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July 7, 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.

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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,
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RESERVATIONS: Call the Chicago Federal Information Center, 312–353–0339.

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WHEN: July 15, at 9 a.m.
WHERE: Main Auditorium, Federal Building,
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Presidential Documents

Title 3—

The President

Proclamation 5674 of July 1, 1987

United States-Canada Days of Peace and Friendship, 1987

By the President of the United States of America

A Proclamation

Canada is the closest friend and ally of the United States. Our countries share not only the world's longest undefended border but also common ideals such as freedom, democracy, human rights, justice, and an ardent desire for a peaceful world.

Other factors bind our countries together as well. The United States and Canada fought side by side against tyranny in two world wars and in other conflicts. Both of our countries have welcomed immigrants from around the globe, and our cultures have been similarly strengthened and enriched thereby. Many cultural and economic exchanges between the United States and Canada have also fostered our special relationship.

Because Canada celebrates Canada Day on July 1, and the United States celebrates Independence Day on July 4, the two intervening days are a truly appropriate time to commemorate the friendship between our countries.

The Congress of the United States, by Public Law 99–438, has designated July 2 and 3, 1987, as "United States-Canada Days of Peace and Friendship" 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 July 2 and 3, 1987, as United States-Canada Days of Peace and Friendship. I call upon the people of the United States to observe these days with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of July, 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. 87–15458
Filed 7–2–87; 3:19 pm]
Billing code 3195–01–M

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 5675 of July 2, 1987

National Literacy Day, 1987

By the President of the United States of America

A Proclamation

The ability to read and write is a true blessing and treasure. It enables us not only to discover and learn from the rich legacy of recorded human experience but also to understand and take full part in basic activities essential to daily life. Those who do not have these skills must forego many of life's possibilities, and society loses many of the contributions these people could otherwise make. Every American can be truly grateful to the dedicated citizens among us who give others the beautiful and lasting gift of literacy.

In the years since I created the Adult Literacy Initiative, more and more Americans have decided to help foster reading and writing skills. Volunteers and private-public partnerships do a great deal of good. Nevertheless, studies show that more needs to be done before "functional illiteracy" is a thing of the past, so we must continue our efforts to reach all who lack literacy.

The Congress, by Senate Joint Resolution 117, has designated July 2, 1987, as "National Literacy Day" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim July 2, 1987, as National Literacy Day. I invite the Governors of every State, local officials, and all Americans to observe this day with appropriate ceremonies and activities to increase awareness about illiteracy and to encourage participation in programs to eliminate this problem.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of July, 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. 87-15544
Filed 7-6-87; 10:55 am]
Billing code 3195-01-M

Rules and Regulations

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 453

[Docket No. 4383S]

Cranberry Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) issues a new Part 453 in Chapter IV of Title 7 of the Code of Federal Regulations to be known as the Cranberry Crop Insurance Regulations (7 CFR Part 453), effective for the 1988 and succeeding crop years. The intended effect of this rule is to prescribe procedures for insuring cranberries. The authority for the promulgation of this rule is contained in the Federal Crop Insurance Act, as amended.

EFFECTIVE DATE: August 6, 1987.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is January 1, 1992.

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

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

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

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

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

On Wednesday, April 29, 1987, FCIC published a notice of proposed rulemaking in the **Federal Register** at 52 FR 15506, to issue a new Part 453 in Chapter IV of Title 7, Code of Federal Regulations for the purpose of providing procedures for insuring cranberries, effective for the 1988 and succeeding crop years.

The public was given 30 days in which to submit written comments, data, and opinions on this proposed rule, but none were received. Therefore, the proposed rule published at 52 FR 15506 is adopted as final.

List of Subjects in 7 CFR Part 453

Crop Insurance, Cranberries.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation issues a new Part 453 in Chapter IV of Title 7 of the Code of Federal Regulations to be known as the Cranberry Crop Insurance Regulations (7 CFR Part 453), effective for the 1988 and succeeding crop years. Part 453 is added to read as follows:

PART 453—CRANBERRY CROP INSURANCE REGULATIONS

Subpart—Regulations for the 1988 and Succeeding Crop Years

Sec.

453.1 Availability of cranberry crop insurance.
453.2 Pemium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
453.3 OMB control numbers.
453.4 Creditors.
453.5 Good faith reliance on misrepresentation.
453.6 The contract.
453.7 The application and policy.

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

Subpart—Regulations for the 1988 and Succeeding Crop Years

§ 453.1 Availability of cranberry crop insurance.

Insurance shall be offered under the provisions of this subpart on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (the Act). The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through Agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation offer contracts containing substantially the same terms and conditions as the contract set out in this part. No person may have in force more than one contract on the same crop for the crop year, whether insured by the Corporation or insured by a company which is reinsured by the Corporation. If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts will be voided for that crop year but the person will still be liable for the premium on all contracts unless the person can show to the satisfaction of the Corporation that the multiple

contract insurance was inadvertent and without the fault of the insured. If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled.

The person must repay all amounts received in violation of this section with interest at the rate contained in the contract for delinquent premiums. An insured whose contrct with the Corporation or with a Company reinsured by the Corporation under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a company reinsured by the Corporation unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility. All applicants for insurance under the Act must advise the agent, in writing, at the time of application, of any previous applications for a Contract under the Act and the present status of the applications or contracts.

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

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

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

§ 453.3 OMB control numbers.

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

§ 453.4 Creditors.

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

§ 453.5 Good faith reliance on misrepresenatation.

Notwithstanding any other provision of the cranberry insurance contract, whenever: (a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation: (1) Is indebted to the Corporation for additional premiums; or (2) has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the insured person believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and (b) the Board of Directors of the Corporation, or the Manager in cases involving not more than $100,000, finds that: (1) An agent or employee of the Corporation did in fact make such misrepresentation or take other erroneous action or give erroneous advice; (2) said insured relied thereon in good faith; and (3) to require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto. Requests for relief under this section must be submitted to the Corporation in writing.

§ 453.6 The contract.

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

§ 453.7 The application and policy.

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

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

(c) In accordance with the provisions governing changes in the contract contained in policies issued under FCIC regulations for the 1988 and succeeding crop years, a contract in the form provided for in this subpart will come into effect as a continuation of a cranberry contract issued under such prior regulations, without the filing of a new application.

(d) The application for the 1988 and succeeding crop years is found at Subpart D of Part 400—General Administrative Regulations (7 CFR 400.37, 400.38) and may be amended from time to time for subsequent crop years. The provisions of the Cranberry Crop Insurance Policy for the 1988 and succeeding crop years are as follows:

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Cranberry—Crop Insurance Policy

(This is a continuous contract. Refer to Section 15.) Agreement to insure: We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

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

Terms and Conditions

1. Causes of loss.

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

(1) Adverse weather conditions;
(2) Fire;
(3) Wildlife;
(4) Earthquake;
(5) Volcanic eruption;
(6) Insects;
(7) Plant disease;
(8) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches; or
(9) Failure or breakdown of irrigation equipment or facilities due to direct damage to the irrigation equipment or facilities from an insurable cause of loss if the cranberry crop is damaged by freezing temperatures within 72 hours of such equipment or

facilities failure and we determine the equipment or facilities could not be made operational or replaced within the 72-hour time period;

unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9.e.(5).

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

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

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

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

(4) The failure to carry out a good cranberry irrigation practice, except failure of the water supply after insurance attaches due to an unavoidable cause;

(5) The failure or breakdown of irrigation equipment or facilities except as provided in subsection 1.a. above; or

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

2. Crop, acreage, and share insured.

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

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

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

(1) The time of loss; or

(2) The beginning of harvest.

d. Except by written agreement between you and us or unless provided by the actuarial table, we do not insure any acreage:

(1) Unless at least four growing seasons have elapsed between the date the vines were set out and the date insurance is to attach;

(2) With less than 90 percent of a stand of bearing vines based on the original planting pattern; or

(3) That is being renovated and not being used to produce a full crop for the current year.

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

f. We may limit the insured acreage to any acreage limitation established under any Act of Congress, or by marketing order rules, if we advise you of the limit prior to the date insurance attaches.

3. Report of acreage, practice, share, and approved yield.

You must report on our form:

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

b. The practice;

c. Your share at the time insurance attaches; and

d. The approved yield by unit.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any cranberries grown in the county. This report must be submitted annually on or before the reporting date established by the actuarial table. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by the reporting date, we may elect to determine, by unit, the insured acreage, practice, share, and approved yield or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

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

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

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

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

d. By applying for cranberry crop insurance, you agree to furnish us records of acreage and production prior to the sales closing date for the purpose of determining the production guarantee.

5. Annual premium.

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

b. Interest will accrue at the rate of one and one-fourth percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the first premium billing date.

6. Deductions for debt.

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

7. Insurance period.

a. Insurance on insured acreage attaches for each crop year on November 21 and ends at the earliest of:

(1) Total destruction of the cranberry crop;

(2) The date harvest would normally start on the unit on any acreage which will not be harvested;

(3) Harvest of the cranberry crop;

(4) Final adjustment of a loss; or

(5) November 20 of the crop year.

b. If you purchase any insurable acreage of cranberries on or before January 5 of any crop year, insurance will be considered to have attached to such acreage at the beginning of the insurance period provided we have inspected and accepted such acreage in writing. If you sell any acreage of cranberries on or before January 5 of any crop year, insurance will not be considered to have attached to such acreage for the crop year.

8. Notice of damage or loss.

a. In case of damage or probable loss:

(1) You must give us written notice of the loss or probable loss including the dates of damage and the causes of damage:

(a) If during the period before harvest, the cranberries on any unit are damaged and you decide not to further care for or harvest any part of them;

(b) At least 15 days before the beginning of harvest if you anticipate a loss on any unit; and

(c) Immediately, if probable loss is determined within 15 days prior to or during harvest.

(2) If you are going to claim an indemnity on any unit, you must give us notice not later than 72 hours after the earliest of:

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

(b) Discontinuance of harvest of any acreage on the unit; or

(c) The date harvest would normally start in the area if any acreage on the unit is not to be harvested.

(3) Unless notice has been given under subsection (2) above, and in addition to the other notices required by this section, if you are going to claim an indemnity on any unit, you must give us notice not later than 10 days after the earlier of:

(a) Harvest of the unit; or

(b) November 20 of the crop year.

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

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

9. Claim for indemnity.

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

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

(2) Harvest of the unit; or

(3) November 20 of the crop year.

b. We will not pay any indemnity unless you:

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

(2) Authorize us, in writing, to examine and obtain any records pertaining to the production and marketing of the insured cranberries; and

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

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

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

(2) Subtracting from the result the total production of cranberries to be counted (see subsection 9.e.);

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

(4) Multiplying this result by your share.

d. If the information reported by you under section 3 of this policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information

reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

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

(1) Cranberry production which, due to insurable causes, is determined not to meet quality requirements of the receiving processor, would not meet those requirements if properly handled, and has a value of less than 75 percent of the market price for cranberries meeting the minimum requirements will be adjusted by:

(a) Dividing the value per barrel of such cranberries by the market price per barrel for cranberries meeting the minimum requirements; and

(b) Multiplying the result by the number of barrels of such cranberries.

(2) Appraised production to be counted will include:

(a) Potential production lost due to uninsured causes and failure to follow recognized cranberry farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause or destroyed by you without our consent; and

(c) Any unharvested production.

(3) Any appraisal we have made on insured acrege will be considered production to count unless such acreage is:

(a) Not harvested before the harvest of cranberries becomes general in the county and reappraised by us;

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

(c) Harvested.

(4) We may determine the amount of production of any unharvested cranberries on the basis of field appraisals conducted after the earlier of:

(a) The date harvest would normally start on the unit on any acreage which will not be harvested; or

(b) November 20 of the crop year.

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

f. You must not abandon any acreage to us.

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

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

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

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

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

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

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

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

10. Concealment or fraud.

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

11. Transfer of right to indemnity on insured share.

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

12. Assignment of indemnity.

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

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

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

14. Records and access to farm.

You must keep records of the harvesting, storage, shipment, sale, or other disposition of all the insured crop produced on each unit, and separate records including the same information for production of the crop from any uninsured acreage. The records must be kept for three years from the end of the crop year to which they pertain. Failure to keep and maintain such records may at our option result in: (a) Assignment of production to units by us; (b) a determination that no indemnity is due; or (c) cancellation of the contract for that crop year. Any person designated by us will have access to such records and the farm for purposes related to the contract.

15. Life of contract: cancellation and termination.

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

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

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

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

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

d. The cancellation and termination dates are November 20.

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

f. The contract will terminate if no premium is earned for three consecutive years.

16. Contract changes.

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by August 31 preceding the cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

17. Meaning of terms.

For the purposes of cranberry crop insurance:

a. "Actuarial table" means the forms and related material for the crop year approved by us. The actuarial table is available for public inspection in your service office, and

shows the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding cranberry insurance in the county.

b. "Approved yield" means the yield based on the insured's records, that is approved by us and utilized to establish the liability on the unit.

c. "Barrel" means 100 pounds of cranberries.

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

e. "Crop year" means the period beginning with the date insurance attaches and extending through the normal harvest time and is designated by the calendar year in which the cranberries are normally harvested.

f. "Direct damage" means actual physical damage to the equipment or facilities which is the direct result of an insurable cause of loss.

g. "Harvest" means picking of the cranberries from the vines for the purpose of removal from the land.

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

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

j. "Irrigation equipment, facilities, and water supply" means the supply of water and the mechanical and constructed equipment and facilities used to deliver the water to the cranberry crop so as to prevent damage due to drought or freeze.

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

l. "Service office" means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

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

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

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

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

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

We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

18. Descriptive headings.

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

19. Determinations.

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

20. Notices.

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

Done in Washington, DC, on June 10, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-15389 Filed 7-6-87; 8:45 am]

BILLING CODE 3410-08-M

Commodity Credit Corporation

7 CFR Part 713

Cotton Loan Deficiency Payments

AGENCY: Commodity Credit Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: On April 22, 1987, a proposed rule was published in the **Federal Register** (52 FR 13248) which would amend the regulations governing loan deficiency payments for the 1987 through 1990 crops of upland cotton. The purpose of this final rule is to adopt the proposed rule without change as a final rule.

