for newly type certificated helicopters.

A technical paper, "Realistic Civil Helicopter Crash Safety" by R. G. Fox, presented at an American Helicopter Society meeting in April 1986, contains information on the relative risk of serious injury in U.S. aircraft operations. Figure 4 of the paper concerns general aviation accident rates derived from NTSB and FAA data (1975 through 1979). As reflected in this paper, transport rotorcraft (those over 6,000 pounds gross weight, Class C and D in DOT/FAA/CT-85/11) have 8 accidents per 100,000 flight hours. Normal category rotorcraft have 14.3 accidents per 100,000 flight hours. Figure 5 in the paper concerns general aviation relative risk of serious injury. Because of the higher seating capacity, transport helicopters have a higher relative risk of serious injury than the smaller helicopters even though transport rotorcraft have a lower accident rate. The author concludes that helicopters, both normal and transport, should benefit from improved crash safety criteria. Mr. Fox's paper presents the position of a rotorcraft group derived from members of AIA. As indicated in the paper, the group advocates installation of energy attenuating seats with shoulder harnesses to improve occupant protection for a realistic civil helicopter crash environment which is less severe than the U.S. military standards which have higher associated weight penalties. This paper is included in the docket.

To further aid in judging anticipated benefits of the notice proposals, FAA reviewed data from a helicopter manufacturer proprietary report, issued in 1986, concerning large military helicopter cost trends versus vertical velocity impact speeds. These cost trend curves reveal significant reduction in accident cost with little increase in operating cost for protection from the vertical impact condition contained in the notice.

The current FAA Rotorcraft Master Plan contains information and projections for the U.S. rotorcraft fleet. By the year 2000, this fleet is expected to double in size. There should be an ever-increasing demand for urban area rotorcraft operations and movement of persons, as well as materials, both within and between the major metropolitan area is the United States. Increased use of transport helicopters in the urban areas is expected. A 1982 Aerospatiale Helicopter Division sponsored report on the world civil rotorcraft market was recently referenced in the July 8, 1986, issue of "Rotor and Wing International." The report stated that the world market for twin-engine helicopters will be divided into 53 percent for transport helicopters with 9 to 15 seats and 13 percent for those with more than 15 seats. Two projections in the report are indicative of the increasing demand and use of twin-engine transport helicopters which have a larger passenger capacity. The fleet size of transport rotorcraft (percentage of the total fleet) is expected to increase more rapidly than the normal category fleet, and transport helicopters should operate more hours each year in the future, resulting in increased occupant exposure to fatal or serious injury in otherwise survivable accidents. Thus, the potential for survivable accident and injury reduction is greater when the transport and normal category helicopters are designed to the proposed occupant protection standards contained in this notice.

The significantly improve occupant protection for known survivable emergency landing impact conditions, the FAA is hereby proposing mandatory standards for Part 27 normal category rotorcraft and for Part 29 transport rotorcraft.

The proposals contained in this notice would contribute to a significant enhancement in rotorcraft safety and potential utility which would, in turn, promote the continued expansion of rotorcraft operations in the United States.

The FAA is not aware of any industry or operator opposition to the intent of the regulatory program as reflected herein to improve occupant protection in newly type certificated helicopter designs, both normal and transport category, for realistic impact conditions. The notice will, however, provide a forum for support or opposition to the program and the proposals. The FAA particularly urges interested members of the public and the rotorcraft industry, including the operators, to provide data, information, or comments on the likely cost impact of the proposals on the design of seats and safety belts and harnesses. Specifically, information and/or comments on the potential acquisition and operating cost for designs that would satisfy the proposals are requested. A preliminary economic evaluation of the impact of these proposals may be found later in this notice.

Discussion

This notice proposes to adopt standards to increase and assess the capability of occupant and seat restraint systems to absorb a crash impact and provide increased occupant protection for both primarily vertical and primarily

longitudinal emergency landing impact scenarios, and to provide improved occupant protection from items of mass that may become loose on impact. This notice contains proposals that would amend both normal and transport category rotorcraft standards and are summarized as follows:

1. Addition of two specific emergency landing dynamic impact design standards for normal category rotorcraft seats and occupant restraint systems. Each condition is related to a potentially survivable impact condition measured at the rotorcraft floor and seat attachment and includes respective performance standards.

2. Addition of a standard requiring use of a standard anthropomorphic test dummy (ATD), a test device defined by 49 CFR Part 572 (a 50-percentile male), for the seat and occupant restraint assessment during the specified emergency landing dynamic impact conditions. The ATD is a test device to achieve valid test results.

3. Addition of performance standards for human impact injury criteria. Loads or test values measured on the ATD shall not exceed the criteria proposed. Energy management is envisioned for the dynamic vertical load case.

4. Increase the static design load factors by 170 to 300 percent for the seat and occupant restraint system and items of mass in the cabin that could injure an occupant. As an example, the present 4g ultimate forward load factor would be increased to 16g ultimate. The static design standards would supplement the dynamic impact standards proposed and would identify and thereby provide for correction of possible problems in the seat, safety belt and shoulder harness, and airframe interface prior to dynamic testing.

5. Increase the static design forward load factor by a factor of 2 for restraining the rotors and other items of mass above and aft of the cabin that may injure an occupant if the object came loose in an emergency landing. The present 4g ultimate forward load factor would be increased to 8g ultimate. The other design conditions would not be changed.

6. Require a safety belt and shoulder harness, either single or double strap, for each occupant regardless of seat location and orientation in the rotorcraft. Presently, each front seat of normal and transport rotorcraft must be equipped with a safety belt and harness, while other seats are required to be equipped with a safety belt and other features of design to protect each occupant.

As stated earlier, these proposals are based, in part, on the data and conclusions in Report No. DOT/FAA/CT-85/11 which indicate occupants may be protected by seat designs that use energy management or dissipation and proper occupant restraint (safety belts and shoulder harnesses). The two proposed dynamic landing impact conditions, described as a "floor pulse," are derived from this data. By virtue of experience with previously approved transport category rotorcraft seat designs that use energy management dissipating features such as seat stroking and a combined safety belt and shoulder harness, improved occupant restraint systems are feasible. Requiring increased seat and floor attachment strength and energy absorbing occupant restraint systems for specific dynamic landing impact or "floor pulse" conditions would be practical but would result in additional certification costs and increased weight with increased operating cost as estimated in the economic summary of this notice.

The impact energy dissipation characteristics of typical, presently used aircraft structure are not well understood or generally measurable except by full-scale dynamic impact test. The FAA rotorcraft crash dynamics program, as presently represented by Report No. DOT/FAA/CT-85/11, indicates that fuselage deformation and remaining cabin volume during or after a survivable impact are not presently a significant problem. Accordingly, dynamic impact tests of the entire rotorcraft design are not presently warranted. The agency has outlined an on-going crash dynamics program (49 FR 37111; September 21, 1984). Future rulemaking action will depend on completing the program and analyzing the conclusions. As noted herein, assessment of the fuselage characteristics during dynamic landing conditions may not be warranted or beneficial.

The minor crash or emergency landing ultimate static load factors stated in present § 29.561(b)(3) would be retained at this time for design of transport rotorcraft doors and exits and "underfloor" fuel tanks as noted.

Proposal No. 3-50 of Rotorcraft Regulatory Review Program Notice No. 3 (Notice 84-19, 49 FR 46670; November 29, 1984) would amend § 29.963(b) by increasing the forward, sideward, and downward ultimate inertia load factors for transport rotorcraft fuel tanks wherever the tanks may be located. Fuselage tanks located below the cabin floor would also be protected or designed for possible rupture as a result of the fuel tank loads derived from the proposed increased inertia load factors. Section 29.561(d) presently requires protection of "underfloor" fuel tanks from the entire rotorcraft crash impact loads specified in present § 29.561(b)(3). The standard in present § 29.561(d) would be retained. Any proposal to substantively amend this present standard is deferred for further study and development of possible alternative means of fuel tank protection.

Regulatory Evaluation and Regulatory Flexibility Determination Summary

The FAA conducted a preliminary regulatory evaluation of the economic impact of these proposed regulatory changes. A copy of this regulatory evaluation dated August 1986 has been placed in the docket for review by interested persons. Information and/or comments on the proposal's potential acquisition and operating cost and benefits are requested. This evaluation includes, in part, a benefit and cost analysis, a sensitivity analysis of the benefit and cost of the proposals, and cost estimate assumptions and factors used. The methodology used is not dependent on a forecast of the future size and activity of the U.S. rotorcraft fleet. The FAA proposes to amend Parts 27 and 29 of the FAR to require the installation of shoulder harnesses and seats incorporating energy attenuation or energy management features on all newly designed and certificated rotorcraft. The proposals to improve occupant protection standards are the result of several specific proposals presented at the Rotorcraft Regulatory Review Conference in 1979, the general and specific recommendations of the NTSB, and the FAA aircraft crash dynamics program. Also, U.S. military and European military helicopters have included these design features in the new helicopter designs. In addition, the Congress has requested the FAA to improve aircraft occupant protection. This proposal is one part of the FAA program to fulfill that request.

The proposed changes to §§ 27.561(c), 27.785 (g) and (k), 29.561(c), 29.783, 29.785 (g) and (k), and 29.809 would cause manufacturers to incur negligible testing or analysis costs in demonstrating compliance with these new standards. The remaining proposals considered for Parts 27 and 29 would have a cost impact on rotorcraft manufacturers and operators.

For the purpose of this analysis, those elements of the proposed amendments to §§ 27.561, new 27.562, and 27.785 which would have a cost impact have been examined as if they were primarily a single proposal. The close interrelations of these amendments preclude clear separation and analysis.

Those proposed amendments considered for §§ 29.561, new 29.562, and 29.785 having a cost impact have been analyzed in the same manner. The proposals for Parts 27 and 29 are the same.

This review indicates that implementing the proposals affecting both Parts 27 and 29 rotorcraft will be cost effective. The proposed shoulder harnesses and energy attenuating seats are expected to reduce fatalities and injuries sustained in otherwise survivable crashes by 30 to 85 percent. Further, it is estimated that rotorcraft passengers and crew will use the harnesses 100 percent of the time in deference to § 91.14, an operating rule. For the purpose of this analysis, it is assumed that transport helicopters will have an average of 12 seats and a maximum certificated weight over 6,000 pounds and that normal category helicopters will have an average of 4.84 seats with a lower maximum certificated weight.

For this rulemaking to be cost effective, taking into consideration the estimated cost impact to industry, the Part 27 proposals must be 25 percent effective in reducing fatalities and proportionate injuries which is well below the expected range, and the Part 29 proposals must be 61 to 77 percent effective in reducing fatalities and proportionate injuries which is well within the expected range for transport rotorcraft.

The FAA recognizes there is some uncertainty in assessing the benefits to be derived from reducing fatalities and other injuries and the costs associated with implementing those proposals. In appreciation of the potential public concerns, the FAA, therefore, solicits data and views relating specifically to the assumptions used regarding future seat and restraint system weight, design, fabrication, material cost, operating cost, and other factors contained in the preliminary regulatory evaluation analysis. A copy of this analysis may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

The FAA has determined that this proposal is not likely to result in a competitive trade advantage or disadvantage for American manufacturers in domestic or foreign markets. Foreign manufacturers are expected to comply with the certification standards of their largest export customer, the United States. To remain competitive in overseas markets, foreign vendors will export a similarly equipped rotorcraft to both the United States and third world countries. Foreign and American manufacturers are expected to pass the new certification costs on to consumers in their domestic and foreign markets.

The FAA determined that these proposals, if adopted, will not have a significant impact on a substantial number of small entities. According to FAA criteria, a small helicopter manufacturer is one that is independently owned and operated and has fewer than 75 employees. Using these criteria, only one American manufacturer which produces a few small piston-engine rotorcraft is considered a small entity. Therefore, the proposed amendments will not impact a substantial number of small entities.

The FAA has determined that this document involves proposed regulations which are not considered to be major under the procedures and criteria prescribed in Executive Order 12291 or significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the person identified in the section entitled "For Further Information Contact." For the reasons stated in the regulatory evaluation, the FAA certifies that these regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities. In addition, these proposals, if adopted, would have little or no impact on trade opportunities for United States firms doing business overseas or for foreign firms doing business in the United States.

List of Subjects in 14 CFR Parts 27 and 29

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

The Proposed Amendments

PART 27—[AMENDED]

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 27 of the FAR (14 CFR Part 27) as follows:

1. The authority citation for Part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.45; 49 CFR 1.47.

* * * * *

2. By amending § 27.561 by revising paragraphs (b)(3) and (c) to read as follows:

§ 27.561 General.

* * * * *

(b) The structure must be designed to give each occupant every reasonable chance of escaping serious injury in a crash landing when—

* * * * *

(3) Each item of mass that could injure an occupant and each occupant is restrained when subjected to the following ultimate inertia load factors relative to the surrounding structure:

(i) Upward–4g.

(ii) Forward–16g.

(iii) Sideward–8g.

(iv) Downward–20g, after intended displacement of the seat device.

(c) The supporting structure must be designed to restrain, under any ultimate inertia load up to those specified in this paragraph, any item of mass above and/or behind the crew and passenger compartment that could injure an occupant if it came loose in an emergency landing. Items of mass to be considered include, but are not limited to, rotors, transmissions, and engines. The items of mass must be restrained for the following ultimate inertia load factors:

(1) Upward—1.5g.

(2) Forward—8g.

(3) Sideward—2g.

(4) Downward—4.

Explanation. The present standard provides for protection of the rotorcraft occupants in an emergency landing. Specific ultimate inertia load forces related to a minor crash landing are stated in present paragraph (b). Other conditions are stated in the section. The present inertia load factors apply to restraining the occupants and to any item of mass that could injure an occupant if it came loose in a minor crash landing.

This proposal would provide increased static strength standards. "Forces" in paragraph (b)(3) would be changed to "factors" as the proper descriptor. The static strength standard in proposed paragraph (b)(3)(iv) is unusual. The proposal recognizes that a seat and restraint system must "stroke" primarily vertically to manage or dissipate energy and satisfy the proposed new standards in § 27.562. The seat system, therefore, would "stroke" for a specified downward load factor and then would sustain a 20g downward load factor without failure after using the available seat stroke displacement. The static design and dynamic test standards would supplement each other. Dynamic test strength requirements for occupant protection during survivable emergency landings are proposed in a new § 27.562 that is found in proposal No. 3 of this notice.

Section 27.561(b) would be changed to delete "minor crash landing" and insert "crash landing." Paragraph (a) would not be changed by this proposal.

In § 27.561(b)(3), items of mass in the crew and passenger compartment that could injure an occupant if released would be subject to significantly increased restraint load factors. The factors referenced in present paragraph (c) would apply to items of mass outside the cabin as described. The factors would remain the same except the forward load factor would be raised from 4 to 8g's. Reference to paragraph (b)(3) for the inertia forces would be deleted from present § 27.561(c) when the specific values are added. The increased static design load factor for items of mass is considered representative of the current metal aircraft design practice or the capability of the newer rotorcraft designs. Report No. DOT/FAA/CT-85/11 indicates that items of mass above and/or behind the crew and passenger compartment are not significant occupant injury factors in a crash landing impact.

In summary, proposed paragraph (b) relates to restraining occupant and cabin interior items of mass for increased inertia load factors. Proposed paragraph (c) relates to restraining items of mass outside the cabin that could injure an occupant.

3. By adding a new § 27.562 to read as follows:

§ 27.562 Emergency landing dynamic conditions.

(a) The rotorcraft, although it may be damaged in an emergency crash landing, must be designed to reasonably protect each occupant when—

(1) Proper use is made of seats, safety belts, and shoulder harnesses provided in the design; and

(2) The occupant experiences ultimate dynamic loads resulting from the conditions prescribed in this section.

(b) Each seat or other seating device for crew or passenger occupancy must successfully complete dynamic tests with an occupant, simulated by an anthropomorphic test dummy (ATD) defined by 49 CFR Part 572, Subpart B, or its equivalent with a total minimum weight of at least 170 pounds, in accordance with the following criteria:

(1) A change in velocity of not less than 30 feet per second when the seat or other seating device is oriented in its nominal position with respect to the rotorcraft's reference system, the rotorcraft's longitudinal axis is canted upward 60° with respect to the impact velocity vector, and the rotorcraft's lateral axis is perpendicular to a vertical plane containing the impact velocity vector and the rotorcraft's longitudinal axis. Peak deceleration must occur in not more than 0.031 seconds after impact and must reach a minimum of 30g's.

(2) A change in velocity of not less than 42 feet per second when the seat or other seating device is oriented in its nominal position with respect to the rotorcraft's reference system, the rotorcraft's longitudinal axis is yawed 10° either right or left of the impact velocity vector (whichever would cause the greatest load on the shoulder harness), the rotorcraft's lateral axis is contained in a horizontal plane containing the impact velocity vector, and the rotorcraft's vertical axis is perpendicular to a horizontal plane containing the impact velocity vector. Peak deceleration must occur in not more than 0.071 seconds after impact and must reach a minimum of 18.4g's.

(3) The floor rails or attachment devices used to attach the seating devices to the airframe structure for the conditions of this section must be misaligned with respect to each other by at least 10° vertically (i.e., pitch out of parallel) and by at least a 10° lateral roll, with the directions optional, to account for possible floor warp.

(c) Compliance with the following must be shown:

(1) The seating device system must remain intact although it may experience separation intended as part of its design.

(2) The attachment between the seating device and the airframe structure must remain intact, although the structure may have exceeded its limit load.

(3) The ATD's shoulder harness strap or straps must remain on or in the immediate vicinity of the ATD's shoulder during the impact.

(4) The safety belt must remain on the ATD's pelvis during the impact.

(5) The ATD's head either does not contact any portion of the crew or passenger compartment, of if contact is made, the head impact does not exceed a head injury criteria (HIC) of 1,000 as determined from this equation

$$HIC = (t_2-t_1)\left[\frac{1}{(t_2-t_1)}\int_{t_1}^{t_2} a(t)dt\right]^{2.5}$$

Where: a(t) is the resultant acceleration at the center of gravity of the head expressed as a multiple of g (the acceleration of gravity) and t_2-t_1 is the time duration, in seconds, of major head impact, not to exceed 0.05 seconds.

(6) Loads in individual upper torso harness straps must not exceed 1,750 pounds. If dual straps are used for retaining the upper torso, the total harness strap loads must not exceed 2,000 pounds.

(7) The maximum pelvic load must not exceed 1,500 pounds as measured in the axis of the spine of the ATD.

(d) An alternate approach that achieves the equivalent or greater level of occupant protection, as required by paragraph (c) of this section, must be substantiated on a rational basis.

Explanation. The present normal and transport category rotorcraft standards require substantiation for static design conditions. This proposal would add a new standard that requires two specific seat and occupant test conditions for emergency landing dynamic conditions using a specific type of ATD that simulates a 50-percentile male. The 50-percentile dummy described is the only presently available and acceptable ATD. One test condition simulates primarily a vertical loading with some longitudinal velocity change for seat device impact. The other test condition simulates a longitudinal loading with some lateral velocity change for seat device impact. These conditions were derived from Report No. DOT/FAA/CT-85/11. Test criteria or conditions to evaluate the seat and floor attachment for possible floor deflection or warp during rotorcraft landing impact are also proposed to prevent seat separation from the floor.

Performance criteria for human impact injury criteria are proposed. Loads or test values measured on the ATD shall not exceed the criteria proposed for head, chest, and spine. The chest load on impact is measured in terms of shoulder harness strap load. (A shoulder harness is also called an upper torso restraint.) The head injury criteria (HIC) is also specified in 49 CFR 571.208. A discussion of this pass or fail human impact injury criteria, with further

explanation, may be found in the preamble of Notice No. 86-11 (51 FR 25982, July 17, 1986) which relates to transport airplane improved seat safety standards. The proposed standard would allow an alternate approach to these dynamic tests provided the same or equivalent level of occupant impact tolerance or protection is proven.

The impact conditions for normal and transport category rotorcraft are the same. The minor crash impact and emergency conditions specified in present §§ 27.561 and 29.561 are equal. Human impact injury criteria are not a function of the type of rotorcraft or aircraft, and standards should be the same for normal and transport category rotorcraft. Therefore, proposal No. 7 in this notice adds a new § 29.562 that is identical to the proposed new § 27.562, and the foregoing explanation shall also apply to proposal No. 7.

4. By amending § 27.785 by revising paragraphs (a), (b), (c), (f), and (g) and by adding new paragraphs (i), (j), and (k) to read as follows:

§ 27.785 Seats, berths, safety belts, and harnesses.

(a) Each seat, safety belt, harness, and adjacent part of the rotorcraft at each station designated for occupancy during takeoff and landing must be free of potentially injurious objects, sharp edges, protuberances, and hard surfaces and must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the static intertia load factors specified in § 27.561 and dynamic conditions specified in § 27.562.

(b) Each occupant must be protected from serious head injury by a safety belt plus a shoulder harness that will prevent the head from contacting any injurious object except as provided for in § 27.562(c)(5).

(c) Each occupant's seat must have a combined safety belt and shoulder harness with a single-point release. The pilot's combined safety belt and shoulder harness must allow the pilot when seated with safety belt and shoulder harness fastened to perform all functions necessary for flight operations. There must be a means to secure belts and harnesses, when not in use, to prevent interference with the operation of the rotorcraft and with rapid egress in an emergency.

* * * * *

(f) Each seat and its supporting structure must be designed for an occupant weight of at least 170 pounds considering the maximum load factors, inertia forces, and reactions between occupant, seat, and safety belt or harness corresponding with the applicable flight and ground load conditions, including the emergency landing conditions of § 27.561. In addition—

(1) Each pilot seat must be designed for the reactions resulting from the application of the pilot forces prescribed in § 27.397; and

(2) The inertia forces prescribed in § 27.561 must be multiplied by a factor of 1.33 in determining the strength of the attachment of—

(i) Each seat to the structure; and

(ii) Each safety belt or harness to the seat or structure.

(g) When the safety belt and shoulder harness are combined, the rated strength of the safety belt and shoulder harness may not be less than that corresponding to the inertia forces specified in § 27.561, considering the occupant weight of at least 170 pounds, considering the dimensional characteristics of the restraint system installation, and using a distribution of at least 60-percent load to the safety belt and at least 40-percent load to the shoulder harness. If the safety belt is capable of being used without the shoulder harness, the inertia forces specified must be met by the safety belt alone.

(h) * * *

(i) Each seating device system includes the device such as the seat, the cushions, the occupant restraint system, and attachment devices.

(j) Each seating device system may use design features such as crushing or separation of certain parts of the seats to reduce occupant loads for the emergency landing dynamic conditions of § 27.562; otherwise, the system remains intact and must not interfere with rapid evacuation of the rotorcraft.

(k) For purposes of this section, a litter is defined as a device designed to carry a nonambulatory person, primarily in a prone position, into and on the rotorcraft. Each berth or litter installed parallel to or within 15° of the longitudinal axis of the rotorcraft must be designed so that the forward part has a padded end-board, cloth diaphragm, or equivalent means that can withstand the load reaction of an occupation weight of at least 170 pounds when the occupant is subjected to the forward inertia forces specified in § 27.561. In addition—

(1) The berth or litter must have a restraint system and must not have corners or other protuberances likely to cause serious injury to a person occupying it during emergency landing conditions; and

(2) The berth or litter attachment and the occupant restraint system attachments to the structure must be designed to withstand the critical loads resulting from flight and ground load conditions and from the conditions prescribed in § 27.561(b).

Explanation. Amendment 27-21, effective December 6, 1984 (49 FR 44422; November 6, 1984), extensively amended § 27.785 and, in part, added shoulder harness requirements and design standards. The present standard requires a shoulder harness for each front seat occupant whether a crewmember or passenger. It provides for occupant protection from injurious objects and provides specific standards for occupant protection from head injury. An occupant other than front seat occupants is protected from head injury by complying with one of these options.

The minimum occupant weight for design purposes is presently 170 pounds. A 60/60 percent distribution of the occupant restraint loads between the safety belt and harness is also stated in the present standard. Each seat must be designed for § 27.561 emergency landing conditions (ultimate inertia forces) and for flight and ground load conditions. Each pilot seat must also be designed for reactions resulting from the application of pilot forces stated in § 27.397. Design standards for a headrest are also contained in present § 27.785.

The proposed amendment to § 27.785 would refer to the emergency static and dynamic landing loads of amended §§ 27.561 and 27.562 as prescribed. A berth or litter would not be subject to dynamic tests and for this reason, has been deleted from § 27.785(a). In addition, the proposal would revise paragraph (b) to require that each occupant regardless of seat location and orientation in the rotorcraft must be protected from serious head injury by a safety belt plus a shoulder harness that may prevent contact with any injurious object. Compliance with § 27.562(c)(5) would be an acceptable standard to prove that head contact with an object is not considered serious. Upper torso restraint, also called a shoulder harness, is essential to improve resistance to spinal injury from possible vertical impact loads.

The proposed revision to § 27.785(c) requires that all seats would be equipped with a shoulder harness. Accordingly, § 27.785(b)(2) for other means of head protection is no longer necessary and would be deleted.

Reference to flight and ground load conditions would be retained in the proposed revision to paragraph (f) although the conditions specified in § 27.561 are expected to be critical design conditions.

The proposed revision to paragraph (g) would decrease the load sharing or distribution for the shoulder harness from 60 to 40 percent. A proposed Society of Automotive Engineers (SAE) standard, SAE Aerospace Standard AS 8043, indicates the static design load distribution should approach 40 percent for the upper torso restraint or shoulder harness and 60 percent for the safety belt. In addition, the dynamic tests conducted under proposed new § 27.562 would also impose impact loads on the belt and harness. The static design cases would supplement the dynamic impact conditions. Correlation of the static design loads obtained from § 27.561(b) and dynamic test loads is not considered essential.

Proposed new paragraph (i) would define each seating device to include cushions and restraint means. The physical characteristics of unique cushions and restraining means will influence the dynamic response of the occupant and the restraint system to the dynamic impact conditions prescribed in this notice. Thus, the rotorcraft type design data would include the cushion and the seat belt and harness. Changing from the seat cushion or safety belt and harness to another with different physical characteristics would require compliance with the standards. Proposed new paragraph (j) would recognize and accept features of seat designs that "stroke" or deform to reduce occupant impact loads. Intended separation of a part would be acceptable if the seat system functions as intended and is otherwise intact.

In addition, a new standard would be added by proposed paragraph (k) for occupant berths and litters. This standard would also apply to any "litter" installation as prescribed. A litter would be defined in the standard. With the more severe emergency landing conditions in proposed § 27.561(b), seat safety belts alone may not adequately restrain and protect a litter or berth occupant for the forward load condition proposed. Seat design standards were used in the past. While the previous standards did address berths, they did not specifically address litter standards. The proposed standard is necessary to assure berth and litter occupants are restrained for the increased static design inertia forces. Dynamic tests of a berth or litter are not warranted at this time.

Proposed changes to § 29.785 are contained in proposal No. 9 of this notice. Occupant restraint and related protection standards for transport category rotorcraft should at least be equal to normal category standards. This concept is reflected in present § 27.785, as of Amendment 27-21, and § 29.785, as of Amendment 29-24. Therefore, the foregoing explanation shall also apply to proposal No. 9, amended § 29.785.

PART 29—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 29 of the FAR (14 CFR Part 29) as follows:

5. The authority citation for Part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.45; 49 CFR 1.47.

6. By amending § 29.561 by revising paragraphs (b)(3) and (c) to read as follows:

§ 29.561 General.

* * * * *

(b) The structure must be designed to give each occupant reasonable chance of escaping serious injury in a crash landing when—

* * * * *

(3) Each item of mass that could injure an occupant and each occupant is restrained when subjected to the following ultimate inertia load factors relative to the surrounding structure:

(i) Upward—4g.

(ii) Forward—16g.

(iii) Sideward—8g.

(iv) Downward—20g, after the intended displacement of the seat device.

(c) The supporting structure must be designed to restrain under any ultimate inertia load factor up to those specified in this paragraph, any item of mass above and/or behind the crew and passenger compartment that could injure an occupant if it came loose in an emergency landing. Items of mass to be considered include, but are not limited to, rotors, transmission, and engines. The items of mass must be restrained for the following ultimate inertia load factors:

(1) Upward—1.5g.

(2) Forward—8g.

(3) Sideward—2g.

(4) Downward—4g.

* * * * *

Explanation. The present standard provides for protection of the rotorcraft occupants in an emergency landing. Specific static ultimate inertia load factors are stated and related to a minor crash landing in present paragraph (b). Other conditions are stated in the section. The present inertia load factors apply to restraining the occupants and to any item of mass that could injure an occupant if it came loose in a minor crash landing.

Present paragraph (d) concerns protection of fuel tanks located below the passenger floor. These tanks shall resist rupture from whole aircraft crash impact loads specified in present paragraph (b)(3).

This proposal would provide increased static strength standards. "Forces" in paragraph (b)(3) would be changed to "factors" as the proper descriptor. The proposed static strength standard in paragraph (b)(3)(iv) is unusual. The proposal recognizes that a seat and restraint system must "stroke" primarily vertically to manage or dissipate energy and satisfy the proposed new standards in § 29.562. The seat system, therefore, would "stroke" for a specified downward load factor and then would sustain a 20g downward load factor without failure after using the available seat stroke displacement. The static design and dynamic test standards would supplement each other. Dynamic strength requirements for occupant restraint during emergency landings are proposed in new § 29.562 that is found in proposal No. 7 of this notice.

Section 29.561(b) would be changed to delete "minor crash landing" and insert "crash landing." Paragraph (a) would not be changed by this proposal.

Reference to paragraph (b)(3) for the inertia load factors would be deleted and the specific inertia load factors applicable to items of mass above and/or behind the cabin would be stated. Only the load factor for the forward load case would be increased from 4 to 8g's. The present values for up, down, and sideward will be retained. For further information, refer to the explanation for proposal No. 2.

Section 29.561(d) presently pertains to internal fuel tanks located below the passenger floor level. The fuselage structure of the fuel tanks must be designed to resist the aircraft crash impact loads of present § 29.561(b)(3), and to protect the fuel tanks from rupture, if rupture is likely when these whole aircraft loads are applied to that area. The present inertia load factors would be retained in paragraph (d).

7. By adding a new § 29.562 to read as follows:

§ 29.562 Emergency landing dynamic conditions.

(a) The rotorcraft, although it may be damaged in a crash landing, must be designed to reasonably protect each occupant when—

(1) Proper use is made of seats, safety belts, and shoulder harnesses provided in the design; and

(2) The occupant experiences ultimate dynamic loads equivalent to those resulting from the conditions prescribed in this section.