EFFECTIVE DATE: July 7, 1987.

ADDRESS: Director, Cotton, Grain and Rice Price Support Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Beverly Pritts, Program Specialist, Cotton Grain and Rice Price Support Division, ASCS, P.O. Box 2415, Washington, DC 20013. Phone: (202) 447-8374.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in accordance with Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that this rule will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local governments, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innnovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

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

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

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

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

The Office of Management and Budget has approved the information collection requirements contained in these regulations under the provisions of 44 U.S.C. Chapter 35 and OMB Numbers 0560-0004, 0560-0030, 0560-0050, 0560-0071, 0560-0084, and 0560-0092 have been assigned.

Loan Deficiency Program

A proposed rule was published in the **Federal Register** on April 22, 1987, (52 FR 13248) which would amend 7 CFR 713.55 to allow eligible producers of upland cotton to obtain loan deficiency payments with respect to their production on a bale-by-bale basis for the 1987 and subsequent crops of upland cotton.

A discussion of the comments received with respect to the proposed rule is set forth below:

Summary of Comments Received

The comment period ended May 22, 1987. All comments received through this date have been considered. A total of 4 responses were received. All

respondents supported the provisions of the proposed rule which would allow eligible producers of upland cotton to obtain loan deficiency payments on a bale-by-bale basis for the 1987 and subsequent crops of upland cotton.

It has been determined that the provisions set forth in the proposed rule should be adopted as a final rule without change.

List of Subjects in 7 CFR Part 713

Cotton, Feed grains, Price support programs, Wheat, Rice.

Accordingly, the regulation at Part 713 of Title 7 of the Code of Federal Regulations is amended as follows:

PART 713—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR Part 713 continues to read as follows:

Authority: Secs. 101A, 103A, 105C, 107C, 107D, 107E, 109, 113, 401, 403, 503, 504, 505, 506, 507, 508, and 509 of the Agricultural Act of 1949, as amended; 99 Stat. 1419, as amended, 1407, as amended, 1395, as amended; 1444, 1383, as amended, 1448; 91 Stat. 950, as amended, 63 Stat. 1054, as amended, 99 Stat. 1461, as amended, 1462, 1463, 1464 (7 U.S.C. 1441–1, 1444–1, 1444b, 1445b, 1445b–2, 1445b–3, 1445b–4, 1445d, 1445h, 1421, 1423, and 1461 through 1469); sec. 1001 of the Food Security Act of 1985, as amended, 99 Stat. 1444 (7 U.S.C. 1308); sec. 1001 of the Food and Agriculture Act of 1977, as amended, 91 Stat. 950, as amended (7 U.S.C. 1309).

2. Section 713.55 is revised to read as follows:

§ 713.55 Loan deficiency program.

(a) The Secretary will announce whether loan deficiency payments will be made available to producers on a farm for a specific crop for a crop year.

(b) Loan deficiency payments on wheat, feed grains, rice and 1986 crop of upland cotton.

(1) In order to be eligible to receive loan deficiency payments if such payments are made available for a crop of wheat, feed grains, rice, or the 1986 crop of upland cotton, the producer of such commodity must:

(i) Comply with all of the program requirements to be eligible to obtain loans or purchases in accordance with Parts 1421 and 1427 of this title;

(ii) Agree to forego obtaining such loans or purchases; and

(iii) Otherwise comply with all program requirements.

(2) The loan deficiency payment applicable to a crop of wheat, feed grains, rice, or the 1986 crop of upland cotton shall be computed by multiplying the loan payment rate, as determined in accordance with paragraph (d) of this section, by the quantity of the crop the producer is eligible to pledge as collateral for a price support loan in accordance with Parts 1421 and 1427 of this title but not to exceed the product obtained by multiplying:

(i) The individual farm program acreage for the crop determined in accordance with § 713.108 by

(ii) The farm program payment yield for the farm provided in § 713.6.

(c) Loan deficiency payments on 1987 and subsequent crops of upland cotton.

(1) In order to be eligible for any loan deficiency payments if such payments are made available for a crop of upland cotton, the producer must:

(i) Comply with all of the program requirements to be eligible to obtain loans in accordance with Part 1427 of this title;

(ii) Agree to forego obtaining such loans on the quantity of upland cotton with respect to which a loan deficiency payment is requested; and

(iii) Otherwise comply with all program requirements.

(2) The loan deficiency payment applicable to a crop of upland cotton shall be computed by multiplying the loan payment rate, determined in accordance with paragraph (c) of this section, by the quantity of the crop eligible to be pledged as collateral for a price support loan in accordance with Part 1427 of this title but with respect to which the producer agrees to forego obtaining such loan, but not to exceed the product obtained by multiplying:

(i) The individual farm program acreage for the crop determined in accordance with § 713.108 by

(ii) The farm program payment yield for the farm provided in § 713.6.

(d) The loan payment rate for a crop shall be the amount by which the level of price support loan originally determined for the crop exceeds the level at which CCC has announced, in accordance with Parts 1421 and 1427 of this title, that producers may repay their price support loans.

(e) With respect to upland cotton, an amount not to exceed one-half of such payment may be made and, with respect to rice, an amount not to exceed one-half of such payment shall be made in accordance with Part 770 of this chapter.

Signed at Washington, DC on June 30, 1987.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 87–15363 Filed 7–6–87; 8:45 am]

BILLING CODE 3410–05–M

7 CFR Part 1427

[Amdt. 8]

CCC Cotton Loan Program Regulations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to amend the Commodity Credit Corporation (CCC) Cotton Loan Program Regulations governing the 1980 and subsequent crops of cotton concerning the packaging of cotton which is pledged to CCC as collateral for price support loans. The specifications for bale packaging materials used in wrapping cotton for 1987 that were approved and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC) are acceptable to CCC. Therefore, CCC is incorporating these specifications by reference and will require that 1987-crop cotton pledged to CCC as collateral for price support loan be wrapped to comply with these specifications.

EFFECTIVE DATE: July 7, 1987. The Director of the Federal Register approved the incorporation by reference of the specifications effective on July 7, 1987.

ADDRESS: Director, Cotton, Grain, and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Beverly Pritts, Cotton, Grain, and Rice Price Support Division, USDA–ASCS, P.O. Box 2415, Washington, DC 20013, (202) 447–8374.

The Final Impact Statement describing the options considered in developing the rule that eliminated the publishing in the **Federal Register** of packaging specifications and the impact of implementing each option is available upon request from the above-named individual.

SUPPLEMENTARY INFORMATION:

This final action has been reviewed under USDA Procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512–1 and has been classified "not major". It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) significant adverse effect on competition, employment,

investment, productivity innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal Assistance Program that this rule applies to are: Commodity Loans and Purchases; 10.051, as found in the Catalog of Federal Domestic Assistance. It has been determined that the Regulatory Flexibility Act is not applicable to this rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

An Environmental Evaluation has been completed. It has been determined that this action is not expected to have any significant impact on the quality of the human environment. In addition, it has been determined this action will not adversely affect environmental factors such as wildlife habitat, water quality, air quality, and land use and appearance. Accordingly, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

A final rule was published in the **Federal Register** on July 1, 1982, that amended the cotton loan program regulations to provide that CCC would no longer publish in the **Federal Register** the packaging specifications acceptable to CCC for packaging cotton pledged to CCC for price support loans. Instead, CCC determined that the specifications for cotton bale packaging materials approved and published by the joint Cotton Industry Bale Packaging Committee (JCIBPC) were acceptable to CCC for packaging cotton pledged to CCC for price support loans and incorporated by reference, in accordance with 1 CFR Part 51, the specifications approved and published by the JCIBPC for 1982-crop cotton.

Since the only purpose of this final rule is to amend the cotton loan program regulations to incorporate, by reference, the specifications approved and published by the JCIBPC for 1987-crop cotton which are generally available and accepted by the cotton industry, it has been determined that no further public rulemaking is required.

Accordingly, the regulations governing the cotton loan program set forth at 7 CFR 1427.1 through 1427.26 are amended as stated herein in order to incorporate, by reference, in accordance with 1 CFR Part 51, the packaging specifications approved and published by the JDIBPC for 1987-crop cotton.

Copies of the specifications published by the JDIBPC will be made available to the public upon request by that Committee and by county ASCS offices.

List of Subjects in 7 CFR Part 1427

Cotton, Incorporation by reference, Loan programs—agriculture, Packaging and containers, Price support programs, Surety bonds, Warehouse.

Accordingly, 7 CFR Part 1427 is amended as follows:

PART 1427—[AMENDED]

1. The authority citation for 7 CFR 1427.1–1427.26 is revised to read as follows:

Authority: Secs. 4 and 5 of the Commodity Credit Corporation Charter Act, as amended, 62 Stat. 1070 as amended, 1072 (15 U.S.C. 714b and 714c); secs. 103A, 401 and 403 of the Agricultural Act of 1949, as amended, 99 Stat. 1407, as amended, 63 Stat. 1054, as amended (7 U.S.C. 1444–1, 1421 and 1423); sec. 501 of Pub. L. 99–198.

2. In § 1427.5, paragraph (l) is revised to read as follows:

§ 1427.5 Eligible cotton.

* * * * *

(l) Each bale must be packaged in materials which meet specifications adopted and published by the Joint Cotton Industry Bale Packaging Committee (JCIBPC), sponsored by the National Cotton Council of America, for bale coverings and bale ties which are identified and approved by the JCIBPC as experimental packaging material. Heads of bales must be completely covered. Copies of the 1987 Specifications for Cotton Bale Packaging Materials published by the JCIBPC which are incorporated by reference are available upon request at the county ASCS office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Information with respect to experimental packaging material may be obtained from JCIBPC. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a).

* * * * *

Signed at Washington, DC, on July 1, 1987.

Milton Hertz,

Executive Vice President, Commodity Credit Corporation.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 4

Nondiscrimination on Basis of Age in Federally Assisted Commission Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to implement provisions of the Age Discrimination Act of 1975, as amended. The Act, which applies to persons of all ages, prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. It also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age. These amendments are designed to guide the actions of recipients of financial assistance from NRC. They incorporate the basic standards for determining what is age discrimination, and they discuss the responsibilities of NRC recipients and the investigations, conciliation, and enforcement procedures NRC will use to ensure compliance with the Act.

EFFECTIVE DATE: July 7, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Edward E. Tucker, Manager, Civil Rights Program, Office of Small and Disadvantaged Business Utilization/Civil Rights, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–7697.

SUPPLEMENTARY INFORMATION:

Background

Section 6102 of the Age Discrimination Act of 1975, as amended, provides in part that "no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance." The Act directs that all Federal agencies empowered to provide Federal financial assistance issue rules, regulations, and directives consistent with standards and procedures established by the Secretary of Health, Education and Welfare, now the Secretary of Health and Human Services (HHS). The standards and procedures established by the Secretary of HHS have been published as final general regulations in 1979 in 45 CFR Part 90 (44 FR 33768). The HHS model regulations

were the subject of protracted litigation that delayed the approval of NRC's final regulations until October 1985. Differences in language between the final rule and the HHS general regulations are for the sake of clarity and are not intended to constitute substantive differences. The HHS general regulations are also referred to as the HHS government-wide regulations.

These amendments would be added to 10 CFR Part 4 as Subpart C. The General Provisions, §§ 4.1 through 4.4 and Appendix A, which identifies the NRC programs of financial assistance to which Part 4 applies, would be applicable to Subpart C. Subpart C is devoted exclusively to prohibiting discrimination on the basis of age in programs or activities which receive Federal financial assistance.

Sections 4.2 and 4.3(d) of the General Provisions have been amended to more closely conform to language used in the HHS government-wide regulations defining Federal financial assistance. The revised language describes the coverage of Part 4 more specifically.

The Act, as implemented by these regulations, generally covers all programs and activities which receive Federal financial assistance. However, the Act and these regulations do not apply to any age distinction "established under authority of any law" which provides benefits or establishes criteria for participation on the basis of age or in age-related terms (§ 4.302(b)). Thus, age distinctions which are "established under authority of any law" may continue in use. By the terms of § 4.302(b) "any law" refers to Federal statutes, state statutes, or local statutes adopted by elected, general purpose legislative bodies.

The Act also excludes from its coverage most employment practices, except for programs funded under the public service employment titles of the Comprehensive Employment and Training Act (CETA). These regulations do cover any program or activity that is both a program of Federal financial assistance and provides employment such as the College Work Study Program (42 U.S.C. 2751, et seq.) and the Work Incentive Program (42 U.S.C. 630, et seq.). The Age Discrimination in Employment Act (ADEA), which is administered by the Equal Employment Opportunity Commission (EEOC), continues to be the Federal statute that prohibits employment discrimination for persons between the ages of 40 and 70. Individuals in this age range who experience employment discrimination, other than in CETA public service employment programs, must look to the ADEA for relief, not the Age Discrimination Act.

On September 21, 1981 (46 FR 46582), the NRC published a notice of proposed rulemaking concerning these amendments. The proposed regulations were based on the model regulations developed by HHS.

The NRC received one comment on its proposed regulations. The commenter stated that the complainants should not be required to state when they first knew of the discrimination. Rather it should be an element of the affirmative defense offered by the person or organization charged with discrimination. The statute requires that agency regulations be consistent with the HHS general rules. The HHS general rules do not address this issue and NRC has no authority to depart from the general rules, therefore the NRC regulation was not changed.

On November 23, 1981, a copy of the draft final rule was transmitted to the Office of the General Counsel, Civil Rights Division, HHS, for review and approval. This action was necessary to comply with the requirement that agency specific regulations were to be approved by the Secretary, HHS before they were published as final regulations. In a letter dated July 14, 1984, the Director, Office of Civil Rights, HHS, approved the draft NRC final rule without change.

NRC Assistance Programs

The NRC currently provides assistance in the form of training programs for State personnel. The training is performed pursuant to section 274 of the Atomic Energy Act of 1954, as amended, which provides for State assumption of certain areas of NRC regulatory activity. This Agreement States Program is designed to improve the State employees' technical and administrative skills as well as develop an understanding and ability to apply regulatory concepts and procedures.