(b) Each seat or other seating device for crew or passenger occupancy must successfully complete dynamic tests with an occupant simulated by an anthropomorphic test dummy (ATD) defined by 49 CFR Part 572, Subpart B, or its equivalent with a total minimum weight of at least 170 pounds, in accordance with the following criteria:

(1) A change in velocity of not less than 30 feet per second when the seat or other seating device is oriented in its nominal position with respect to the rotorcraft's reference system, the rotorcraft's longitudinal axis is canted upward 60° with respect to the impact velocity vector, and the rotorcraft's lateral axis is perpendicular to a vertical plane containing the impact velocity vector and the rotorcraft's longitudinal axis. Peak deceleration must occur in not more than 0.031 seconds after impact and must reach a minimum of 30g's.

(2) A change in velocity of not less than 42 feet per second when the seat or other seating device is oriented in its nominal position with respect to the rotorcraft's reference system, the rotorcraft's longitudinal axis is yawed 10° either right or left of the impact velocity vector (whichever would cause the greatest load on the shoulder harness), the rotorcraft's lateral axis is contained in a horizontal plane containing the impact velocity vector and the rotorcraft's vertical axis is perpendicular to a horizontal plane containing the impact velocity vector. Peak deceleration must occur in not more than 0.071 seconds after impact and must reach a minimum of 18.4g's.

(3) The floor rails or attachment devices used to attach the seating devices to the airframe structure for the conditions of this paragraph must be misaligned with respect to each other by at least 10° vertically (i.e., pitch out of parallel) and by at least a 10° lateral roll, with the directions optional, to account for possible floor warp.

(c) Compliance with the following must be shown:

(1) The seating device system must remain intact although it may experience separation intended as part of its design.

(2) The attachment between the seating device and the airframe structure must remain intact although the structure may have exceeded its limited load.

(3) The ATD's shoulder harness strap or straps must remain on or in the immediate vicinity of the ATD's shoulder during the impact.

(4) The safety belt must remain on the ATD's pelvis during the impact.

(5) The ATD's head either does not contact any portion of the crew or passenger compartment or, if contact is made, the head impact does not exceed a head injury criteria (HIC) of 1,000 as determined by this equation.

$$HIC = (t_2-t_1)\left[\frac{1}{(t_2-t_1)}\int_{t_1}^{t_2} a(t)dt\right]^{2.5}$$

Where: a(t) is resultant acceleration at the center of gravity of the head expressed as multiple of g (the acceleration of gravity) and t_2-t_1 is the time duration, in seconds, or major head impact, not to exceed 0.05 seconds.

(6) Loads in individual shoulder harness straps must not exceed 1,750 pounds. If dual straps are used for retaining the upper torso, the total harness strap loads must not exceed 2,000 pounds.

(7) The maximum pelvic load, as measured in an ATD as defined in 49 CFR 572, Subpart B, or its equivalent, must not exceed 1,500 pounds.

(d) An alternate approach that achieves the equivalent or greater level of occupant protection, as required by paragraph (c) of this section, must be substantiated on a rational basis.

Explanation. The proposal would add a new standard for emergency landing dynamic conditions for transport rotorcraft. The emergency landing impact conditions for normal and trasport category rotorcraft are considered equal.

See the explanation for proposal No. 3 in this notice for new § 27.562, Emergency landing dynamic conditions, for an explanation of this proposal.

8. By amending § 29.783 by revising paragraphs (d) and (g)(1) to read as follows:

§ 29.783 Doors.

* * * * *

(d) There must be reasonable provisions to prevent the jamming of any external doors in a minor crash, as a result of fuselage deformation, under the following ultimate inertia forces:

(1) Upward—1.5g.

(2) Forward—4.0g.

(3) Sideward—2.0g.

(4) Downward—4.0g.

* * * * *

(g) * * *

(1) The door, integral stair, and operating mechanism have been subjected to the inertia forces specified in paragraph (d) of this section, acting separately relative to the surrounding structure.

* * * * *

Explanation. The present standard in paragraph (d) requires reasonable provisions to prevent jamming of any external door due to fuselage deformation in a minor crash. The design ultimate inertia forces specified in present § 29.561(b)(3) for a minor crash have been used as the design criteria for proving compliance whith this standard. In addition, paragraph (g)(1) requires continued effectiveness or usability of any integral stair and door after application of the inertia forces stated in present § 29.561(b)(3).

The minor crash inertia forces as applied to the fuselage doors and exits are not altered in this notice. This proposal would revise the standards to include the present specific minor crash inertia forces in paragraph (d) rather than retain a reference to a "minor crash" in paragraph (d) and a reference to § 29.561(b)(3) in paragraph (g)(1). The downward forces would be stated only as 4.0g and the presently stated relief from this factor as a result of the rotorcraft landing response to a 5 f.p.s. descent would be deleted by this proposal. Relief from the 4.0g force is considered a superfluous standard for future transport rotorcraft door and exit designs in the context of this notice to improve occupant protection.

This notice contains a proposal to change § 29.561(b)(3) by significantly increasing the ultimate inertia forces for occupant seat and restraint static load factors. These occupant restraint factors are not warranted for the fuselage shell doors, integral stairs, doors, and exits.

9. By amending § 29.785 by revising paragraphs (a), (b), (c), (f), and (g) and

by adding new paragraphs (i), (j), and (k) to read as follows:

§ 29.785 Seats, berths, safety belts, and harnesses.

(a) Each seat, safety belt, harness, and adjacent part of the rotorcraft at each station designated for occupancy during takeoff and landing must be free of potentially injurious objects, sharp edges, protuberances, and hard surfaces and must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia factors specified in § 29.561 and dynamic conditions specified in § 29.562.

(b) Each occupant must be protected from serious head injury by a safety belt plus a shoulder harness that will prevent the head from contacting any injurious object, except as provided for in § 29.562(c)(5).

(c) Each occupant's seat must have a combined safety belt and shoulder harness with a single-point release. The pilot's combined safety belt and shoulder harness must allow the pilot when seated with safety belt and shoulder harness fastened to perform all functions necessary for flight operations. There must be a means to secure belt and harness when not in use to prevent interference with the operation of the rotorcraft and with rapid egress in an emergency.

* * * * *

(f) Each seat and its supporting structure must be designed for an occupant weight of at least 170 pounds, considering the maximum load factors, inertia forces, and reactions between the occupant, seat and safety belt or harness corresponding with the applicable flight and ground-load conditions, including the emergency landing conditions of § 29.561. In addition—

(1) Each pilot seat must be designed for the reactions resulting from the application of the pilot forces prescribed in § 29.397; and

(2) The inertia forces prescribed in § 29.561 must be multiplied by a factor of 1.33 in determining the strength of the attachment of—

(i) Each seat to the structure; and

(ii) Each safety belt or harness to the seat or structure.

(g) When the safety belt and shoulder harness are combined, the rated strength of the safety belt and shoulder harness may not be less than that corresponding to the inertia forces specified in § 29.561, considering the occupant weight of at least 170 pounds, considering the dimensional characteristics of the restraint system installation, and using a distribution of at least 60-percent load to the safety belt and at least 40-percent load to the shoulder harness. If the safety belt is capable of being used without the shoulder harness, the inertia forces specified must be met by the safety belt alone.

* * * * *

(i) Each seating device system includes the device such as the seat, the cushions, the occupant restraint system means, and attachment devices.

(j) Each seating device system may use design features such as crushing or separation of certain parts of the seat in the design to reduce occupant loads for the emergency landing dynamic conditions of § 29.562; otherwise, the system must remain intact and must not interfere with rapid evacuation of the rotorcraft.

(k) For the purposes of this section, a litter is defined as a device designed to carry a nonambulatory person, primarily in a prone position, into and on the rotorcraft. Each berth or litter installed parallel to or within 15° of the longitudinal axis of the rotorcraft must be designed so that the forward part has a padded end-board, cloth diaphragm, or equivalent means that can withstand the load reaction of an occupant weight of at least 170 pounds when the occupant is subjected to the forward inertia factor specified in § 29.561. In addition—

(1) The berth or litter must have a restraint system and must not have corners or other protuberances likely to cause serious injury to a person occupying it during emergency landing conditions; and

(2) The berth or litter attachments and the occupant restraint system attachments to the structure must be designed to withstand the critical loads resulting from flight and ground load conditions and from the conditions prescribed in § 29.561(b).

Explanation. Amendment 29–24, effective December 6, 1984 (49 FR 44422; November 6, 1984), extensively amended § 29.785 and, in part, added shoulder harness requirements and design standards and other occupant protection standards. The standards of present §§ 27.785 and 29.785 are identical. Occupant restraint and related protection standards for normal and transport category rotorcraft should remain equal as reflected in the present standards. The proposed change to § 29.785 is substantively identical to proposed § 27.785 except Part 29 sections shall be used rather than Part 27. The explanation for proposal No. 4 for the proposed amendments to § 27.785 applies to this proposal as well, except that references to associated sections shall refer to Part 29 sections rather than Part 27 sections.

10. By amending § 29.809 by revising paragraph (e) to read as follows:

§ 29.809 Emergency exit arrangement.

* * * * *

(e) There must be means to minimize the probability of the jamming of any emergency exit in a minor crash landing as a result of fuselage deformation under the ultimate inertia forces in § 29.783(d).

* * * * *

Explanation. The present standard in paragraph (e) requires that each exit use means or features to minimize the probability of the exit jamming due to fuselage deformation in a minor crash landing. This is similar to the door standards in § 29.783 (d) and (g)(1). The minor crash landing ultimate inertia forces are specified in present § 29.561(b)(3). These forces would be added to § 29.783(d) as stated in proposal No. 8 of this notice. See the explanation for proposal No. 8. Therefore, this proposal would revise § 29.809(e) by referring to revised § 29.783(d) for the appropriate ultimate inertia forces that should apply to door and exit designs of transport rotorcraft.

Issued in Fort Worth, Texas, on May 22, 1987.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 87–12522 Filed 6–2–87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circulars; Dynamic Evaluation of Normal Category Rotorcraft Seats, 27.562-X, and Dynamic Evaluation of Transport Category Rotorcraft Seats, 29.562-X

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Availability of proposed advisory circulars (AC) and request for comments.

SUMMARY: Proposed AC's 27.562-X and 29.562-X set forth an acceptable means, but not the only means, of showing compliance with the provisions of Parts 27 and 29 of the Federal Aviation Regulations (FAR) pertaining to dynamic testing of rotorcraft seats.

DATES: Comments must be received on or before December 30, 1987.

ADDRESSES: Send all comments on the proposed AC's to: FAA, Regulations Program Management, Fort Worth, Texas 76193-0111.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Major, FAA, Regulations Program Management, Fort Worth, Texas 76192-0111, telephone (817) 624-5117 or FTS 734-5117.

SUPPLEMENTARY INFORMATION: Copies of proposed AC's 27.562-X and 29.562-X are being mailed to all known, affected industry and government entities, both foreign and domestic. Any interested person not receiving a copy of these proposed AC's should contact the person named under **"FOR FURTHER INFORMATION CONTACT."**

Comments Invited

Interested persons are invited to comment on the proposed AC's. Commenters must identify proposed AC 27.562-X or AC 29.562-X and submit comments in duplicate. Comments received may be inspected at the office of the Regulations Program Management, ASW-111, Building 3B, Room 144, Federal Aviation Administration, Southwest Region, 4400 Blue Mound Road, Fort Worth, Texas, between the hours of 8 a.m. and 4 p.m., weekdays, except Federal holidays.

Issued in Fort Worth, Texas, on May 22, 1987.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 87-12533 Filed 6-2-87; 8:45 am]

BILLING CODE 4910-13-M

federal register

Wednesday
June 3, 1987

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Protective Breathing Equipment; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 24792; Amdt. No. 121-193]

Protective Breathing Equipment

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations applicable to protective breathing equipment (PBE) by: (1) Incorporating the requirements of § 25.19 of the Federal Aviation Regulations into current § 121.337; (2) providing new standards for PBE for crewmembers who may be required to fight in-flight fires; (3) requiring the performance of an approved firefighting drill using PBE; (4) requiring that, when possible, additional PBE be located within 3 feet of each required hand fire extinguisher in passenger compartments; and (5) clarifying certain emergency drill requirements. This action was prompted by several in-flight fires and, in part, by a report on PBE by the National Transportation Safety Board.

EFFECTIVE DATE: July 6, 1987.

FOR FURTHER INFORMATION CONTACT: David E. Catey, Project Development Branch (AFS-240), Air Transportation Division, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-8096.

SUPPLEMENTARY INFORMATION:

Background

Protective breathing equipment (PBE) consists of a full face mask attached to an oxygen supply; a face mask, including smoke goggles, attached to an oxygen supply; or a smoke hood attached to an oxygen supply. Rules requiring operators conducting air carrier operations outside of the United States to have such equipment installed in their airplanes were originally included in § 41.24(c) of the Civil Air Regulations (CAR), which became effective on October 21, 1949. The basic requirement of these early standards was that the equipment be designed to prevent the person wearing the equipment from breathing noxious gases. Such standards were also a part of the type certification basis for older airplanes, and they still apply to those airplanes.

Subsequent amendments to the transport category airplane type certification requirements resulted in the current PBE requirements set forth in § 25.1439 of the Federal Aviation Regulations (FAR). That rule specifies the airplane compartment configurations for which PBE is required and establishes performance standards for the equipment.

Under § 25.1439, PBE is required in an airplane if there are cargo compartments or isolated separate compartments, including upper and lower lobe galleys, which the flightcrew may enter during flight. Performance requirements in this rule specify that PBE must be designed to protect the flightcrew from smoke, carbon dioxide, and other harmful gases; that the PBE must also include suitable covering for eyes, nose, and mouth; and that a specified amount of oxygen must be supplied. These PBE standards for transport category airplanes were adopted in 1964 and amended in 1976. They do not apply to airplanes still in service that were type certificated prior to that time.

On July 11, 1973, a Boeing 707 (B-707) airplane made a forced landing short of the runway at Paris, France, as the result of a cabin fire started by a cigarette in a rear lavatory waste bin. Intense fire, smoke, and harmful gases spread throughout the airplane, with the result that only 11 of the 134 occupants survived. Investigation indicated that the use of upgraded PBE, meeting the revised standards contained in Technical Standard Order (TSO) C99, might have permitted the flight attendants using such upgraded equipment to extinguish the fire in flight and thus might have saved more lives.

On November 3, 1973, a fatal accident occurred in Boston, Massachusetts, involving a B-707 freighter airplane. Investigation of this accident prompted the National Transportation Safety Board (NTSB) to evaluate PBE used by a number of air carriers. The NTSB reported that smoke goggles used by several air carriers did not adequately protect crewmembers from smoke and that certain goggles in use appreciably restricted the wearer's vision. The NTSB recommended that all transport category airplanes, regardless of date of certification, be required to comply with current § 25.1439 and that all smoke goggles presently in use be inspected to ensure that they comply with § 25.1439.

On June 2, 1983, an in-flight fire occurred in the aft lavatory of a McDonnell-Douglas DC-9 airplane en route to Montreal, Canada. The crew was unable to control the fire and requested an emergency descent and air traffic control clearance to the nearest available airport. The crew successfully landed the airplane at Covington, Kentucky. Soon after passenger and crewmember evacuation from the airplane began, dense smoke rapidly spread through the passenger compartment, apparently making it impossible for 23 of the 41 passengers on board to find their way to emergency exits. The Federal Aviation Administration's (FAA) analysis of this accident concludes that a number of those passengers who perished might have survived if certain cabin safety improvements under consideration at that time by this agency had been in effect. One of those improvements is the requirement contained in this rulemaking for additional PBE for use by crewmembers throughout the airplane. It is conceivable that, had the airplane been equipped with the additional PBE, its effective use by the flight attendants in fighting the fire might have delayed the spread of smoke in the cabin.

The result of this rule will be that the operating rule in Part 121 will impose additional PBE requirements that go beyond the airplane certification rules in § 25.1439. The principal additional requirement will be PBE for flight attendants, in addition to flight crewmembers, which will protect them while fighting on-board fires. These additional requirements are appropriate for Part 121 air carriers because they will provide the high level of safety that should be found in large air carrier aircraft operations. In addition, the Part 121 operating rule will provide refinements to the basic certification rules, such as specific inspection and training procedures.

On October 31, 1983, the NTSB issued two safety recommendations pertinent to this rulemaking. Safety Recommendation A-83-74 recommends that the FAA "require that protective breathing equipment, including smoke goggles, currently carried aboard transport category airplanes to comply with 14 CFR 25.1439 and 14 CFR 121.337 which do not meet the minimum performance standard prescribed in Technical Standard Order (TSO) C99 or equivalent be replaced with equipment which meets the standards." Safety Recommendation A-83-75 recommends that the FAA "amend 14 CFR 121.337 to prescribe a minimum number of portable protective breathing apparatus with full face masks which will be carried in the passenger compartment of transport category airplanes readily accessible to cabin attendants and flightdeck crew."

The current operating requirement (§ 121.337) for PBE used by Part 121 operators provides that the flightcrew be protected from smoke, carbon dioxide, and other harmful gases. The requirement for "protection" is actually

composed of several different criteria, of which the most significant is the amount of contamination that can be tolerated by the lungs without unduly impairing a flight crewmember's ability to function.

The FAA conducted a survey of reports concerning human physiological limitations resulting from 15-minute exposures to contaminants likely to be present in airplane fires. The results of this survey show that contaminant concentrations in the air of 5 percent for breathing and 10 percent for eye contact are the maximum acceptable levels for 15 minutes of exposure for flight crewmembers. These standards are currently incorporated in material referenced in TSO–C99.

In general, minimum performance standards for equipment established by the FAA are issued in the form of TSO's. Until recently, TSO's were included within the FAR (Part 37); they are now issued as nonregulatory material but continue to provide a basis for approval of materials, parts, and appliances.

TSO–C99 was first issued in June 1983. Prior to the issuance of TSO–C99, there were no specific standards for approval of PBE beyond those contained in the operating and certification rules. After issuing TSO–C99, the FAA tested a number of oxygen mask-smoke goggle combinations used in air carrier airplanes. These tests showed that many of these PBE units permitted contaminant concentration levels that exceeded the performance levels in TSO–C99. Carriers using such units were required to replace them with acceptable equipment.

The FAR now require all certificate holders to furnish approved PBE for their flight crewmembers' use. This equipment is generally used when a flight crewmember is in a sedentary state. This equipment is usually approved in accordance with TSO–C99 and Society of Automotive Engineers (SAE) Aerospace Standard (AS) 8031. This new rule will require that equipment to be used by crewmembers in other than a sedentary state must be PBE approved in accordance with new minimum performance standards contained in § 121.337. Guidance for approval will be available at FAA Field Offices by the effective date of the rule.

The FAA proposed that PBE be required in additional locations in airplanes operated under Part 121. Portable PBE located in passenger compartments would have to be easily accessible and conveniently located within 3 feet of each hand fire extinguisher required by § 121.309. An approved firefighting drill using PBE would have to be performed by all crewmembers while wearing PBE. In addition, certain emergency drill requirements in Part 121 would be clarified.

These proposals were derived from experience gained from the accidents mentioned previously, where smoke and noxious gases may have impeded crewmembers when fighting cabin fires and, as previously noted, NTSB recommendations A–83–74 and A–83–75, which urge that a minimum number of PBE units be required aboard transport category airplanes and that PBE aboard those airplanes comply with §§ 25.1439 and 121.337 and TSO–C99.

As a result of various studies and recommendations, the FAA recently adopted rules that require the addition of reduced flammability requirements for seat cushions and high usage interior cabin materials, smoke detectors in lavatories, additional and improved hand fire extinguishers in airplanes operated under Part 121, and floor proximity lighting systems. These cabin safety improvements are in addition to the items in this amendment.

The FAA has carefully evaluated the cost and benefits of this amendment and has concluded that the lives that may be saved are in addition to any lives saved as a result of other cabin safety initiatives.

There are three major safety benefits to this PBE amendment. The first benefit is the direct prevention of injury or death of crewmembers as a result of smoke or harmful gases. The second benefit is a decreased likelihood of passenger injury or death because crewmembers will not be incapacitated by smoke or harmful gases and thus will be able to continue to perform their safety duties. Finally, the third benefit is the lessened chance of injury or death for both passengers and crewmembers as a result of the enhanced ability of crewmembers to actively combat potentially catastrophic in-flight fires. In contrast to the active cabin safety measures in this amendment, the benefits of related FAA cabin safety initiatives are those lives saved and injuries prevented by passive fire protection countermeasures in both in-flight and post-crash fires. Smoke detection devices, fire retardant materials, and improved passenger egression measures are passive in nature and not dependent on crewmember activation. The PBE amendment enhances the effectiveness of these passive fire protection initiatives by providing a complementary active countermeasure against the hazards of inflight fires. For this reason, the benefits attributed to this amendment represent an increase in the savings to the public above the cost of lives and injuries already cited in other related FAA initiatives.

Comments on the Proposed Rule

During the 120-day comment period, the FAA received 32 comments in response to Notice of Proposed Rulemaking (NPRM) No. 85–17. The comments represent the views of individuals, airline employee labor organizations, U.S. airline organizations, oxygen mask manufacturers, and foreign airlines. Most comments agree with the need for improving regulations in the cabin safety area and commend the FAA for the rulemaking effort. Airline labor organizations, the NTSB, and numerous individuals favor even more stringent requirements than that proposed in the NPRM.

On January 3, 1986, the Air Transport Association (ATA) petitioned for a 60-day extension of the comment period. This request was denied by the FAA because the original comment period of 120 days was considered a reasonable length of time for any comments. The ATA submitted comments on the NPRM, dated February 10, 1986. Subsequently, an additional response was received from ATA, which was dated May 7, 1986. Although the last ATA comments received were beyond the comment period deadline, the FAA has considered them in developing this final rule. No other late-filed comments were received.

ATA stated that the incoporation of the PBE requirements of § 25.1439 into § 121.337 will have a significant impact on operators of airplanes certificated prior to the most recent changes to Part 25. These operators will be required to dispose of or modify PBE equipment that was properly certificated and deemed airworthy when the airplane was originally purchased. ATA says this is a departure from what it views as the standard FAA practice of imposing more stringent equipment standards only on airplanes certificated after the date of a new rule.

With the development of new technology equipment and the emphasis being placed upon upgrading cabin safety, upgrading of standards for PBE devices is warranted. Some existing equipment essentially meets the new standards, while other equipment can be modified to meet these new standards. In view of the clear safety improvements from the new standards, the FAA concludes that these changes should be implemented in accordance with the time constraints contained in the final rule.

The ATA and Regional Airlines Association (RAA) both state that

applying the new oxygen standards to portable PBE for flightcrew and cabin crew will increase the oxygen cylinder dimensions, which may create a space problem in the flightcrew compartment.

To meet this objection, § 121.337(b)(9)(iii) has been modified from the original proposal to allow the Administrator to authorize another location for portable PBE on the flight deck if space constraints prevent its storage in the flightcrew compartment. In such an event, the portable PBE for use by the flightcrew would have to be conveniently located so that it is readily accessible for use by the flightcrew in an emergency. Similarly, § 121.337(b)(9)(iv) allows PBE in passenger compartments to be located more than 3 feet from a hand fire extinguisher if special circumstances make it impractical to locate them as required. For example, space constraints may make it impossible to place PBE within 3 feet of the hand fire extinguishers at some locations on some airplanes. In this case, the Administrator may allow another location if an equivalent level of safety is maintained.

The NPRM proposed a 1-year compliance date for carriers to provide PBE in Part 121 operations. The ATA opposes the 1-year compliance period for several reasons. ATA says that PBE specifications are part of this rulemaking package. Therefore, until the package is finalized, equipment may not even be ordered. Because of this lack of adequate lead time, ATA states that it will be difficult for carriers to acquire new PBE for installation aboard airplanes and for use by crewmembers during the required training. ATA also maintains that demand for new PBE could outstrip manufacturers' inventories and production capacity. Finally, ATA says there will be administrative delays in establishing and approving training programs and that, after approval, it will take at least a year for all crewmembers to be trained. Several other commenters state that the 1-year compliance date would be insufficient and would cause additional compliance costs.

The FAA intends to give carriers a reasonable amount of time to comply with this rule for installation of PBE devices for both flight crewmembers and cabin crewmembers who may have to combat fires in the airplane. Equipment may need to be developed to meet the new approval standards to be established for an active (nonsedentary) crewmember. Once these standards have been established, the manufacturers state that they will be able to meet the expected demand. Indeed, the Civil Aeromedical Institute (CAMI) has conducted tests that show that there is at least one currently available portable smoke hood device that would essentially provide the levels of protection for crewmembers combatting fires that the new rule requires. These tests used a work profile designed to replicate the activity of a crewmember combatting an in-flight fire. Thus, a carrier that wants to begin equipping its airplanes at once will be able to do so. Nevertheless, the FAA has decided that a 2-year compliance period for PBE for crewmembers combatting fires is appropriate. This longer period should allow ample time for development, manufacture, and distribution of adequate numbers of new equipment and time for required training.

Several commenters state that the economic impact could be substantial both for the PBE and for training personnel in the use of the PBE.

The FAA is aware that there may be some economic burden placed on Part 121 certificate holders; however, the safety benefits of the rule far outweigh the economic costs that may be incurred.

Two commenters indicate that the PBE should provide for hypoxia protection as well as protection from harmful gases and smoke.

The primary reason that the FAA has decided that the amendment should not include protection from the effects of hypoxia is that accident statistics do not show instances where smoke and/or fire in the airplane have occurred simultaneously with depressurization. Protection from the effects of depressurization is provided by the currently installed oxygen equipment, which will continue to provide supplemental oxygen to crewmembers, while PBE is intended to protect from the effects of smoke, carbon dioxide, and other harmful gases. Thus, PBE may supply any breathable atmosphere such as compressed air or oxygen.

Current § 121.337 only requires protection from the effects of smoke, carbon dioxide, and other harmful gases for required flight crewmembers on flight deck duty. It does not require protection against the physiological effects of depressurization. The FAA concludes that it is not necessary to require that the new requirements for PBE provide depressurization protection for either flight crewmembers or cabin crewmembers. This does not mean that they do not need some kind of breathing equipment that furnishes protection from depressurization. If a carrier chooses to furnish equipment that protects against the effects of smoke, carbon dioxide, and other harmful gases, as well as an oxygen deficient environment (hypoxia) caused by depressurization, it may do so. Flight crewmembers must currently be protected from the effects of depressurization by full or partial masks that meet the standards prescribed in § 121.335. The FAA will not require that this equipment also meet the standards for PBE or that PBE meet these standards.

Two commenters state that PBE devices now in use are specifically tested only for use in a smoke-filled environment and that utilizing this equipment in a firefighting situation would subject this equipment to an unintended use. One of these commenters further states that they disagree with the implication that crewmembers are now, or should be, "firefighters." This commenter feels that crewmembers should never be led to believe that any existing or proposed equipment allows a crewmember to attack all fires. The commenter thinks that getting the airplane on the ground without delay should be the prime mission. In addition, this commenter criticizes the requirement for firefighting drills in the new training requirements. These drills themselves may present hazards to crewmembers that even professional firefighters would not undertake.

The FAA intent is that the equipment be used only as it was designed, but that it be utilized to the fullest extent of its capability. The equipment prescribed in the rule should be used to assist in locating any source of smoke and to aid in fighting an in-flight fire. Flight crewmembers should naturally make every effort to land the airplane as soon as possible. The efforts of the cabin crew in combatting or limiting an in-flight fire may very well provide the necessary time for the flightcrew to safely land the airplane.

Most of the commenters have definite recommendations regarding the equipment requirements of the NPRM. The NTSB issued Safety Recommendations A–83–75, which recommends that the FAA amend § 121.337 to prescribe a minimum number of portable protective breathing devices with full-face masks. The NTSB's comment in the docket continues to support this stand since it maintains that many partial masks with goggles fail to protect wearers adequately in a smoke-filled environment.

Numerous other commenters state that the full or partial face masks are not

practical for several reasons and that PBE hoods should be considered for use by cabin crewmembers.

The FAA agrees with the NTSB and other commenters that PBE for flight crewmembers should provide full protection from the effects of smoke, carbon dioxide, or other harmful gases while performing flight deck duties and while combatting a fire on the flight deck or elsewhere in the airplane. However, the FAA does not believe this protection may only be achieved using a full face mask. Properly designed combination face mask/goggle units, for example, may also provide the same level of protection, and manufacturers and carriers should be free to achieve the required level of protection using whatever technology will meet FAA approval criteria.

Similarly, hoods for portable PBE to be used by cabin crewmembers may be one means of providing protection for them while fighting fires. However, it need not be the only means. The PBE requirement is intended to ensure the necessary level of protection for crewmembers, not to mandate a particular PBE technology. Nevertheless, the FAA notes that hoods may offer advantages for cabin crewmembers who are fighting fires. For example some allow freedom of movement and use of the hands, since it may not be necessary to carry or position an oxygen bottle.

One commenter states that the proposed one PBE per required hand fire extinguisher is excessive in number and that for narrow body airplanes, one PBE in the front of the airplane and one PBE in the rear would be sufficient. The commenter states that a greater number should be required for wide-body airplanes, but the commenter was not specific about numbers. This same commenter further contends that the 3-foot maximum distance between a required hand fire extinguisher and PBE is without justification.

The FAA and the NTSB have recognized that in the past some airplane disasters that resulted from cabin fires might have been prevented with a rapid recognition of smoke/fire in the cabin and a rapid response to putting out the fire or limiting its spread. If a flight attendant is required to run to one end or the other of the airplane to get a PBE rather than going to the nearest required hand fire extinguisher for the PBE, valuable time may be lost. Therefore, in most cases, locating the PBE in the cabin within 3 feet of each required hand fire extinguisher is both reasonable and practical. The FAA does recognize that there are certain circumstances that will not practically allow the certificate holder to locate a PBE within 3 feet of each required hand fire extinguisher and, therefore, the Administrator may authorize deviations from the requirement if special circumstances exist that make compliance impractical and the proposed deviation provides an equivalent level of safety.

Another commenter says that the requirement to allow interphone communication for each of two flight crewmember stations in the cockpit to at least one normal flight attendant station in each passenger compartment may create a problem, especially in an airplane that only requires one flight attendant. This scenario might require the lone flight attendant, or the only flight attendant using PBE and fighting a fire, to be hooked up to a cord for interphone use. This could lead to interphone cord entanglement or disconnection and would be unsatisfactory.

The purpose of this provision of the rule is to ensure a means of free exchange of information between flight deck personnel and cabin crewmembers during this type of emergency. In a situation where the only flight attendant on board is fighting a fire, it is not necessary for that flight attendant to be able to communicate with the flightcrew while actually fighting the fire. Rather there must be a provision for a flight attendant to communicate with the flight deck personnel by means of the intercom while wearing the PBE. This communication may be before and after the actual firefighting itself to keep the flight crewmembers informed regarding the emergency and to advise the flight crewmembers of the efficacy of firefighting actions or smoke elimination procedures so that the flightcrew can determine what course of action should be taken. If more than one cabin crewmember is available, at least one must be able to communicate using the interphone while wearing PBE with the flight deck personnel during the emergency. This flight attendant would be able to relay the information about the emergency to the flight deck personnel.

Two commenters state that "the duration of protection should be commensurate with the stated objectives and purposes for the mission completion." These commenters say that 30 minutes of protection is the bare minimum duration of protection because that is the least amount of time required to safely land and evacuate the airplane. In addition, these commenters say that when a flight is more than 30 minutes flying time from an adequate emergency landing field, the minimum protection time should be the time required to reach such a field and evacuate.

The comments misperceive the purpose of the amendment. PBE is not intended to provide protection for the entire period required to land and evacuate an airplane in the event of an inflight fire. Rather it is designed to protect the crew long enough to allow them to take measures to combat the fire.

Several commenters indicate that the use of oxygen during an in-flight fire emergency borders on the catastrophic. One commenter states that military accident records are full of documentation of burns that were fueled by oxygen from the airplane breathing systems. However, the commenter making this assertion furnishes no supporting evidence. Commenters further indicate that the potential for oxygen leaks around the face masks is very high. Therefore, these commenters recommend the use of air instead of oxygen in PBE.

Hypoxia protection is already provided for under the current supplemental oxygen rules, and therefore it is unnecessary to require that the PBE duplicate these requirements. Therefore, any breathable atmosphere may be furnished for PBE. On the other hand, the FAA concludes that oxygen is an acceptable medium. It has been used, and still is used, over the past 50 years in civilian and military firefighting. The very few instances that have been reported where use of oxygen has resulted in injuries were where the oxygen hoses have burned through resulting in injuries to personnel. Crewmembers should be trained to maintain the proper distance from the fire to avoid injury while fighting a fire. By remaining the appropriate distance, the crewmember will reduce the chances of any oxygen that might conceivably leak from the PBE from fueling the fire or creating an explosion.

Several commenters oppose the number of proposed PBE and recommend that this requirement be reduced. On the other hand, seven commenters recommend that a PBE should be provided every crewmember and that it should be located at each cabin crewmember's seat.

The FAA has determined that one PBE device at each hand fire extinguisher location required by § 121.309 will provide an adequate level of coverage and will avoid any confusion in locating the equipment since it will be near a hand fire extinguisher. These locations will give the best distribution in the airplane and furnish easy access for the flight attendants should a problem arise

while they are performing their duties. The flight attendants are performing various duties throughout the cabin for a far longer period of time than they spend at their seats. The FAA has also determined that the restricted size of many areas aboard an airplane and the nature of emergencies restrict the number of flight attendants that can effectively fight a fire, and therefore it is not necessary for all flight attendants to be equipped with PBE.

Numerous commenters misinterpreted the term "for use in" to mean that a PBE needed to be located in each Class A, B and E cargo compartment. That phrase merely means that a PBE may be located nearby as long as it is conveniently located and easily accessible for use in these areas. The rule states that the PBE must be "in" an area when it requires a PBE to be physically located in that specific area.

One commenter states that the proposed wording for equipment preflight could inhibit development of more advanced equipment.

The FAA agrees and has changed the rule accordingly.

Two commenters object to the hands-on type of training in which flight attendants must fight a typical fire while wearing PBE. They say that this type of training does not accurately train for other types of fires, such as electrical fires. In addition, they cite potential hazards to flight attendants while undergoing such training and the difficulty of finding suitable locations for such training. Finally, they question the benefit of this one-time training in contrast to more frequent demonstrations. They believe that instruction using realistic training aids will better prepare flight attendants to cope with actual airplane fires.

The FAA does not agree with these commenters. Demonstrations and training aids, no matter how realistic, cannot provide the training benefits and confidence that actual firefighting experience will give to all crewmembers, including flight attendants. Although this requirement is a one-time exercise, it will provide a base of actual experience with combatting a fire that a crewmember can build upon in later recurrent training. Nothing in the rule prevents carriers from developing training curricula for initial and recurrent training that use training aids and instructors to supplement and reinforce the experience gained in the actual firefighting demonstrations. Any potential danger to flight attendant trainees can be eliminated with careful planning and supervision of the training. Indeed, this training requirement is supported by flight attendant associations, who feel it should be a recurring rather than a one-time requirement. The cost and possible inconvenience of location of suitable training sites should be far outweighed by the vastly increased competence and confidence of crewmembers in fighting in-flight fires.

Section-by-Section Analysis

Section 121.337(a)

This section as proposed would have required certificate holders to furnish PBE meeting certain requirements in paragraph (b) of this section as well as the minimum performance standards of TSO–C99, Protective Breathing Equipment. TSO–C99 provides the current basic approval criteria for PBE to be used by flight crewmembers. A commenter on the proposal points out that the standards in TSO–C99 were designed to provide protection to these flight crewmembers who would be in a sedentary state while using the PBE. In contrast, the crewmembers who would be using the newly-required PBE to combat fire and smoke in the airplane would be quite active while using PBE. Consequently, their rates of oxygen consumption and carbon dioxide production would be significantly higher. Thus, equipment that meets TSO–C99 may not satisfy the demands of this higher workload.

The FAA agrees that the standards in TSO–C99 were not designed to accommodate nonsedentary crewmembers. Accordingly, the reference to TSO–C99 in paragraph (a) of the rule has been removed. Instead, the rule now requires that PBE be approved for use and that it meet specific equipment, breathing gas, and communication requirements set forth in paragraph (b) of the section.

When the issue of increased workload requirements of crewmembers combatting fire and smoke was identified, the FAA began to study the problem of appropriate performance levels for these crewmembers. A work profile was developed with input from airworthiness and flight standards staffs and CAMI. This work profile was based on expected work levels allowing a crewmember to proceed to a source of smoke or fire, don PBE, obtain a hand fire extinguisher, and fight the fire for a reasonable period of time. This work profile is believed to be representative of the exertion a crewmember would undergo while combatting an in-flight fire, although it is by no means the only possible or plausible scenario. For example, this scenario is less rigorous than that developed by the British Civil Aeronautics Authority (CAA) for approval of PBE. The British scenario includes a portion simulating an evacuation. That portion is not appropriate for PBE to meet this amendment which does not cover the evacuation phase of an emergency.

Using this work profile, CAMI has tested one portable smoke hood which is currently available, the Scott Aviation Emergency Escape Breathing Device, which is approved under TSO–C99. CAMI's tests show this hood will essentially meet the requirements for protecting the crew from the effects of those items covered under paragraph (b)(1) of the amendment. Of course, this does not necessarily mean that any PBE device that is approved under TSO–C99 can also be approved for use by cabin crewmembers under this amendment. However, it does show that there is now PBE available that may be approved and that the technology to build approvable PBE is readily available.

Because TSO–C99 does not provide appropriate performance standards for approval of PBE to be used in fighting in-flight fires, the FAA is developing new approval criteria to be used in evaluating such PBE under the new rule. These criteria will be available from FAA Flight Standards district offices when this amendment becomes effective. After the effective date of the rule, there will be allowed a 2-year compliance period for furnishing portable PBE to be used in combatting in-flight fires and for providing the required crewmember training. In view of the ready availability of appropriate technology, this period should provide ample time for compliance and training.

The language of section (a) has also been changed to allow any breathable gas to be used instead of requiring oxygen as proposed. This will allow greater flexibility for manufacturers and operators.

Section 121.337(b)(1)

The proposal specified that protection was required from the effects of smoke, carbon dioxide, or other harmful gases. The final rule adds the requirement to protect the wearer from an oxygen deficient environment except one caused by cabin depressurization. This additional requirement is no more than a refinement of the proposed language that will not add any additional burden on manufacturers or carriers. In addition, the change makes it clear that hypoxia caused by cabin depressurization is not within the range of hazards that PBE is required to deal with, although it may be used for this protection if a carrier chooses and if the

equipment also meets the standards in § 121.335.

Section 121.337(b)(2)

This section, which was not included in the notice, makes explicit the duty of a certificate holder to inspect PBE to ensure its continued suitability for its purpose. While this language was not included in the notice, it does no more than make explicit in the PBE rule itself the general requirement for inspection that applies to all items of equipment used aboard airplanes. In addition, the section also provides for inspection periods that may be different from those specified by the equipment manufacturer if the certificate holder can show that an equivalent level of safety is maintained. Thus, this added section is not envisioned to impose any additional requirements beyond the normal inspection requirements, and it provides for relief for a certificate holder who can justify different inspection periods.

Section 121.337(b)(3)

This section requires that the PBE eye protection must not impair the user's vision to the extent that the person would not be able to perform all crewmember duties. This section further requires that this equipment must allow for the use of eyeglasses without impairment of vision or the loss of protection against the effects of smoke, carbon dioxide, or other harmful gasses required by paragraph (b)(1) of this section. This last requirement for continued protection while wearing glasses was understood in the notice but is being clarified in the final rule.

Section 121.337(b)(4)

The final rule requires that the equipment must allow flight crewmembers to communicate using the airplane radios and to use the interphone to communicate with one another. The notice stated that the equipment must allow the flightcrew to use the radio and to communicate with each other while at their assigned duty stations. This could be construed to mean that the flightcrew must be able to use the radios and that they could communicate with one another visually or by signs. This was not the intent of the notice, and the amendment is changed to make clear that they must be able to communicate between them using the interphone. The notice required interphone communication for each of the two flight crewmember stations in the pilot compartment to at least one normal flight attendant station in each passenger compartment. This was misconstrued to mean that the communication could be between two flight crewmembers to the flight attendant without the flight attendant being required to be able to reply to the flightcrew over the interphone. Therefore, the final rule is changed to make clear that the PBE must allow two-way crewmember interphone communication between each of two flight crewmember stations and at least one normal flight attendant station in each passenger compartment.

In addition, it should be noted that this communication capability between the flight deck and each passenger compartment requires only interphone capability to at least one flight attendant station. Some commenters misconstrue this section to require an interphone connection to the PBE itself and question whether such a hook-up would impede the firefighting effort. This section merely requires that the interphone equipment at the flight attendant station and the PBE must be compatible so that a crewmember may communicate with the flight deck from the station location while wearing PBE, not communicate continuously while wearing the PBE.

Section 121.337(b)(5)

This section amplifies and clarifies the interphone requirement in § 121.337(b)(4). It makes it clear that all PBE used by cabin crewmembers must allow the use of the interphone hook-up at at least one flight attendant station in each compartment. In other words, it is not permissible to have only one PBE that is capable of interphone communication; all must have that capability. This is in contrast to the requirement in paragraph (b)(4) that no more than one flight attendant station in each passenger compartment must have interphone equipment that is compatible with the PBE.

Section 121.337(b)(6)

This section merely allows, but does not require, that PBE may be used to satisfy the supplemental oxygen requirements of Part 121, provided it meets the requirements of § 121.335 as well as the requirements of § 121.337 for PBE.

Section 121.337(b)(7)(i)

This section contains the performance standards for PBE and has been simplified. The notice contained detailed standards for performance of PBE, including oxygen flow rates for various types of systems, which were the same for all crewmembers. The FAA has determined that these detailed standards are not appropriate for inclusion in the language of the rule itself. Rather, the rule now includes only the basic performance standards: PBE must provide breathing gas to a crewmember for 15 minutes at a pressure altitude of 8,000 feet. This standard must be met both for flight crewmembers, who are generally sedentary while wearing PBE, and for cabin crewmembers who will be combating fires while wearing PBE. The higher workload of the crewmembers who are combating fires will require a greater supply of breathing gas to provide the required level and duration of protection. The more detailed standards proposed in the notice have been eliminated from this section of the rule. Such detailed standards are more appropriate for guidance material that will form the basis for approval testing of PBE. This detailed guidance will be available from the FAA as soon as the rule becomes effective.

Sections 121.337(b)(7) (ii) and (iii)

These sections require that the breathing gas system must not itself present any hazards and that there must be a means of determining the quantity of breathing gas available.

Section 121.337(b)(7)(iv)

This section was added to specifically allow the use of chemical oxygen generators as a means of meeting the PBE requirements. While the notice did not exclude the use of such devices, failure to mention them might have been considered to prohibit them. The standards to be applied are those already existing for transport category airplanes.

Section 121.337(b)(8)

This section is unchanged from the proposal.

Section 121.337(b)(9)

This section has been rewritten and reorganized for clarity. In addition, this section now requires portable PBE to be available for use by all crewmembers in fighting fires. The proposal restricted portable PBE to crewmembers other than flight crewmembers. The FAA has concluded that there is no reason for this restrictive language since, in some situations, the aid of a flight crewmember might be beneficial to firefighting efforts. No additional PBE will be required by this change.

Sections 121.337(b)(9) (iii) and (iv)

These sections require portable PBE to be located on the flight deck and in each passenger compartment, respectively, and have been changed to reflect several comments. These comments

express concern that space or other limitations might make compliance with these PBE placement requirements impossible. To accommodate this possibility, these two sections now allow the Administrator to allow PBE to be placed elsewhere if special circumstances, such as space constraints, make compliance impractical and an equivalent level of safety can be achieved.

Section 121.337(b)(9)(ii)

This section has been changed to be consistent with the PBE requirements for the passenger compartment and with current policy with respect to the hand fire extinguisher requirements of § 121.309(c)(2). The amendment will require one PBE for each hand fire extinguisher actually installed in an upper or lower lobe galley, where the galley encompasses the entire lobe. If a galley does not encompass the entire lobe, current policy allows a hand fire extinguisher to be conveniently located outside the galley for use in the galley. Section 121.337(b)(9)(iv) would require PBE within 3 feet of this extinguisher unless the Administrator allows it to be placed elsewhere.

Section 121.337(e)(1)

This section has been changed slightly to require that PBE at each flight crewmember duty station be checked for proper functioning before each flight, rather than only before each flight crewmember's first flight of the day. This will provide an extra assurance that this PBE will be fully functioning if needed and should impose little extra work on flight crewmembers.

Section 121.337(e)(2)

This section has also been changed slightly to allow a certificate holder to designate a particular crewmember to check the PBE not located at flight crewmember duty stations. The proposal would have required each responsible crewmember to check PBE before his or her first flight of the day in the airplane. The revised language will simplify carrier procedures by allowing a designated crewmember to check PBE while other crewmembers perform other preflight duties.

Section 121.337(f)

This section provides a compliance period of 2 years for certificate holders to furnish portable PBE for crewmembers who must fight in-flight fires. This period reflects the fact that new approval standards will be required to provide adequate protection and training to these crewmembers. As the technology to meet these standards is already available, a 2-year period should be more than adequate.

Section 121.417(d)

This section has been changed to lengthen the training compliance date to 2 years rather than 1 year as proposed. The firefighting drill referred to in this section must be performed using the portable PBE intended for fighting in-flight fires. Certificate holders are not required to have the equipment on board the airplane until 2 years after the effective date of the amendment. Thus, this change conforms the training compliance date to that period.

Economic Evaluation

This document summarizes the final industry cost impact and benefit assessment of a regulation to amend Part 121 of the FAR to upgrade the level of protection for the traveling public against the hazards of in-flight fires. The final rule incorporates the requirements of § 25.1439 into current § 121.337, adopts new standards for PBE for crewmembers who may fight a fire in the airplane while in flight and requires that crewmembers perform an approved firefighting drill while using PBE. The final rule also requires that additional PBE be located within 3 feet of each required hand fire extinguisher in passenger compartments when possible and clarifies certain emergency drill requirements.

This rule is a result of recommendations of the NTSB, which found during an accident investigation that PBE (smoke goggles) used by several air carriers did not adequately protect the flightcrew and that some smoke goggles restricted the user's vision. The action to increase crewmembers' firefighting training was prompted by the FAA's awareness of several fatal inflight fires in airplanes of U.S. manufacture operated by foreign carriers and by the alarming number of cabin fire and smoke-in-the-cabin incidents recorded in recent years.

The assumptions used in the preparation of economic impact estimates of the changes to §§ 121.337 and 121.417 have been developed by the FAA. Cost factors were obtained from manufacturers, air carriers, and industry trade associations. Information for analysis of benefits was obtained from the safety records of the NTSB and the FAA. The revisions to the PBE provisions and standards of § 121.337 and the current crewmember emergency training requirements of § 121.417 stem from the FAA's growing awareness of the hazards of in-flight fires.

In NPRM No. 85–17, the FAA invited public comments concerning the technical and operational considerations and economic impact assumptions as these apply to the additional time, labor hours, materials, and facilities that would be required for compliance. Comments on the proposal were submitted by domestic and foreign air carriers, manufacturers, and operator trade associations. The majority of the comments recommend minor technical modifications and editorial clarification. A number of commenters state that the economic impact could be substantial both for the PBE and for training personnel in the use of PBE. Several commenters, however, point out that PBE meeting the performance standards of TSO–C99 would protect sedentary flight crewmembers but would be inadequate to satisfy the workload requirements of crewmembers actively fighting a fire. The FAA has evaluated the public comments and made final determination regarding their impact.

With the exception of cockpit PBE that meets the standards of TSO–C99, the FAA finds that the proposals determined to have an economic impact at the NPRM stage of rulemaking will also have an economic impact if the rule is adopted.

The amendment to § 121.337 would have an economic impact on all active and future production airplanes operating under Part 121 because of the cost of acquisition, installation, and maintenance of portable breathable gas PBE that would meet the new equipment requirements and the new standards that will be available at the time this rule is in effect for all crewmembers who may have to fight a fire. The cost of this requirement is $14.193 million in 1985 dollars for the 10-year period of 1988 to 1997 and $10.789 million at a present worth discount rate of 10 percent over the same period.

The amendment of the crewmember emergency training requirements of § 121.417 would affect the current 146 Part 121 certificate holders. These operators would be required to incur additional cost to equip and train the present and future crewmembers in the Part 121 fleet. The estimated cost of compliance with the new firefighting training requirements is $63.079 million in 1985 dollars and $50.332 million at a discount rate of 10 percent for the 10-year period of 1988 to 1997.

Thus, the maximum estimated cost of compliance of the amendments to increase protection against the hazards of inflight fires is $61.120 million in 1985 dollars for the period 1988 to 1997 at a present worth discount rate of 10 percent over the same 10-year period.

The basic benefit that results from this rule is the savings for the general public in lower exposure to accidents and death caused by otherwise survivable in-flight fires. Quantification of these benefits was made difficult by the relatively limited number of in-flight cabin fire accidents. There have been no major cabin fire accidents in U.S. air carrier passenger operations. During the 10-year period of 1974 to 1983 reviewed in this evaluation, there have been only three major in-flight fires in worldwide operations in which the countermeasures adopted in this rule might have been effective in averting an accident. When such accidents have occurred, however, the results have been catastrophic. To allow for the uncertainty inherent in predicting future accidents when historical data is limited, a risk analysis has been performed. The risk analysis generates a probability distribution of the potential benefits that may be realized from accidents avoided as a result of the amendments.

A comparison of the probability distribution of potential benefits and estimated costs of each amendment is summarized in Tables 1 and 2. Averages of the possible benefit and benefit/cost ratio outcomes, weighted by the probability of each outcome, are also indicated as the expected benefit/cost ratio for each amendment. All values have been discounted at the 10 percent discount rate prescribed by the Office of Management and Budget over the 10-year period of this analysis. As indicated in Tables 1 and 2, the expected benefit/cost ratios for the PBE and the firefighting training rules are 3.2 and 1.4, respectively. The combined total cost of the PBE and firefighting training rules is $61.1 million and the expected benefits equal $100.3 million, resulting in a total expected benefit/cost ratio of 1.7.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 requires a review of rules to assess their impact on small business. This amendment will have a significant economic impact on a substantial number of small entities. However, the FAA finds that there are no viable alternatives for small air carriers to adopt that would reduce the cost of compliance yet achieve the level of protection sought by this rulemaking.

Trade Impact Assessment

The FAA has determined that these regulations will not have an impact on international trade.

TABLE 1.—PROBABILITY DISTRIBUTION OF BENEFIT/COST RATIOS FOR PROTECTIVE BREATHING EQUIPMENT (PBE)

Benefit (dollar million)	Benefit/cost ratio	Probability that the protective breathing equipment proposal will equal or exceed the benefit/cost ratio shown at left (in percent)
0	0	100
10.8 (breakeven)	1.0	83
15.4	1.4	75
29.5	2.7	50
46.8	4.3	25
140.4	13.0	0

Expected Benefit/Cost Ratio=3.2 (based on expected benefit of $35.1 million).

Cost of Protective Breathing Equipment for 1988–1997, $10.8 million.

TABLE 2.—PROBABILITY DISTRIBUTION OF BENEFIT/COST RATIOS FOR FIRE FIGHTING EQUIPMENT (PBE)

Benefit (dollar million)	Benefit/cost ratio	Probability that the fire fighting training requirement will equal or exceed the benefit/cost ratio shown at left (in percent)
0	0	0
38.0	.75	75
50.3 (breakeven)	1.0	64
63.7	1.2	50
91.0	1.8	25
214.6	4.2	0

Expected Benefit/Cost Ratio=1.4 (based on expected benefit of $68.1 million).

Cost of Fire Fighting Training for 1988–1997, $50.3 million.

Conclusion

Under the terms of the RFA, the FAA has reviewed these amendments to determine what impact they may have on small entities. The amendments will have a significant economic impact on a substantial number of small entities. The FAA has evaluated several alternatives and has chosen the only alternative that would accomplish the objective.

These amendments will not result in an annual effect on the economy of $100 million or more, or a major increase in costs for consumers; industry; or Federal, State, or local government agencies. Accordingly, it has been determined that these are not major amendments under Executive Order 12291. In addition, the amendments will have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

Since the amendments concern a matter on which there is a substantial public interest, the FAA has determined that this action is significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

A regulatory evaluation of the amendments, including a Regulatory Flexibility Analysis, has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Part 121

Aviation safety, Safety, Air carriers, Air transportation, Aircraft, Airplanes, Airworthiness directives and standards, Transportation, Common carriers.

Adoption of the Amendment

Accordingly, Part 121 of the Federal Aviation Regulations (14 CFR Part 121) is amended as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC FLAG AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for Part 121 is revised to read as set forth below, and the authority citations following all sections in Part 121 are removed:

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. By revising § 121.337 to read as follows:

§ 121.337 Protective breathing equipment.

(a) The certificate holder shall furnish approved protective breathing equipment (PBE) meeting the equipment, breathing gas, and communication requirements contained in paragraph (b) of this section.

(b) *Pressurized cabin airplanes.* Except as provided in paragraph (f) of this section, no person may operate a transport category airplane unless protective breathing equipment meeting the requirements of this section is provided as follows:

(1) *General.* The equipment must protect the flightcrew from the effects of smoke, carbon dioxide or other harmful gases or an oxygen deficient environment caused by other than an airplane depressurization while on flight deck duty and must protect crewmembers from the above effects while combatting fires on board the airplane.

(2) The equipment must be inspected regularly in accordance with inspection guidelines and the inspection periods

established by the equipment manufacturer to ensure its condition for continued serviceability and immediate readiness to perform its intended emergency purposes. The inspection periods may be changed upon a showing by the certificate holder that the changes would provide an equivalent level of safety.

(3) That part of the equipment protecting the eyes must not impair the wearer's vision to the extent that a crewmember's duties cannot be accomplished and must allow corrective glasses to be worn without impairment of vision or loss of the protection required by paragraph (b)(1) of this section.

(4) The equipment, while in use, must allow the flightcrew to communicate using the airplane radio equipment and to communicate by interphone with each other while at their assigned duty stations. The equipment, while in use, must also allow crewmember interphone communications between each of two flight crewmember stations in the pilot compartment and at least one normal flight attendant station in each passenger compartment.

(5) The equipment, while in use, must allow any crewmember to use the airplane interphone system at any of the flight attendant stations referred to in paragraph (b)(4) of this section.

(6) The equipment may also be used to meet the supplemental oxygen requirements of this part provided it meets the oxygen equipment standards of § 121.335 of this part.

(7) Protective breathing gas duration and supply system equipment requirements are as follows:

(i) The equipment must supply breathing gas for 15 minutes at a pressure altitude of 8,000 feet for the following:

(A) Flight crewmembers while performing flight deck duties; and

(B) Crewmembers while combatting an in-flight fire.

(ii) The breathing gas system must be free from hazards in itself, in its method of operation, and in its effect upon other components.

(iii) For breathing gas systems other than chemical oxygen generators, there must be a means to allow the crew to readily determine, during flight, the quantity of breathing gas available in each source of supply.

(iv) For each chemical oxygen generator, the supply system equipment must meet the requirements of § 25.1450 (b) and (c) of this chapter.

(8) Protective breathing equipment with a fixed or portable breathing gas supply meeting the requirements of this section must be conveniently located on the flight deck and be easily accessible for immediate use by each required flight crewmember at his or her assigned duty station.

(9) Protective breathing equipment with a portable breathing gas supply meeting the requirements of this section must be easily accessible and conveniently located for immediate use by crewmembers in combatting fires as follows:

(i) One for use in each Class A, B, and E cargo compartment (as defined in § 25.857 of this chapter) that is accessible to crewmembers in the compartment during flight.

(ii) One for each hand fire extinguisher located in each upper and lower lobe galley, where the galley encompasses the entire upper or lower lobe compartment space.

(iii) One on the flight deck, except that the Administrator may authorize another location for this PBE if special circumstances exist that make compliance impractical and the proposed deviation would provide an equivalent level of safety.

(iv) In each passenger compartment, one located within 3 feet of each hand fire extinguisher required by § 121.309 of this part, except that the Administrator may authorize a deviation allowing locations of PBE more than 3 feet from required hand fire extinguisher locations if special circumstances exist that make compliance impractical and the proposed deviation provides an equivalent level of safety.

(c) *Nonpressurized cabin airplanes.* The requirements of paragraphs (a) and (b) of this section apply to nonpressurized cabin airplanes if the Administrator finds that it is possible to obtain a dangerous concentration of smoke or carbon dioxide or other harmful gases in the flight deck area in any attitude of flight that might occur when the airplane is flown in accordance with either normal or emergency procedures.

(d) *Nonpressurized cabin airplanes with a built-in carbon dioxide hand fire extinguisher system in a fuselage compartment.* Each certificate holder operating a nonpressurized cabin airplane that has a built-in carbon dioxide hand fire extinguisher system in a fuselage compartment shall provide protective breathing equipment meeting the requirements of paragraphs (a) and (b) of this section for the flight crewmembers except where—

(1) Not more than 5 pounds of carbon dioxide would be discharged into any compartment in accordance with established fire control procedures; or

(2) The carbon dioxide concentration at each flight crewmember station has been determined in accordance with § 25.1197 of this chapter and has been found to be less than 3 percent by volume (corrected to standard sea level conditions).

(e) *Equipment preflight.* (1) Before each flight, each item of PBE at flight crewmember duty stations must be checked by the flight crewmember who will use the equipment to ensure that the equipment—

(i) For other than chemical oxygen generator systems, is functioning, is serviceable, fits properly (unless a universal-fit type), and is connected to supply terminals and that the breathing gas supply and pressure are adequate for use; and

(ii) For chemical oxygen generator systems, is serviceable and fits properly (unless a universal-fit type).

(2) Each item of PBE located at other than a flight crewmember duty station must be checked by a designated crewmember to ensure that each is properly stowed and serviceable, and, for other than chemical oxygen generator systems, the breathing gas supply is fully charged. Each certificate holder, in its operations manual, must designate at least one crewmember to perform those checks before he or she takes off in that airplane for his or her first flight of the day

(f) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the final compliance date for furnishing portable PBE for use in combatting in-flight fires aboard airplanes shall be July 6, 1989.

3. By amending § 121.417 by revising paragraph (c), by redesignating paragraph (d) as (e), and by adding new paragraphs (d) and (f), to read as follows:

§ 121.417 Crewmember emergency training.

* * * * *

(c) Each crewmember must accomplish the following emergency training during the specified training periods, using those items of installed emergency equipment for each type of airplane in which he or she is to serve (Alternate recurrent training required by § 121.433(c) of this part may be accomplished by approved pictorial presentation or demonstration):

(1) One-time emergency drill requirements to be accomplished during initial training. Each crewmember must perform—

(i) At least one approved firefighting drill using at least one type of installed hand fire extinguisher, appropriate for the type of fire to be fought, while using the type of installed PBE for combatting

fires aboard airplanes required by § 121.337 of this part; and

(ii) An emergency evacuation drill with each person egressing the airplane or approved training device using at least one type of installed emergency evacuation slide. The crewmember may either observe the airplane exits being opened in the emergency mode and the associated exit slide/raft pack being deployed and inflated, or perform the tasks resulting in the accomplishment of these actions.

(2) Additional emergency drill requirements to be accomplished during initial training and once each 24 calendar months during recurrent training. Each crewmember must—

(i) Perform the following emergency drills and operate the following equipment:

(A) Each type of emergency exit in the normal and emergency modes, including the actions and forces required in the deployment of the emergency evacuation slides;

(B) Each type of installed hand fire extinguisher;

(C) Each type of emergency oxygen system to include protective breathing equipment;

(D) Donning, use, and inflation of individual flotation means, if applicable; and

(E) Ditching, if applicable, including but not limited to, as appropriate:

(*1*) Cockpit preparation and procedures;

(*2*) Crew coordination;

(*3*) Passenger briefing and cabin preparation;

(*4*) Donning and inflation of life preservers;

(*5*) Use of life-lines; and

(*6*) Boarding of passengers and crew into raft or a slide/raft pack.

(ii) Observe the following drills:

(A) Removal from the airplane (or training device) and inflation of each type of life raft, if applicable;

(B) Transfer of each type of slide/raft pack from one door to another;

(C) Deployment, inflation, and detachment from the airplane (or training device) of each type of slide/raft pack; and

(D) Emergency evacuation including the use of a slide.

(d) After July 6, 1989, no crewmember may serve in operations under this part unless that crewmember has performed the firefighting drill prescribed by paragraph (c)(1)(i) of this section.

* * * * *

(f) For the purposes of this section, "perform" means accomplishing a prescribed emergency drill using established procedures that stress the skill of those persons involved in the drill, and "observe" means to watch without participating actively in the drill.

Issued in Washington, DC, on May 26, 1987.

Donald D. Engen,

Administrator.

[FR Doc. 87-12521 Filed 6-2-87; 8:45 am]

BILLING CODE 4910-13-M

federal register

Wednesday
June 3, 1987

Part VII

Department of Commerce

National Oceanic and Atmospheric Administration

Financial Assistance for Research and Development Projects to Strengthen and Develop the U.S. Fishing Industry; Notice of Availability

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 70475-7075]

Financial Assistance for Research and Development Projects to Strengthen and Develop the U.S. Fishing Industry

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of availability of financial assistance.