In addition to the Agreement States Program, the NRC has recently entered into assistance relationships (grants and certain types of cooperative agreements) with a variety of eligible recipients for projects related to nuclear safety assessment. The use of these assistance instruments is designed to increase the flexibility available to NRC staff in stimulating research and information exchange in technical areas directly related to their regulatory responsibilities. Paragraph (e) of Appendix A is being revised to add a reference to research support programs and to delete the information regarding the Uranium Mill Tailings Radiation Control Act of 1978, section 207, Pub. L. 95–604, 92 Stat. 3003, authorizing grants to eligible Agreement States to aid in the development of State regulatory programs, because the authority for that program is no longer in effect.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). These requirements were approved by the Office of Management and Budget approval number 3150–0053.

Regulatory Analysis

The Commission has prepared a regulatory analysis on this final regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Single copies of the analysis may be obtained from Mr. Edward E. Tucker, Manager, Civil Rights Program, Office of Small and Disadvantaged Business Utilization and Civil Rights, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. Pursuant to the provisions of the Age Discrimination Act of 1975, as amended, the final rule conditions the granting of Federal financial assistance by the NRC upon the basis that the recipient shall not discriminate because of age in programs sponsored by the NRC. Moreover, since there are no additional data collection or recordkeeping requirements necessary for compliance, the final rule, if implemented, will not result in imposing an economic burden on any recipient, including small entities.

List of Subjects in 10 CFR Part 4

Administrative practice and procedure, Civil rights, Federal aid

programs, Handicapped, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 US.C. 553, the NRC is adopting the following amendments to 10 CFR Part 4.

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED COMMISSION PROGRAMS

1. In 10 CFR Part 4, the table of contents and citation of authority are revised to read as follows:

General Provisions

Sec.
4.1 Purpose and scope.
4.2 Subparts.
4.3 Application of this part.
4.4 Definitions.
4.5 Communications and reports.

Subpart A—Regulations Implementing Title VI of the Civil Rights Act of 1964 and Title IV of the Energy Reorganization Act of 1974

Discrimination Prohibited

4.11 General prohibition.
4.12 Specific discriminatory actions prohibited.
4.13 Employment practices.
4.14 Medical emergencies.

Assurances Required

4.21 General requirements.
4.22 Continuing State programs.
4.24 Assurances from institutions.

Compliance Information

4.31 Cooperation and assistance.
4.32 Compliance reports.
4.33 Investigations.
4.44 Resolution of matters.
4.45 Intimidatory or retaliatory acts prohibited.

Means of Effecting Compliance

4.46 Means available.
4.47 Noncompliance with § 4.21.
4.48 Termination of or refusal to grant or to continue Federal financial assistance.
4.49 Other means authorized by law.

Opportunity for Hearing

4.51 Notice of Opportunity for hearing.

Hearings and Findings

4.61 Presiding officer.
4.62 Right to counsel.
4.63 Procedures, evidence, and record.
4.64 Consolidated or joint hearings.

Decisions and Notices

4.71 Initial decision or certification.
4.72 Exceptions and final decision.
4.73 Rulings required.
4.74 Content of orders.
4.75 Post termination proceedings.

Judicial Review

4.81 Judicial review.

Effect on Other Regulations; Forms and Instructions

4.91 Effect on other regulations.
4.92 Forms and instructions.
4.93 Supervision and coordination.

Subpart B—Regulations Implementing Section 504 of the Rehabilitation Act of 1973, as Amended

4.101 Definitions.

Discriminatory Practices

4.121 General prohibitions against discrimination.
4.122 General prohibitions against employment discrimination.
4.123 Reasonable accommodation.
4.124 Employment criteria.
4.125 Preemployment inquiries.
4.126 General requirement concerning program accessibility.
4.127 Existing facilities.
4.128 New construction.

Enforcement

4.231 Responsibility of applicants and recipients.
4.232 Notice.
4.233 Enforcement procedures.

Subpart C—Regulations Implementing the Age Discrimination Act of 1975, as Amended

General

4.301 Purpose and scope.
4.302 Application of this subpart.
4.303 Definitions.

Standards for Determining Age Discrimination

4.311 Rules against age discrimination.
4.312 Definitions of "normal operation" and "Statutory objective".
4.313 Exceptions to the rules against age discrimination. Normal operation or statutory objective of any program or activity.
4.314 Exceptions to the rules against age discrimination. Reasonable factors other than age.
4.315 Burden of proof.

Duties of NRC Recipients

4.321 Assurance of compliance.
4.322 Written notice, technical assistance, and educational materials.
4.324 Information requirements.

Investigation, Conciliation, and Enforcement Procedures

4.331 Compliance reviews.
4.332 Complaints.
4.333 Mediation.
4.334 Investigation.
4.335 Prohibition against intimidation or retaliation.
4.336 Compliance procedure.
4.337 Hearings, descisions, post-termination proceedings.
4.338 Remedial and affirmative action by recipients.
4.339 Alternate funds disbursal procedure.
4.340 Exhaustion of administrative remedies.
4.341 Reports.

Subpart D—[Reserved].

Subpart E—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the U.S. Nuclear Regulatory Commission.

4.501 Purpose.
4.502 Application.
4.504 4.509 [Reserved].
4.510 Self-evaluation
4.511 Notice.
4.512 4.529 [Reserved].
4.530 General prohibition against discrimination.
4.531 4.539 [Reserved].
4.540 Employment.
4.541 4.548 [Reserved].
4.549 Program accessibility: Discrimination prohibited.
4.550 Program accessibility: Existing facilities.
4.551 Program accessibility: New construction and alterations.
4.552 4.559 [Reserved].
4.560 Communications.
4.561 4.569 [Reserved].
4.570 Compliance procedures.
4.571 4.999 [Reserved].

Appendix A—Federal Financial Assistance to Which This Part Applies

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 274, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under secs. 602–605, Pub. L. 88–352, 78 Stat. 252, 253 (42 U.S.C. 2000d–1–2000d–4); sec. 401, 88 Stat. 1254 (42 U.S.C. 5891). Subpart B also issued under sec. 504, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 706); sec. 119, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 794); sec. 122, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 706(6)). Subpart C also issued under Title III of Pub. L. 94–135, 89 Stat. 728, as amended (42 U.S.C. 6101). Subpart E also issued under 29 U.S.C. 794.

2. Section 4.1 is revised to read as follows:

§ 4.1 Purpose and scope.

The regulations in this part implement:

(a) The provisions of Title VI of the Civil Rights Act of 1964, Pub. L. 88–352; (78 Stat. 241; 42 U.S.C. 2000a note), and Title IV of the Energy Reorganization Act of 1974, Pub. L. 93–438, (88 Stat. 1233; 42 U.S.C. 5801 note), which relate to nondiscrimination with respect to race, color, national origin or sex in any program or activity receiving Federal financial assistance from NRC;

(b) The provisions of section 504 of the Rehabilitation Act of 1973, as amended, Pub. L. 93–112 (87 Stat. 355; 29 U.S.C. 701 note), Pub. L. 95–602 (92 Stat. 2955; 29 U.S.C. 701 note), which relates to nondiscrimination with respect to the handicapped in any program or activity receiving Federal financial assistance; and

(c) The provisions of the Age Discrimination Act of 1975, as amended Pub. L. 94–135 (89 Stat. 713; 42 U.S.C. 3001 note), Pub. L. 95–478 (92 Stat. 1513; 42 U.S.C. 3001 note), which relates to nondiscrimiantion on the basis of age in any program or activity receiving Federal financial assistance.

3. Sections 4.1a through 4.4 are redesignated as §§ 4.2 through 4.5 and new §§ 4.2, 4.3, and 4.4(d) are revised to read, as follows:

§ 4.2 Subparts.

Subpart A sets forth rules applicable to Title VI of the Civil Rights Act of 1964 and Title IV of the Energy Reorganization Act of 1974. (The Acts are collectively referred to in Subpart A as "the Act".) Subpart B sets forth rules applicable specifically to matters pertaining to section 504 of the Rehabilitation Act of 1973, as amended. Subpart C set forth rules pertaining to the provisions of the Age Discrimination Act of 1975, as amended, Pub. L. 94–135 (89 Stat. 713; 42 U.S.C. 3001 note), Pub. L. 95–478 (92 Stat. 1513; 42 U.S.C. 3001 note), which relates to nondiscrimination on the basis of age in any program or activity receiving Federal financial assistance.

§ 4.3 Application of this part.

This part applies to any program for which Federal financial assistance is authorized under a law administered by NRC. The programs to which this part applies are listed in Appendix A of this part; Appendix A may be revised from time to time by notice published in the Federal Register. This part applies to money paid, property transferred, or other Federal assistance extended under any program or activity, by way of grant, entitlement, cooperative agreement, loan, contract, or other agreement by NRC, or an authorized contractor or subcontractor of NRC, the terms of which require compliance with this part. If any statutes implemented by this part are otherwise applicable, the failure to list a program in Appendix A does not mean the program is not covered by this part. This part does not apply to—

(a) Contracts of insurance or guaranty; or

(b) Procurement contracts; or

(c) Employment practices under any program or activity except as provided in §§ 4.13, 4.122 and 4.302.

§ 4.4 Definitions

* * * * *

(d) "Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which NRC provides or otherwise makes available assistance in the form of—

(1) Funds;

(2) Services of Federal personnel or other personnel at Federal expense; or

(3) Real and personal property or any interest in or use of property, including—

(i) Transfers or leases of property for less than fair market value or for reduced consideration;

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its fair market value is not returned to the Federal Government; and the

(iii) Sale and lease of, and the permission to use (other than on casual or transient basis) Federal property or any interest in such property without consideration or at a nominal consideration, or at a consideration which is reduced for the purpose of assisting the recipient, or in recognition of the public interest to be served by such sale or lease to the recipient.

* * * * *

4. Immediately following § 4.233, a new Subpart C is added to read as follows:

Subpart C—Regulations Implementing the Age Discrimination Act of 1975, as Amended

General

§ 4.301 Purpose and scope.

The purpose of this subpart is to set forth NRC policies and procedures under the Age Discrimination Act of 1975 which prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance.

§ 4.302 Application of this subpart.

(a) The Age Discrimination Act of 1975 and these regulations apply to any program or activity receiving Federal financial assistance from NRC.

(b) The Age Discrimination Act of 1975 and these regulations do not apply to—

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body that—

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except for any program or activity receiving Federal financial assistance for public service employment under the Comprehensive Employment and Training Act of 1974 (CETA) (29 U.S.C. 801 et seq.).

§ 4.303 Definitions.

As used in this subpart:

(a) "Act" means the Age Discrimination Act of 1975, as amended, (Title III of Pub. L. 94–135; 89 Stat. 713; 42 U.S.C. 3001 note).

(b) "Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) "Age" means how old a person is, or the number of elapsed years from the date of a person's birth.

(d) "Age distinction" means any action using age or an age-related term.

(e) "Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(f) "Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

Standards for Determining Age Discrimination

§ 4.311 Rules against age discrimination.

The rules stated in this section are limited by the exceptions contained in §§ 4.313 and 4.314 of this subpart.

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual, licensing, or other arrangements use age distinctions or take any other actions which have the effect, on the basis of age, of—

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under,

a program or activity receiving Federal financial assistance, or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

§ 4.312 Definitions of "normal operation" and "statutory objective".

For purposes of §§ 4.313 and 4.314, the terms "normal operation" and "statutory objective" have the following meaning:

(a) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) "Statutory objective" means any purposes of a program or activity expressly stated in any Federal statute State statute, or local statute or ordinance adopted by an elected general purpose legislative body.

§ 4.313 Exceptions to the rules against age discrimination. Normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by § 4.311, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program of activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if—

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

§ 4.314 Exceptions to the rule against age discrimination. Reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 4.311 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

§ 4.315 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 4.313 and 4.314 is on the recipient of Federal financial assistance.

Duties of NRC Recipients

§ 4.321 Assurance of compliance.

Each NRC recipient has primary responsibility to ensure that its programs and activities are in compliance with the Act and these regulations. Each recipient will sign an assurance of compliance that its programs and activities will be conducted in compliance with all the requirements imposed by the Act and these regulations. A recipient also has responsibility to maintain records, provide information, and to afford access to its records to NRC, to the extent required to determine whether it is in compliance with the Act and these regulations.

§ 4.322 Written notice, technical assistance, and educational materials.

(a) NRC will provide written notice to each recipient of its obligations under the Act and these regulations, including its obligation under paragraph (b) of this section.

(b) Where a recipient makes available Federal financial assistance from NRC to a subrecipient, the recipient shall provide the subrecipient written notice of the subrecipient's obligations under the Act and these regulations.

(c) NRC will provide technical assistance, where necessary, to recipients to aid them in complying with the Act and these regulations.

(d) NRC will make available educational materials which set forth the rights and obligations of recipients and beneficiaries under the Act and these regulations.

§ 4.324 Information requirements.

Each recipient shall:

(a) Make available upon request to NRC information necessary to determine whether the recipient is complying with the Act and these regulations.

(b) Permit reasonable access by NRC to the recipient's books, records, accounts, facilities, and other sources of information to the extent necessary to determine whether the recipient is in compliance with the Act and these regulations.

Investigation, Conciliation, and Enforcement Procedures

§ 4.331 Compliance reviews.

(a) NRC may conduct compliance reviews and preaward reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. NRC may conduct these reviews even in absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

(b) If a compliance review of preaward review indicates a violation of the Act or these regulations, NRC will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, NRC will arrange for enforcement as described in § 4.336.

§ 4.332 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with NRC, alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, NRC may extend this time limit.

(b) NRC will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Accepting a complaint as sufficient for further processing that—

(i) Is made in writing;

(ii) Alleges a violation of the Act;

(iii) Identifies the parties involved and the date the complainant first had knowledge of the alleged violation;

(iv) Describes generally the action or practice complained of; and

(v) Is signed by the complainant.

(2) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(3) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure.

including the right to have a representative at all stages of the complaint procedures.

(4) Notifying the complainant and the recipient (or their representatives) of their right to contact NRC for information and assistance regarding the complaint resolution process.

(c) Each recipient and complainant shall participate actively in efforts toward speedy resolution of the complaint.

(d) NRC will return to the complainant any complaint outside the jurisdiction of these regulations, and will state the reason(s) why it is outside the jurisdiction of these regulations.

§ 4.333 Mediation.

(a) Referral of complaints for mediation. NRC will refer to a mediation agency designated by the Secretary of the Department of Health and Human Services all complaints that—

(1) Fall within the jurisdiction of the Act and these regulations; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible. There must be at least one meeting with the mediator before NRC will accept a judgment that an agreement is not possible. However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and recipient sign it. The mediator shall send a copy of the agreement to NRC. NRC will take no further action on the complaint unless the complainant or recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjudicative proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the agency appointing the mediator.

(e) NRC will use the mediation process for a maximum of 60 days after receiving a complaint. Mediation ends if—

(1) From the time NRC receives the complaint 60 days elapse; or

(2) Prior to the end of that 60-day period, the mediator determines an agreement is reached; or

(3) Prior to the end of that 60-day period, the mediator determines that an agreement cannot be reached.

(f) The mediator shall return unresolved complaints to NRC.

§ 4.334 Investigation.

(a) *Informal investigation.* (1) NRC will investigate complaints that are unresolved after mediation or are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation, NRC will use informal fact-finding methods, including joint or separate discussions with the complaint and recipient to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties. NRC may seek the assistance of any involved State program agency.

(3) NRC will put any agreement in writing and have it signed by the parties and an authorized official at NRC.

(4) The settlement shall not affect the operation of any other enforcement effort of NRC, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) Settlement of a complaint under this section will not constitute a finding of discrimination by the NRC against a recipient or an admission of discrimination by the recipient.

(b) *Formal investigation.* If NRC cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, NRC will attempt to obtain voluntary compliance. If NRC cannot obtain voluntary compliance, it will begin enforcement as described in § 4.336.

§ 4.335 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who—

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, investigation, hearing, or other part of NRC's investigation, conciliation, and enforcement process.

§ 4.336 Compliance procedure.

(a) NRC may enforce the Act and these regulations through—

(1) Termination of a recipient's Federal financial assistance from NRC under the program or activity involved where the recipient has violated the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, cases that are settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal fiancial assistance from NRC.

(2) Any other means authorized by law including but not limited to—

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipients created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) NRC will limit any termination under § 4.336(a)(1) to the particular recipient and particular program or activity NRC finds in violation of Act or these regulations. NRC will not base any part of a termination on a finding with respect to any program or activity of the recipient that does not receive Federal financial assistance from NRC.

(c) NRC will take no action under paragraph (a) until—

(1) The Commission, or designee, has advised the recipient of its failure to comply with the Act or these regulations and has determined that voluntary compliance cannot be obtained.

(2) 30 days have elapsed after the Commission, or designee, has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. A report will be filed whenever any action is taken under paragraph (a) of this section.

(d) NRC also may defer granting new Federal financial assistance to a recipient when termination proceedings under § 4.336(a)(1) are initiated.

(1) New Federal financial assistance includes all assistance for which NRC requires an application or approval, including renewal or continuation of existing activities or authorization of new activities, during the deferral period. New Federal financial assistance does not include increases in funding as a result of change computation of formula awards or assistance approved prior to the beginning of termination proceedings under § 4.336(a)(1).

(2) NRC will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under § 4.336(a)(1). NRC will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearings has been extended by mutual consent of the

recipient and NRC. NRC will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

§ 4.337 Hearings, decisions, post-termination proceedings.

Certain NRC procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to NRC enforcement of these regulations. They are §§ 4.61 through 4.64 and §§ 4.71 through 4.75.

§ 4.338 Remedial and affirmative action by recipients.

(a) Where NRC finds a recipient has discriminated on the basis of age, the recipient shall take any remedial action that NRC may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, NRC may require both recipients to take remedial action.

(b) Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(c) If a recipient, operating a program that serves the elderly or children in addition to persons of other ages, provides special benefits to the elderly or to children, the provision of those benefits shall be presumed to be voluntary affirmative action provided that is does not have the effect of excluding otherwise eligible persons from participation in the program.

§ 4.339 Alternate funds disbursal procedure.

(a) When NRC withholds funds from a recipient under these regulations, the Commission, or designee, may disburse the withheld funds directly to an alternate recipient, any public or nonprofit private organization or agency, or State or political subdivision of the State.

(b) Any alternative recipient will be required to demonstrate—

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

§ 4.340 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if—

(1) 180 days have elapsed since the complainant filed the complaint and NRC has made no finding with regard to the complaint; or

(2) NRC issues any finding in favor of the recipient.

(b) If NRC fails to make a finding within 180 days or issues a finding in favor of the recipient, NRC will—

(1) Promptly advise the complainant; and

(2) Advise the complainant of his or her right to bring a civil action under section 305(e) of the Act of injunctive relief that will effect the purposes of the Act; and

(3) Inform the complainant that—

(i) The complainant may bring a civil action only in a United States District Court for the district in which the recipient is found or transacts business;

(ii) A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) That before commencing the action, the complainant shall give 30 days notice by registered mail to the Commission, the Secretary of the Department of Health and Human Services, the Attorney General of the United States, and the recipient;

(iv) The notice must state the relief requested, the court in which the complainant is bringing the action, and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) The complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of pending action in any court of the United States.

§ 4.341 Reports.

The NRC shall submit to the Secretary of Health and Human Services, not later than December 31 of each year, a report which—

(a) Describes in detail the steps taken during the preceding fiscal year to carry out the Act; and

(b) Contains data on the frequency, type, and resolution of complaints and on any compliance reviews, sufficient to permit analysis of the agency's progress in reducing age discrimination in programs receiving Federal financial assistance from NRC; and

(c) Contains data directly relevant to the extent of any pattern or practice of age discrimination which NRC has identified in any programs receiving Federal financial assistance from NRC and to progress toward eliminating it; and

(d) Contains evaluative or interpretative information which NRC determines is useful in analyzing agency progress in reducing age discrimination in programs receiving Federal financial assistance from NRC; and

(e) Contains whatever other data the Secretary of HHS may require.

6. Paragraph (e) of Appendix A is revised to read as follows:

Appendix A—Federal Assistance to which this Part Applies

* * * * *

(e) *Research Support.* Agreements for the financial support of basic and applied scientific research and for the exchange of scientific information.

Dated at Bethesda, MD, this 22nd day of June 1987.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.

Executive Director for Operations.

[FR Doc. 87-15369 Filed 7-6-87; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-ASW-19, Amdt. 39-5659]

Airworthiness Directives; Boeing Vertol Model 234 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting a new airworthiness directive (AD) which was previously made effective as to all known U.S. owners and operators of certain Boeing Vertol Model 234 series helicopters by individual telegrams. The AD requires replacement of the spiral bevel ring gear and the first stage sun gear and associated parts in the forward and aft transmissions. The AD is needed to prevent possible failure of the spiral bevel ring gear which could result in desynchronization of the main rotor blades and loss of control of the helicopter.

EFFECTIVE DATES: July 20, 1987, as to all persons except those to whom it was made immediately effective by individual telegrams issued November 14, 1986, which contained this amendment.

Compliance: As indicated in body of AD.

FOR FURTHER INFORMATION CONTACT: P. Perrotta or M. Schoenberger, Propulsion Branch, ANE-174, New York Aircraft Certification Office, Aircraft Certification Division, New England

Region, Federal Aviation Administration, Room 202, 181 South Franklin Avenue, Valley Stream, New York 11581, telephone number (516) 791–7421.

SUPPLEMENTARY INFORMATION: On November 14, 1986, telegraphic AD T86–23–51 was issued and made effective immediately as to all known U.S. owners and operators of certain Boeing Vertol Model 234 series helicopters. This AD was prompted by a failure of the forward transmission spiral bevel ring gear which resulted in loss of control of the helicopter and an accident. The failure of the ring gear may have been associated with modifications to the ring gear, an adjacent sun gear, and the shim installed between these gears prescribed by Boeing Vertol Service Bulletin No. 234–63–1014. Accordingly this AD requires removal of these modified parts and installation of similar but unmodified parts of known reliability. The telegraphic AD required all replacement parts to be new; however, subsequent review has established that the sun gear was not involved in the failure mode. Thus, the replacement part prescribed by this AD need not be new but only in serviceable condition.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to public interest, and good cause existed to make the AD effective immediately by individual telegrams, issued November 14, 1986, as to all known U.S. owners and operators of certain Boeing Vertol Model 234 series helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

The FAA has determined that this regulation is an emergency regulation that is not considered to be 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 action 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). A copy of it, when filed, may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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:

PART 39—[AMENDED]

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.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive (AD):

Boeing Vertol: Applies to Boeing Vertol Model 234 series helicopters certificated in any category, equipped with forward rotor transmission P/N's 234D1200–2, –3, –4, –5, and –6 and/or aft rotor transmission P/N's 234D2200–3, –4, and –5.

Compliance is required as indicated, unless already accomplished.

To prevent failure of the spiral bevel ring gear/sun gear bolted joint, accomplish the following before further flight.

(a) For both forward and aft transmissions, remove all spiral bevel ring gears, P/N's 114D1244–5 and –6 and 114D2254–5 and –6; first stage sun gears, P/N's 234D1243–1 and –2 and 234D2250–1 and –2; and spacer shim, P/N's 114D2257–1 and –2, with more than zero hour's time in service. Spiral bevel ring gears, P/N's 114D1244–6 and 114D2254–6; first stage sun gears, P/N's 234D1243–2 and 234D2250–2; and spacer shim, P/N 114D2257–2, are not eligible for further service.

(b) Install the following parts, which must be new, except for the first stage sun gear (item (b)(2) below), which must be at least serviceable:

(1) Spiral bevel ring gear, P/N 114D1244–5 or 114D2254–5;

(2) First stage sun gear, P/N 234D1243–1 or 234D2250–1;

(3) Spacer shim, P/N 114D2257–1; and

(4) Associated hardware as follows:

(i) Bolt, P/N BACB30MT6T12;

(ii) Washer, P/N BACW10BP6P; and

(iii) Nut, P/N BACN10TW6.

(c) An alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, New York Aircraft Certification Office, 181 South Franklin Avenue, Rm. 202, Valley Stream, NY 11581.

This amendment becomes effective July 20, 1987, as to all persons except those persons to whom it was made immediately effective by individual telegrams issued November 14, 1986, which contained this amendment.

Issued in Fort Worth, Texas, on June 18, 1987.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 87–15297 Filed 7–6–87; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 9

Review of Exchange Disciplinary, Access Denial Or Other Adverse Actions

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted final rules amending the Commission's Part 9 rules. These amendments effect changes in the existing procedures and standards governing review of exchange disciplinary, access denial and other adverse actions in order to streamline and simplify the entire review process.

DATES: Effective August 6, 1987 this Part will apply in its entirety to all appeals, and all matters relating thereto, filed on and after August 6, 1987. This Part will not apply to notices of appeal, or petitions for stay, filed before August 6, 1987, except that parties to any Part 9 proceeding pending on August 6, 1987, may, within 30 days after August 6, 1987, elect to have the matter governed by this Part.

FOR FURTHER INFORMATION CONTACT: Philip V. McGuire, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

I. Background

On February 9, 1987, the Commission published proposed revisions to the Commission's Part 9 rules governing review of exchange disciplinary, access denial and other adverse actions in which it requested public comment on the rules as proposed, and suggestions for any other changes that would simplify and expedite the review process. 52 FR 4021. As stated by the Commission, the revisions are intended to streamline and clarify the procedures and standards governing the disposition of notices of appeal filed with the Commission.

In response to this request for public comment, the Commission received

letters from six exchanges: The Chicago Board of Trade; the Chicago Mercantile Exchange; the Coffee, Sugar & Cocoa Exchange, Inc.; the Commodity Exchange, Inc.; the New York Cotton Exchange; and the New York Mercantile Exchange. All the commenters generally were supportive of the proposed rules.

The Commission has considered the comments in these letters and has determined to adopt final rules which amend, in their entirety, the formerly existing Part 9 Rules Relating to Review of Exchange Disciplinary, Access Denial or Other Adverse Actions.

II. Summary of Changes to Proposed Rules Adopted in Final Rules

In its final rules the Commission has adopted numerous changes to its proposed rules which incorporate and respond to comments received from the public and which should improve or expedite the review process. In addition, the Commission has narrowed the scope and applicability of the Part 9 procedures by narrowing the definitions of "access denial actions" and "other adverse actions."

The Commission also has expanded the scope of § 9.21(b) to provide that an exchange may file a motion to deny review of certain matters that the exchange contends are not within the scope of part 9. Further, the Commission has established standards and procedures governing *ex parte* stays. These revisions, among others, and the comments are discussed in more detail below.

A. Scope of Rules

The term "access denial action" was defined in proposed § 9.2(a) to mean "any proceeding other than a disciplinary action [1] by an exchange that denies or limits the privileges of membership." Commenters stated that, without some limitation, the definition would encompass certain exchange actions denying or limiting such privileges as, for example, the ability to vote, to hold office or to run for office in a particular membership category. The Commission agrees that such matters which are generally limitations on a member's ability to participate in an exchange's corporate affairs are not appropriate for Part 9 review.[2] Therefore, the Commission has amended the definition of "access denial action" to exclude expressly "any exchange action that solely limits a member's ability to participate in the internal corporate affairs of the exchange."

Conversely, certain exchange actions clearly fall within the definition of access denial action and are appropriately subject to review and the notification requirements of Part 9, particularly those instances where (1) a non-member is denied exchange membership, (2) a suspended or expelled member is denied reinstatement of membership privileges, or (3) an explicit limitation is imposed upon the membership rights of a specific exchange member or group of members. Finally, such matters as the acquisition of floor trader status or the prescription of terms of floor access for members relate directly to an exchange's function as a contract market and, therefore, should not be excluded from the definition of access denial action.

The term "other adverse action" was defined in proposed § 9.2(g) to include "any exchange action, other than an access denial action or disciplinary action that adversely affects any person whether or not a member of an exchange." The Commission agrees with commenters who similarly argued against the extension of this definition into strictly internal corporate affairs of an exchange. Therefore, the proposed definition of "other adverse action" similarly has been amended to exclude "any exchange action that solely involves the internal corporate affairs of the exchange." By excluding such matters, the Commission intends to limit "other adverse actions" to those exchange actions that relate directly to an exchange's function as a contract market. For example, exchange actions affecting rights in connection with floor space allocations, communication line installations, exchange personnel decisions, or contract disputes between an exchange and its clearing service contractor normally would not be deemed "other adverse actions."