SUMMARY: For FY 87, Saltonstall-Kennedy (S-K) funds are available to assist persons in carrying out research and development projects which address aspects of U.S. fisheries involving the U.S. fishing industry (commercial or recreational) including, but not limited to, harvesting, processing, and associated infrastructures. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications it will fund.

DATE: August 3, 1987.

ADDRESSES: Applications should be sent to the applicable regional or Washington Office of the National Marine Fisheries Service, (For addresses, see section III. E.2.)

FOR FURTHER INFORMATION CONTACT: Phyllis S. Bentz, S-K Program Manager, National Marine Fisheries Service, Washington, DC 20235, Telephone: 202-673-5497.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Saltonstall-Kennedy (S-K) Act (15 U.S.C. 713c-2-713c-3) makes available to the Secretary of Commerce up to 30 percent of the gross receipts collected under the customs laws from duties on fishery products. The Secretary must use a portion of these funds each year to make available grants to assist persons in carrying out research and development projects which address aspects of United States fisheries, including, but not limited to, harvesting, processing, and associated infrastructures. U.S. fisheries [1] include any fishery that is or may be engaged in by U.S. citizens or nationals or citizens of the Northern Mariana Islands. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

B. Funding

There is no guarantee that sufficient funds will be available to make awards for all approved projects. For FY 87, $7.4 million was appropriated for the S-K program. Approximately $559,000 has been committed to fund the second and third years of previously approved multi-year projects and about $750,000 has been placed in the Fisheries Promotional Fund established by the Fish and Seafood Promotion Act of 1986. Therefore, about $6.1 million may be used to fund new fisheries research and development projects, subject to availability.

C. Public Response to Draft Priorities

On January 15, 1987, the proposed FY 87 S-K funding priorities were published in the **Federal Register** to provide interested parties an opportunity for review and comment. The views of the industry were solicited initially through meetings in the fall of 1986. The NMFS received 89 responses regarding the proposed priorities (30 from individual businesses, 17 from industry associations, eight from universities, four from state and local governments, five from fisheries development foundations, 10 from members of Congress, and 15 from others, including private individuals.

The commenters' recommendations addressed both national and regional priorities covering a broad spectrum of categories such as marketing, product development, consumer education, vessel safety and insurance, marine recreational fisheries, seafood quality and safety, user conflict resolution, impact of seafood imports, island fisheries problems, and other issues. All comments were considered. Some modifications to the priorities were made as a result of these recommendations and are reflected in this notice. Where recommendations were inconsistent with Administration policy or could be included under more general priorities they were not accepted. A number of the comments focused on a few key issues. These are summarized below with NMFS' response.

1. Marketing

Comment: Many commenters were concerned that marketing activities, e.g., promotion, research, product development, and consumer education, were excluded from the funding priorities, and urged that they be included. Arguments presented were that exclusion of marketing: (1) Ignores the needs of the fishing industry; (2) violates the basic intent of the Saltonstall-Kennedy Act of 1954, as amended, which authorizes research and development projects which address any aspect of U.S. fisheries, including but not limited to harvesting, processing, and marketing; (3) ignores the need for generic market research and development activities which are an integral part of the fisheries development process; and (4) inhibits redirection of effort to alternative fisheries.

Response: The NMFS agrees that marketing activities are essential to the fisheries development process. However, a new mechanism has been established to fund fish and seafood marketing activities. The Fish and Seafood Promotion Act of 1986 (FSPA), passed in November 1986, authorizes a National Fish and Seafood Promotional Council and product-specific Councils to conduct seafood marketing, promotion, research, and consumer education. As FSPA is implemented, financial support for the National Council will come from a Fisheries Promotional Fund which will be capitalized primarily through monies transferred from the Saltonstall-Kennedy Fund, while industry assessments will support product-specific Council activities. For FY 87, $750,000 is being placed in the Fisheries Promotional Fund from the amount currently appropriated for the FY 1987 S-K Grants Program. Appropriation authority will be required to spend such funds. To provide for a transition from the marketing activities previously conducted under the S-K Program to those to be conducted under the FSPA, a funding priority has been included in FY 87 for one-time only feasibility studies on establishing the product-specific Councils. Although this priority is listed in the National section, it applies to all regions.

2. Vessel Safety and Insurance

Comment: Another concern expressed by commenters was the exclusion of vessel safety and insurance as national priorities, recognizing that those areas remain two of the most significant problems facing the fishing industry.

Response: Following identification of specific needs in these areas, priorities have been added in the National section dealing with identification, analysis, and resolution of fishing vessel safety problems, and investigation and

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Alaskan groundfish, Pacific whiting, New England whiting, Gulf of Mexico groundfish, etc.

development of fishing industry insurance alternatives.

3. Recreational Fisheries

Comment: Many commenters expressed the opinion that recreational fisheries projects should not be funded with S–K funds but rather with Wallop-Breaux monies.

Response: It is the intent of Congress that the definition of U.S. fishery encompasses both commercial and recreational fisheries, and therefore, S–K funds can, and should be, used to benefit all aspects of U.S. fisheries. Congress does, however, recognize that the majority of available funds will be used for the benefit of the commerical fishing industry. (House Committee Report 96–1138, Part 1, June 26, 1980, accompanying H.R. 7039—American Fisheries Promotion Act.)

Comment: Concern was expressed that no priorities for recreational fisheries were included for the Northwest Region.

Response: The initial recommendations for recreational fisheries priorities in the Northwest Region were limited to promotional activities or other activities not appropriately within the purview of the S–K Program. Recreational fisheries priorities have been added which fall within the purview and policies of the S–K Program.

4. Economic Impact Studies

Comment: Several commenters recommended inclusion of a priority for a study of the contribution to the economy of the commercial fishing sector comparable to that being conducted on the marine recreational fishing sector. No recent data have been collected, analyzed, or published on expenditures and secondary economic contributions associated with commerical seafood production.

Response: The NMFS agrees that there should be comparable studies to define the contribution of the commercial and recreational industries. Since S–K funds have supported such work for the recreational industry, a priority for a similar study on the commercial industry is included. However, priorities for regional, state or other disaggregated analyses of economic benefit that address resource allocation issues from a particular point of view are not deemed appropriate. The approach in dealing with allocation issues is to include priorities on mechanisms to resolve user conflicts.

5. Northwest vs. Alaska Fisheries

Comment: Concern was expressed that virtually all of the Northwest Region's priorities address Alaska species/problems and not those of Oregon and Washington.

Response: All priorities in the Northwest apply to all underutilized groundfish off Washington, Oregon, and Alaska. Some language modification has been made to clarify this. A new priority relating to whiting has been included. It should be noted that specific project examples listed in the Northwest priorities reflect specific problem areas identified by industry representatives. The Northwest constituency includes the Seattle-based industry which harvests resources in the EEZ off Alaska.

II. FY 87 Funding Priorities

Consistent with authorizing legislation, NOAA will emphasize the use of current and future S–K funds appropriated by Congress for industry grants in the following manner. Priority areas and associated research and development activities that will be designated for funding will be those that are beyond the scope of any single entity within the fishing industry to undertake without Government assistance because of one or more of the following: (1) There is a high degree of risk in achieving positive results; (2) the potential benefits are too widely dispersed; and (3) the time frame for resolution of the problem or issue is long or unknown. While multi-year approaches to address these research areas are encouraged, the funding of short term proposals is not precluded.

Fisheries research, development, and utilization proposals should relate to one or more of the priority areas in the Regional and National sections. The NMFS will also consider other proposals (note exceptions which follow); however, funding will be available only if sufficient projects adequately addressing the specific priorities are not received.

Except for the Western Pacific, Puerto Rico, and the U.S. Virgin Islands, funding will not be provided for projects primarily involving the following activities: (1) Infrastructure planning and construction; (2) port and harbor development; (3) aquaculture research and development; (4) resource enhancement; (5) research evaluating the ability or extent to which fish are attracted to fish aggregating devices; and (6) extension activities such as newsletters.

The NMFS has identified fisheries and funding priorities in consultation with a wide cross section of the U.S. fishing industry. The priorities are identified on a regional basis according to specific fisheries. Some priorities were found to relate to several, and in a few instances, all fisheries or regions and are listed as national priorities. In these cases, the application should state the extent to which multiple fisheries resources would be addressed.

Priorities for FY 87 funding within specific fisheries are listed below, along with a summary of activities funded in FY 86. Proposals addressing the priorities should build upon or take into account any past or current work in the area. Lists of ongoing and past studies, and more detail where necessary, are available from the applicable regional or Washington office. (For addresses, see section E.2.)

A. Northeast Region

1. *Squid, mackerel and butterfish.* Projects funded in FY 86 focused on continued product development and both domestic and export market development activities for undervalued mixed species, particularly mackerel, hakes, herring, ocean pout, skates, and dogfish; seafood health and nutrition through consumer education; increasing exports of Mid-Atlantic seafood products through participation in foreign trade shows; developing and demonstrating selective fishing gear to reduce habitat destruction and provide escapement for juveniles and non-target species by-catch; and developing a regional towed gear observation system.

For FY 87, projects are solicited which will complement these activities or address other developmental impediments. Specifically, priority for funding will be given to projects that:

a. Conduct technical and economic feasibility studies on harvesting and processing of non-traditional species.

b. Identify chemical indicators of decomposition and conduct authentic pack studies according to an FDA standard protocol permitting objective and subjective measurements of changes in inherent textural and sensory characteristics at various intervals of storage in squid, mackerel and butterfish.

c. Design, test, and/or demonstrate various types of fishing gear which will enhance conservation measures by reducing by-catch of juveniles and non-target species.

d. Develop/demonstrate technical measures to reduce maintenance costs for fishing vessels and gear.

2. *Atlantic demersal finfish.* In FY 86, efforts were continued to evaluate existing techniques and potentially new methods to process and use fish waste. Also funded was a project to demonstrate a prototype shrimp separator trawl and test the

effectiveness of the trawling efficiency device (TED) both alone and in combination with the separator trawl.

In FY 87, priority will be given to projects which:

a. Evaluate the technical and economic feasibility of shifting fishing efforts to other species, such as the hakes and mackerel, and resolving associated problems.

b. Develop, modify, test, and/or evalute harvesting methods that will enhance conservation measures by reducing the by-catch of juveniles and non-target species.

3. *Coastal, estuarine and Great Lakes fisheries.* Projects funded in FY 86 focused on developing new markets for underutilized species of freshwater fish and fish products in the Great Lakes area and other States having commercial fisheries dependent upon harvesting underutilized species of freshwater fish; feasibility and modeling of the use of New Jersey salt marshes to treat clam processing waste waters in order to reduce the amount and cost of in-plant conventional treatment necessary to achieve state effluent standards; and characterization and utilization of wastes from ocean quahog and surf clam processing plants.

Priorities for FY 87 funding will focus on projects which:

a. Examine and demonstrate the potential for developing recreational fishing as a new industry in coastal communities; and developing new recreational fisheries to reduce fishing pressure on over-harvested stocks.

b. Develop and/or demonstrate fishing gear which increases survival of fish taken in catch-and-release marine recreational fisheries; this effort may include possible educational materials.

4. *General.* The following priorities pertain to all Northeast fisheries:

a. Continue the development and/or demonstration of quality seafood maintenance programs for industry from the net to the table.

b. Analyze factors affecting quality and shelf-life of fish and fish products.

B. Southeast Region

Both commercial and recreational projects should be concentrated on shifting current harvesting activity from fully or over utilized fisheries to alternate fisheries, or should contribute to solutions for the specific problem areas identified in the following sections. Proposals should contain appropriate economic analysis where the output's applicability and priority depend upon the product, process, or concept being economically viable.

1. *Latent/underutilized southeast resources.* A major initiative funded during FY 86 focused on foreign and domestic market investigations; exploratory fishing; handling and storage studies; and product and market concept development. Also funded in FY 86 were projects to develop voluntary seafood product quality codes based on industry recommendations and supported by existing pertinent regulatory documentation; to study the utilization of menhaden minces and surimi for direct consumption and use in further processed foods; to investigate quality control procedures for fresh yellowfin tuna; to provide an updated log of bottom obstructions in the Gulf of Mexico; to conduct a study to develop a demand for recreational fishing in Puerto Rico and the Virgin Islands; to evaluate access and infrastructure needs for recreational fishery development in Puerto Rico and the Virgin Islands; and to develop a strategy for integrating the marine recreational fishing and tourism industries.

For FY 87, the priority areas of consideration include the following. (Priorities b. and c. may include menhaden to the extent projects address the use of menhaden for human consumption.)

a. *Proposals which lead to the development, refinement and/or demonstration of harvesting methods for the coastal herrings complex.* Emphasis can be on vessel type, gear type, electronics, fishing strategy or some combination of these.

b. *On-board care of seafood.* Studies in this area can address improved handling, sorting and storage of seafood. The studies can address quality, cost-savings, overall efficiency, methods for live release of unwanted sizes or species or other worthy objectives.

c. Develop and/or adapt processing technology to improve product value or reduce processing costs.

d. *Program to identify underutilized recreational species.* This work should expand and build upon initial and ongoing research.

2. *Shrimp.* A project was funded in FY 86 to develop a video tape illustrating a model safety program for Gulf and South Atlantic shrimp trawling vessels.

In FY 87 funding priority will be given to proposals designed to provide for the testing and evaluation of alternative trawl efficienty devices (TED's) or to accelerate their rate of adoption. Proposals should complement and not duplicate current efforts in this area.

3. *Molluscan shellfish.* Funded in FY 86 were projects to study molluscan shellfish growing water quality and market standards and to study the removal (depuration) of Hepatitis A virus in shellfish.

In FY 87 priority will be given to proposals which address quality and safety issues in molluscan shellfish. All proposals in this area must demonstrate knowledge of relevant past and current research. Specifically, proposals should:

a. Provide for more uniformity in regulations and practices among States.

b. Improve sampling protocols.

c. Identify critical control points during handling and/or address problems related to the recreational harvesting of shellfish and crustaceans.

d. Improve handling of shellstock by examining current practices (e.g., depuration) and the extent of shell breakage/contamination.

e. Study application of nucleic acid probes and various immunological techniques to measure and detect pathogenic viruses.

f. Study improved microbiological standards by defining the relationship between *Escherichia coli* concentrations in shellfish and their growing waters and which would also evaluate the conditions for and rate of growth of *E. coli* in shellfish and their harvest waters.

4. *General.* The following priorities pertain to all Southeast fisheries:

a. *Gear selectivity.* Proposals will be entertained for gear development and/or fishing strategies to eliminate unwanted by-catch, including unwanted sizes or species. The proposals can be for any fishing gear including various trawls and nets as well as pelagic or bottom or longline gear.

b. *Studies to resolve user conflicts.* A current barrier to orderly development of commercial and recreational fisheries is a growing set for user conflicts, technological, biological and ecological, involving access to and use of the fishery resources of the Gulf and South Atlantic. Proposals are encouraged which provide innovative approaches to the resolution of such conflicts.

c. *Trade barrier identification.* Proposals should either identify existing tariff and non-tariff trade barriers to the export of fisheries products or provide for methodologies to discover such barriers affecting commercial and recreational fisheries. Proposals can also include an analysis of the impact of trade barriers as well as methods or strategies for private and/or public actions to eliminate or minimize such barriers.

C. Southwest Region

The Southwest Region is comprised of two distinct geographic areas—the U.S. Pacific Islands and three mainland states (California, Nevada, and Arizona). The island fisheries differ

significantly in many instances from the mainland fisheries. Accordingly, we have established a list of proposed funding priorities for each of these geograpic areas.

1. *U.S. Pacific Islands.* Projects funded in FY 86 provide for continued developed of infrastructure facilities in Guam and the Northern Mariana Islands, exploratory fishing for surface albacore in the South Pacific, and continued research on fishery enhancement through reseeding of island reef areas with juvenile trochus and giant clams. Exploratory fishing projects are being carried out in the Hawaii tuna handline fishery and Palau's deep sea shrimp fishery. In the Federated States of Micronesia, a recently developed poke stick detection method for ciguatera poisoning in tropical fishes in undergoing its first field test to evaluate its effectiveness.

In the U.S. Pacific Islands, priority consideration will be given in FY 87 to projects which contribute to the fishery development goals of Hawaii, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands and the Trust Territory of the Pacific Islands. High priority will be given to projects with regional benefits. All proposals should be consistent with the cultural and social values of Pacific island communities.

Projects related to fish aggregation devices (FADs) will not be funded during this cycle. The problem affecting FADs throughout the Pacific is the short life expectancy caused by basic deficiencies in mooring design. Based upon the recommendations of a 1983 mooring design study sponsored by the South Pacific Commission, the NMFS has funded FAD projects in Yap and American Samoa. Preliminary results indicate improvement in life expectancy, but data are sketchy and final results are not available. A policy on future S–K support of FADs will be announced this fiscal year.

Proposals which address problems in the following areas will be given priority for funding in FY 87.

a. *Tuna.* Investigate techniques for improving the yield of sashimi-grade tuna in Pacific Island areas. Particular attention should be given to product quality control and market requirements.

b. *Other pelagic species.* Projects related to other oceanic pelagic species (e.g., mahimahi, wahoo, billfish, shark) should focus on overseas market requirements. Particular attention should be given to maintaining product quality (e.g., avoidance of histamine in mahimahi, urea in shark) through improved handling, processing, and storage methods.

c. *Recreational fisheries.* Projects should assess the opportunities and identify strategies for development of charter sport fishing ventures in Pacific Island areas. Such development should be integrated with local tourism development and be consistent with local economic development priorities. Services and facilities available and needed for sport fishing development should be indentified.

d. *Vessel support services and facilities.* Proposals for the design, engineering and construction of needed fishing vessel support services and facilities (e.g., launch ramps) will be considered. Proposals should demonstrate a need by local fishermen.

e. *Bottomfish.* Projects to expand export channels for these species are requested. Project for bottomfish development in areas where the resources may be distressed and unable to withstand added fishing pressure will not be funded.

2. *Mainland (California, Nevada, and Arizona)—a. West Coast groundfish/California.* In FY 86 the NMFS funded projects: To investigate gear conflicts and develop alternate gears; to establish seafood advertising standards; to establish a prototype seafood retail training school; and to develop an operating model to analyze changing economic conditions (landings, prices, etc.) in the fishing industry on the West Coast.

In FY 87, innovative projects that address the priorities identified below will be considered for any groundfish species. Pacific whiting and shortbelly rockfish continue to be the highest priority groundfish species for commercial development in FY 87. Specifically, priority for funding will be given to projects that:

(1) Examine or demonstrate innovative fishing techniques that improve continued production, minimize conflict between the needs of developing fisheries and the management of developed fisheries (or vice versa), reduce marine mammal and bird mortality, and shift effort from fully utilized species.

(2) Investigate technology for using priority West Coast groundfish species commercially; identify consumption or regulatory factors inhibiting the use of underutilized groundfish species.

(3) Demonstrate product quality assurance and control technologies from the net to the table.

(4) Develop models and data acquisition systems to analyze California marine recreational and commercial fishing activity for economic, social or ecological impact. Such research should focus on the interaction between fisheries, particularly multiple fishery fishing.

b. *Tuna.* Projects funded in FY 86 address development of albacore tuna quality control standards and marketing of products in institutional markets and in Pacific coast retail trade.

Priority for FY 87 funding will be given to tuna (albacore, bluefin, yellowfin, etc.) projects which:

(1) Identify and demonstrate cost effective technology for producing alternatives to canned tuna.

(2) Demonstrate quality control measures that improve market acceptance of fresh and frozen products.

(3) Develop effective untilization of sport-caught tuna.

c. *West Coast coastal pelagics.* Projects funded in FY 86 are to develop bone softening techniques that may result in new uses for some coastal pelagic species, and to investigate recreational species preferences and encourage fishing for underutilized species.

In FY 87, priority will be given to projects that:

(1) Investigate technologies for using coastal pelagic species commercially or upgrading existing uses; identify consumption or regulatory factors inhibiting the use of underutilized coastal pelagics.

(2) Evaluate sport catch consumption patterns and develop alternatives for greater utilization of sport-caught species that are presently discarded.

d. *Multi-species industrial development.* Some projects cross species groups. Worthy proposals that do not fit neatly within the above species groups will be considered in FY 87. Such proposals should pertain to domestically available resources and to problems specific to the Southwest Region.

D. Northwest Region

The Northwest fishing industry requires a research and development program which focuses on fully utilizing groundfish food in the Exclusive Economic Zone (EEZ) off Oregon, Washington and Alaska. The Region's industry is heavily dependent on the resources found in the EEZ off Alaska, and therefore will also invest in projects of high quality which support this segment of the industry.

1. *West Coast groundfish (Oregon, Washington and Alaska).* The NMFS funded projects in FY 86 that were to: Develop new product forms utilizing pollock; develop and test technologies to minimize crab by-catch in the

groundfish trawl fishery; examine the impact of the foreign fishing allocation of North Pacific pollock on U.S. harvesters and processors; develop educational materials detailing research findings concerning the nutritional impacts of seafood consumption; research the longterm effects of modifying the diet to include groundfish; examine and analyze the factors impacting the international competitiveness of the North Pacific seafood industry; assist the factory trawlers in developing at-sea quality standards and an inspection system for their fleet; promote the recreational angling opportunities for non-salmonoid species off the coasts of Oregon and Washington; continue to develop a safety training program for fishing vessels; and continue the study of impacts of fish oils on plasma lipids in humans.

The FY 87 priorities outlined below will focus on research and development activities which will support the continued growth of the Region's industry. Groundfish species in need of further development include the following: pollock, whiting, dogfish, shortbelly rockfish, offshore squid, and assorted flatfishes found in the EEZ.

a. Develop new or improved processing and harvesting technologies which increase efficiency, productivity, and competitiveness of the Region's industry. Specific projects may:

(1) Develop an improved technology which will more efficiently process flatfishes.

(2) Evaluate the effect of groundfish predation on crab stocks.

(3) Develop and evaluate new gear technology in an attempt to measure effectiveness in reducing by-catch of nontraditional and/or traditional species, and improving catch efficiencies.

(4) Assess the comparative value of groundfish harvested by various gear techniques and evaluate the implications for the industry.

(5) Develop and adapt harvesting and processing technology to improve the quality of fresh and frozen seafood.

(6) Continue to develop quality assurance protocols for frozen at sea products.

(7) Assess the economic and technological feasibility of at sea and shoreside processing of whiting.

b. Continue research and analysis which assists industry in overcoming trade barriers and provides useful data in formulating trade strategies. Specific trade activities may:

(1) Determine the volume and impact of foreign processed EEZ species on U.S. competitiveness in domestic and world markets.

(2) Determine the economic impact of trade barriers and foreign subsidies on U.S. competitiveness in domestic and world markets.

c. Continue development of a safety training program for fishing vessels and processing plants. Specific projects may:

(1) Monitor and evaluate the impacts of voluntary safety initiatives.

(2) Develop a safety program specifically for processing plants, at-sea or shoreside.

d. Examine and demonstrate the potential for developing recreational fisheries as a new industry in coastal communities; and developing new recreational fisheries to reduce fishing pressure on over-harvested stocks.

2. *West Coast salmon (Oregon, Washington, and Alaska).* The FY 87 priority outlined below will support the full development of the pink salmon and chum salmon fisheries found in the EEZ off Oregon, Washington, and Alaska. Large surpluses have prevented optimum economic return. Such projects may:

a. Investigate new technologies for using West Coast salmon species commercially.

E. Alaska Region

1. *Alaska groundfish.* Projects funded in FY 86 address pollock surimi production, quality, technology development, and education; product and market development; and new processing technology. Significant imbalance currently exists in the capability of the processing and catching segments of the industry. The industry's ability to catch the raw material far exceeds its ability to process and market the groundfish products from this new fishery.

Proposals which address impediments to full use of Alaska groundfish in the following areas will be given priority for funding in FY 87.

a. Improve processing, product quality and competitiveness of the Alaska groundfish industry by:

(1) Developing and/or applying technology to increase processing efficiency and productivity. Specific needs:

(a) New flatfish processing technology.

(b) Improved utilization of by-catch species.

(2) Developing and demonstrating technology to increase utilization and improve value of by-products from groundfish processing operations.

(3) Upgrading the quality of products. Specific needs:

(a) Develop product standards for U.S. produced pollock surimi.

(b) Evaluate seasonal variation in flesh quality of major groundfish species.

b. Develop technologies and information for the harvesting segment of the Alaska groundfish industry to reduce the by-catch of non-target species and minimize conflicts between gear types.

c. Continue the development of a vessel safety program that reduces operational costs and increases efficiency of the Alaska groundfish fleet.

2. *Salmon.* Investigate new technologies for using salmon species commercially.

F. National

In FY 86, the NMFS funded national projects which address issues cross-cutting a number of fisheries and regions. Specifically, NMFS funded projects which address strategies to reduce fishing vessel insurance costs and improve vessel safety; develop and implement a standard system for seafood inclusion in the Universal Product Code; estimate and forecast economic activity associated with marine recreational fisheries at five year intervals and develop tools to estimate the economic value of fisheries to different user groups; develop video tape training programs for use by vessel and processing plant operators addressing sanitation, refrigeration, personal hygiene and sodium bisulfate applications; develop international standards and processing guidelines for frozen squid products; describe the movement of fresh and frozen seafood products from domestic harvesting through processing, identifying control points as a first step in establishing a comprehensive seafood surveillance system for the U.S. industry; conduct investigations to determine the nutritional equivalency of surimi with natural seafood products; develop a commercially feasible hyperfiltration system for recovery of proteins and other soluable materials from the surimi production process; conduct a national seafood/health nutrition communication program; and conduct regional and national conferences relating to "Matching Capital to Resources in the Fish Harvesting Industry: Limited Entry and/or Other Alternatives."

In FY 87 consideration will be given to proposals which address the following areas:

1. Identify critical control points for ensuring safe and wholesome fishery products. In conjunction with the on-going study to identify public health

risks in processing seafood, provide detailed descriptions and flow diagrams of the harvesting, processing, and distribution conditions affecting the quality and safety of the following product/process categories of fishery products: Pickled, dried, salted/smoked, vacuum packed, cooked, breaded/batter-dipped, engineered, and irradiated, based on observations made at statistically representative vessels and facilities. (This information will subsequently be used to identify critical control points and recommend methods and tolerances to ensure the production and distribution of safe, wholesome, and properly labeled fishery products.)

2. Identify and analyze the impacts of foreign aquaculture on U.S. trade in fisheries products.

3. Develop analytical research data with emphasis on fatty acids and other nutrients of public concern, to correct deficiencies in available information on the chemical and nutritional composition of seafoods. These data will be used to provide accurate nutrient information on seafoods available for consumption by the U.S. consumer and will assist in the development of factual seafood nutrition/health educational programs to encourage seafood consumption.

4. Identify and analyze barriers to exports of sport fishing equipment.

5. Determine the feasibility of obtaining and measuring biomedically important compounds from seafood or seafood waste materials.

6. Create an economic model that accurately reflects the value of the commercial industry and measures its contribution to the nation.

7. Develop a program which would help fishing vessel fleets identify, analyze and resolve their particular safety problems. Proposals should formulate specific plans for addressing these problems.

8. Assist the fishing industry in investigating and developing its insurance alternatives. Proposals should build on work in this area conducted and/or coordinated by the National Council of Fishing Vessel Safety and Insurance.

9. Conduct studies that will analyze the feasibility of developing product-specific seafood marketing councils for one or more species of fish and fish products authorized under section 210 of the Fish and Seafood Promotion Act of 1986. These studies will be limited to research and analysis that bear directly on the decision of an industry segment to proceed with planning and implementation of a product-specific council, and will not include formation of a Council. Proposals should be sent to the appropriate regional or Washington Office.

10. Survey the current and potential use of commercial and recreational fishing vessels for public wildlife and habitat observation.

11. Evaluate existing techniques or develop new methods to process and use fish wastes and determine technical and economic feasibility of their application. Efforts should supplement, and not duplicate on-going fish waste studies, e.g., those of the New England Fisheries Development Foundation.

III. How to Apply

A. Eligible Applicants

Applications for grants or cooperative agreements for fisheries development projects may be made, in accordance with the procedures set forth in this notice by:

1. Any individual who is a citizen or national of the United States;

2. Any individual who is a citizen of the Northern Mariana Islands (NMI), being an individual who qualifies as such under Section 8 of the Schedule on Transitional Matters attached to the Constitution of the NMI;

3. Any corporation, partnership, association, or other entity, nonprofit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[2]

[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the NMI must own not less than 75 percent of the interest in the entity or, in the case of a non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens or nationals of the United States or citizens of the NMI, if: (i) The title of 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizen of the NMI; (ii) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (iii) through any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (iv) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercise by any person who is not a citizen or national of the United States.

No individual or organization that is in arrears on any outstanding debt to the U.S. Department of Commerce will be considered for funding. Any first time applicant for Federal grant funds may be subject to a preaward accounting survey prior to execution of the award. The NMFS encourages women and minority individuals and groups to submit applications. NOAA employees including full, part-time and intermittent personnel, (or their immediate families) and NOAA offices or centers (note that this does not include Sea Grant institutional personnel) are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide necessary information or guidance about the fisheries development and utilization program and the priorities and procedures included in this solicitation.

B. Amount and Duration of Funding

For FY 87, the NMFS may have an estimated $6.1 million available to fund new fishery research and development projects. Grants or cooperative agreements will be awarded for a period of one to three years.

To qualify as a multi-year award, a project must, in addition to the criteria elaborated under "Administrative Requirements" and other applicable sections, meet the following criteria: (1) The technology to be developed must require more than a single year to research, develop and demonstrate; (2) The products or services to be developed require more than a single year to research, design and demonstrate and/or market; (3) Single year funding would otherwise result in *significant* discontinuity in project implementation; (4) Projects must indicate complete objectives, tasks, or products for the end of each funding cycle. The burden of proof for meeting these criteria rests with the applicant. No projects will be funded beyond three consecutive years. Once approved, multi-year projects will not compete for funding in subsequent years. For multi-year projects, funding beyond the first year will be contingent on the availability of new fiscal year program funds and the extent to which project objectives were met during the prior year.

Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part of the entire amount of funds available. Funding for successful applications generally will be provided by December 31, 1987.

C. Cost-Sharing Requirements

The NMFS must provide at least 50 percent, but will provide no more than 80 percent of total project costs. Total project costs are defined as those approved by NMFS in the project award. The non-Federal share may include funds received from private sources or from State or local governments or the value of in-kind contributions. Federal funds may not be used to meet the non-Federal share of matching funds. In-kind contributions are noncash contributions provided by the applicant or non-Federal third parties. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project.