The commenters also asserted that issues involving property rights, such as matrimonial or estate disputes, or, more importantly, claims against an exchange member's assets, are subject to state law, but not to the provisions of the Act. The Commission agrees that such disputes may be remote from the Commission's regulatory concerns. Therefore, in response to any notice of appeal relating to an other adverse action that "solely involves the internal corporate affairs to the exchange," the Commission will entertain a motion to deny Commission review. *See* final §§ 9.1(B) and 9.21(b). In deciding such a motion, the Commission will determine whether such factors are intertwined or related to matters in which the Commission otherwise has a juridical interest.

Other commenters stated that certain matters relating directly to an exchange's function as a contract market should not be subject to Commission review. The commenters included among these matters: Certification of weighmasters and depositories, denials of hedge exemptions, restrictions on capital-based position limits, emergency margin impositions, net capital requirements or adjustments, findings of *force majeure* in a delivery context, and decisions regarding warehouse licensing or grading of physical commodities. The Commission believes that in certain circumstances such matters may implicate important policy issues and, therefore, these matters should not be excluded from the scope of Part 9.

The inclusion of "other adverse actions" within the scope of Part 9 is based upon the express language of section 8c(2) of the Act which provides that, in addition to reviewing exchange disciplinary actions and access denial actions, the Commission may review "any other exchange action" upon application by the person "adversely affected" by that exchange action. Thus, section 8c(2) is not limited in scope to disciplinary and access denial actions. Nonetheless, the Commission reiterates that certain provisions of the new Part 9 do not apply to other adverse actions. Specifically, §§ 9.11–9.13 governing notice and the effective date of disciplinary and access denial actions, § 9.24 governing petitions for stay, and § 9.32 governing Commission review on its own motion do not apply to other adverse actions.

As originally proposed, § 9.21(b) provided that an exchange could file a motion to postpone the filing of the record in conjunction with a motion requesting that the Commission decline to accept a notice of appeal of any matter that the exchange contends is excluded by proposed § 9.1(b). Commenters expressed concern that proposed § 9.21(b) failed to provide for dismissal of appeals of matters that clearly or appropriately were outside the scope of Part 9.

Section 9.21(b), as amended, provides that an exchange, in addition to

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[1] Final § 9.2(d) defines "disciplinary action" to mean "any suspension, expulsion or other penalty (as defined in § 8.03(i) of this chapter,) imposed on a member of an exchange by that exchange for violation of rules of the exchange, including summary actions."

[2] Nonetheless, in certain instances, the specific application of an exchange rule that limits the membership privileges of an individual, or a group or class, could constitute an "access denial action" or "other adverse action" appropriate for Part 9 review.

challenging a notice of appeal as expressly excluded from the scope of Part 9 by § 9.1(b), may challenge a notice of appeal as excluded by operation of the definitional exclusions in § 9.2(a) or § 9.2(g). Section 9.21(b) also now provides that the submission of a motion to deny review pursuant to that rule, accompained by an affidavit averring facts in support of the motion, will operate to stay the filing of the record and subsequent submissions.

B. Commission Review Procedures

In its proposed rules, the Commission intended to modify its rules by which parties could obtain Commission review of exchange disciplinary, access denial or other adverse actions. Under the former Part 9 rules, parties disciplined, denied access or adversely affected by exchange actions were not granted the right to appeal an exchange decision, but instead were entitled only to apply for review under a *certiorari* procedure. Under that procedure, the party seeking review was required to submit an application for review outlining those factual or legal elements of the exchange decision with which the applicant disagreed. In passing upon the application, the Commission necessarily considered the exchange decision and portions or all of the underlying record in addition to the issues raised. In the event review was granted, the parties filed full briefs, and the Commission again considered the case in full. This two-tiered review procedure required the Commission to perform duplicative functions by first considering the application for review and answer thereto (which often resembled briefs) and, if review was granted, considering the briefs (which often restated the issues raised in the application and answer).

The Commission has rejected this duplicative *certiorari* procedure for a one-step appeal procedure. Under the new Part 9, an appeal is initiated by filing a notice of appeal. After the notice of appeal is filed, the record of the exchange proceeding and the briefs must be filed with the Commission prior to institution of Commission review. The new appeal procedure will relieve the burden imposed on the parties by the former rules that required the parties to file detailed and time-consuming applications for review and answers followed by, if review was granted, briefs in support of the issues in the application for review. Under the final rules, as adopted, the parties need only file a single brief. The change of appellate review rules from a *certiorari* procedure to an appeal procedure also will be more efficient and expeditious because it will afford aggrieved parties the opportunity to appeal as a matter of right, and will spare the Commission from considering the merits of the exchange action and the application for review separately before determining whether to review the issues on appeal and render its own decision on the merits.

As was the case under the former rules, if no party files an appeal, the Commission may review an exchange disciplinary or access denial action by taking review on its own motion within 180 days after the Commission has received the notice of the exchange action prescribed in § 9.11.[3] In any case, at the conclusion of the Commission's consideration of the issues on appeal, the Commission may render an order of summary affirmance, or a more expansive opinion, either of which will constitute the final decision of the Commission effective upon service.

One commenter criticized the efficacy and efficiency of taking review of all adverse exchange actions regardless of whether they raise important questions of law or policy, and proposed that the Commission retain the present *certiorari* procedure as it applies to other adverse actions. The Commission has rejected this proposal, because to juxtapose a *certiorari* procedure for other adverse actions next to an appeals procedure for disciplinary and access denial actions would adversely affect the efficiencies sought to be achieved by the revised procedure and could create confusion and inconsistent treatment of matters appealed to the Commission. To the extent that this proposal was motivated by concerns that the revised rules would invite appeals of matters outside the scope of Part 9, the Commission again notes the availability of the § 9.21(b) motion.

C. Summary Affirmances

Proposed § 9.33(b) provided that the terms of an order of summary affirmance could state that the summary affirmance was not to be construed as expressing the Commission's views on a particular matter. One commenter expressed concern that this provision could potentially cause confusion over whether a particular summary affirmance was or was not "on the merits" for purposes of judicial review. In order to avoid this confusion, the Commission has revised § 9.33(b) to read:

> If the Commission finds that the result reached in the decision of the exchange is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission may, by appropriate order, summarily affirm the decision of the exchange without opinion, which will constitute the Commission's final decision. Unless the Commission expressly indicates otherwise in its order, an order of summary affirmance does not reflect a Commission determination to adopt the exchange final decision, including any rationale contained therein, as its opinion and order, and neither the exchange's final decision nor the Commission's order of summary affirmance will serve as a Commission precedent in other proceedings.

Unless the Commission indicates otherwise, an order of summary affirmance is strictly an affirmance of the result reached by the exchange and does not reflect a determination to adopt the exchange's findings of fact or rationale as its own. Under this provision, the Commission may summarily affirm an exchange disciplinary, access denial or other adverse action where it agrees that the result reached by the exchange is substantially correct and that the underlying factual findings made by the exchange are supported by substantial evidence.

The Commission also notes that in particular cases, legal issues may be raised that neither implicate issues arising under the Act nor would affect the Commission's determination that a decision of an exchange is substantially correct. In such limited instances, the Commission, in its discretion, may identify particular issues not arising under the Act and the Commission's rules and indicate that the Commission is not addressing those issues. In such instances, the Commission intends no collateral estoppel effect as to the non-Act issues, although *res judicata* should attach to those claims arising under the Act.

D. Ex Parte Stays

Proposed § 9.24(d) provided that the Commission, in its discretion, could issue a stay order without awaiting an exchange reply. This provision was substantially similar to the provision in former rule § 9.22(b). However, one commenter expressed concern with a procedure that lacked certain safeguards limiting the circumstances where such relief would be granted, and proposed that the Commission adopt an additional provision similar to Rule 65(b) of the Federal Rules of Civil Procedure governing temporary restraining orders.

The Commission finds merit in this proposal and has revised § 9.24 to provide that the Commission may grant

[3] *See* section 8c(2) of the Act.

an *ex parte* stay only where the petitioner (1) expressly requests an *ex parte* stay, (2) files a proof of service and (3) clearly establishes by affidavit that immediate and irreparable harm will result in the absence of a stay. The Commission considers an *ex parte* stay to be an extraordinary remedy that may only appropriately be considered where an exchange disciplinary action is to become effective before the five-day period for filing the exchange response expires. *See* § 9.12(a)(1). Of course, since proof of service on the exchange is required, the exchange immediately could respond to the petition for stay.[4] In most instances the Commission will review an exchange's reply before determining whether to grant a stay.

E. Scope of Review

Rule § 9.30, which provides that the Commission may consider *sua sponte* any issues arising from the record before it and may base its determination on those issues, has been revised to provide that where the Commission determines to consider any issue *sua sponte* the Commission may so notify the parties and provide them an opportunity to address the issue to be considered *sua sponte* by the Commission.

F. Record of the Exchange Proceeding

Proposed § 9.2(i) defined "record of the exchange proceeding" to include, among other things, "all documents, minutes, or other exchange records serving as a basis for or reflecting the deliberations concerning the disciplinary action, access denial action or other adverse action taken by an exchange." One commenter criticized this portion of the definition, noting that it could have been construed to include informal notes or other products of an exchange committee's deliberative process. In order to minimize any inhibiting influence on an exchange committee's deliberations, the Commission has revised § 9.2(i) to define the "record of the exchange proceeding" to mean:

> all testimony, exhibits, papers and records produced at or filed in an exchange disciplinary or access denial proceeding or served on a party to that proceeding; all documents, minutes or other exchange records serving as a basis for or reflecting the findings, rationale and conclusions concerning the adverse action taken by an exchange; a transcript of any proceeding before any body of the exchange in connection with the exchange proceeding; and a copy of all exchange rules which form the basis for the exchange proceeding.

The Commission believes that this definition adequately balances the commenter's concerns with the Commission's need for sufficient documentation of the legal and factual basis for the exchange action.[5]

The Commission has revised § 9.2(i) to require expressly that the record filed with the Commission must include a transcript of the exchange proceeding. This is consistent with the provisions of Commission Rule § 8.17(a)(10) which provides that a substantially verbatim record of the exchange proceeding must be made and must be capable of being transcribed accurately. Commission Rule § 8.17(a)(10) further provides that the exchange need not transcribe the record unless the decision is appealed to an exchange board of appeals or appealed to the Commission pursuant to this Part.

In reviewing an exchange disciplinary, access denial, or other adverse action, the Commission carefully will review the record, with deference to the exchange as a trier of fact, particularly where an exchange bases a finding on the credibility of a witness and the consistency of that witness' testimony with the documentary and other evidence reviewed by the exchange committee. The Commission's role is not to re-weigh the evidence *de novo* or otherwise substitute its judgment for the exchange's. Notwithstanding this deferential standard of review, the Commission may consider the relevant factual circumstances that form the basis for the exchange action and rule on the sufficiency of the evidence used by the exchange in making its findings.

G. Commission Review of Exchange-Sponsored Arbitrations

Rule § 9.1(b)(1) codifies Commission practice by providing that the Commission will not accept notices of appeal (or petitions for stay) of any arbitration proceeding. In discussing proposed § 9.1(b)(1), the Commission emphasized that proposed § 9.1(b)(1) codified its well-established policy that the term "other adverse action" does not encompass an action in which an exchange has no substantial interest as an exchange.[6] Therefore, in the past, where an exchange has not had a substantial interest in the outcome of the arbitration proceeding, the Commission has not exercised its discretion to review that exchange-sponsored arbitration proceeding. Nonetheless, as stated previously,[7] the Commission retains the authority to examine an exchange's conduct of arbitration proceedings by means of waiving the no-review provision in § 9.1(b) or through its normal oversight program.

One commenter expressed concern that the potential for Commission review of an arbitration proceeding, however remote, represented a change in the Commission's general no-review policy regarding exchange-sponsored arbitrations. The Commission does not intend a change in this no-review policy. However, to the extent that the Commission provides a forum for review of exchange actions that adversely affect members and non-members, its standards for initiating review under this part (*i.e.*, waiving the general no-review provision of § 9.1(b)(1)) will be similar to those applied by other forums. Under these standards, Commission action would be very narrow, commensurate with procedures which, under certain circumstances, permit an arbitration award to be vacated by a court. In such a case the Commission may vacate an arbitration award where by means of affidavit or other documentary evidence it is established, that, among other things: The award was procured by fraud or corruption; the arbitrators were partial or corrupt; the arbitrators unduly prejudiced a party by failing to give due regard for the procedural rights of parties; or the arbitrators exceeded their jurisdiction.[8]

The commenter also opined that the Commission should refrain from conducting oversight reviews of an exchange's conduct of arbitration proceedings. The Commission notes that it historically has evaluated arbitration programs through its oversight authority and will continue to do so.[9]

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[4] The Commission also has revised § 9.9(b)(1)(iii) by expanding from two to four days the period governing temporary stays.

[5] In order to minimize copying costs for an exchange, § 9.2(b)(6) has been revised to provide that where the appellant already possesses documents which constitute a portion of the record, the appellant should request those portions of the record not in the appellant's possession. In addition to providing these portions of the record, the exchange should provide the appellant with an index of the record.

[6] 52 FR 4021, 4023. *See, e.g., Friedman v. Caruso* (September 9, 1985); *In re Chicago Board of Trade and Pitts* (July 9, 1985); *Jeffrey v. Refco* (April 17, 1985); *Burke v. ContiCommodity Services* (April 17, 1985); *In re Chicago Mercantile Exchange and Stein* (December 19, 1979); *In re Chicago Board of Trade and Tamari* (December 14, 1978).

[7] 52 FR 4021, 4028 n.19.

[8] *See* 9 U.S.C. 10.

[9] *See* pp. 85–92, Report to Congress under section 237 of the Futures Trading Act of 1982 (December 1985).

H. Time to File Notice of Appeal

The Commission has amended § 9.20(a) by expanding the time to file a notice of appeal from fifteen to thirty days after notice of the disciplinary or access denial action has been delivered to the person disciplined or denied access.[10] This has been done for purposes of administrative convenience in order to bring the relevant timeframes in this part in line with section 17(h) (2) of the Act governing Commission review of National Futures Association disciplinary actions.[11]

I. Settlements

Rule 9.7 has been revised to provide that, upon submission of a stipulation for dismissal based on a settlement agreement, the Commission may, in its discretion, issue an order terminating the proceeding. This differs from former rule § 9.5 and proposed § 9.7 which provided that the Commission automatically would dismiss the proceeding upon submission of the stipulation for dismissal. The Commission encourages early settlement of disputes and, therefore, will decline to dismiss a proceeding based on a settlement only in limited circumstances. In determining whether to accept a stipulation for dismissal, the Commission generally will consider: (1) Any previous efforts to reach settlement; (2) the timing of the request, *i.e.*, whether the briefs have been submitted and whether any effort has been expended by the Commission for appellate review; and (3) whether either party has abused the Commission's procedures for delay or other purposes.

III. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*, imposes certain requirements on federal agencies in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with that Act, the Commission previously submitted this rule in proposed form and its associated information collection requirements to the Office of Management and Budget. The Office of Management and Budget approved the collection of information associated with this rule on April 7, 1987, and assigned OMB control 3038–0022 to the rule. Copies of the OMB approved information collection package associated with the rule may be obtained from Robert Neal, OMB, Room 3228, NEOB, Washington, DC 20503. Telephone: (202) 395–7340.

B. The Regulatory Flexibility Act

With respect to persons seeking Commission review, the proposed Part 9 rules would impose no additional regulatory burden since Commission review of exchange disciplinary, access denial and other adverse actions is already provided for by the provisions of former Part 9 of the Commission's rules. Also, the Commission previously has noted that the proposed revisions would ease the regulatory burden by reducing the number of submissions and by providing greater certainty as to the standards and procedures governing such review. The Commission previously has determined that contract markets are not "small entities" within the Regulatory Flexibility Act ("REA"), 5 U.S.C. 601 *et seq.* and, accordingly, the requirements of the RFA do not apply to those entities. 47 FR 18618 (April 30, 1982). Accordingly, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman of the Commission hereby certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

C. Effective Date

Effective August 6, 1987 this Part will apply in its entirety to all appeals, and all matters relating thereto, filed on and after August 6, 1987. This Part will not apply to notices of appeal, or petitions for stay, filed before August 6, 1987 except that parties to any Part 9 proceeding pending on August 6, 1987, may, within 30 days after August 6, 1987 elect to have the matter governed by this Part.

List of Subjects in 17 CFR Part 9

Administrative practice and procedure, commodity exchanges, commodity futures.

17 CFR Part 9 is revised to read as follows:

[10] § 9.24(a) governing stays was not revised and provides that a petition for stay must be filed within ten days after delivery of the "9.11 notice" to the person disciplined or denied access. § 9.12(a) was not revised and provides that generally an exchange disciplinary or access denial action may become effective fifteen days after delivery of the "9.11 notice" to the person disciplined or denied access. A significant exception to the 15-day rule is provided by § 9.12(a) (1) concerning member responsibility actions. § 9.12(a) (1) provides that an exchange may cause a disciplinary action to become effective prior to the expiration of the fifteen-day period if the exchange reasonably believes that immediate action is necessary to protect the best interests of the marketplace.

[11] The time to file the record of the exchange proceeding similarly has been expanded from fifteen to thirty days after service of the notice of appeal. § 9.21(a).

PART 9—RULES RELATING TO REVIEW OF EXCHANGE DISCIPLINARY, ACCESS DENIAL OR OTHER ADVERSE ACTIONS

Subpart A—General Provisions

Sec.

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9.33 Final decision by the Commission.

Authority: 7 U.S.C. 4a, 6c, 7a, 12a, 12c, 16a.

Subpart A—General Provisions

§ 9.1 Scope of rules.

(a) *Matters included.* This part governs the review by the Commission, pursuant to section 8c of the Act, as amended, of any suspension, expulsion, disciplinary or access denial action, or other adverse action by an exchange.

(b) *Matters excluded.* This part does not apply to and the Commission will not accept notices of appeal, or petitions for stay pending review, of:

(1) Any arbitration proceeding, regardless of whether the proceeding was conducted pursuant to the provisions of section 5a(11) of the Act or involved a controversy between members of an exchange;

(2) Except as provided in §§ 9.11(a), 9.11(b)(1)–(5), 9.11(c), 9.12(a) and 9.13 (concerning the notice, effective date and publication of a disciplinary or

access denial action), any summary action authorized under the provisions of § 8.27 of this chapter imposing a minor penalty for the violation of exchange rules relating to decorum or attire, or relating to the timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities; and

(3) Any exchange action arising from a claim, grievance, or dispute involving cash market transactions which are not a part of, or directly connected with, any transaction for the purchase, sale, delivery or exercise of a commodity for future delivery or a commodity option.

The Commission will, upon its own motion or upon motion filed pursuant to § 9.21(b), promptly notify the appellant and the exchange that it will not accept the notice of appeal or petition for stay of matters specified in this paragraph. The determination to decline to accept a notice of appeal will be without prejudice to the appellant's right to seek alternate forms of relief that may be available in any other forum.

(c) *Applicability of these Part 9 Rules.* Unless otherwise ordered, these rules will apply in their entirety to all appeals, and matters relating thereto filed on or after August 6, 1987. Any Part 9 proceeding pending before the Commission on August 6, 1987 will continue to be governed by the Commission's former Part 9 Rules, 17 CFR Part 9 (1987), except that the parties to any part 9 proceeding pending on August 6, 1987 may, within 30 days after August 6, 1987 by written stipulation executed by all parties, and filed with the Proceedings Clerk before the Commission's final decision is rendered, elect to have the matter governed by the provisions of this Part 9, as amended.

§ 9.2 Definitions.

For purposes of this part:

(a) "Access denial action" means any proceeding other than a disciplinary action by an exchange that denies or limits the privileges of membership, but excludes any exchange action that solely limits the ability of a member of an exchange to participate in the internal corporate affairs of the exchange.

(b) "Disciplinary action" means any suspension, expulsion or other penalty (as defined in § 8.03(i) of this chapter) imposed on a member of an exchange by that exchange for violations of rules of the exchange, including summary actions.

(c) "Exchange" means any board of trade which has been designated as a contract market.

(d) "Exchange proceeding" means any formal or informal proceeding by an exchange which results in a disciplinary action, access denial action or other adverse action.

(e) "Mail" means properly addressed and postpaid first class mail, and includes overnight delivery service.

(f) "Member of an exchange" means any person who is admitted to membership or has been granted membership privileges on an exchange, any employee, officer, partner, director or affiliate of such member or person with membership privileges including any associated person, and any other person under the supervision or control of such member or person with membership privileges.

(g) "Other adverse action" and "adverse action" include any exchange action, other than an access denial action or disciplinary action, that adversely affects any person, whether or not a member of the exchange, but exclude any exchange action that solely involves the internal corporate affairs of the exchange.

(h) "Party" includes the person filing a notice of appeal or petition for stay who has been the subject of a disciplinary, access denial or other adverse action by an exchange; that exchange; any person participating in a proceeding under this part pursuant to § 9.25; and the Division of Trading and Markets when participating in a proceeding under this part pursuant to § 9.26.

(i) "Record of the exchange proceeding" means all testimony, exhibits, papers and records produced at or filed in an exchange disciplinary or access denial proceeding or served on a party to that proceeding; all documents, minutes or other exchange records serving as a basis for or reflecting the findings, rationale and conclusions concerning the adverse action taken by an exchange; a transcript of any proceeding before any body of the exchange in connection with the exchange proceeding; and a copy of all exchange rules which form the basis for the exchange proceeding.

(j) "Rules of the exchange" means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, or written and publicly available interpretation or stated policy of the exchange, or instrument corresponding thereto.

(k) "Summary action" means a disciplinary action resulting in the imposition of a penalty on a member of an exchange for violation of rules of the exchange authorized under the provisions of § 8.17(b) (penalty for impeding progress of hearing), § 8.25 (member responsibility action) or § 8.27 (penalty for violation or rules relating to decorum, attire, submission of records or similar activities) of this chapter.

§ 9.3 Provisions referenced.

Except as otherwise provided in this part, the following provisions of the Commission's Rules Relating to Reparations contained in Part 12 of this chapter apply to this part: § 12.3 (Business Address; Hours); § 12.5 (Computation of Time); § 12.6 (Extensions of Time; Adjournments; Postponements); § 12.7 (Ex Parte Communications); and § 12.12 (Signature).

§ 9.4 Filing and service; official docket.

(a) *Filing with the Proceedings Clerk; proof of filing; proof of service.* Any document that is required by this part to be filed with the Proceedings Clerk must be filed by delivering it in person or by mail to: Proceedings Clerk, Office of Proceedings, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. To be timely filed under this part, a document must be delivered or mailed to the Proceedings Clerk within the time prescribed for filing. A party must use a means of filing which is at least as expeditious as that used in serving that document upon the other parties. Proof of filing must be made by attaching to the document for filing an affidavit of filing executed by any person 18 years of age or older or a proof of filing executed by an attorney-at-law qualified to practice before the Commission. The proof of filing must certify that the attached document was deposited in the mail, with first-class postage prepaid, addressed to the Proceedings Clerk, Office of Proceedings, 2033 K Street, NW., Washington, DC 20581, on the date specified in the affidavit. Proof of service of a document must be made by filing with the Proceedings Clerk, simultaneously with the filing of the required document, an affidavit of service executed by any person 18 years of age or older or a certification of service executed by an attorney-at-law qualified to practice before the Commission. The proof of service must identify the persons served, state that service has been made, set forth the date of service, and recite the manner of service.

(b) *Formalities of filing*—(1) *Number of copies.* Unless otherwise specifically provided, an original and two conformed copies of all documents filed with the Commission in accordance with the provisions of this part must be filed with the Proceedings Clerk.

(2) *Title page.* All documents filed with the Proceedings Clerk must include at the head thereof, or on a title page, the name of the Commission, the title of the proceeding, the docket number (if one has been assigned by the Proceedings Clerk), the subject of the particular document and the name of the person on whose behalf the document is being filed.

(3) *Paper, spacing, type.* All documents filed with the Proceedings Clerk must be typewritten, must be on one grade of good white paper no less than 8 or more than 8½ inches wide and no less than 10½ or more than 11½ inches long, and must be bound on the top only. They must be double-spaced, except for long quotations (3 or more lines) and footnotes which should be single-spaced.

(4) *Signature.* The original copy of all papers must be signed in ink by the person filing the same or by his duly authorized agent or attorney.

(c) *Service*—(1) *General requirements.* All documents filed with the Proceedings Clerk must, at or before the time of filing, be served upon all parties. A party must use a means of service which is at least as expeditious as that used in filing that document with the Proceedings Clerk. One copy of all motions, petitions or applications made in the course of the proceeding, all notices of appeal, all briefs, and letters to the Commission or an employee thereof must be served by a party upon all other parties.

(2) *Manner of service.* Service may be either personal or by mail. Service by mail is complete upon deposit of the document in the mail. Where service is effected by mail, the time within which the person served may respond thereto will be increased by three days.

(3) *Designation of person to receive service.* The first document filed in a proceeding by or on behalf of any party must state on the first page the name and postal address of the person who is authorized to receive service for the party of all documents filed in the proceeding. Thereafter, service of documents must be made upon the person authorized unless service on a different authorized person or on the party himself is ordered by the Commission, or unless pursuant to § 9.8 the person authorized is changed by the party upon due notice to all other parties. Parties must file and serve notification of any changes in the information provided pursuant to this subparagraph as soon as practicable after the change occurs.

(4) *Service of orders and decisions.* A copy of all notices, rulings, opinions and orders of the Commission will be served on each of the parties and will be deemed served upon deposit in the mail.

(d) *Official docket.* Upon receipt of a notice of appeal filed in accordance with § 9.20, or a petition for stay pending review filed in accordance with § 9.24, the Proceedings Clerk will establish and thereafter maintain the official docket of that proceeding and will assign a docket number to the proceeding.

§ 9.5 Motions.

(a) *In general.* An application for a form of relief not otherwise specifically provided for in this part must be made by a written motion, filed with the Proceedings Clerk. The motion must state the relief sought and the basis for the relief and may set forth the authority relied upon.

(b) *Answer to motions.* Any party may serve and file a written response to a motion within ten days after service of the motion, or within such longer or shorter period as established by these rules, or as the Commission may direct.

(c) *Motions for procedural orders.* Motions for procedural orders, including motions for extensions of time, may be acted on at any time, without awaiting a response thereto. Any party adversely affected by such action may request reconsideration, vacation or modification of the action.

(d) *Dilatory motions.* Frivolous or repetitive motions dealing with the same subject matter will not be permitted and such motions will summarily be denied.

§ 9.6 Sanctions for noncompliance.

In the event that any party fails to file any document or make any appearance which is required under this part, the Commission may, in its discretion, and upon its own motion or upon the motion of any party to the proceeding, dismiss the proceeding before it, or, based on the record before it, affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the exchange.

§ 9.7 Settlement.

At any time before there has been a final determination by the Commission with respect to any notice of appeal filed in accordance with § 9.20, the parties may file a stipulation for dismissal based on a settlement agreement. Thereupon, the Commission may issue an order terminating the proceeding before the Commission as to the parties to the settlement agreement. The entry of such an order does not affect the Commission's authority under the Act.

§ 9.8 Practice before the Commission.

(a) *Practice*—(1) *By non-attorneys.* An individual may appear *pro se* (on his own behalf); a general partner may represent the partership; a *bona fide* officer of a corporation, trust or association may represent the corporation, trust or association.

(2) *By attorneys.* An attorney-at-law who is admitted to practice before the highest Court in any State or territory, or of the District of Columbia, who has not been suspended or disbarred from appearance and practice before the Commission in accordance with provisions of Part 14 of this chapter may represent parties as an attorney in proceedings before the Commission.