The percentage of the total project costs provided from non-Federal sources, not to exceed 50 percent of the costs of the project, will be an important factor in the selection of projects to be funded. Exemption from cost-sharing requirements may be granted in unusual circumstances only to non-profit, public interest organizations which demonstrate no financial ability to meet cost-sharing requirements, and to government institutions in American Samoa, Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, Puerto Rico and the U.S. Virgin Islands. In the case of American Samoa, Guam, the U.S. Virgin Islands, and the Northern Mariana Islands, under the provisions of 48 U.S.C. 1469a.(d), any requirement for local matching funds under $200,000 (including in-kind contributions) shall be waived. The total project costs and the percentage of cost-sharing required will be determined as described below.

1. Determining Total Project Costs

The total costs of a project consist of all costs incurred in the performance of project tasks, including the value of the in-kind contributions, to accomplish the objectives of the project during the period the project is conducted. A project begins on the effective date of a grant, cooperative agreement, or contract award between the applicant and an authorized representative of the United States Government and ends on the date specified in the award. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to award, are neither reimbursable nor recognizable as part of the recipient's cost share.

The NMFS will determine the appropriateness of all cost-sharing proposals, including the valuation of in-kind contributions, on the basis of guidance provided in Office of Management and Budget (OMB) Circulars. In general, the value of in-kind services or property used to fulfill the cost-sharing requirements will be the fair market value of the services or property. Thus, the value is equivalent to the costs of obtaining such services or property if they had not been donated. Appropriate documentation must exist to support in-kind services or property used to fulfill cost-sharing requirements.

2. Determining the Level of Cost Sharing Required

The percentage of the total project costs that must be provided from non-Federal sources follows.

a. *20 percent.* For projects that would benefit the general public as well as the fishing industry but offer no unique advantage to specific industry sectors, the non-Federal cost share will be no less than 20 percent of the total project cost, and no greater than 50 percent. These projects would ordinarily involve research on the safety of fishery products or other activities for which members of the fishing industry would not necessarily receive direct benefits.

b. *30 percent.* For projects that contain economic risks which prevent an individual or group within the fishing industry from undertaking them without assistance, the non-Federal cost share will be no less than 30 percent of the total project cost. Most applications will be in this category.

c. *40 percent.* For projects which involve significant fishing industry participation, entail a limited risk, and in which the prospects for immediate future gain for the project are significant, the non-Federal cost share will be no less than 40 percent of the total project cost.

C. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the participants and the applicant describing the specific tasks to be performed. Applications must identify the specific priorities to which they are responding. If an application is not in response to a priority, it should be so stated. Applicants should not assume prior knowledge on the part of the NMFS as to the relative merits of the project described in the application. Applications must be clearly and completely submitted in the following format:

1. *Cover sheet.* An applicant must use OMB Standard Form 424 as the cover sheet for each project within an application. Applicants may obtain copies of the form from the NMFS Regional Offices, NMFS Washington Office or Department of Commerce Regional Administrative Support Centers (RASC); addresses are listed under the "Application Submission and Deadline" section which follows.

2. *Project summary.* Each project within the application must contain a summary of not more than one page which provides the following information:

a. Project title.

b. Project status: (new or continuing)

c. Project duration: (beginning and ending dates)

d. Name, address, and telephone number of applicant.

e. Principal Investigator(s).

f. Specific priority(ies) to which project responds.

g. Project objective.

h. Summary of work to be performed. For continuing projects the applicant will briefly describe progress to date in addition to work proposed with the additional funds.

i. Total Federal funds requested (initial and total amount and percentage of total project costs).

j. Project costs to be provided from non-Federal Government sources (initial and total amount and percentage of total project costs).

k. Total project costs.

3. *Project description.* Each project within the application must be completely and accurately described. Each project description may be up to fifteen pages in length. The NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS will *not* guarantee the confidentiality of any information submitted as part of any project nor will NMFS accept for consideration any project requesting confidentiality of any part of the project. Each project must be described as follows:

a. *Identification of problem(s).* For new projects, identify and completely describe the problem(s) the project addresses. In this description, include: (1) The fisheries involved, (2) the specific problem(s) that the fishing industry has encountered, (3) the sectors of the fishing industry that are affected, (4) the specific priorities to which the proposal responds, and, (5) how the problem(s) prevent the fishing industry

from developing a fishery or using existing fishery resources. If the application is for the continuation of an existing S–K funded project, describe progress to date and explain why continued funding is necessary.

b. *Project goals and objectives.* State what the proposed project will accomplish and describe how this will eliminate or reduce the problem(s) described above. For multi-year projects, describe the ultimate objective of the project and how the individual tasks contribute to reaching the objective. Describe the time frame in which tasks would be conducted.

c. *Need for Government financial assistance.* Explain why members of the fishing industry cannot fund all the proposed work. List all other sources of funding which are or have been sought for the project.

d. *Participation of persons or groups other than the applicant.* Describe: (1) The level of participation by NMFS, Sea Grant, or other Government and non-Government entities, particularly members of the fishing industry, required in the project(s); and (2) the nature of such participation. In addition, list names and addresses of the members of the fishing industry consulted during the preparation of the project description.

e. *Federal, State, and Local Government activities.* List any existing Federal, State, or local Government programs or activities, including State Coastal Zone Management Plans, this project would affect and describe the relationship between the project and these plans or activities. List names and addresses of persons providing this information.

f. *Project outline.* This section requires the applicant to prepare a general narrative fully describing the work to be performed which will achieve the previously articulated goals and objectives. A chart which outlines major goals, supporting work activities, timeframe, and individuals responsible for various work activities must be included.

The narrative should include information which responds to the following questions:

(1) How will the project be structured?

(2) What major products, (e.g., research, services, or activities) will be produced and what is the specific nature of these products?

(3) What supporting work activities (be as specific as possible) will be undertaken to produce major products, services?

(4) Who will be responsible for carrying out various work activities? (Highlight work which will be subcontracted and provisions for competitive subcontracting).

(5) What methodology will be used to evaluate final products or services, and how will it be integrated into the project?

The milestone chart should:

(1) Graphically illustrate the major products, research, services and/or activities,

(2) Supporting work activities and associated timeline; and

(3) The individual responsible for various work activities.

Because this information is critical to understanding and reviewing the application, NMFS encourages applicants to provide as much detail as possible. Applications lacking sufficient detail may be eliminated from further consideration.

g. *Project management.* Describe how the project will be organized and managed. List all persons, directly employed by the applicant, who will be involved in the project, their qualifications, experience, and level of involvement in the project. If any tasks will be conducted through subcontracts, applicants must follow procurement standards contained as Attachment O to OMB Circular A–102 for State and Local Governments, Indian Tribes and Attachment O to OMB Circular A–110 for Institutions of Higher Education, Hospitals, and other Non-profit Organizations. If a subcontractor is chosen prior to application submission, the process used must be documented.

h. *Project impacts.* Describe the impact of the project in terms of anticipated increased landings, production, sales, exports, product quality, safety, or any other measurable factors. Describe the specific products or services that will be produced by this project. Describe how these products or services will be made available to the fishing industry.

i. *Evaluation of project impacts.* The procedures for evaluating the relative success or failure of a project in achieving its goals should be clearly delineated within each proposal. It is the responsibility of applicants to identify the best methodology for evaluating project effectiveness.

Evaluation procedures in each proposal should at a minimum contain the following:

(1) The project objectives should be stated in a substantive, measurable way.

(2) Specific methods should be defined that will be used to (a) monitor the progress of the project according to dated milestones, and (b) evaluate the accomplishments of the project in terms of its original goals and objectives.

(3) The benefits of the project should be clearly defined. Depending on the nature of the benefits, the evaluation methodology should be able to accurately assess the benefits. For example, if statistical procedures are to be used, their specific application and use in the project evaluation should be described.

(4) Where benefits might be termed "intangible," methods should be defined to measure results. For example, in the case of consumer education or market promotion programs, will post awareness surveys be conducted?

j. *Project costs.* Costs must be provided in a detailed budget. No cost sharing can come from another Federal source. Costs must be allocated to the Federal share and matching share provided by the applicant. Applicant's matching costs are to be divided into cash and in-kind contributions. A standard budget form (ED–357 NG; Rev. 3–80) is available from the offices listed in section E. A separate budget must be submitted for each project within an application. For multi-year projects, funds will be provided as specified tasks are completed. Therefore, an applicant submitting a multi-year project must submit two budgets—one covering total project costs (including individual outyear costs) and one covering the initial funding request for the project. The initial funding request should cover funds required during the first 12-month period. NMFS will not consider fees or profits as allowable costs for grantees. To support its budget the applicant must describe briefly the basis for estimating the value of the matching funds derived from in-kind contributions. Costs for the following categories must be detailed in the budget.

(1) *Personnel.* (a) Identify salaries by position and percentage of time of each individual dedicated to the project.

(b) *Fringe benefits.* Indicate benefits associated with personnel working on the project.

(2) *Consultants and contract services.* Identify all consultant and/or contractual service costs by specific task in relation to the project.

(3) *Travel and transportation.* (a) Identify major travel and transportation costs, number of people traveling and purpose of travel.

(b) Itemize costs, including approximate air fare, per diem rates, and/or any additional fees associated with the trip, such as conference fees, registration fees, etc.

(4) *Equipment, space or rental costs.* (a) Identify equipment purchases or rental costs with the intended use.

(b) Identify space rental costs with specific uses.

(5) *Other costs.* (a) *Consumable office supplies.* Include cost for pens, paper, typewriter ribbons, etc.

(b) *Postage and shipping.* Include postage for correspondence, material produced under grant as well as air freight, truck or rail shipping of bulk materials to be used in conferences and workshops.

(c) *Printing costs.* Include costs associated with producing materials in conjunction with the project.

(d) *Final audit.* Include costs of having a special audit of the project performed. This cost should not be included if an organizational audit will be used in place of a special audit for the project.

(e) *Telephone and telegraph.* Identify estimated calls and monthly bills.

(f) *Utilities.* Identify costs of utilities and percentage of use in conjunction with performance of project.

(g) *Additional costs.* Indicate any additional costs associated with the project which are allowable under OMB circulars A-122, A-87 and A-21.

4. *Project consolidation.* Applicants may submit two or more projects under one proposal but must identify project costs, including administrative costs, separately for each individual project. As a result, the amount of administrative funds provided will be based on the actual number of projects funded.

5. *Supporting documentation.* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries development may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Reviewers will not necessarily examine all material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description, where appropriate.

E. Application Submission and Deadline

1. *Deadline.* The NMFS will accept applications for funding under this program between [insert date of publication] and [insert date 60 days from date of publication]. An application will be accepted if the application is received by any of the offices listed below on or before August 3, 1987.

2. *Submission of applications to NMFS reviewing officers.* Applicants must submit one signed original and two (2) copies of the complete application. *Applications are not to be bound in any manner.*

a. Applications relating to a specific fishery or a particular region should be submitted to the appropriate NMFS Regional Office as specified below:

Northeast Region (Maine, Massachusetts, Rhode Island, Connecticut, Vermont, New Hampshire, New York, New Jersey, Pennsylvania, Deleware, Maryland, Virginia, West Virginia, Ohio, Indiana, Illinois, Wisconsin, Michigan, Minnesota): Regional Director, National Marine Fisheries Service, P.O. Box 1109, Gloucester, MA 01930, Telephone No: (617) 281-3600.

Southeast Region (North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, New Mexico, Oklahoma, Arkansas, Tennessee, Kentucky, Missouri, Kansas, Nebraska, Iowa, Puerto Rico, Virgin Islands): Regional Director, National Marine Fisheries Service, Duval Bldg., 9450 Koger Blvd., St. Petersburg, Florida 33702, Telephone No: (813) 893-3142.

Southwest Region (California, Hawaii, Nevada, Arizona, American Samoa, Guam, Trust Territory of Pacific Islands, Northern Mariana Islands): Regional Director, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, CA 90731, Telephone No: (213) 548-2575.

Northwest Region (Washington, Oregon, Idaho, Montana, Wyoming, Utah, Colorado, North Dakota, South Dakota): Regional Director, National Marine Fisheries Service, Bin C15700, 7600 Sand Point Way, NE., Seattle, Washington 98115, Telephone No: (206) 527-6150.

Alaska Region (Alaska): Regional Director, National Marine Fisheries Service, P.O. Box 1668, 709 West Ninth Street, Juneau, AK 99802, Telephone No: (907) 586-7221.

b. Applications addressing national priorities should be sent to: Director, Office of Utilization Research, National Marine Fisheries Service,1825 Connecticut Avenue, NW., Washington, DC 20235, Telephone: (202) 673-5497.

c. Questions of an administrative nature should be referred to the offices listed below:

Northeast: NOAA RAS/EC32, Eastern Administrative Support Center, 253 Monticello Avenue, Norfolk, Virginia 23510 Telephone: (804) 441-6646

Southeast: NOAA/RAS/CC31, Central Administrative Support Center, Federal Bldg. Room 1758, 601 East 12th Street, Kansas City, Missouri 64106, Telephone: (816) 374-7267

Northwest/Southwest/Alaska: NOAA RAS/WC33, Western Administrative Support Center, BIN C15700, 7600 Sandpoint Way, NE, Seattle, Washington 98115, Telephone: (206) 526-6036

Washington: NOAA RAS/DC33, National Capital Administrative Support Center, NBOC1 Room 106, 11420 Rockville Pike, Rockville, Maryland 20852, Telephone: (301) 443-8574

IV. Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

For applications meeting the requirements of this solicitation, NMFS will determine which office should evaluate the proposed work. This will normally be the office where the application is filed.

1. *Consultation with interested parties.* The NMFS will evaluate the project(s) contained in the application in consultation with representatives from other Federal Government agencies with programs affecting the U.S. fishing industry, members of the fishing industry, and other fisheries interests, as necessary. The regional and Washington Offices of NMFS will make project descriptions available in the following manner:

a. *Public review and comment.* Regional applications may be inspected at the office to which they are submitted. All applications will be available for inspection at the NMFS Office of Industry Services, 1825 Connecticut Avenue NW., Room 1025, Washington, DC from August 10, 1987, to August 19, 1987. Written comments will be accepted at a regional or the Washington office until August 19, 1987.

b. *Consultation with members of the fishing industry.* The NMFS shall, at its discretion, request comments from members of the fishing industry who have knowledge in the subject matter of a project or who would be affected by a project.

c. *Consultation with Government agencies.* Applications will be reviewed in consultation with NMFS Research Centers and Utilization Laboratories, RASC Grants/Contracts Offices and, as appropriate, Department of Commerce

and other Federal agencies. The Regional Fishery Management Councils may be asked to review projects and advise of any real or potential conflicts with Council activities.

2. *Technical evaluation.* The NMFS, in consultation with appropriate private and public sector authorities, will conduct a technical evaluation of each project. If an application contains two or more projects, the NMFS will evaluate the projects separately. All comments submitted to the NMFS will be taken into consideration in the technical evaluation of projects. The NMFS will give projects point scores based on the following evaluation criteria:

a. *Problem description and project conceptual approach toward resolution.* Evaluated will be both the applicant's comprehension of the problem(s) and the overall concept proposed to resolve the problem(s). (20 points).

b. *Soundness of project design/technical approach.* Evaluated will be whether or not the applicant provided sufficient information to technically evaluate the project and, if so, the strengths and/or weaknesses of the technical design proposed for problem resolution. (25 points).

c. *Project management and experience and qualifications of personnel.* Evaluated will be the organization and management of the project, the project's personnel in terms of related experience, qualifications, and extent of cooperation with the fishing industry and government throughout the various phases of the project. (15 points).

d. *Project monitoring and evaluation.* Evaluated will be the effectiveness of the applicant's proposed methods to track project progress and evaluate the final accomplishments of the project in terms of its original goals and objectives and contribution to fisheries development. (20 points).

e. *Project costs.* Evaluated will be the justification and allocation of the budget in terms of the work to be performed. Taken into account will be unreasonably high or low project costs, as well as funds requested from S–K which should more appropriately be provided by the applicant. (20 points).

3. *Formal industry review.* After the technical evaluation, each reviewing office will solicit comments from the fishing industry, consumer representatives, and others, as appropriate, to rank the projects filed with the office. This review may be carried out by correspondence or involve formal meetings of industry representatives. Considered in the review, along with the technical evaluation, will be the significance of the problem addressed in the project. The reviewers will rank each project in terms of importance or need for funding, and provide recommendations on the level of funding NMFS should award to each project and the merits and benefits of funding each project.

B. Funding Awards

After projects have been evaluated, the reviewing offices will develop recommendations for project funding. They will submit the recommendations to the Assistant Administrator for Fisheries, who will determine the number of projects to be funded based on the recommendations provided, consistency of projects with the identified fisheries objectives, and the amount of funds available for the program.

The exact amount of funds awarded to a project will be determined in pre-award negotiations between the applicant and NOAA/NMFS program and grants management representatives. The Department of Commerce (DOC) will review all recommended projects and funding before final authority is given to proceed on the project. The funding instrument will be determined by RASC Grants Officers. Projects may not be initiated in expectation of Federal funding until a notice of award document is received.

V. Administrative Requirements

A. Obligations of the Applicant.

An Applicant must:

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

4. If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow access to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representatives. The NMFS may provide a proportionate share of funds as part of the financial award to pay for an audit.

5. If a project is awarded, submit quarterly project status reports on the use of funds and progress of the project to NMFS within 30 days after the end of each calendar quarter. These reports will be submitted to the individual specified as the Program Officer in the funding agreement. The content of these reports will include, at a minimum, a summary of progress and expenditures to date, including:

a. Description of tasks scheduled and accomplished;

b. Description of actual and scheduled expenditures;

c. Explanation of any differences between actual and scheduled work or expenditures; and

d. Any proposed changes in plans or redirection of resources or activities and the reason therefor.

6. If a project is awarded, submit an original and two copies of a final report within 90 days after completion of each project to the NMFS Program Officer. The final report must describe the project and include an evaluation of the work performed and the results and benefits in sufficient detail to enable NMFS to assess the success of the completed project. The content of the evaluation should include, at a minimum:

a. Description of the original project goals and objectives, and the context in which the project was to benefit the fishing industry. This description should address the following questions:

(1) What were the original project goals and objectives?

(2) To what extent were goals measurable or quantifiable?

(3) Were modifications made to project goals and objectives and, if so, what was the cause for the modifications?

(4) Where the goals and objectives attained? How? If not, why?

b. Description of the specific accomplishments (information, products, or services) of the project and the relationship of these to the project's goals and objectives.

(1) List the specific information, products, or services produced by the project.

(2) Describe the relationship of the products and services to the original project goals and objectives.

(3) Describe the extent to which the products or services meet the need of the fishing industry.

(4) Describe the value of the products or services by themselves or in concert with other activities.

c. Description of how the project benefited the fishing industry. This description should address the following questions:

(1) To what extent did the industry have access to the products or services produced by the project?

(2) To what extent have the fishing industry and associated infrastructure (universities, financial institutions, etc.) used the project's products or services to satisfy a need or lessen business or other risks?

(3) To what extent are the project's results likely to be used by the industry in the future?

(4) To what extent are project results likely to be used by others in the future to provide benefits to the fishing industry?

d. Description of the specific economic or other benefits the fishing industry received as a result of its use of the products or services of the project or as a result of others using the products or services. This description should address the following questions:

(1) Are clear economic benefits demonstrable?

(a) If economic benefits are demonstrable, how? (e.g. increased landings, production, sale and/or value of fishery products, increased exports, greater vessel or gear efficiency, etc.)

(b) If not, why? (Were the results too intangible? A function of greater elapsed time interval? Other?)

2. Nature of benefits:

(a) What were the benefits of the projects?

(b) Are benefits one-time or continuing?

(c) To what extent are benefits measurable vs. intangible?

(d) Are benefits direct or indirect?

(e) Are the benefits the result of a "negative" finding?

e. Description of the actual need for Federal assistance in the project.

7. If a project is funded by grant or cooperative agreement, an applicant must comply with applicable Office of Management and Budget (OMB) Circulars, and Treasury Circulars. Copies are available from the RASC Offices listed above.

8. In order for NMFS to assist the grantee in disseminating information, the grantee is requested to submit three copies of all publications (in addition to the Final Report in 6. above) printed with grant funds to the Office of Industry Services, NMFS, Washington, DC 20235.

9. Any state agency submitting an application for funding is required to complete item 22 of Standard Form 424 regarding clearance by the State Point Of Contact (SPOC) established as a result of Executive Order 12372.

B. Obligations of the National Marine Fisheries Service

The NMFS will:

1. Provide all forms and explanatory information necessary for the proper submission of applications for fisheries development and utilization projects.

2. Provide advice, through the NMFS Office servicing the applicant's area, to inform applicants of NMFS fisheries development policies and goals. Interested applicants are encouraged to contact the NMFS Washington or Regional Offices for clarification or explanation of any information appearing in this notice.

3. Monitor all projects after award to ascertain their effectiveness in achieving project objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

4. Maintain a mailing list for the annual S–K solicitations. Upon request, interested persons will be placed on the mailing list to receive the FY 88 solicitation at the time it is published in the **Federal Register.**

C. RASC Grants Officer Responsibility

The RASC Grants Officer is responsible for the administrative processing of NOAA Federal assistance awards. Questions from the recipient of an administrative nature will be referred to the Grants Officer. The official grant file will be maintained by the Grants Officer who will ensure that OMB, DOC, and NOAA policies are met.

D. Legal Requirements

The applicant will be required to satisfy the requirements of applicable Federal, State and local laws.

VI. Classification

NOAA reviewed this notice in accordance with Executive Order 12291. This notice is not "major" because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

Information collection requirements contained in this notice have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act and have been assigned OMB #0648–0135.

This notice of availability of financial assistance for fisheries research and development projects will also appear in the *Commerce Business Daily.*

(Federal Domestic Assistance Catalogue No. 11.427 Fisheries Development and Utilization Research and Demonstration Grants and Cooperative Agreements)

Dated: May 29, 1987.

Carmen J. Blondin,

Acting Director, Office of Trade and Industry Services.

[FR Doc. 87–12587 Filed 6–2–87; 8:45 am]

BILLING CODE 3510-22-M

federal register

Wednesday
June 3, 1987

Part VIII

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement; Families of Missing Children; Psychological Consequences and Promising Intervention; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Program Announcement, Families of Missing Children, Psychological Consequences and Promising Interventions

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of re-issuance of the solicitation for applications to conduct a research program on the psychological consequences of missing and sexually exploited children.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to section 406(a)(4) (A) and (B) of the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, announces a new OJJDP initiative entitled, "Families of Missing Children: Psychological Consequences and Promising Interventions." The primary goal of this research is to increase our knowledge of and develop effective treatment alternatives for the psychological consequences of families with missing and sexually exploited children.

OJJDP's National Institute for Juvenile Justice and Delinquency Prevention (NIJJDP) invites public agencies and nonprofit private organizations, or combinations thereof, to submit competitive grant applications to design and conduct a study of the psychological consequences of families with missing and sexually exploited children. One research agency will be selected to conduct the study at three to five sites. Each site must have an established and fully operational missing children's program.

It is anticipated that this initiative will entail three years of funding and program activity at a total cost of $1,250,000. Up to $250,000 has been allocated for the first year of the initiative. Only one project will be funded.

The deadline for receipt of applications is June 30, 1987.

This solicitation is being re-issued because none of the proposals received in response to the announcement issued August 8, 1986 met the requirements of the solicitation.

FOR FURTHER INFORMATION CONTACT: Catherine P. Sanders, Research and Program Development Division, NIJJDP, 633 Indiana Avenue, NW., Room 782, Washington, DC, 20531, Telephone (202) 724-5929.

SUPPLEMENTARY INFORMATION:

Request for Proposals—Families of Missing Children: Psychological Consequences and Promising Interventions

I. Introduction and Background
II. Program Goal and Objectives
III. Research Strategy
IV. Major Responsibilities of the Successful Applicant
V. Eligibility Requirements
VI. Dollar Amount and Duration
VII. Minimum Program Application Requirements
VIII. Selection Procedures and Criteria
IX. Procedures and Deadline for Submission of Applications
X. Civil Rights Compliance
XI. Footnotes

I. Introduction and Background

This solicitation to conduct research on families with missing children is issued by the Research and Program Development Division (R&PDD) of the Office of Juvenile Justice and Delinquency Prevention (OJJDP). The solicitation addresses the Missing Children's Assistance Act which authorizes the OJJDP to "make grants to and enter into contracts with public agencies or nonprofit private organizations, or combinations thereof, for research, demonstration projects, or service programs designed to increase knowledge of and develop effective treatment pertaining to the psychological consequences of: (1) The abduction of a child, both during the period of disappearance and after the child is recovered, and (2) the sexual exploitation of a missing child." (Title IV, Section 406(a)(4)(A) and (B)).

Pursuant to section 403(1)(A) and (B) of the Missing Children Assistance Act, the term "missing child" means any individual less than 18 years of age whose whereabouts are unknown to such individuals' legal custodian if: (1) The circumstances surrounding such individual's disappearances indicate that such individual may possibly have been removed by another from control of such individual's legal custodian without such custodian's consent; or (2) the circumstances of the case strongly indicate that such individual is likely to be abused or sexually exploited.

The Office of Juvenile Justice and Delinquency Prevention hereby invites applicants for a program of research on Families of Missing Children: Psychological Consequences and Promising Interventions. To understand the program's goal, objectives, and strategy, it is necessary to examine the scope of the problem.

Concern for the number of reported cases of missing children, (e.g., family abductions, nonfamily abductions, runaways and throwaways), has raised the public's demand for increased knowledge and development of effective treatment for the adverse psychological consequences of abduction and sexual exploitation. The subject is a complex one to address because very little empirical research has been conducted in the area. Even where data are available, the task of interpretation is difficult given the multiple levels of victimization and differences according to age and sex of the missing and sexually exploited child. Reviews of the literature on this topic suggest that missing, sexually exploited children and their families can be psychologically scarred and suffer emotional distress for life.

A variety of issues needs to be studied to determine how the experience of missing children affects, over time, the lives of victimized children and their families. These issues range from the time of first report of missing and to whom reported; to the types and amount of support/treatment services that are available to families of missing children; to the kinds of long-term follow-up services available; to the kinds of psychological and physical care available to families of recovered and non-recovered children. Limited documentation is currently available regarding the actual operations of local missing children's programs and their delivery of promising interventions.

A significant percentage of missing children are missing as a result of family or parental abductions, commonly called "snatchings." [1] The motivation behind child snatching may range from a genuine concern for the child, to revenge directed against the legal guardian. However, the child is almost always the victim. These children may be used as psychological weapons against the custodial parent or relative.

Little is known about the specific psychological effects of sexual abuse in conjunction with a parental kidnapping. Data are available on the effects of parental kidnapping itself, but the data make no special reference to the situation of sexually abused, kidnapped children. It is believed that not many of these children are sexually abused. It sexual abuse did occur, we would expect these children to experience many of the same effects as other sexual abuse victims with the added burden of coping with the impact of parental abduction.[2] Agopian, in a 1984 study, provided data on the effects of parental kidnapping by itself.[3] Common

reactions among all victims were fear, worrying and agony. Reactions among the children depended on the age of the child, the length of abduction, and the treatment experienced while suppressed. Short-term abductees experienced nightmares, fear of strangers and fear of a second abduction. Long-term abductees tended to develop an affection for and identification with the abducting parent. Other symptom included secrecy, frequent lying, and difficulty interacting with other children. Younger children experience a particular difficulty after their abductions because many do not remember the custodial parent upon return.[4] More research is needed with larger samples to reveal other similarities and dissimilarities in reactions to this form of abduction, and to identify responses that can alleviate these symptoms.

The group of missing children who are the object of the most public concern are those abducted by nonfamily persons or strangers. Virtually nothing is known about the impact of sexual exploitation among stranger abducted children. It is assumed by the public and by many authorities that stranger abductions occur primarily for purposes of sexual abuse;[5] or are committed by emotionally disturbed individuals, pedophiles, serial murderers, or those who want to sell abducted children on the black market.[6] However, these assumptions have not been empirically substantiated.

In a series of research products, Terr[7] chronicled the short- and long-term effects of stranger abductions on a group of school aged kidnapped victims. Terr's research, which was conducted over a four-year period, uncovered symptoms characteristic of a post traumatic stress syndrome. The trauma experienced by these children was purely psychological with no concomitant serious physical injury to the children. All children showed some post traumatic stress with many symptoms still present four years after the kidnapping. From this research, it would seem that stranger abduction alone produces long-lasting effects on its victims. Children sexually abused during such abductions undoubtedly suffer these kinds of effects as well.

Perhaps the kind of situation experienced by sexually exploited, stranger abducted children is best approximated by the experience of children involved in extrafamilial sex rings. Few investigations have focused on the impact of involvement in sex rings and pornography on children. Burgess et al., (1948)[8] in a study of 62 child and adolescent victims involved in sex rings and pornography, reported the children displayed the same symptoms of post traumatic stress response. These responses included reexperiencing the event through intrusive thoughts and flashbacks; diminished responsiveness to others and the environment; lack of trust in people; withdrawal, acting out, periods of autonomic arousal, especially hyperalertness; and internal tension such as somatic complaints, bed-wetting and general malaise.

Research needs to be done to determine whether sexual abuse was part of the motivation for the abduction, whether any sexual acts were carried out in the course of the abduction, and the psychological effects of different abduction experiences.

The bulk of research attention in the area of sexual exploitation and missing children has been on the runaway youth. Throwaway/push-out children have typically been seen as a sub-type of runaway children and will be treated as such for the purpose of this study. Findings from previous research indicate that runaways suffer numerous harms while away from home including prostitution, involvement in pornography, coersive sexual abuse, robbery, burglary, drug use and general victimization such as assault. Of these, prostitution is the main type of sexual exploitation involving to runaways.[9]

Browne and Finkelhor,[10] in a 1985 review article chronicled the short and long-term effects of female child sexual victimization. According to these authors, initial effects included fear, anxiety, depression, anger, hostility, aggression and sexually inappropriate behavior. Long-term effects included depression and self-destructive behavior, anxiety, feelings of isolation and stigma, poor self esteem, difficulty in trusting others, a tendency toward revictimization, substance abuse and sexual maladjustment. The Brown and Finkelhor profile of the more seriously victimized female is almost synonymous with the profile of the juvenile female prostitute. Without much specific knowledge, we can only speculate on how these traumatic events impact, over time, the subsequent lives of runaway children.