(b) *Debarment of counsel or representative during the course of a proceeding.* Whenever, while a proceeding is pending before the Commission, the Commission finds that a person acting as counsel or representative for any party to the proceeding is guilty of contemptuous conduct, the Commission may order that such person be precluded from further acting as counsel or representative in the proceeding. The proceeding will not be delayed or suspended pending disposition of the appeal; *Provided*, That the Commission may suspend the proceedings for a reasonable time for the purpose of enabling the party to obtain other counsel or representative.

(c) *Withdrawal of representation.* Withdrawal from representation of a party will be only by leave of the Commission. Such leave to withdraw may be conditioned on the attorney's (or representative's) submission of an affidavit averring that the party represented has actual knowledge of the withdrawal, and such affidavit must include the name and address of a successor counsel (or representative) or a statement that the represented party has determined to proceed *pro se*, in which case, the statement must include the address where that party can thereafter be served.

§ 9.9 Waiver of rules; delegation of authority.

(a) *Standards for waiver; notice to parties.* To prevent undue hardship on any party or for other good cause shown the Commission may waive any rule in this part in a particular case and may order proceedings in accordance with its direction upon a determination that no party will be prejudiced thereby and that the ends of justice will be served. Reasonable notice will be given to all parties of any action taken pursuant to this paragraph.

(b) *Delegation of authority.* (1) The Commission hereby delegates, until the Commission orders otherwise, to the Chief of the Opinions Section, or the Chief's designee, the authority:

(i) To waive or modify any of the requirements of § § 9.20–9.25 and to waive or modify the requirements of the Commission's Rules Relating to Reparations incorporated by § 9.3 insofar as such requirements pertain to changes in time permitted for filing, and to the form, execution, service and filing of documents;

(ii) To enter orders under § § 9.5, 9.6 and 9.7;

(iii) To decline to accept any notice of appeal, or petition for stay pending review, of matters excluded from this part by §§ 9.1(b), 9.2(a) and 9.2(b), and to so notify the appellant and the exchange;

(iv) To stay the effective date of a disciplinary action for a period of time, not to exceed four days, to enable the Commission to rule on a petition for stay filed under § 9.24;

(v) To decline to accept any document which has not been timely filed or perfected, as specified in these rules;

(vi) To order the filing of the record of the exchange proceeding nothwithstanding the submission of a motion under § 9.21(b) that the Commission not accept a notice of appeal; and

(vii) To enter any order which will facilitate or expedite Commission review.

(2) Within seven days after service of a ruling issued pursuant to paragraph (b)(1) of this section, a party may file with the Proceedings Clerk a petition for Commission reconsideration of the ruling. Unless the Commission orders otherwise, the filing of a petition for reconsideration will not operate to stay the effective date of such ruling.

(3) The Chief of the Opinions Section may submit to the Commission for its consideration any matter which has been delegated pursuant to paragraph (b)(1) of this section.

(4) Nothing in this section will be deemed to prohibit the Commission, at its election, from exercising the authority delegated to the Chief of the Opinions Section under this section.

Subpart B—Notice and Effective Date of Disciplinary Action or Access Denial Action

§ 9.10 [Reserved]

§ 9.11 Form, contents and delivery of notice of disciplinary or access denial action.

(a) *When required.* Whenever an exchange decision pursuant to which a disciplinary action or access denial action is to be imposed has become final, the exchange must, within thirty days thereafter, provide written notice of such action to the person against whom the action was taken and to the Commission: *Provided,* That the exchange is not required to notify the Commission of any summary action, as authorized under the provisions of § 8.27 of this chapter, which results in the imposition of minor penalties for the violation of exchange rules relating to decorum or attire. No final disciplinary or access denial action may be made effective by the exchange except as provided in § 9.12.

(b) *Contents of notice.* For purposes of this part, the written notice of a disciplinary action or access denial action may be either a copy of a written decision which accords with §§ 8.16, 8.18, or 8.19(c) of this chapter (including copies of any materials incorporated by reference) or other written notice which must include:

(1) The name of the person against whom the disciplinary action or access denial action was taken;

(2) A statement of the reasons for the disciplinary action or access denial action together with a listing of any rules which the person who was the subject of the disciplinary action or access denial action was charged with having violated or which otherwise serve as the basis of the exchange action;

(3) A statement of the conclusions and findings made by the exchange with regard to each rule violation charged or, in the event of settlement, a statement specifying those rule violations which the exchange has reason to believe were committed;

(4) The terms of the disciplinary action or access denial action;

(5) The date on which the action was taken and the date the exchange intends to make the disciplinary or access denial action effective; and

(6) Except as otherwise provided in §9.1(b), a statement informing the party subject to the disciplinary action or access denial action of the availability of Commission review of the exchange action pursuant to section 8c of the Act and this part.

(c) *Delivery and filing of the notice.* Delivery of the notice must be made either personally to the person who was the subject of the disciplinary action or access denial action or by mail to such person at that person's last known address. A copy of the notice must be filed on the same date with the Commission, either in person during normal business hours or by mail to: Contract Markets Section, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K St., NW., Washington, DC 20581. The notice filed with the Commission must additionally include the date on which the notice was delivered to the person disciplined or denied access and state whether delivery was personal or by mail.

(d) *Effect of delivery and filing by mail.* Filing by mail to the Commission and delivery by mail to the person disciplined or denied access will be complete upon deposit in the mail of a properly addressed and postpaid document. Where delivery to the person disciplined or denied access is effected by such mail, the time within which a notice of appeal or petition for stay may be filed will be increased by three days.

(e) *Certification.* Copies of the notice and the submission of any additional information provided pursuant to this section must be certified as true and correct by a duly authorized officer, agent or employee of the exchange.

§ 9.12 Effective date of disciplinary or access denial action.

(a) *Effective date.* Any disciplinary or access denial action taken by an exchange will not become effective until at least fifteen days after the written notice prescribed by § 9.11 is delivered to the person disciplined or denied access; *Provided, however,* That the exchange may cause a disciplinary action to become effective prior to that time if:

(1) As authorized by § 8.25 of this chapter, the exchange reasonably believes, and so states in its written decision, that immediate action is necessary to protect the best interests of the marketplace; or

(2) As authorized by § 8.17(b) of this chapter, the exchange determines, and so states in its written decision, that the actions of a person who is within the exchange's jurisdiction have impeded the progress of a disciplinary hearing; or

(3) As authorized by § 8.27 of this chapter, the exchange determines that a person has violated exchange rules relating to decorum or attire, or timely submission of accurate records required for clearing or verifying each day's transactions or other similar activities; or

(4) The person against whom the action is taken has consented to the penalty to be imposed and to the timing of its effectiveness.

(b) *Notice of early effective date.* If the exchange determines in accordance with paragraph (a)(1) of this section that a disciplinary action will become effective prior to the expiration of fifteen

days after written notice thereof, it must notify the person disciplined in writing, either personally or by telegram or other means of written telecommunication to the person's last known address, stating the reasons for the determination. The exchange must also be by telegram or other means of written telecommunication immediately notify the Commission (Attention: Contracts Markets Section, Division of Trading and Markets). Where notice is delivered by telegram or other means of written telecommunication, the time within which the person so notified may file a petition for stay pursuant to § 9.24(a)(2) will be increased by one day.

§ 9.13 Publication of notice.

Whenever an exchange suspends, expels or otherwise disciplines, or denies any person access to the exchange, it must make public its findings by disclosing at least the information contained in the notice required by § 9.11(b). An exchange must make such findings public as soon as the disciplinary action or access denial action becomes effective in accordance with the provisions of § 9.12 by posting a notice in a conspicuous place on its premises to which its members and the public regularly have access for a period of five consecutive business days. Thereafter, the exchange must maintain and make available for public inspection a record of the information contained in the disciplinary or access denial notice.

§§ 9.14–9.19 [Reserved]

Subpart C—Initial Procedure With Respect to Appeals

§ 9.20 Notice of appeal.

(a) *Time to file.* Except as provided in § 9.1(b), any person who is the subject of disciplinary or access denial action by an exchange or any person who is otherwise adversely affected by any other action of an exchange may, at any time within thirty days after notice of the disciplinary or access denial action has been delivered to the person disciplined or denied access in accordance with § 9.11, or within thirty days after notice of an other adverse action, file a notice of appeal of such disciplinary, access denial or other adverse action. The Commission may dismiss any appeal for which a notice of appeal is not timely filed.

(b) *Contents.* The notice of appeal need consist only of a brief statement indicating that the party is requesting Commission review of the exchange action, and must include:

(1) The name and address of the appellant, and any duly authorized agent or officer of the appellant;

(2) The name and docket number of the exchange proceeding;

(3) The date on which the disciplinary, access denial or other adverse action was imposed by the exchange or the date on which the final exchange decision was rendered, and the dates upon which the exchange action has or will become final and effective;

(4) A copy of the notice provided to the appellant by the exchange in accordance with the provisions of § 9.11, in the case of a disciplinary or access denial action, or otherwise, in the case of any other adverse exchange action;

(5) The relief sought from the action of the exchange;

(6) The appellant's request for a copy of the record of the exchange proceeding, or portions of the record not in the appellant's possession, and a representation that the appellant agrees to pay the exchange reasonable fees, as provided in the rules of the exchange, for printing that copy; and

(7) A nonrefundable fee of $100 remitted by check, bank draft or money order, payable to the Commodity Futures Trading Commission.

§ 9.21 Record of exchange proceeding.

(a) *Filing of record.* Within thirty days after service of the notice of appeal, the exchange must file two copies of the record of the exchange proceeding (as defined in § 9.2(i)) with the Proceedings Clerk, and serve a copy on the appellant and any other party to the proceeding, provided that such person has agreed to pay the exchange reasonable fees, as provided in the rules of the exchange, for printing the copy. The record must be bound as a unit, must be chronologically indexed and tabbed, must be certified as correct by a duly authorized official, agent or employee of the exchange, and must contain a certificate of service on the appellant or any other party to the proceeding (or waiver of service for failure to pay costs pursuant to this rule).

(b) *Motion that the Commission not accept notice of appeal.* Within fifteen days after service of the notice of appeal, the exchange may file a motion that the Commission not accept a notice of appeal of any matter that the exchange contends is excluded from this part by §§ 9.1(b), 9.2(a) and 9.2(g). Such motion must be accompanied by an affidavit averring facts in support of the motion. The filing of such motion will operate to stay the filing of the record and subsequent submissions pending the Commission's ruling on such motion. The appellant may serve and file a written response to such motion within ten days after service of the motion.

§ 9.22 Appeal brief.

(a) *Time to file.* Any person who has filed a notice of appeal in accordance with the provisions of § 9.20 must perfect the appeal by filing an appeal brief with the Proceedings Clerk within thirty days after service of the record of the exchange proceeding. The Commission may dismiss any appeal for which an appeal brief is not timely filed.

(b) *Contents.* Each appeal brief submitted to the Commission pursuant to this section must include, in the order indicated:

(1) A statement of the issues presented for review;

(2) *A statement of the case.* The statement must first indicate briefly the nature of the case and include a full description of the disciplinary, access denial or other adverse action. There must follow a clear and concise statement of all facts relevant to the consideration of the appeal, including, if known, each alleged act or omission forming the basis of the exchange action, with appropriate references to the record of the exchange proceeding;

(3) *An argument.* The argument may be preceded by a summary. The argument must contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, and citations to relevant authorities and to parts of the record of the exchange proceeding; and

(4) A conclusion stating the precise relief sought.

(c) *Length of appeal brief.* Without prior leave of the Commission, the appeal brief may not exceed thirty-five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, statutes, rules, regulations or similar materials.

§ 9.23 Answering brief.

(a) *Time for filing answering brief.* Within thirty days after service of the appeal brief, the exchange must file with the Commission an answering brief.

(b) *Contents of answering brief.* The answering brief generally must follow the same style as prescribed for the appeal brief but may omit a statement of the issues or of the case if the exchange does not dispute the issues or the statement of the case contained in the appeal brief.

(c) *Length of answering brief.* Without prior leave of the Commission, the answering brief may not exceed thirty-five pages, exclusive of any table of contents, table of cases, index and appendix containing transcripts of testimony, exhibits, statutes, rules, regulations or similar materials.

§ 9.24 Petition for stay pending review.

(a) *Time to file.* (1) Within ten days after the notice of the disciplinary or access denial action has been delivered in accordance with § 9.11 to a person disciplined or denied access, that person may petition the Commission to stay the disciplinary or access denial action pending consideration by the Commission of the notice of appeal and, if granted, the appeal underlying the notice of appeal. The petition for stay must be accompanied by the notice of appeal.

(2) Within ten days after a notice of summary action has been delivered in accordance with § 9.12(b) to a person who is the subject of a summary action authorized by § 8.25 of this chapter, that person may petition the Commission to stay the effectiveness of the summary action pending completion of the exchange proceeding conducted as authorized by §8.26 of this chapter.

(3) The Commission may deny any petition for stay which is not timely filed or which is not otherwise in accord with these rules.

(b) *Contents of petition for stay.* A petition filed under this section must state the reasons that the stay is requested and the facts relied upon, as specified in § 9.20. Averments of the petition must be supported by affidavits, other sworn statements or copies thereof, or a stipulation as to those facts which are not in dispute. Based upon the petition, the Commission, in its discretion, may order a stay or the disciplinary action or access denial action.

(c) *Response to petition.* The exchange may serve and file a written response to any petition for a stay within five days after service of the petition.

(d) *Standards for granting petition for stay.* The Commission will promptly determine whether to grant or deny a petition for stay and may act upon a petition at any time, without waiting for a response thereto. In determining whether to grant or deny the petition for stay, the Commission will consider, among other things, whether the petitioner has established:

(1) Petitioner's likelihood of success on the merits; and

(2) That denial of the stay would cause irreparable harm to the petitioner; and

(3) That granting the stay would not endanger orderly trading or otherwise cause substantial harm to the exchange or market participants; and

(4) That granting the stay would not be contrary to the Act, and the rules, regulations and orders of the Commission thereunder or otherwise contrary to the public interest.

(e) *Ex parte stays.* The Commission may act upon a petition for stay, without waiting for the exchange's response thereto only where petitioner:

(1) Expressly requests an *ex parte* stay;

(2) Files a proof of service; and

(3) Clearly establishes by affidavit that immediate and irreparable injury, loss or damage will result to the petitioner before the exchange can be heard in opposition.