The U.S. Congress took important steps to address this problem by passing the Missing Children Act in 1982 (Pub. L. 97–292, 96 Stat. 1259, 28 U.S.C. 1 note, 534) and, in 1984, the Missing Children's Assistance Act, Title IV of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended. In June 1984, the National Center for Missing and Exploited Children (NCMEC) was established as part of the Federal government's commitment to the issue of missing children. The NCMEC serves as a clearinghouse of information and assistance concerning missing children and the criminal and sexual exploitation of children.

To further support the Federal government's role in addressing the Missing Children issue, the Attorney General appointed nine members to a statutory Advisory Board on missing children. One of the purposes of the Board is to clarify the issue of missing and exploited children and recommend concrete action to alleviate the associated problems. This research program is specifically designed to inform and implement the Advisory Board's recommendations.

II. Program Goal and Objectives

A. Program Goal

To increase our knowledge of and develop effective treatment alternatives pertaining to the psychological consequences for the parents, the missing child, and for other siblings during the period of disappearance and after the child is recovered; including the consequences of any abuse or sexual exploitation a missing child may have experienced.

B. Major Objectives

1. To describe the dynamics and psychological consequences of abduction of a child for both the family and the child.

2. To determine high risk factors for sexual exploitation among missing children.

3. To determine what factors in the missing experience seem to make a difference in terms of ameliorating short- and long-term consequences.

4. To identify and document promising treatment alternatives for families of missing children.

III. Research Strategy

The target population for this research includes all categories of missing children, which encompass parental abductions, stranger abductions, runaways, and throwaways/pushouts. The research program is designed to identify effective treatment strategies for ameliorating the adverse psychological consequences of abduction and sexual exploitation.

One award will be made to a research agency to conduct the study at three to five sites. Applicant organizations will apply directly for the grant award and may choose to provide limited support through contracts to the sites to cover on-site costs critical for conducting the research. This would include costs for

the research psychologist, training and travel for key field staff and volunteers, and other costs associated with data collection. No funds are to be used to supplement existing services.

Each participating site must be an operational missing children's program (List of Missing Children's Programs available upon request) which has instituted a sufficient case flow, a referral mechanism, and intervention services. Sufficient caseflow should be defined in terms of the proposed research questions, and should determine, in part, the analysis plan. The program will require a collaborative effort at each site between the researcher and the missing children's program. The researcher, in conjunction with the sites, must document that the program has established continuing contact with clients so that the psychological consequences can be assessed throughout the missing child experience.

The applicant must secure cooperation and provide written verification from the program sites that each is willing and ready to participate in the study. There are no restrictions on missing children's programs agreeing to collaborate with more than one research organization during this application process, as only one applicant will be selected to conduct this study. Because a principal focus of this research initiative is to provide for intensive assessment of parental and nonfamily abductions it is necessary to carefully select study sites which operate in jurisdictions with sufficient prevalence of this phenomenon to answer the research questions.

Each site must employ a full time research psychologist with psychometric, counseling, and crisis intervention skills to assess the psychological characteristics of the families at various stages. The psychologist must assist the research organization in developing and refining the research design and data collection instruments, sensitizing the design to individual sites, and documenting the services provided to the study sample. The research psychologists would also train and supervise those program staff/volunteers involved in data collection. These planning activities should take place during the first six to nine months of the study.

Data collection should begin with the first contact made by the parents/guardians to the center. At this point, the police may have already been contacted, and the initial search for the child may have begun. The missing children's program immediately begins to assist the parents with whatever services are needed at this time. These might include: notification of proper authorities and the national, state and local missing children's networks; assistance with media/public service announcements; assistance with law enforcement interviews; and development of a strategy for reducing stress to the family. Retrospective data from the pre-missing period should also be collected during this period. This inquiry should focus on both positive and negative family experiences prior to the child becoming missing.

During the period of nonrecovery, the study should document the level and nature of psychological services provided to both parents and siblings and the manner in which the services were provided. During the period when the child is recovered, data should be gathered on the mental health and medical services provided to the family. For those recovered children who must enter the judicial system, data should be gathered on the program's services to lessen the continued stress to the child and family.

Throughout the course of program contacts, the research psychologists and trained staff/volunteers will document the various interventions and assess psychological consequences for the child and family. The researcher should attempt to adopt a core set of measures across sites to allow for comparisons and the development of a larger aggregate data base. Issues that might be examined include:

1. What did the child experience while missing? In the case of abduction, how did the abductor successfully manipulate the child's continued separation from his/her family? Was the child abused or sexually exploited?

2. What are the psychological consequences for the abducted child, and how do they affect the child's ability to return home to his/her family?

3. How does the recovered child and family cope with judicial system involvement, and reintegration into the school, church and community?

4. What capabilities does a family need to cope with a long-term missing child, the recovery of a missing child, the determination of death, nonrecovery of the child, or the disclosure of the sexual exploitation?

5. Are there specific support services needed by the family at critical stages during the time the child is missing and after recovery?

6. What are the psychological consequences of those children and families who receive varying levels and types of intervention?

7. Were family life stress indicators (e.g., alcohol or drug abuse, unemployment, separation or divorce) present, and did these increase the child's vulnerability for becoming missing?

Given the sensitive and traumatic nature of the problem being investigated, the study population should have access to appropriate services. Therefore, the primary sample should be exclusively comprised of those families who make contact with or are referred to the missing children's program. (It is recognized that families of known pushouts and throwaways are less likely to contact a center for help). Applicants are encouraged to explore the possibility of establishing appropriate comparison or control groups to define more clearly the psychological consequences and treatment needs of the missing children and their families.

IV. Major Responsibilities of the Successful Applicant

The research organization in conjunction with the targeted sites selected to conduct this research project will be responsible for all aspects of the project design, implementation, and product development.

A. Activities and Functions—Year I

The initial award will support the first year of project activities. There will include the following:

1. Conduct of planning activities.

2. Completion of a refined and detailed research design.

3. Development of a comprehensive workplan for the implementation of refined design.

4. Selection of or development and pretesting of data collection instruments.

5. Ensuring full access to all study data sources.

6. Development of a detailed plan for confidentiality of data.

7. Initiation of study sample and production of baseline data on client characteristics and services provided.

8. Documentation of each center's services for the purpose of constructing client-based instruments.

9. Provision of technical assistance and training for data collection.

B. Activities and Functions—Year II

1. Continue implementation of the research design.

2. Preliminary analysis of data and provision of feedback to program sites.

3. Ongoing assessment of the validity and reliability of measurement techniques and instruments.

4. Communication of findings through the production of interim reports and issue papers.

5. Coordination and data sharing among sites involved in the program.

C. Activities and Functions—Year III

1. Follow-up data collection on psychological impact of the total experience.

2. Conduct of data analysis and interpretation of results.

3. Continued coordination and data sharing among sites involved in this program.

4. Communication of findings through the production of issues papers (e.g., policies and practices necessary for future research and program development), final reports, technical assistance and training manuals. Emphasis should be placed on developing products suitable for widespread publication and dissemination.

The researcher should plan to produce documents which clearly convey significant findings and practical applications for policymakers, practitioners, and other researchers throughout the study period.

V. Eligibility Requirements

Eligible applicants include public or private nonprofit research organizations or combinations thereof. The applicant must have prior experience in the design, conduct and implementation of research, and in the development, maintenance and analysis of data bases involving assessment of psychological functioning.

Applicants may choose to submit joint proposals with other eligible organizations as long as one organization is designated in the application as the primary applicant and any co-applicants are designated as such. The applicant and any co-applicants 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. Dollar Amount and Duration

Up to $250,000 has been allocated for the initial 12-month award to one organization competitively selected under this initiative. It is anticipated that this initiative will entail three years of research activities (i.e., a three year project period). The initial award will provide support for year 1 activities. Up to $500,000 will be allocated for each of the second and third 12-month budget periods.

Funding of each noncompeting continuation grant, i.e., each of the two additional 12 month budget periods, within the approved three year project period may be withheld for justifiable reasons. They include: (1) There is no continued need for further research; (2) the grantee is delinquent in submitting required reports; (3) adequate grantor agency funds are not available to support the project; (4) the grantee has failed to show satisfactory progress in achieving the objectives of the project or otherwise failed to meet the terms and conditions of the award; (5) a grantee's management practices have failed to provide adequate stewardship of grantor agency funds; (6) outstanding audit exceptions have not been cleared; and (7) any other reason which would indicate that continued funding would not be in the best interests of the Government.

VII. Minimum Program Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and a budget narrative. The program narrative shall not exceed 75 doubled-spaced pages in length.

In submitting joint applications, the relationships among the parties must be set forth in the application. As a general rule, research 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 research 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 designated as the payee to receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. 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-applicant.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following information must be included in the application:

A. A review of the literature relevant to the psychological consequences of missing and sexually exploited children. Discuss promising approaches for improvement of national policies and practices.

B. A problem statement which clearly documents the nature and extent of the problems of families with missing and exploited children in the selected jurisdictions. Provide a brief description of the services and treatment alternatives provided by each program.

1. Identify the criteria utilized in the selection of study sites and provide data to justify those selections. Discuss each program's readiness and willingness to participate in the study.

2. Discuss the current process for providing services and treatment for the adverse psychological consequences of abduction and sexual exploitation in each of the targeted sites.

3. Provide statistics regarding actual number of cases handled annually by each missing children's program. Specify the number of cases utilizing the following categories: family abductions, nonfamily abductions, runaways, and sexually abused.

C. A succinct statement of your understanding of the goal and objectives of the program of research on Families of Missing Children: Psychological Consequences and Promising Interventions.

D. A complete discussion of the proposed research design and methodology including:

1. Delineation of the theoretical framework developed to specifically guide the identification and assessment of problems among the programs' client populations.

2. Presentation of your specific study's goals and objectives.

3. Description of the key research questions to be investigated.

4. Description of the proposed sample. Include a discussion of the expected refusal and attrition rates, and justification that the proposed sample size is adequate for the research questions to be addressed. Provide a discussion of plans to establish and maintain contact with the subjects so that the psychological consequences can be assessed throughout the missing child experience. Consider the feasibility of establishing appropriate comparison/control groups.

5. Description of key variables to be assessed, and the plans for development and pretesting of instruments.

6. Discussion of plans for data collection and statistical analysis.

7. Specification of data sources and inclusion of letters from cognizant agencies verifying data access.

8. A Privacy Certificate describing procedures to be followed to assure confidentiality of data in accordance

with funding agency regulations, copies of which are available upon request.

9. Written verification from authorized officials, of all parties involved in this program (e.g., missing children's program, protective service, law enforcement), of their commitment to collaborate in the research program planning, and implementation. The missing children's program should verify that they understand the type of data they will be asked to provide.

E. A detailed workplan for Year I activities which includes identification of major milestones, designation of organizational responsibilities, and a schedule for completion of tasks and products. The nature and utility of products should be discussed. Also include a preliminary workplan for completion of Year II and Year III activities.

F. A description of the project management structure which includes proposed staffing plans, brief position descriptions which delineate roles and responsibilities, description of relevant staff experience and expertise, and resumes of key project staff (include as an appendix to the application). The project director must devote a minimum of fifty percent (50%) of his/her time to this effort.

G. An organizational capability statement which describes relevant organizational experience and demonstrates that the applicant has the substantive and financial capability to effectively administer the research project.

H. A detailed budget for Year I program activities. The budget should also include funds for a three person advisory board to meet twice for two days during the first year.

I. An estimated budget of annual costs for conducting Year II and III activities through the conclusion of the project period.

J. If it is determined to be necessary for the research organization to provide financial support from the grant award to another organization to cover costs critical for research program implementation, the application must include: A statement of work for the proposed contract; and the procedures to be followed for competitive selection *or* a justification for noncompetitive award for these support services where a single contractor has the capability to provide specified services.

K. The applicant and collaborating missing children's centers must indicate a willingness to host an on-site visit by OJJDP staff and/or Peer Review Panel members to verify information provided in this application.

VIII. Selection Procedures and Criteria

All applications received in response to this solicitation will be reviewed in terms of their potential contribution to the state-of-the-art, the rigor and feasibility of the research design, and their innovativeness in responding to key issues in the implementation of the study. Applications will be evaluated by an external peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR Part 34, Subpart B. Site visits may be conducted by peer review panelists and/or OJJDP staff to verify information provided by the applicant ranked as best qualified for further consideration.

Specifically, applications will be rated according to the following criteria and weights:

A. The problem to be addressed is clearly stated including evidence of knowledge of related literature and justification for site selection (refer to section VII A, B)	15
B. An understanding of the goal and objectives of this research program is clearly articulated, including an assessment of the degree to which the proposed project would further these objectives (refer to section VII C, D. 2)	10
C. The research design and methodology is sound and contains program elements directly linked to the achievement of project objectives (refer to section VII D)	35
D. The workplan is adequate, clear and feasible and will support the development of useful products (refer to section VII E)	10
E. The project management structure is adequate to successfully conduct the project (refer to section VII F)	15
F. Organizational capability is demonstrated at a level sufficient to successfully support the project (refer to section VII G)	5
G. Budget costs are reasonable, complete and appropriate in comparison to the activities proposed to be undertaken (refer to section VII, H, I, J)	10

The application receiving the highest total score on the above criteria will be recommended for funding consideration to the Administrator, OJJDP. In addition to the scores based upon the above weighted criteria, the final selection process will also include consideration of diversity of the study population and sensitivity to measurement issues to be studied. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist the Administrator's consideration of competing applications and selection of the application for funding. The final award decision will be made by the OJJDP Administrator. Pursuant to section 406(b) and (c), in considering grant applications under this title, the Administrator shall give priority to applicants who have demonstrated or demonstrate ability in: Locating missing children or locating and reuniting missing children with their legal custodians; providing other services to missing children or their families; or conducting research relating to missing children; and which utilize volunteer assistance in providing services to missing children and their families. The Administrtor shall give first priority to applicants qualifying with demonstrated ability in locating and reuniting children with their legal custodians and providing other services to missing children or their families.

Furthermore, in order to receive assistance under this title for a fiscal year, applicants shall give assurance that they will expend, to the greatest extent practicable, for such fiscal year an amount of funds (without regard to any funds received under any Federal law) that is not less than the amount of funds they received in the preceding fiscal year from State, local, and private sources.

IX. Procedures and Deadlines for Submission of Applications

A. Applicants must submit the original signed application and three copies to NIJJDP/OJJDP. The necessary forms for applications (Standard Form 424) will be provided upon request.

B. The deadline for receipt of applications is June 30, 1987. All applications must be postmarked by the U.S. Postal Service or hand delivered on or before June 30, 1987. Hand delivered applications must be taken to the NIJJDP/OJJDP between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

C. The mailing address for all correspondence (e.g., applications, requests for forms) related to this program announcement is as follows: Catherine P. Sanders, NIJJDP/OJJDP, U.S. Department of Justice, 633 Indiana Avenue, NW., Room 782, Washington, DC 20531.

X. Civil Rights Compliance

A. All recipients of OJJDP assistance 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 32, 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 records 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, 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 person(s) 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.

XI. Footnotes

1. "Child Sexual Abuse and Exploitation and the Particular Vulnerability of Runaway and Abducted Children—Kentucky's Response to a Growing National Tragedy," *Final Report of the Kentucky Task Force on Exploited and Missing Children*, (September, 1983).

2. G.T. Hotaling and D. Finkelhor, *The Sexual Exploitation of Missing Children: A Research Review*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (Washington, DC, October, 1985).

3. M. Agopian, "The Impact on Children of Abduction by Parents," Child Welfare, 63(6): 511–519, (1984).

4. G.T. Hotaling and D. Finkelhor, *The Sexual Exploitation of Missing Children: A Research Review*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (Washington, DC, October, 1985).

5. Ibid.

6. U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, *America's Missing and Exploited Children: Their Safety and Their Future*, report prepared by the Attorney General's Advisory Board on Missing Children, (Washington, DC, March, 1986).

7. L. Terr, "Children of Chowchilla: A Study of Psychic Trauma," (1979); "Psychic Trauma in Children: Observations Following the Chowchilla School-bus Kidnapping," *American Journal of Psychiatry*, 138(1), pp. 144–19, (1981); "Chowchilla Revisited: The Effects of Psychic Trauma Four Years After a School-bus Kidnapping," *American Journal of Psychiatry*, 140(12), pp. 1543–1550, (1983); and "Time Sense Following Psychic Trauma: A Clinical Study of Ten Audits and Twenty Children," *American Journal of Ortho-psychiatry* 53(2); pp. 244–260, (1983).

8. A.W. Burgess, C.R. Hartman, et al., "The Impact of Child Pornography and Sex Rings on Child Victims and Their Families," In A.W. Burgess, (Ed.) *Child Pornography and Sex Rings*, Lexington, MA: Lexington Books, (1984).

9. G.T. Hotaling and D. Finkelhor, *The Sexual Exploitation of Missing Children: A Research Review*, U.S. Department of Justice, Office of Juvenile Justice and Delinquency Prevention, (Washington, DC, October, 1985).

10. A. Browne and D. Finkelhor, *The Impact of Child Sexual Abuse: A Review of the Research*, Psychological Bulletin (in press), 1986.

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87–12592 Filed 6–2–87; 8:45 am]

BILLING CODE 4410–18–M

federal register

Wednesday
June 3, 1987

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Part 121

Mandatory Reporting for Emergency Evacuation and Components; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

[Docket No. 25289; NPRM 87-5]

Mandatory Reporting for Emergency Evacuation Systems and Components

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to amend the mechanical reliability reporting requirement contained in Part 121 of the Federal Aviation Regulations to require certificate holders to report each failure, malfunction, or defect of emergency evacuation systems and components. This action is necessary to collect, record, analyze, and disseminate data concerning those failures, malfunctions, or defects that occur during training, testing, or actual emergency conditions to improve the levels of emergency evacuation system reliability and safety.

DATE: Comments must be received on or before August 3, 1987.

ADDRESS: Comments on the proposal are to be marked "Docket No. 25289" and mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204), Docket No. 25289, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be inspected at Room 916 on weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: George R. Johnson, Project Development Branch (AFS-360), Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267-3798.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments and by commenting on the possible environmental, energy, or economic impact of this proposal. The comments should carry the regulatory docket or notice number and be submitted in duplicate to the address above. All comments received as well as a report summarizing any substantive public contact with Federal Aviation Administration (FAA) personnel on this rulemaking will be filed in the docket. The docket is available for public inspection both before and after the closing date for making comments.

Before taking any final action on the proposal, the Administrator will consider any comments made on or before the closing date for comments. The proposal may be changed in light of comments received. The FAA will acknowledge receipt of a comment if the commenter submits with the comment a self-addressed, stamped postcard on which the following statement is made "Comment to Docket No. 25289." When the comment is received, the postcard will be dated, time stamped, and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attn: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Requests should be identified by the docket number of this proposed rule. Persons interested in being placed on a mailing list for future proposed rules should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Section 121.703(a) of the Federal Aviation Regulations (FAR) requires each certificate holder to report the occurrence or detection of failures, malfunctions, or defects in 16 specified categories. Section 121.703(c) requires the certificate holder to report any other failure, malfunction or defect in an aircraft that occurs, or is detected at any time if, in its opinion, that failure, malfunction or defect has endangered or may endanger the safe operation of an aircraft used by the certificate holder.

The ability to evacuate an airplane safely and quickly during an emergency is a major concern to the FAA, the aviation industry, and the public. As part of an effort to collect information about and address these concerns, the FAA sponsored a technical conference in Seattle, Washington, from September 3-6, 1985, related to emergency evacuation of transport category airplanes. Discussions covered the number, capacity, distribution, and marking of emergency exits, full-scale evacuation demonstrations, the validity of the data derived from full-scale evacuation tests versus that data obtained from analysis, and the cirteria to be used to decide when the analysis method would be acceptable in lieu of a full-scale demonstration. The discussions also covered escape slides and the design standards and certification testing requirements for these slides, slide maintenance failure reporting and other related topics. Working groups were established to review and discuss existing regulations in Parts 25 and 121 of the FAR and recommend regulatory and nonregulatory changes.

During the conference, a representative from a leading manufacturer stated that its testing of transport category airplane cabin evacuation slides resulted in a 90 percent success rate. Airline pilots, cabin crewmembers, and maintenance personnel presented a different view, referring to the general unreliability of evacuation slides.

Several comments were made about the lack of, or inadequate, reporting of failures, malfunctions, and defects of emergency evacuation systems and components (such as evacuation slides, gas bottles, cables, doors indicators, motors, clips, girth bar attachments, etc.). Discussion focused on the present Service Difficulty Report System, the collection and disposition of those reports, the malfunctions and defects that are not presently reported, and potential solutions to the problems discussed.

Members of groups representing flight attendants, the National Transportation Safety Board, and the National Transportation Safety Association stated their concerns that failures, malfunctions, or defects of evacuation systems or components are not being reported to the FAA, thus creating a vacuum of knowledge.

The process by which failures, malfunctions, or defects are presently reported was criticized for excluding a large number of events such as the inadvertent deployment of evacuation slides during cabin safety demonstrations or maintenance checks and overhauls. Representatives from the FAA and other organizations expressed concern that regulatory authorities were unaware of emergency evacuation system incidents taking place in the field and that some of this information may be significant to safety.

There has also been legislative concern regarding the safe evacuation of aircraft. A congressional hearing on this matter was held by the Subcommittee on Investigations and Oversight of the House Committee on Public Works and Transportation on June 24 to 26, 1985.

The Mechanical Reliability Reports (MRR's) and Service Difficulty Reports (SDR's) are utilized by the FAA primarily as a maintenance and

continued airworthiness surveillance tool and published in the Aviation Standards Service Difficulty Report Summary by FAA's Aviation Standards National Field Office at Oklahoma City, Oklahoma. This summary consists of air carrier MMR's and is available to FAA personnel, industry affiliates, and others with a need for access to the information. This information provides the FAA with reliability and airworthiness statistical data necessary for planning, directing, controlling, and evaluating certain aircraft products such as emergency evacuation systems and components. This system also provides a means for measuring the effectiveness of the self-evaluation techniques being employed by certain segments of the civil aviation industry.

Discussion of the Proposal

Current § 121.703(a) would be amended to require each certificate holder to report all failures, malfunctions, or defects of emergency evacuation systems or components that are found defective or which fail to perform their intended function during demonstrations, testing, or actual emergency situations.

A review of service difficulty records for evacuation slides revealed only 106 reports submitted by air carriers between January 1, 1980 and November 8, 1985. Based on this relatively low number of reports, it appears that certificate holders have not consistently reported failures, malfunctions or defects in their emergency evacuation systems. In addition, review of those reports filed reveals that there is no standardization of what is reported.

This proposal would amend § 121.703(a) by adding a new paragraph (17) to specifically require certificate holders to report the occurrence or detection of each failure, malfunction or defect of its aircrafts' emergency evacuation systems and components. This proposal would clarify what to report so that a data base can be established that will provide trend information. Corrective action in the form of redesign, maintenance/operational/procedural changes, adjusted inspection intervals and training programs would be the results of the analysis of this data base. The FAA intends to enlarge the data base for reporting and make it available to airlines and manufacturers.

Regulatory Evaluation

This regulatory evaluation examines the benefit and cost elements of a Notice of Proposed Rulemaking to establish mandatory reporting for emergency evacuation systems and components. The notice proposes to amend Part 121 of the FAR, to require each certificate holder to report all failures, malfunctions or defects of emergency evacuation systems and components. This action is necessary to collect, record, analyze, and disseminate data concerning those failures, malfunctions, or defects that occur during training, testing, or actual emergency conditions, to improve the levels of reliability and safety. At present, air carriers and airmen report these malfunctions on a voluntary basis. There have been 106 voluntary reports between 1980 and 1985.

The proposed amendment was prompted largely as a result of concerns expressed by members of groups representing flight attendants, the National Transportation Safety Board, and the National Transportation Safety Association. Members of these groups stated that failures, malfunctions, or defects of evacuation systems and components are not being adequately reported to the FAA.

The FAA estimates that potential benefits expected to accrue from implementation of the proposed rule would range between $2,600 and $131,000 annually as a result of enhanced safety. Such safety enhancements would take the form of reduced likelihood of injuries (minor and serious) and fatalities during emergency evacuations on air carriers, primarily as a result of survivable post-crash ground fires due to malfunctions or defects in emergency evacuation equipment.

The FAA estimated that the total incremental cost of compliance expected to accrue from implementation of the proposed rule would range between $25 and $90 annually (in 1985 dollars) per operator. This cost assessment is based on information received from personnel at the FAA's Aviation Standards National Field Offices in Oklahoma City, Oklahoma, and is the estimated expense for additional form preparation and record keeping.

On balance, the FAA estimates that this notice would be cost-beneficial.

The regulatory evaluation that has been placed in the docket contains additional details relating to costs and benefits.

International Trade Impact Statement

The proposed rule is not expected to have an adverse impact on the trade opportunities for U.S. firms doing business abroad or on foreign firms doing business in the United States. The rule would only impact scheduled operators of U.S.-registered aircraft such as turbojet and turboprop aircraft who report deficiencies in their emergency evacuation systems and components to the FAA.

Regulatory Flexibility Determination

The FAA has determined that under the criteria of the Regulatory Flexibility Act of 1980, the proposed rule would not have a significant economic impact on a substantial number of small entities. All of the small entities potentially impacted by the rule would represent operators of scheduled aircraft for hire, with nine or less aircraft owned, but not necessarily operated.

Based upon a comparison of the upper range of the total annual incremental cost of compliance ($90) and the annualized threshold of significant impact ($51,000), the FAA concludes that a substantial number of small entities would not be significantly impacted by the proposed rule.

Conclusion

This proposal, if adopted, would enable the FAA to achieve prompt and appropriate correction of conditions adversely affecting continued airworthiness of emergency evacuation systems and components, through the collection of service difficulty reports, their consolidation and collation in a common data bank, analysis of that data, and the rapid dissemination of trends, problems, and alert information to the appropriate segments of the aviation community and the FAA.

It proposes only one substantive change which would provide benefits with negligible costs to the aviation public. The proposed amendment will provide benefits by establishing mandatory reporting requirements that will enhance the reliability of the data base for emergency evacuation systems and components.

Because this proposal, if adopted, is not likely to result in an annual effect on the economy of $100 million or more, or a major increase in costs for consumers, industry, or Federal, State, or local government agencies, it has been determined that it is not a major proposal under Executive Order 12291. In addition, the proposal, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States. The FAA has determined that this action is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, as noted above, the FAA certifies that under the criteria of the Regulatory Flexibility Act, this proposed regulation, if promulgated, will not have a significant economic impact

on a substantial number of small entities.

A draft regulatory evaluation of the proposal, including a Regulatory Flexibility determination and Trade Impact assessment, has been placed in the regulatory docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

Paperwork Reduction Act

Information collection requirements in § 121.703(a) have been approved previously by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and have been assigned OMB control number 2120–0008.

List of Subjects in 14 CFR Part 121

Aviation safety, Safety, Air carrier, Air transportation, Airplanes, Transportation, Common carriers.

The Proposed Rule

Accordingly, the Federal Aviation Administration proposes to amend Part 121 of the Federal Aviation Regulations (14 CFR Part 121) as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

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

Authority: 49 U.S.C. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (Revised, Pub. L. 97–449, January 12, 1983).

2. By amending § 121.703 by removing the word "and" at the end of paragraph (a)(15); by removing the period at the end of paragraph (a)(16) and inserting "; and" in its place; and by adding a new paragraph (a)(17) to read as follows:

§ 121.703 Mechanical reliability reports.

(a) * * *

(17) Emergency evacuation systems or components including all exit doors, passenger emergency evacuation lighting systems, or evacuation equipment that are found defective, or that fail to perform the intended functions during an actual emergency or during training, testing, maintenance, demonstrations, or inadvertent deployments.

* * * * *

Issued in Washington, DC, on May 22, 1987.

William T. Brennan,

Acting Director of Flight Standards.

[FR Doc. 87–12520 Filed 6–2–87; 8:45 am]

BILLING CODE 4910–13–M

federal register

Wednesday
June 3, 1987

Part X

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program; Final Rule and Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule revises existing regulations governing the Health Professions Student Loan (HPSL) program to conform those regulations with amendments made to the Public Health Service Act by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985, and Pub. L. 99–92, the Nurse Education Amendments of 1985.

EFFECTIVE DATE: These regulations are effective June 3, 1987.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4540.

SUPPLEMENTARY INFORMATION: Public Law 99–129, the Health Professions Training Assistance Act of 1985, made numerous amendments to the HPSL statute, sections 740–747 of the Public Health Service Act (the Act). These final regulations incorporate into the existing HPSL regulations those changes necessary to conform the regulations with amendments made by Pub. L. 99–129, and therefore do not require public comment before implementation. These regulatory amendments also provide that a school may, upon request, obtain a defaulted borrower's address as obtained from the Internal Revenue Service, and include the longstanding requirement that schools must comply with Truth in Lending Regulation Z (12 CFR Part 226). The amendments are described below according to the section of the HPSL regulations which they affect.

Section 57.202 Definitions.

The Secretary has added to this section of the regulations definitions for "default" and "grace period," and has amended the definition of "health professions school" to include doctoral pharmacy programs. These definitions are consistent with amendments to the Act made by Pub. L. 99–129.

Section 57.206 Eligibility and selection of health professions student loan applicants.

Section 57.206(a)(1)(v): The Secretary is amending this section to include a new paragraph (v) which implements the statutory requirement (section 741(b)(3) of the Act) that an HPSL applicant who is required under section 3 of the Military Selective Service Act to register for the draft must have complied with this requirement to be eligible to receive HPSL funds.

Section 57.208 Health professions student loan promissory note and disclosure requirements.

The Secretary is revising the title of this section and adding new paragraphs (c)(1) and (c)(2) to incorporate the disclosure requirements in Pub. L. 99–129, which apply to any HPSL loan made after June 30, 1986 (section 745 of the Act). Paragraph (c)(1) sets forth information that the school must provide to the borrower at the time the loan is made. This information may be provided in the promissory note, the disclosure statement required by Truth in Lending Regulation Z, or a separate written statement. Paragraph (c)(2) sets forth information that the school must provide to the borrower prior to the completion or termination of the borrower's studies at the school.

The Secretary has also included a new paragraph (c)(3) which states the requirement that a school must comply with Truth in Lending Regulation Z. Although not previously referenced in the HPSL regulations, these requirements have been applicable to the HPSL program since their inception. The Secretary is including this paragraph to clarify that the disclosure requirements of Pub. L. 99–129 are in addition to, rather than in place of, the requirements of Truth in Lending Regulation Z.

Section 57.210 Repayment and collection of health professions student loans.

The Secretary is amending paragraph (b)(2) to include the revised late charge provision in Pub. L. 99–129 (section 741(j) of the Act), which provides that, for loans made on or after October 22, 1985, the school must charge a penalty not to exceed 6 percent of the installment payment on any loan that is more than 60 days past due, but is prohibited from charging a penalty on any loan that is 60 days or less past due. In response to some confusion regarding the calculation of the late charge under this provision, the regulations clarify that the charge cannot exceed 6 percent of the amount due at the time the charge is calculated. The regulatory provision gives the school discretion, in accordance with the statute, in determining the amount of the charge within the 6 percent maximum, and thus allows the school to decide: (1) Whether to assess the charge on a percentage basis, as a flat dollar amount, or as a combination of the two; and (2) whether to calculate the charge on the total amount due at the time the charge is calculated or on a portion of the amount due.

As authorized in Pub. L. 99–92 (section 6103(m)(5) of the Internal Revenue Code of 1954), the Secretary is adding a new paragraph (b)(5) which states that the Secretary may request from the Internal Revenue Service (IRS) the address of a defaulted HPSL borrower. This information may be disclosed by the Secretary to the school from which the borrower received the HPSL loan for the purpose of locating the defaulted borrower to collect the loan. This provision also requires that any school which requests address information from IRS records must comply with the requirements of the Secretary and the IRS regarding the safeguarding and proper handling of this information.

Section 57.216a Performance standard.

In accordance with Pub. L. 99–129 (section 740(c) of the Act), the Secretary is amending this section to include the statutory default formula.

Since these regulations include only necessary revisions to conform the HPSL regulations with statutory amendments, the Secretary has determined pursuant to 5 U.S.C. 553 and departmental policy that it is unnecessary and impractical to follow proposed rulemaking procedures.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the requirements in these regulations are minimal in comparison to the overall resources of health professions schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of health professions schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100

million established in section (b) of Executive Order 12291.

Paperwork Reduction Act

These regulations contain an information collection in § 57.208(c) which has been submitted to the Office of Management and Budget (OMB) for approval under section 3507 of the Paperwork Reduction Act of 1980. This regulatory information collection requirement will not be effective until the Department obtains OMB approval, at which time a notice will be published in the **Federal Register** to notify the public of such action.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, Subpart C of 42 CFR Part 57 is amended as follows:

Dated: November 6, 1986.

Robert E. Windom,

Assistant Secretary for Health.

Approved: January 14, 1987.

Otis R. Bowen,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.342, Health Professions Student Loan Program)

PART 57—[AMENDED]

Subpart C—Health Professions Student Loans

1. The authority for Subpart C is revised to read as follows:

Authority. Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 740–747, Public Health Service Act, 77 Stat. 170–173, 90 Stat. 2266–2268, 91 Stat. 390–391, 95 Stat. 920, 99 Stat. 532–536 (42 U.S.C. 294m–q).

2. Section 57.202 is amended by revising the definition of "health professions school" and adding definitions for "default" and "grace period" as follows:

§ 57.202 Definitions.

* * * * *

"Default" means the failure of a borrower of a loan made under this subpart to make an installment payment when due, or comply with any other term of the promissory note for such loan, except that a loan made under this subpart shall not be considered to be in default if the loan is discharged in bankruptcy or if the school reasonably concludes from written contacts with the borrower that the borrower intends to repay the loan.

* * * * *

"Grace period" means the period of 1 year beginning on the date upon which a student ceases to be a full-time student at a school of medicine, osteopathic medicine, dentistry, pharmacy, podiatry, optometry, or veterinary medicine.

"Health professions school" or "school" means a public or private nonprofit school of medicine, school of dentistry, school of osteopathic medicine, school of podiatry, school of optometry, or school of veterinary medicine as defined in section 701(4) of the Act, or a school of pharmacy as defined in section 747 of the Act.

* * * * *

3. Section 57.206 is amended by revising paragraphs (a)(1) (iii) and (iv) and adding a new paragraph (a)(1)(v) as follows:

§ 57.206 Eligibility and selection of health professions student loan applicants.

(a) * * *

(1) * * *

(iii) In need of the amount of the loan to pursue a full-time course of study at the school;

(iv) Of exceptional financial need in the case of students of medicine or osteopathic medicine. A student will be considered to demonstrate exceptional financial need if the school determines that his or her resources, as described in paragraph (b)(1) of this section, do not exceed the lesser of $5,000 or one-half of the costs of attendance at the school. Summer earnings, educational loans, veterans (G.I.) benefits and earnings during the school year will not be considered as resources in determining whether an applicant meets the eligibility criteria for exceptional financial need; and

(v) In compliance with the requirement to register for the draft, if required to do so under section 3 of the Military Selective Service Act.

* * * * *

4. Section 57.208 is amended by revising the heading of this section and adding new paragraph (c) as follows:

§ 57.208 Health professions student loan promissory note and disclosure requirements.

* * * * *

(c) *Disclosure requirements.* (1) For any loan made after June 30, 1986, the school shall, at the time the loan is made, provide the following loan information to the student:

(i) The yearly and cumulative maximum amounts that may be borrowed by the student;

(ii) The terms which repayment of the loan will begin;

(iii) The maximum number of years in which the loan must be repaid;

(iv) The interest rate that will be paid by the borrower and the minimum amount of the required monthly payment;

(v) The amount of any other fees charged to the borrower by the lender;

(vi) Any options the borrower may have for deferral, cancellation, prepayment, consolidation, or other refinancing of the loan;

(vii) A definition of default on the loan and a specification of the consequences which will result to the borrower if the borrower defaults, including a description of any arrangements which may be made with credit bureau organizations;

(viii) To the extent practicable, the effect of accepting the loan on the eligibility of the borrower for other forms of student assistance; and

(ix) A description of the actions that may be taken by the Federal Government to collect the loan, including a description of the type of information concerning the borrower that the Federal Government may disclose to:

(A) Officers, employees, or agents of the Department of Health and Human Services,

(B) Officers, employees, or agents of schools with which the Secretary has an agreement under this subpart, or

(C) Any other person involved in the collection of a loan under this subpart.

(2) For any loan made after June 30, 1986, the school shall, prior to the borrower's completion or termination of studies at the school, provide the following loan information to the student:

(i) Each amount borrowed by the student under this subpart;

(ii) The total amount borrowed by the student under this subpart; and

(iii) A schedule for the repayment of the amounts borrowed under this subpart, including the number, amount, and frequency of payments to be made.

(3) In addition to the requirements set forth in paragraphs (c)(1) and (c)(2) of this section, the school must comply with the applicable requirements of Truth in Lending Regulation Z (12 CFR Part 226).

5. Section 57.210 is amended by revising paragraph (b)(2) and adding paragraph (b)(5) to read as follows:

§ 57.210 Repayment and collection of health professions student loans.

* * * * *

(b) * * *

(2) *Late charge.* (i) For any health professions student loan made after June 30, 1969, but prior to October 22, 1985, the school may fix a charge for failure of the borrower to pay all or any part of an installment when it is due and, in the case of a borrower who is entitled to deferment under section 741(c) of the Act, or cancellation or repayment under section 741(f) of the Act, for any failure to file timely and satisfactory evidence of the entitlement. The amount of the charge may not exceed $1 for the first month or part of a month by which the installment or evidence is late and $2 for each succeeding month or part of a month. The school may elect to add the amount of this charge to the principal amount of the loan as of the day after the day on which the installment or evidence was due, or to make the amount of the charge payable to the school no later than the due date of the next installment following receipt of the notice of the charge by the borrower.

(ii) For any health professions student loan made on or after October 22, 1985, the school shall assess a charge for failure of the borrower to pay all or any part of an installment when the loan is more than 60 days past due and, in the case of a borrower who is entitled to deferment under section 741(c) of the Act, for any failure to file satisfactory evidence of the entitlement within 60 days of the date payment would otherwise be due. No charge may be made if the loan is less than 61 days past due. The amount of this charge may not exceed an amount equal to 6 percent of the amount due at the time the charge is calculated. The school may elect to add the amount of this charge to the principal amount of the loan as of the day on which the charge is calculated, or to make the amount of the charge payable to the school no later than the due date of the next installment following receipt of the notice of the charge by the borrower.

* * * * *

(5) *Disclosure of taxpayer identity information.* Upon written request by the Secretary, the Secretary of the Internal Revenue Service (IRS) may disclose the address of any taxpayer who has defaulted on a health professions student loan, for use only by officers, employees, or agents of the Department, to locate the defaulted borrower to collect the loan. Any such mailing address may be disclosed by the Secretary to any school from which the defaulted borrower received a health professions student loan, for use only by officers, employees, or agents of the school whose duties relate to the collection of health professions student loan funds, to locate the defaulted borrower to collect the loan. Any school which requests and obtains this address information must comply with the requirements of the Secretary and the IRS regarding the safeguarding and proper handling of this information.

6. Section 57.216a is amended by revising the introductory text and paragraphs (a), (b), and (c)(3) as follows:

§ 57.216a Performance standard.

On June 30, 1984, and on each June 30 thereafter, except as provided in paragraph (b) of this section, each school must have a default rate (as calculated under paragraph (a) of this section) of not more than 5 percent.

(a) The default rate for each school shall be the ratio (stated as a percentage) that the defaulted principal amount outstanding of the school bears to the matured loans of the school. For this purpose:

(1) The term "defaulted principal amount outstanding" means the total amount borrowed from the loan fund of a school that has reached the repayment stage (minus any principal amount repaid or canceled) on loans in default for more than 120 days; and

(2) The term "matured loans" means the total principal amount of all loans made by a school under this subpart minus the total principal amount of loans made by the school to students who are:

(i) Enrolled in a full-time course of study at the school; or

(ii) In their grace period.

(b) Any school that has a default rate greater than 5 percent on June 30 of any year will be required to:

(1) Reduce its default rate by 50 percent (or a school with a default rate below 10 percent must reduce its rate to 5 percent) by the close of the following 6-month period; and

(2) By the end of each succeeding 6-month period, reduce its default rate to 50 percent of the required rate for the previous 6-month period, until it reaches 5 percent.

(c) * * *

(3) By the end of the succeeding 6-month period, reduce its default rate to 50 percent of the rate it failed to achieve under paragraph (b) of this section, or 5 percent. A school that meets this requirement wil be permitted to resume the use of its health professions student loan funds, but must continue to comply with the requirements of paragraph (b)(2) of this section if its default rate is still greater than 5 percent.

* * * * *

[FR Doc. 87-12604 Filed 6-2-87; 8:45 am]
BILLING CODE 4160-15-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend existing regulations governing the Health Professions Student Loan (HPSL) program to implement amendments made to the Public Health Service Act by Pub. L. 99–129, the Health Professions Training Assistance Act of 1985, to update the definition of exceptional financial need used for determining eligibility for students of medicine and osteopathic medicine, and to require schools to verify, to the best of their ability, the information provided by the student on the loan application.

DATE: Comments on this proposed rule are invited. To be considered, comments must be received by July 20, 1987.

ADDRESSES: Respondents should address written comments to Mr. Thomas D. Hatch, Director, Bureau of Health Professions (BHPr), Room 8–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Support, BHPr, Room 7–74, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, BHPr, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4540.

SUPPLEMENTARY INFORMATION: Public Law 99–129, the Health Professions Training Assistance Act of 1985, made numerous amendments to the HPSL statute, sections 740–747 of the Public Health Service Act (the Act). This notice of proposed rulemaking (NPRM) proposes to revise the HPSL regulations to implement certain provisions of Pub. L. 99–129. (The Secretary is publishing concurrently final amendments to the HPSL regulations which implement other provisions of Pub. L. 99–129.) In addition, this NPRM proposes to update the definition of exceptional financial need to reflect increases in educational costs that have occurred since the definition was originally established in 1979, and to require schools to verify, to the best of their ability, the information provided by the student on the loan application. The proposed amendments are described below according to the section of the regulations which they affect.

Section 57.202 Definitions.

The Secretary is proposing to add to this section a definition of default which is consistent with an amendment to the Act made by Pub. L. 99–129. The definition of default set forth in section 740(c) of the Act excludes from the default category any loan for which the school reasonably concludes from written contacts with the borrower that the borrower intends to repay the loan. The proposed regulatory definition would clarify that if a borrower has failed to make an installment payment when due, the school may exclude the borrower's loan from the default category, based on the borrower's intent to repay, only if: (1) The loan is in forbearance; or (2) the borrower's repayment schedule has been renegotiated and the borrower is complying with the renegotiated schedule.

Section 57.204 Payment of Federal capital contributions.

Section 742(a)(5) of the Act, as amended by Pub. L. 99–129, authorizes the Secretary to reallocate HPSL funds remitted to the Department in any fiscal year to schools which established an HPSL fund during the period between July 1, 1972, and September 30, 1985, provided that the reallocation occurs in the same or the succeeding fiscal year. The Secretary is proposing to amend § 57.204 of the regulations to: (1) Provide for a separate application cycle for these funds, limited to those schools which established an HPSL fund between July 1, 1972, and September 30, 1985; and (2) provide that, when a reallocation occurs, the Secretary will allocate the funds to eligible schools using the same procedure that would be used to allocate new Federal capital contributions, as set forth in § 57.204(a).

Section 57.206 Eligibility and selection of health professions student loan applicants.

Section 57.206(a)(1)(iv): The Secretary is proposing to amend this section to state that a student will be considered to have exceptional financial need if the school determines that his or her resources do not exceed the lesser of $6,000 or one-half of the costs of attendance at the school. This amendment would increase the maximum allowable level of resources from $5,000 to $6,000 to correspond with increases in the average costs of attendance at public schools of medicine.

When the $5,000 level was established in 1979, it was equivalent to approximately 50 percent of the average cost of attendance at schools of medicine ($9,260 during academic year 1977–78, based on data from the Association of American Medical Colleges (AAMC)). More recent data from the AAMC indicate that the average cost of attendance for an in-state student attending a public medical school during academic year 1985–86 had increased to $11,621, while the comparable cost for a student attending a private medical school was $22,306. Because there is such a disparity between the average costs of attendance at public and private medical schools, and to help assure that these funds continue to be limited to students from low-income families, the Secretary is proposing to use the more conservative figure of $11,621 when updating this definition. The proposed maximum resources a student could have to be considered of exceptional financial need, $6,000, is based on approximately 50 percent of $11,621, the average cost of attendance for an in-state student attending a public medical school. However, the Secretary is interested in receiving comments on the proposed increase to $6,000 and alternative proposals, with supporting rationale.

Section 57.206(d): The Secretary is proposing to add a new paragraph (d) to this section which would require that the school must verify, to the best of its ability, the information provided by the student on the loan application. This provision is intended to further assure that loans are not made to ineligible students and that schools have accurate information from the student for skiptracing purposes.

Section 57.231a Loan cancellation reimbursement.

The Secretary is proposing to amend this section to implement the statutory provision which permits a school to assess a charge on HPSL loans to insure against the loss of its institutional contribution for loans made on or after October 22, 1985, that are canceled due to the borrower's death or permanent and total disability. This replaces the former statutory provision which applied to loans made prior to October 22, 1985, under which the Secretary was authorized to reimburse schools for the institutional share of death or disability cancellations.

The proposed regulatory provision would authorize a school to charge an

insurance premium, not to exceed .3 percent of the loan amount, on loans made on or after the effective date of final regulations implementing the provision. If a school should choose to institute the insurance premium, this provision would require that the funds collected be maintained by the school in an insured, interest-bearing account (with any earned interest credited to this insurance fund) and used only to reimburse the school for the institutional share of any HPSL loan made on or after October 22, 1985 that is canceled due to death or disability. The school would not be required to set up a separate bank account for the funds, but would be required to maintain separate accountability.

The Secretary developed the .3 percent maximum charge for the insurance premium based on 10 percent (the equivalent of the institutional share) of the total dollar amount of HPSL loans canceled for death or disability as of June 30, 1985 ($3,228,353) compared with the total dollar amount of HPSL loans fully repaid as of June 30, 1985 ($114,638,877). The Secretary requests that any school that would consider implementing this insurance premium review its institutional records to determine if the .3 percent proposed maximum rate could be expected to adequately cover anticipated losses of institutional funds due to death and disability cancellations. Respondents are asked to provide supporting data based on their schools' death and disability cancellations if they believe that a higher rate is necessary or a lower rate would be more appropriate.

The Secretary notes that loans made prior to October 22, 1985, remain eligible for reimbursement by the Secretary for the institutional share of death and disability cancellations. This reimbursement will continue to be handled in accordance with the previously existing procedure, which would be redesignated as paragraph (a) of this section.

Section 57.215 Records, reports, inspection, and audit.

In accordance with Pub. L. 99-129 (section 746 of the Act), the Secretary is proposing to amend paragraph (a) of this section to implement the provision which allows a school to request a hearing with an administrative law judge prior to being terminated from the HPSL program. To help assure that the hearing process is administered as efficiently and cost-effectively as possible for the schools and the Federal Government, this provision would set forth procedures for determining if a hearing is warranted. These procedures would require that a school's request for hearing be submitted within 90 days after receipt of written notice from the Secretary specifying his or her intention to terminate the school's participation in the program, and contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. The Secretary would be authorized to deny a hearing if: (1) the request for a hearing was untimely; (2) the school did not provide a statement of material factual issues in dispute; or (3) the statement of factual issues in dispute was frivolous or inconsequential. Schools should be aware that the existing regulatory provisions have the effect of law and are not subject to dispute (i.e., they cannot be modified through a hearing before an administrative law judge).

This provision would also provide that the hearings be held in the Washington, DC metropolitan area. The Secretary has determined that this is necessary because of the possibility that a large number of schools could request hearings within a short time period, making it impossible for the Department to schedule and attend hearings in other locations in a timely manner.

Section 57.216a Performance standard.

In acccordance with Pub. L. 99-129 (section 746 of the Act), the Secretary is proposing to amend paragraph (d) of this section to implement the provision which allows a school to request a hearing with an administrative law judge prior to being terminated from the HPSL program. This provision is identical to the hearing provision described above for § 57.215.

Regulatory Flexibility Act and Executive Order 12291

The Department believes that the resources required to implement the proposed requirements in these regulations are minimal in comparison to the overall resources of the schools. Therefore, in accordance with the requirements of the Regulatory Flexibility Act of 1980, the Secretary certifies that these regulations will not have a significant impact on a substantial number of HPSL schools.

The Department has also determined that this rule is not a major rule under Executive Order 12291; therefore, a regulatory impact analysis is not required. In addition, the rule will not exceed the threshold level of $100 million established in section (b) of Executive Order 12291.

Paperwork Reduction Act

Section 57.215(a)(3) contains an information collection requirement subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980. OMB has approved this information collection under control number 0915-0094. Sections 57.215(a)(2) and 57.216a(d) also contain information collections similarly subject to OMB approval. We have submitted a copy of this proposed rule to OMB for review of these information collections. Other organizations and individuals desiring to submit comments on the information collections should direct them to the agency office designated for this purpose whose name appears earlier in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3208), Washington, DC 20503, Attention: Desk Officer for HHS.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs—education, Grant programs—health, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, Subpart C of 42 CFR Part 57 is proposed to be amended as follows:

Dated: November 6, 1986.

Robert E. Windom,

Assistant Secretary for Health.

Approved: January 14, 1987.

Otis R. Bowen,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.342, Health Professions Student Loan Program)

PART 57—[AMENDED]

Subpart C—Health Professions Students Loans

1. The authority for Subpart C is revised to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 740-747, Public Health Service Act, 77 Stat. 170-173, 90 Stat. 2266-2268, 91 Stat. 390-391, 95 Stat. 920, 99 Stat. 532-536 (42 U.S.C. 294m-q).

2. Section 57.202 is amended by adding a definition for "default" as follows:

§ 57.202 Definitions.

* * * * *

"Default" means the failure of a borrower of a loan made under this subpart to make an installment payment when due, or comply with any other term of the promissory note for such

loan, except that a loan made under this subpart shall not be considered to be in default if the loan is discharged in bankruptcy, the borrower's repayment schedule has been renegotiated and the borrower is complying with the renegotiated schedule, or the loan is in forbearance.

* * * * *

3. Section 57.204 is amended by revising the heading of the section and adding a new paragraph (c) as follows:

§ 57.204 Payment of Federal capital contributions and reallocation of funds remitted to the Secretary.

* * * * *

(c) *Reallocation of funds remitted to the Secretary.* All funds from a student loan fund established under this subpart which are remitted to the Secretary in any fiscal year shall be available for allotment under this subpart, in the same fiscal year and the succeeding fiscal year, to schools which, during the period beginning on July 1, 1972, and ending on September 30, 1985, established student loan funds with Federal capital contributions under this subpart. The Secretary will from time to time set dates by which the schools must file applications to receive a portion of these funds. If the total of the amounts requested for any fiscal year by eligible schools exceeds the amount of funds determined by the Secretary at the time of payment to be available for this purpose, the payment to each school will be reduced to whichever is smaller:

(1) The amount requested in the application, or

(2) An amount which bears the same ratio to the total amount of returned funds determined by the Secretary at the time of payment to be available for that fiscal year for the Health Professions Student Loan program as the number of full-time students estimated by the Secretary to be enrolled in that school bears to the estimated total number of full-time students in all eligible schools during that year. Amounts remaining after these payments are made will be distributed in accordance with this paragraph among schools whose applications requested more than the amount paid to them, with whatever adjustments may be necessary to prevent the total paid to any school from exceeding the total requested by it.

4. Section 57.206 is amended by revising paragraph (a)(1)(iv) and adding a new paragraph (d) as follows:

§ 57.206 Eligibility and selection of health professions student loan applicants.

(a) * * *

(1) * * *

(iv) Of exceptional financial need in the case of students of medicine or osteopathic medicine. A student will be considered to demonstrate exceptional financial need if the school determines that his or her resources, as described in paragraph (b)(1) of this section, do not exceed the lesser of $6,000 or one-half of the costs of attendance at the school. Summer earnings, educational loans, veterans (G.I.) benefits and earnings during the school year will not be considered as resources in determining whether an applicant meets the eligibility criteria for exceptional financial need; and

* * * * *

(d) *Verification of loan information.* The school must verify, to the best of its ability, the information provided by the student on the loan application.

5. Section 57.213a is revised as follows:

§ 57.213a Loan cancellation reimbursement.

(a) For loans made prior to October 22, 1985, in the event that insufficient funds are available to the Secretary in any fiscal year to enable him or her to pay to all schools their proportionate shares of all loans and interest canceled under this subpart for practice in a shortage area, death, or disability:

(1) Each school will be paid an amount bearing the same ratio to the total of the funds available for that purpose as the principal of loans canceled by that school in that fiscal year bears to the total principal of loans canceled by all schools in that year; and

(2) Any additional amounts to which a school is entitled will be paid by the Secretary at the time of distribution of the assets of the school's Fund under section 743 of the Act.

(b) For loans made on or after October 22, 1985, a school may assess the borrower a charge to insure against the loss of the institutional share of a loan canceled due to the borrower's death or permanent and total disability. This charge may not exceed .3 percent of the loan amount. Funds collected under this provision must be maintained by the school in an insured, interest-bearing account (with any earned interest credited to this insurance fund), and used only to reimburse the school for the institutional share of any HPSL loan made on or after October 22, 1985 that is canceled due to the borrower's death or permanent and total disability. A school is not required to set up a separate bank account for these funds, but is required to maintain separate accountability for them.

6. Section 57.215 is amended by revising paragraph (a) as follows:

§ 57.215 Records, reports, inspections, and audit.

(a) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its health professions student loan funds as the Secretary may find necessary to carry out the purposes of the Act and these regulations. A school must submit required reports to the Secretary within 45 days of the close of the reporting period.

(1) A school which fails to submit a required report for its Federal capital contribution fund within 45 days of the close of the reporting period:

(i) Shall be prohibited from receiving new Federal capital contributions;

(ii) Must place the revolving fund and all subsequent collections in an insured interest-bearing account; and

(iii) may make no loan disbursements. The above restrictions apply until the Secretary determines that the school is in compliance with the reporting requirement.

(2) A school that fails to submit a complete report within 6 months of the close of the reporting period will be subject to termination. The Secretary will provide the school with a written notice specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 90 days after the receipt of this notice, a formal hearing with respect to termination. The request for hearing must contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(i) The request for a hearing is untimely;

(ii) The school does not provide a statement of material factual issues in dispute; or

(iii) The statement of factual issues in dispute is frivolous or inconsequential.

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the school setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing termination is still determined to be necessary, the school will be terminated from participation in the program and will be required to return the Federal share of the revolving fund to the Department. A school terminated for this reason may reapply for participation in the program once it has submitted the overdue report.

(3) The school must also comply with the requirements of 45 CFR Part 74 and section 705 of the Act concerning recordkeeping, audit, and inspection.

* * * * *

(Approved by the Office of Management and Budget under control number 0915-0094)

7. Section 57.216a is amended by revising paragraph (d) as follows:

§ 57.216a Performance standard.

* * * * *

(d) Any school subject to the provisions of paragraph (c)(3) of this section which fails to comply with those requirements will be subject to termination. The Secretary will provide the school with a written notice specifying his or her intention to terminate the school's participation in the program and stating that the school may request, within 90 days after the receipt of this notice, a formal hearing with respect to termination. The request for hearing must contain a statement of the material factual issues in dispute to demonstrate that there is cause for a hearing. These issues must be both substantive and relevant. The hearing will be held in the Washington, DC metropolitan area. The Secretary will deny a hearing if:

(1) The request for a hearing is untimely;

(2) The school does not provide a statement of material factual issues in dispute; or

(3) The statement of factual issues in dispute is frivolous or inconsequential

In the event that the Secretary denies a hearing, the Secretary will send a written denial to the school setting forth the reasons for denial. If a hearing is denied, or if as a result of the hearing termination is still determined to be necessary, the school will be terminated from participation in the program and will be required to return the Federal share of the revolving fund to the Department. A school terminated for this reason must continue to pursue collections and may reapply for participation in the program only when it has attained a default rate of 5 percent or less.

[FR Doc. 87-12605 Filed 6-2-87; 8:45 am]

BILLING CODE 4160-15-M

federal register

Wednesday
June 3, 1987

Part XI

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Mount Graham Red Squirrel; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Mount Graham Red Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for the Mount Graham red squirrel, *Tamiasciurus hudsonicus grahamensis*, a small mammal found only in the Pinaleno Mountains of southeastern Arizona. Its isolated habitat has declined over the last century and may face additional losses to logging, recreational development, and construction of an astrophysical observatory. The red squirrel may also be in jeopardy because of its reduced numbers and through competition with an introduced species of squirrel. This rule implements the protection of the Endangered Species Act of 1973, as amended, for the Mount Graham red squirrel. A final decision on the determination of critical habitat for the Mount Graham red squirrel will be published in a separate notice by May 1988.

DATES: The effective date of this rule is June 3, 1987.

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

FOR FURTHER INFORMATION CONTACT: Alisa M. Shull, Endangered Species Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

The red squirrel (*Tamiasciurus hudsonicus*) is found in most of Canada and Alaska, and in much of the western and northern parts of the conterminous United States (Hall 1981). It is an arboreal species and, in the southern extremities of its range, is restricted mainly to montane forests. It is grayish brown, tinged with rusty or yellowish along the back. In summer, a dark lateral line separates the light colored underparts from the grayer or browner sides. The ears are slightly tufted in winter, and the tail is bushy (Spicer *et al.* 1985).

The two most southerly subspecies of red squirrel are *T. h. mogollonensis*, which is found in much of the high country of Arizona and New Mexico, and *T. h. grahamensis*, the Mount Graham red squirrel, which is known only from the Pinaleno (Graham) Mountains of Graham County, southeastern Arizona. The latter is slightly smaller than *T. h. mogollonensis*, has a relatively shorter tail, and differs in various skeletal character. Ten adult specimens averaged 7¾ inches (196.0 millimeters) in head and body length, and 5¼ inches (135.5 millimeters) in tail length (Spicer *et al.* 1985).

The range of the Mount Graham red squirrel lies entirely within the Safford Ranger District of the Colorado National Forest. This squirrel is now found at highest densities in Engelman spruce (*Picea engelmannii*) and/or fir, especially corkbark fir (*Abies lasiocarpa* var. *arizonica*). Its diet consists largely of conifer seeds, and during the winter it depends on seed-bearing cones that it has stored at sites known as middens. Forty-eight percent of the active middens are above 10,200 feet (3,109 meters) in mature Engelmann spruce/corkbark fir (Dr. Peter Warshall, Office of Arid Lands Studies, University of Arizona, pers. comm., December 18, 1986). Lower densites have been found in old growth Douglas fir (*Pseudotsuga menziesii*) and/or white fir (*Abies concolor*), often associated with Engelmann spruce. The condition of midden sites is important and the caches must remain cool and moist to preserve the cones and to prevent them from opening and losing their seeds. These caches, usually associated with logs, snags, stumps, or a large live tree, are the focal points of individual territories, and the number of midden complexes offers an approximation of the number of resident red squirrels in a particular area. In good spruce-fir habitat in the Pinaleno Mountains, the population density is about one red squirrel per 8 acres (3.2 hectares), which is lower than has been found in most other areas where the species has been studied (Spicer *et al.* 1985).

The Mount Graham red squirrel was described by Allen in 1894, based on three specimens taken that same year on Mount Graham in the Pinalenos. Subsequent reports indicate that the subspecies was common around the turn of the century, but was declining by the 1920's and rare by the 1950's (Hoffmeister 1956). This situation apparently was associated with loss and disruption of forest habitat, and perhaps with competition from an introduced population of the tassel-eared, or Abert's, squirrel (*Sciurus aberti*). From 1963 to 1967, Minckley (1968) was unable to find the Mount Graham red squirrel and was concerned that the subspecies had become extinct. Later, however, the continued existence of the Mount Graham red squirrel was verified. A Service-funded status survey in 1984–1985 located this mammal or its fresh sign at 16 localities in the Pinalenos and estimated the number of squirrels as 300–500 animals (Spicer *et al.* 1985). More recent surveys and a midden census conducted by the U.S. Forest Service (USFS), the Arizona Game and Fish Department (AGFD), and the University of Arizona (U of A) indicate that this estimate was too high, and a more accurate estimate is 280 squirrels.

In both its original Review of Vertebrate Wildlife, published in the **Federal Register** of December 30, 1982 (47 FR 58454–58460), and the revised version, published on September 18, 1985 (50 FR 37948–37967), the Service included the Mount Graham red squirrel in category 2, meaning that information then available indicated that a proposal to determine endangered or threatened status was possibly appropriate, but was not yet sufficiently substantial to biologically support such a proposal. The 1984–1985 Service status survey and more recent surveys by the USFS, AGFD, and U of A have since provided a substantial basis for determination of endangered status. Although the squirrel does still survive, its range and numbers have been reduced, and its habitat is jeopardized by a number of factors, including proposed construction of an astrophysical observatory. In the **Federal Register** of May 21, 1986 (51 FR 18630–18634), the Service published a proposed rule to determine endangered status.

Summary of Comments and Recommendations

In the proposed rule of May 21, 1986 (51 FR 18630), and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The original comment period closed on July 21, 1986, but was reopened on August 26, 1986 (51 FR 27429), to accommodate two public hearings, and remained open until November 21, 1986. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice, inviting general

public comment, was published in the *Eastern Arizona Courier* on June 18, 1986. Comment letters were received from 135 entities and are discussed below.

Requests for a public hearing were received from John Davis, Managing Editor, *Earth First!*, Tucson, Arizona; Ben Smith, Chairman, Graham County Board of Supervisors; Ned Powell, Tucson, Arizona; and Governor Aker, Mayor, City of Safford. Hearings were held in Tucson and Thatcher, Arizona, on August 26 and 27, 1986, respectively. Interested parties were contacted and notified of the hearings, and notices of the hearings were published in the **Federal Register** on July 31, 1986; the *Arizona Daily Star* on August 11, 1986; and the *Eastern Arizona Courier* on August 13, 1986. A total of about 320 persons attended the hearings. Transcripts of these hearings are available for inspection (see **ADDRESSES**) Comments received in the hearings are also summarized below.

Because of the need for a prompt determination of endangered status for the Mount Graham red squirrel, and because of the complexity of the economic analysis that must accompany the final rule designating critical habitat, the Service has decided for the present to make final only the listing portion of the proposed rule. Section 4(b)(6)(C) of the Act allows the Service to postpone the designation of critical habitat for up to one additional year from the date of publication of the proposed rule. Under this provision the final decision on the designation of critical habitat for the Mount Graham red squirrel will be made by May 21, 1988. Therefore, comments received regarding the proposed critical habitat designation will not be discussed here, but will be addressed in the final notice on critical habitat.

A total of 135 comments were received; 64 supported the proposal; 29 questioned or opposed the proposal; and 42 either commented on information in the proposal but expressed neither support nor opposition, were nonsubstantive or irrelevant to the proposal, or contained only economic or other comments related to critical habitat designation.

Oral or written statements were received from 94 parties at the hearings; 21 supported the proposal; 13 questioned or opposed the proposal; and 60 neither supported nor opposed, were nonsubstantive or irrelevant to the proposal, or contained only economic or other comments related to critical habitat designation.

All letters and written or oral statements received during the comment period and public hearings are combined in the following discussion. All comments are available for public inspection (see **ADDRESSES**).

Comments of support were received from the U.S. Forest Service, Arizona Game and Fish Department, State of Arizona, Office of Arid Land Studies (University of Arizona), Defenders of Wildlife, Arizona Chapter of the Wildlife Society, Mount Graham Conservation Project, Coalition for the Preservation of Mount Graham, Earth First! Tucson Audubon Society, Grand Canyon Chapter of the Sierra Club, Flagstaff Archers, Cochise Conservation Council, Arizona Flycaster's Club, Huachuca Audubon Society, Arizona Wildlife Federation, Arizona Nature Conservancy, Tucson Rod and Gun Club, Animal Defense Council, Southern Arizona Hiking Club, Southern Arizona Roadrunners Club, a member of the Pima County Board of Supervisors, and 54 private individuals.

Comments questioning or in opposition to the proposal were received from 2 State legislators, Picture Rocks Observatory, 2 employees of Steward Observatory, the Vice-president of Research and the President of the U of A, a member of Citizens for Science, a member of the Gila Valley Economic Development Foundation, the Mayor of Safford, and 24 private individuals.

Comments that expressed neither support nor opposition, were nonsubstantive, irrelevant to the proposal, economic, or related to critical habitat were received from the Arizona Board of Regents, 2 faculty members from the Department of Ecology and Evolutionary Biology at the U of A, 4 employees of Steward Observatory (including the Director), a research specialist with the U of A's College of Business, the Director of the Drachman Institute for Land and Regional Development Studies at the U of A, a member of the Physics Department at Arizona State University, the Chairman of Graham County's Board of Supervisors, a representative for Congressman Jim Colbe, a representative for Senator DeConcini, a State legislator, 3 members of Citizens for Science, a councilman for the City of Safford, Lowell Observatory, a member of the Gila Valley Economic Development Foundation, and 59 individuals.

Summaries of substantive comments addressing the listing of the Mount Graham red squirrel are covered in the following discussion. Comments of similar content are placed in a number of general groups. These comments and the Service's responses are given below:

Comment 1: The University of Arizona proposed the development of a Habitat Conservation Plan, under section 10 of the Act, as an alternative to listing. Other commenters expressed opposition to the University's proposal.

Service response: Section 10 of the Act is intended to be used to allow for a permit for taking of a listed species otherwise prohibited by section 9(a)(1)(B), if such taking is incidental to the carrying out of an otherwise lawful activity. Section 10 is not intended to be used in lieu of listing. It does not take the place of the protection provided by listing under the Endangered Species Act. The Mount Graham red squirrel appears, on the best evidence available at this time, to be endangered. Implementation of a habitat conservation plan in the future may, if sufficient, be grounds to reevaluate this finding, but it does not affect its current status. Development of such a plan may moreover operate to relieve the jeopardy which a project might otherwise pose to the squirrel, or permit even limited taking in connection with such a project.

Comment 2: Disagreement was expressed with the Service's statement in the proposed rule that any one of the potential threats could not by itself result in rapid extirpation of the Mount Graham red squirrel.

Service response: Based on additional information on Mount Graham red squirrel numbers and the precarious condition of this subspecies, the Service agrees with the commenter and the final rule reflects this change.

Comment 3: Are the radio repeaters on High Peak and Heliograph Peak a threat to the Mount Graham red squirrel?

Service response: High Peak has not been designated as an electronic site (Cecil Sims, USFS, letter to Eastern Arizona Amateur Radio Society, September 24, 1986). The current radio repeater use level on Heliograph Peak does not appear to be a threat to the squirrel.

Comment 4: Several commenters said that the Mount Graham red squirrel was proposed for listing as a means of stopping the proposed construction of an observatory on Mount Graham by Steward Observatory (University of Arizona), and without the proposed observatory, the squirrel does not meet the criteria for listing.

Service response: Although proposed observatory construction is considered a threat to the Mount Graham red squirrel, it is not the only threat (others discussed in Background section) nor the only reason for listing this subspecies.

Comment 5: Does the proposed observatory pose a threat to the Mount Graham red squirrel?

Service response: Preliminary evidence indicates that construction of an observatory in the Graham Mountains may adversely affect the Mount Graham red squirrel. This question is being evaluated as part of an informal consultation among the U.S. Fish and Wildlife Service, USFS, U of A, and AGFD.

Comment 6: Several commenters expressed opinions about what caused the decline of the Mount Graham red squirrel, including logging, competition with the tassel-eared squirrel, weather, and other factors.

Service response: The cause of the decline is uncertain. This information may be important in determining what factors may be limiting the subspecies and may aid in designing a recovery plan; however, regardless of the reasons for decline, the squirrel is endangered.

Comment 7: Is the tassel-eared squirrel competing with the Mount Graham red squirrel?

Service response: Evidence indicates that competition may be occurring between these two species. However, this evidence is not conclusive, and studies need to be conducted to address this question. Such studies will be included as part of the recovery plan that will be developed for the Mount Graham red squirrel.

Comment 8: Is the Mount Graham red squirrel a valid subspecies? And is the Endangered Species Act meant to cover taxonomic entities below the species level?

Service response: Although the difference between certain morphological characters of *T. h. grahamensis* and *T. h. mogollonensis* is small, these two squirrels are still considered to be separate subspecies and are maintained as such in Hoffmeister's *Mammals of Arizona* (1986). The term "species" as defined in the Endangerd Species Act includes "any subspecies of fish or wildlife or plants."

Comment 9: Several commenters pointed out new census data that have been collected since the publication of the proposed rule.

Service response: The Service is aware of these data and has incorporated them into the final rule.

Comment 10: Additional threats to the squirrel that were not included in the proposed rule include hunting, collecting of dead and down wood in areas used by squirrels, Christmas tree cutting, cienega cutting, new parking lots, new campsites, and hybridization with the Arizona red squirrel (*T. h. mogollonensis*) due to release by humans.

Service response: Hunting is covered under "B" in "Summary of Factors Affecting the Species." The Service does not consider hunting to currently be a major threat to this subspecies, nor does the Service consider hybridization with the Arizona red squirrel (*T. h. mogollonensis*) to be a major threat. While accidental release of *T. h. mogollonensis* is remotely possible, the Service does not consider it likely. "New campsites" are included in "A" under the "Summary of Factors." Other additional threats cited by commenters are now discussed in the final rule, unless the Service has not yet determined whether they pose a threat to the subspecies.

Comment 11: Despite logging, road construction and improvement, recreational development, forest fires, disease, hunters, and predation, the Mount Graham red squirrel has survived and increased and is on its way to recovery and therefore does not need to be listed.

Service response: Although there may be more red squirrels in the Graham Mountains now than there were in the 1950's and 1960's, the Service considers the current estimate of 280 squirrels to be a dangerously low number. In addition, not enough data exist to determine whether the population is increasing or decreasing.

Comment 12: ". . . the 'red Squirrel' is also found in other mountain areas besides Mt. Graham. So, Mt. Graham is not the only habitat of the red squirrel."

Service response: The Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*) is a subspecies of red squirrel. Although the species (*Tamiasciurus hudsonicus*) is found in most of Canada and Alaska and in much of the western and northern parts of the conterminous U.S., the subspecies *T. h. grahamensis* is found only in the Pinaleno (Graham) mountains.

Comment 13: The estimate of 280–300 red squirrels is erroneous. Only the squirrels in the proposed observatory site at the very top of the mountain were counted.

Service response: The estimate refers to the entire squirrel population. Because middens are the focal points of individual squirrel territories, the number of middens offers an approximation of the number of resident squirrels. This characteristic also makes red squirrels one of the easiest small mammals to accurately census. The midden census conducted by the USFS, AGFD, and the U of A in the spring of 1986 was a very thorough census. The population estimate from that census "is probably the best estimate ever made of an entire red squirrel population and one of the best made for any rodent" (Warshall 1986). While the area at the top of Mount Graham contains much of the best habitat for the squirrel, and has therefore been more thoroughly surveyed, areas have been surveyed both within and outside of the proposed astrophysical area.

Comment 14: Sometime in 1930 or 1931, "Pinky" Jones, from Oklahoma, brought two "red fox squirrels" in a cage to the Graham Mountain from Oklahoma. The squirrels were accidentally released and never found. Could this be where the "red squirrel" started?

Service response: The red squirrels that are found in the Graham Mountains were first collected in 1894 by W.W. Price and B.C. Condit. So, the species was already present when Pinky's two "red fox squirrels" were accidentally released. In addition, *no* species of red squirrel occurs in Oklahoma; but the eastern fox squirrel (which is reddish) does, and this may be what Pinky brought over. Fox squirrels are an entirely different kind of squirrel. They are a different species and genus. Fox squirrels do not now occur in the Graham Mountains. Because the Graham Mountains would not provide suitable habitat for fox squirrels, the two released animals probably died during their first winter in the Grahams.

Comment 15: Several commenters disagreed on the amount of spruce-fir forest given in the proposed rule.

Service response: Because of different systems for classifying vegetation, different estimates exist for the amount of spruce-fir forest in the Graham Mountains. Therefore, the Service has modified the rule and uses a figure of 680 acres of *contiguous pure* spruce/fir, which is a generally accepted figure.

Comment 16: Does the Mount Graham red squirrel occur in mixed-conifer forest on Mount Graham? One commenter said that the squirrel is not limited to spruce-fir habitat as the proposal states.

Service response: The proposed rule stated that the squirrel is found *primarily* in spruce/fir. While some red squirrel middens have been found in mixed conifer, most ocur in association with spruce/fir. Recent surveys found Engelman spruce associated with 86 percent of all middens surveyed, and corkbark fir associated with 61 percent of all surveyed middens. The third most important tree species is old growth Douglas fir; 34 percent of all middens were associated with this species (Peter

Warshall, OALS, letter to USFWS 11/20/86).

Comment 17: Suitable middens in shady, moist sites where green cones can be cached are of critical importance. The potential adverse effects of timber harvest, recreational development, and construction projects should be addressed as they affect cone cache sites particularly, not just forest habitat in general.

Service response: This information has been incorporated into the final rule.

Comment 18: Various commenters elaborated on more detailed threats that they believed were due to the proposed observatory.

Service response: Most of this information has been incorporated into the final rule. In addition, the Service will be considering more detailed impacts, due to proposed observatory construction, during section 7 consultations on this matter.

Comment 19: Mount Graham red squirrels are not evenly distributed throughout their habitat. In relation to squirrel density, where is the location of the proposed observatory?

Service response: The observatory is proposed in the vicinity of one of the densest squirrel areas.

Comment 20: It seems unlikely that development would take all of the squirrels' food supply because 62,000 acres of wilderness wraps around the area and squirrels are in the wilderness area.

Service response: Only a few Mount Graham red squirrels have been found in the Wilderness Area, and the habitat in the Wilderness Area is not of high quality for the squirrel (Barry Spicer, AGFD, pers. comm., January 5, 1987).

Comment 21: Listing will not assure the survival of the Mount Graham red squirrel. A plan is needed.

Service response: The Endangered Species Act requires that recovery actions be carried out for all listed species. A recovery plan will be written and recovery actions initiated following listing.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service had determined that the Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis)* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mount Graham red squirrel *(Tamiasciurus hudsonicus grahamensis)* are as follows (information taken from Spicer *et al.* 1985, and from recent surveys and censuses by the USFS, AGFD, and U of A, unless otherwise indicated):

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Mount Graham red squirrel has always been naturally restricted to a relatively small area, and its range and numbers have evidently declined during the past century. In 1914 it was considered common above elevations of 8,500 feet (2,590 meters), and was found as low as 6,750 feet (2,057 meters). Feared extinct by the 1960's, it subsequently seemed to make a partial recovery, but probably has not reached its former numbers. It is now seldom found below 9,200 (2,804 meters), is nowhere abundant, and appears to be common only in small, scattered patches of the best habitat. Such habitat consists mainly of spruce-fir forest. There are about 680 acres (275 hectares) of contiguous pure spruce/fir in the Pinalenos. In this habitat, the estimated density is one red squirrel per 8 acres (3.2 hectares), though not all of the spruce-fir forest is uniformly occupied. The red squirrel also inhabits portions of the adjacent Douglas fir/white fir forest, but only at an estimated density of one individual per 124 acres (50 hectares). The total red squirrel population now in the Pinalenos is estimated at 280.

Although not precisely documented, the apparent decline of the Mount Graham red squirrel seems to parallel the expansion of logging operations in the Pinalenos. Such activity began in the 1880's and was initially not widespread. By 1933, however, roads had been constructed to Old Columbine and some time in the late 1950's or early 1960's the road was cut from Swift Trail up to High Peak (Larry Allen, USFS, pers. comm., December 16, 1986). By 1973, most of the accessible timber had been cut, thereby reducing the age structure and density of the red squirrel's forest habitat.

The construction of a major astrophysical facility on Mount Graham has been proposed by Steward Observatory, University of Arizona. Observatory construction has been proposed for the vicinity of one of the densest squirrel areas. Construction could have a variety of adverse effects on the Mount Graham red squirrel including removal of vegetation resulting in decreased food sources, increased blow-down of trees caused by the opening-up of areas, change in the microclimatic conditions necessary for middens, and increased vulnerability to predation. Other potential adverse impacts could occur due to noise, decreased reproductive interaction due to increased habitat fragmentation and population isolation, and possible increases in tourism, recreational use, and traffic. These latter effects could occur due to the maintence of year-round access to the mountaintop. In the past, the mountaintop has been inaccessible during most of the year due to snow.

Additional losses to red squirrel habitat could result from forest fires, road construction and improvement, recreational development at high elevations, including potential picnic areas, campgrounds, and snow play areas, and collection of dead and down wood. Considering the squirrel's low numbers, restricted range, and past history of decline, any new potential habitat disturbance may be cause for concern. In addition, the cumulative effects could be severe over time.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Tree squirrels (including the red squirrel) were legally hunted in the Pinalenos during October and November, until 1986. Almost all hunters, however, sought the introduced tassel-eared squirrel. Investigations by the Arizona Game and Fish Department (AGFD) have found no substantial take of the red squirrel. In 1986, however, AGFD banned hunting of Mount Graham red squirrels because "as its habitat is reduced or degraded the squirrel will not be able to withstand even limited population losses" (Terry Johnson, AGFD, statement at Public Hearing on August 26, 1986). Hunting is not now considered a major threat.

C. *Disease or predation.* Nothing is known about diseases or parasites in the Mount Graham red squirrel. Other subspecies, however, are susceptible to a variety of diseases including tularemia and those caused by infectous viruses. Predation is not known to have caused reductions in the red squirrel population of the Pinalenos, but a number of predatory mammals, birds, and reptiles are present in the area.

D. *The inadequacy of existing regulatory mechanisms.* Both the AGFD and the USFS, which manages the land inhabited by the Mount Graham red squirrel, are aware of the presence of this mammal and the problems it may face. Both agencies have policies and agreements that give some consideration to the welfare of this squirrel. AGFD also closed the hunting season on the

Mount Graham red squirrel in 1986. However, none of these agreements or regulations specifically require protection of the squirrel's habitat. The Endangered species Act offers additional possibilities for protection and management of habitat.

E. *Other natural or manmade factors affecting its continued existence.* The Mount Graham red squirrel may have suffered through competition with the tassel-eared squirrel, which was deliberately introduced in the Pinalenos from 1941 to 1943. The latter species now occupied nearly all coniferous forest in the area. Although little is known about interaction between these two kinds of squirrel, a number of authorities have suggested that competition has resulted in the excluding of the red squirrel from habitat with ponderosa pine (*Pinus ponderosa*), to which the tassel-eared squirrel is particularly adapted. This process may have ultimately led to a reduction in the red squirrel's range and numbers.

The Mount Graham red squirrel has probably been isolated from other populations of *Tr. hudsonicus* for about 11,000 years. The nearest locality where the species is known to occur is 68 miles (110 kilometers) to the northeast and is separated by a stretch of arid, unsuitable habitat. Natural immmigration of genetic exchange is highly improbable. Because of these factors and its restricted population size and distribution, the Mount Graham red squirrel is particularly vulnerable to any disturbance that might bring about further declines in its already precariously low numbers and weakening of genetic viability. Although the variation in the Mount Graham red squirrel population size is unknown, other red squirrel subspecies' population fluctuations have led to an 80 percent decline in 2 years (Warshall 1986).

The Service has carefully assessed the best available scientific information regarding the past, present, and probable future threats to the species in determining to make this rule final. Based on this evaluation, the Service has decided to list the Mount Graham red squirrel as endangered. A decision to take no action would constitute failure to properly classify the Mount Graham red squirrel pursuant to the Endangered Species Act and would exclude this squirrel from protection provided by the Act. A decision to propose only threatened status would not adequately reflect the very small population size and distribution of this squirrel, its history of vulnerability and decline, and the multiplicity of problems that confront it. For the reasons given below, critical habitat designation is being postponed. Designation of critical habitat will be addressed in a subsequent **Federal Register** notice.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Section 4(b)(6)(C) further indicates that a concurrent critical habitat determination is not required, and that the final decision on designation may be postponed for one additional year from the date of publication of the proposed rule, if the Service finds that a prompt determination of endangered or threatened status is essential to the conservation of the species involved. The Service considers that a prompt determination of endanged status for the Mount Graham red squirrel is essential. As a proposed species, the Mount Graham red squirrel would be eligible only for the limited consideration given under the conference requirement of section 7(a)(4) of the Act, as amended. This does not require a limitation on the commitment of resources on the part of concerned Federal agencies or applicants for Federal permits. Therefore, to ensure that the full benefits of section 7 and other conservation measures under the Act will apply to the Mount Graham red squirrel, prompt determination of endangered status is essential.

Section 4(b)(2) of the Act requires the Service to consider economic and other impacts of designating a particular area as critical habitat. The Service is in the process of evaluating the information obtained during the comment period on the economic impacts of designating critical habitat. However, because of the complexities and extent of the activities being assessed, the Service has not completed the evaluation. The Service is currently performing the economic and other impact analyses required for a determination soon. The final decision on designation of critical habitat for the Mount Graham red squirrel must be made by May 21, 1988, pursuant to section 4(b)(6)(C)(ii) of the Act, as amended.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Because the Mount Graham red squirrel occurs in highest densities in dense spruce-fir forest, it would suffer through activities that destroy such habitat or substantially reduce forest density. Potential activities that could adversely affect the habitat include timber harvesting, recreational development, and construction of the proposed astrophysical facility on Mount Graham, if these were undertaken without adequate consideration of the welfare of the squirrel. Any such activities that take place on national forests would require authorization by the U.S. Forest Service. Because the entire range of the Mount Graham red squirrel is within a national forest, the activities in question could require appropriate USFS consultation as described above.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21, set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that

has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified time to relieve undue economic hardship that would be suffered if such relief were not available.

National Environmental Policy Act

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

This final listing is effective upon publication in the **Federal Register.** Because the construction of an observatory in the Graham Mountains could pose significant threats to the Mount Graham red squirrel, and because this proposed action is presently pending for permit approval by the U.S. Forest Service, the Service considers that the protection available to the species under section 7(a)(2) of the Act should be implemented as soon as the public receives notice of the final listing decision. For these reasons, the Service finds that "good cause" exists to make the final rule listing the Mount Graham red squirrel as an endangered species effective upon publication (5 U.S.C. 553(d)(3); 50 CFR 424.18(b)(1)).

References Cited

Allen, J. A. 1894. Descriptions of ten new North American mammals, and remarks on others. Bull. Amer. Mus. Nat. Hist. 6:320–321.

Arizona Game and Fish Commission. 1982. Threatened native wildlife in Arizona. Arizona Game and Fish Dept. Publ.

Hall, E.R. 1981. The manmmals of North America. John Wiley & Sons, New York, 2 vols.

Hoffmeister, D.F. 1956. Mammals of the Graham (Pinaleno) Mountains, Arizona. Amer. Midl. Nat. 55(2):257–288.

Hoffmeister, D.F. 1986. Mammals of Arizona. The University of Arizona Press and the Arizona Game and Fish Dept.

Minckley, W.L. 1968. Possible extirpation of the spruce squirrel from the Pinaleno (Graham) Mountains, south-central Arizona. J. Arizona Acad. Sci. 5:110.

Spicer, R.B., J.C. de Vos, Jr., R.L. Glinski. 1985. Status of the Mount Graham Red Squirrel, *Tamiasciurus hudsonicus grahamensis* (Allen), of Southeastern Arizona. Report to U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, New Mexico, 48 pp.

Warshall, P. 1986. Working Draft for Recovery Strategy of the Mt. Graham Red Squirrel. Office of Arid Lands Studies, University of Arizona, 21 pp.

Author

This final rule was prepared by Alisa M. Shull, Endangered Species Biologist, U.S. Fish and Wildlife Service, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

PART 17—[AMENDED]

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

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

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

2. Amend § 17.11(h) by adding the following, in alphabetical order under "Mammals," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

SPECIES		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals							
*	*	*	*	*	*		
Squirrel, Mount Graham red	*Tamiasciurus hudsonicus grahamensis.*	U.S.A. (AZ)	Entire	E	268	NA	NA
*	*	*	*	*	*		

Dated: May 26, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–12633 Filed 6–2–87; 8:45 am]

BILLING CODE 4310-55-M

Reader Aids

Federal Register
Vol. 52, No. 106
Wednesday, June 3, 1987

INFORMATION AND ASSISTANCE

SUBSCRIPTIONS AND ORDERS

Subscriptions (public)	202-783-3238
Problems with subscriptions	275-3054
Subscriptions (Federal agencies)	523-5240
Single copies, back copies of FR	783-3238
Magnetic tapes of FR, CFR volumes	275-1184
Public laws (Slip laws)	275-3030

PUBLICATIONS AND SERVICES

Daily Federal Register

General information, index, and finding aids	523-5227
Public inspection desk	523-5215
Corrections	523-5237
Document drafting information	523-5237
Legal staff	523-4534
Machine readable documents, specifications	523-3408

Code of Federal Regulations

General information, index, and finding aids	523-5227
Printing schedules and pricing information	523-3419

Laws 523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the President	523-5230
Weekly Compilation of Presidential Documents	523-5230

United States Government Manual 523-5230

Other Services

Library	523-5240
Privacy Act Compilation	523-4534
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, JUNE

20371-20590 1
20591-20694 2
20695-21000 3

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5663 20695

5 CFR

1600 20591
1640 20371

7 CFR

1d 20372
272 20376
273 20376
900 20591
910 20380
923 20381
925 20382
1106 20383
1930 20697
1945 20384

Proposed Rules:
656 20606
925 20402

8 CFR

214 20554

10 CFR

Ch. I 20592

Proposed Rules:
1013 20403

11 CFR

106 20864
9001 20864
9002 20864
9003 20864
9004 20864
9005 20864
9006 20864
9007 20864
9012 20864
9031 20864
9032 20864
9033 20864
9034 20864
9035 20864
9036 20864
9037 20864
9038 20864
9039 20864

14 CFR

39 20698-20701
71 ..... 20702, 20703
121 20950
171 20703

Proposed Rules:
27 20938
29 20938
39 ..... 20721, 20722
71 ..... 20412, 20825
121 ..... 20560, 20982
135 20560

16 CFR

Proposed Rules:
13 20723

17 CFR

140 20592

18 CFR

300 20704

Proposed Rules:
154 20828
282 20828
375 20828
381 20828

19 CFR

4 20593
24 20593
146 20593
178 20593

20 CFR

654 20496
655 20496
656 20593

Proposed Rules:
61 20536
62 20536

21 CFR

442 20709
510 ..... 20385, 20597
520 ..... 20597, 29598
1301 20598

22 CFR

224 20385

Proposed Rules:
41 20725
224 20413

23 CFR

Proposed Rules:
650 20726

25 CFR

Proposed Rules:
76 20727

28 CFR

541 20678

29 CFR

Proposed Rules:
22 20606
501 20524

511 20386
1926 20616

30 CFR

Proposed Rules:
700 20546
702 20546
750 20546
870 20546
910 20546
912 20546
921 20546
922 20546
933 20546
937 20546
939 20546
941 20546
942 20546
947 20546

32 CFR

Proposed Rules:
199 20731

33 CFR

100 20386

36 CFR

7 20387

38 CFR

Proposed Rules:
36 20617

39 CFR

111 20388
963 20599

40 CFR

60 20391
61 20397
141 20672
142 20672
144 20672
799 20710

Proposed Rules:
52 20422
180 ..... 20751, 20753
228 20429
260 20914
264 20754
265 ..... 20754, 20914
270 ..... 20754, 20914
700 20494

42 CFR

57 20986

Proposed Rules:
57 20989
413 20623

43 CFR

Proposed Rules:
2 20494
4 20755

45 CFR

1204 20714

Proposed Rules:
1179 20628

46 CFR

Proposed Rules:
558 20430
559 20430
560 20430
561 20430
562 20430
564 20430
566 20430
569 20430
586 20430

47 CFR

31 20599
32 20599
64 20714

Proposed Rules:
22 20630
73 20430-20432

49 CFR

383 20574
391 20574
571 20601
1206 20399
1249 20399

Proposed Rules:
171 20631
172 20631
173 20631
174 20631
175 20631
176 20631
177 20631
178 20631
179 20631
1150 20632

50 CFR

17 ..... 20715, 20994
285 20719
672 20720

Proposed Rules:
20 20757
23 20433

LIST OF PUBLIC LAWS

Last List June 1, 1987.

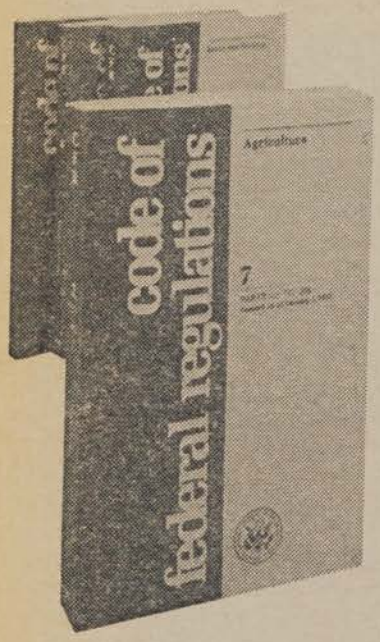
This is a continuing list of public bills from the current session of Congress which have become Federal law. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 270/Pub. L. 100-46

To recognize the one hundred and twenty-fifth anniversary of the United States Department of Agriculture. (May 29, 1987; 101 Stat. 328; 2 pages) Price: $1.00

S. 942/Pub. L. 100-47

To amend title 5, United States Code, to extend the pay retention provisions of such title to certain prevailing rate employees in the Tucson wage area whose basic pay would otherwise be subject to reduction pursuant to a wage survey. (May 29, 1987; 101 Stat. 330; 1 page) Price: $1.00



Just Released

Code of Federal Regulations

Revised as of April 1, 1987

Quantity	Volume	Price	Amount
_____	Title 18—Conservation of Power and Water Resources (Parts 1-149) (Stock No. 869-001-00050-3)	$15.00	$_____
_____	Title 20—Employees' Benefits (Part 500-End) (Stock No. 869-001-00058-9)	24.00	_____
	Title 22—Foreign Relations		
_____	Parts 1-299 (Stock No. 869-001-00068-6)	19.00	_____
_____	Part 300-End (Stock No. 869-001-00069-4)	13.00	_____
		Total Order	$_____

A cumulative checklist of CFR issuances appears every Monday in the Federal Register in the Reader Aids section. In addition, a checklist of current CFR volumes, comprising a complete CFR set, appears each month in the LSA (List of CFR Sections Affected).

Please do not detach

Order Form

Mail to: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402

Enclosed find $_____. Make check or money order payable to Superintendent of Documents. (Please do not send cash or stamps). Include an additional 25% for foreign mailing.

Charge to my Deposit Account No.

☐☐☐☐☐☐☐–☐

Order No._____

VISA

MasterCard

Credit Card Orders Only

Total charges $_____ Fill in the boxes below.

Credit Card No. ☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐☐

Expiration Date Month/Year ☐☐☐☐

Please send me the **Code of Federal Regulations** publications I have selected above.

Name—First, Last

Street address

Company name or additional address line

City State ZIP Code

(or Country)

PLEASE PRINT OR TYPE

For Office Use Only.

	Quantity	Charges
Enclosed		
To be mailed		
Subscriptions		
Postage		
Foreign handling		
MMOB		
OPNR		
UPNS		
Discount		
Refund		