Any order granting a stay prior to the filing of the exchange's reply will expire by its terms within such time after service of the Commission's ruling on the petition, not to exceed ten days, as the Commission fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the exchange consents that it may be extended for a longer period. In any case, the exchange may move for dissolution or modification of the stay, and the Commission will proceed to determine such motion as expeditiously as the ends of justice require.

§ 9.25 Limited participation of interested persons.

On its own motion or upon motion of any person asserting a direct and substantial interest in the outcome of a proceeding conducted under this part, the Commission, in its discretion, may permit the limited participation by such interested person in the proceeding. A motion for leave to participate in the proceeding must identify the interest of that person and must state the reasons why participation in the proceeding by that person is desirable, and must state whether that person requests a copy of the record of the exchange proceeding to the extent permitted by section 8c(1)(B) of the Act and that such person agrees to pay the exchange reasonable fees, as provided in the rules of the exchange, for printing the copy.

§ 9.26 Participation of Commission Staff.

Within twenty days after the receipt by the Division of Trading and Markets of the answering brief, the Division of Trading and Markets may file with the Proceedings Clerk a notice of intention to participate in the proceedings as *amicus curiae.* Within thirty days after filing the notice of intention to participate, the Division may file a brief as *amicus curiae.* Without prior leave of the Commission, the brief may not exceed thirty-five pages. The brief must be filed and served on the appellant, exchange and any other parties to the proceeding in the manner specified by these rules. Within ten days after service of the Division's brief, any party may file a reply to the Division's brief. After the filing of the notice of intent to participate, no employee of the Division of Trading and Markets may thereafter make any communication relating to the proceeding, other than on the record of the proceeding before the Commission, to any Commissioner or Commission decisional employee.

§§ 9.27–9.29 [Reserved]

Subpart D—Commission Review of Disciplinary, Access Denial or Other Adverse Action

§ 9.30 Scope of review.

On review, the Commission may, in its discretion, consider *sua sponte* any issues arising from the record before it and may base its determination thereon, or limit the issues to those presented in the statement of issues in the briefs, treating those issues not raised as waived. If the Commission determines to consider any issue not raised by the parties, it may issue an order that notifies the parties of such determination and provides an opportunity for the parties to address any issue considered *sua sponte* by the Commission.

§ 9.31 Commission review of disciplinary or access denial action on its own motion.

(a) *Request for additional information.* Where a person disciplined or denied access has not appealed the exchange decision to the Commission, upon review of the notice specified in § 9.11, the Division of Trading and Markets may request that the exchange file with the Division the record of the exchange proceeding, or designated portions of the record, a brief statement of the evidence and testimony adduced to support the exchange's findings that a rule or rules of the exchange were violated and such recordings, transcripts and other documents applicable to the particular exchange proceeding as the Division may specify. The exchange must promptly advise the person who is the subject of the disciplinary or access denial action of the Division's request. Within thirty days after service of the Division's request, the exchange must file the information requested with the Division and, upon request, deliver that information to the person who is the subject of the disciplinary or access denial action. Delivery and filing must be in the manner prescribed by § 9.11(c). A person subject to the disciplinary action or access denial action requesting a copy of the information furnished to the Division must, if the exchange rules

so provide, agree to pay the exchange reasonable fees for printing the copy.

(b) *Review on motion of the Commission.* The Commission may institute review of an exchange disciplinary or access denial action on its own motion. Other than in extraordinary circumstances, such review will be initiated within 180 days after the Commission has received the notice of exchange action provided for in § 9.11. If the Commission should institute review on its own motion, it will issue an order permitting the person who is the subject of the disciplinary or access denial action an opportunity to file an appropriate submission, and the exchange an opportunity to file a reply thereto.

§ 9.32 Oral argument.

(a) *On motion of Commission.* On its own motion, the Commission may, in its discretion, hear oral argument by the parties any time before the decision of the Commission is filed with the Proceedings Clerk.

(b) *On request of party.* Any party may file with the Proceedings Clerk a request in writing for the opportunity to present oral argument before the Commission, which the Commission may, in its discretion, grant or deny. A request under this paragraph must be filed concurrently with the party's brief.

(c) *Reporting and transcription.* Oral argument before the Commission will be recorded and transcribed unless the Commission directs otherwise. In the event the Commission affords the parties the opportunity to present oral argument before the Commission, the oral argument will proceed in accordance with the provisions of § 10.103 (b) and (d) of this chapter.

§ 9.33 Final decision by the Commission.

(a) *Opinion and order.* Upon review, the Commission may affirm, modify, set aside, or remand for further proceedings, in whole or in part, the decision of the exchange. The Commission's decision will be contained in its opinion and order which will be based upon the record before it, including the record of the exchange proceeding, and any oral argument made in accordance with § 9.32. Except as provided in paragraph (b) of this section, the opinion and order will constitute the final decision of the Commission, effective upon service on the parties. In the event the Commission is equally divided as to its decision, the Commission will affirm without opinion the decision of the exchange, which will constitute the Commission's final decision.

(b) *Order of summary affirmance.* If the Commission finds that the result reached in the decision of the exchange is substantially correct and that none of the arguments on appeal made by the appellant raise important questions of law or policy, the Commission may, by appropriate order, summarily affirm the decision of the exchange without opinion, which will constitute the Commission's final decision. Unless the Commission expressly indicates otherwise in its order, an order of summary affirmance does not reflect a Commission determination to adopt the exchange final decision, including any rationale contained therein, as its opinion and order, and neither the exchange's final decision nor the Commission's order of summary affirmance will serve as a Commission precedent in other proceedings.

(c) *Standards of review.* In reviewing an exchange disciplinary, access denial or other adverse action, the Commission will consider whether:

(1) The exchange disciplinary, access denial or other adverse action was taken in accordance with the rules of the exchange;

(2) Fundamental fairness was observed in the conduct of the proceeding resulting in the disciplinary, access denial or other adverse action;

(3)(i) In the case of a disciplinary action, the record contains substantial evidence of a violation of the rules of the exchange, or (ii) in the case of an access denial or other adverse action, the record contains substantial evidence supporting the exchange action; and

(4) The disciplinary, access denial or other adverse action otherwise accords with the Act and the rules, regulations and orders of the Commission thereunder.

Issued in Washington, DC on June 30, 1987, by the Commission.

Lynn K. Gilbert,

Deputy Secretary of the Commission.

[FR Doc. 87-15299 Filed 7-6-87; 8:45 am]

BILLING CODE 6351-01

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD5-87-029]

Drawbridge Operation Regulations; Ship Channel, Great Egg Harbor Bay, Somers Point-Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: This temporary rule is being issued to evaluate proposed regulations for the Route 52 drawbridge across Ship Channel, Great Egg Harbor Bay, at mile 0.5, between Somers Point and Ocean City, New Jersey. The notice of proposed rulemaking (CGD5 87-051) is published elsewhere in this issue of the **Federal Register.**

This temporary rule limits draw openings to the hour and half hour between 10:00 a.m. and 8:00 p.m. on Saturdays, Sundays, and Federal holidays from July 2, 1987 through August 30, 1987. The current regulations would remain in effect at all other times. This action should accommodate the needs of vehicular traffic, while providing for the reasonable needs of navigation.

DATES: This temporary rule becomes effective on July 2, 1987. It terminates on August 30, 1987. Comments must be received by September 4, 1987.

ADDRESSES: Comments should be mailed to Commander (ob), Fifth Coast Guard District, c/o CCGD1(obr), Bldg. 135A, Governors Island, NY 10004. The comments and other materials referenced in this notice will be available for inspection and copying at that address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Chief, Bridge Branch, First Coast Guard District (212) 668-7994.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was not published for these regulations and it is being made effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures would be impractical. Implementation of these temporary regulations is necessary to evaluate their effect during the summer months when both recreational boating and vehicular traffic are at their peak.

Persons affected by these temporary regulations are invited to comment on their feasibility and impact on both marine and vehicular traffic, including observed effects (beneficial and detrimental), and any suggestions for changes. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for support of or opposition to these temporary regulations. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

A notice of proposed rulemaking (CGD5 87-051) that proposes to adopt these regulations on a permanent basis is also published in this edition of the **Federal Register**.

The Commander, Fifth Coast Guard District will evaluate all communications received and will determine a final course of action on both this temporary rule and the notice of proposed rulemaking. This temporary rule and the proposed regulations may be changed in light of comments received. Because this is a temporary regulation, the rule will not appear in the Code of Federal Regulations.

Drafting Information

The drafters of this notice are Luis B.G. de Armas, project manager, First Coast Guard District Bridge Branch, and CDR Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

This temporary rule is being issued under 33 CFR 117.43 to evaluate the proposed drawbridge regulations for Route 52 drawbridge across Ship Channel, Great Egg Harbor Bay, at mile 0.5, between Somers Point and Ocean City, New Jersey. A discussion of that proposal is contained in the notice of proposed rulemaking.

The impact of the proposed regulations on highway and marine traffic during the remainder of the summer will be evaluated to determine if the proposed changes result in substantial improvements in vehicular traffic without unreasonably restricting marine traffic.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended as follows:

PART 117-DRAWBRIDGE OPERATIONS REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-01(g).)

2. Section 117.753 is revised to read as folows:

§ 117.753 Ship Channel, Great Egg Harbor Bay.

(a) The draw of the Route 52 (Ship Channel) bridge, mile 0.5, between Somers Point and Ocean City, shall open on signal:

(1) Except from Memorial Day through Labor Day from 10 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the draw must open only on the hour and half-hour;

(2) Except from 11:00 p.m. to 7:00 a.m., the draw must open only if at least 24 hours advance notice is given; and

(3) At any time for public vessels of the United States, vessels with another vessel in tow, and vessels in distress.

(b) This temporary rule is effective between July 2 and August 30, 1987.

Dated: June 29, 1987.

A.D. Breed,

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

[FR Doc. 87-15403 Filed 7-6-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD5-87-028]

Drawbridge Operation Regulations; Beach Thorofare, Great Egg Harbor Bay, Intracoastal Waterway, Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the New Jersey Department of Transportation, the Coast Guard is amending the regulations governing the Route 52 drawbridge over Beach Thorofare, Great Egg Harbor Bay, a part of the New Jersey Intracoastal Waterway at mile 80.4, in Ocean City, New Jersey, by limiting the number of openings for an additional four hours on Saturdays, Sundays, and holidays from Memorial Day through Labor day. This amendment is being made because periods of peak marine and vehicular traffic have increased. This action should accommodate the needs of vehicular traffic, while providing for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on July 2, 1987.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Chief, Bridge Branch, First Coast Guard District (212) 668-7994.

SUPPLEMENTARY INFORMATION: On February 24, 1987, the Coast Guard published the notice of proposed rulemaking in the **Federal Register** (52 FR 6991) as Third Coast Guard District Proposed Rule (CGD3-96-070), prior to disestablishment of the Third District. A separate Third District Public Notice was not issued through administrative oversight. Interested persons were given until April 20, 1987 to submit comments. No comments were received. Nor was there any objection or controversy to more stringent temporary regulations that were implemented during the summers of 1985 and 1986. Therefore, this rule will be issued without publication of the separate public notice.

The Coast Guard finds that good cause exists to make this rule effective in less than 30 days after **Federal Register** publication, in order to implement it during the summer peak traffic periods. This action will also permit the Coast Guard to evalutate temporary regulations (CDG5-87-029) and a notice of proposed rulemaking (CGD5-87-051) for the Route 52 drawbridge across Ship Channel, Great Egg Harbor Bay, published elsewhere in this **Federal Register**.

Drafting Information

The drafters of this notice are Luis B.G. de Armas, project manager, First Coast Guard District Bridge Branch, and CDR Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

This amendment is issued in an effort to relieve vehicular traffic congestion on Route 52 in Ocean City, New Jersey, from 10 a.m. to 8 p.m. on Saturdays, Sundays, and holidays from Memorial Day through Labor Day. Vehicle traffic is at its peak during this period. The present regulations restrict openings to the hour and half hour from 11 a.m. to 5 p.m. During the summers of 1985 and 1986, temporary regulations were implemented that restricted the bridge openings to the hour and half hour from 8 a.m. to 10 p.m. on Saturdays, Sundays, and holidays. Observations made during the 60 day temporary regulation periods indicated that very little savings in motorist time occurred between 8 and 10 a.m. and after 8 p.m. Therefore, those regulations were more restrictive on the mariners than needed.

During the past five years, the number of drawbridge openings has increased from a total of 1807 in 1980 to 2542 in 1984, 2372 in 1985, and 3001 in 1986. Similarly, the peak summer vehicular traffic hours have expanded from 11 a.m. to 5 p.m. in 1980 between 10 a.m. and 8 p.m. in 1985 and 1986.

Economic Assessment and Certification

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

The economic impact of this rule is expected to be so minimal that a full regulatory evaluation is unnecessary. The change in the regulations will

permit a more orderly flow of both vehicular and recreational marine traffic and will permit each mode of traffic to schedule its transits of the bridge to minimize a delay. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–01(g).

2. Section 117.733(h) is revised to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(h) The draw of the Route 52 (Ninth Street) bridge, mile 80.4 at Ocean City, shall open on signal:

(1) Except from Memorial Day through Labor Day from 10 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the draw must be opened only on the hour and half-hour.

(2) At any time for public vessels of the United States, vessels with another vessel in tow, and vessels in distress.

* * * * *

Dated: June 29, 1987.

A.D. Breed,

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

[FR Doc. 87–15404 Filed 7–6–87; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD13 87–07]

Drawbridge Operation Regulations; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: At the request of the City of Seattle, the Coast Guard is temporarily changing the regulations for operation of the Montlake Bridge across the Lake Washington Ship Canal. The temporary rule will establish special regulations for two trial periods of approximately three weeks duration each. During both trials the afternoon closed period would be increased from two to three hours, i.e., 3:30 p.m. to 6:30 p.m. For the first trial, the bridge would open every ½ hour during the 12:30 p.m. to 3:30 p.m. time period, Monday through Friday, and during the 12:30 p.m. to 6:30 p.m. time period, Saturday and Sunday. For the second trial, the bridge would open every hour during the 12:30 p.m. to 3:30 p.m. time period, Monday through Friday, and open every 15 minutes during the 12:30 p.m. to 6:30 p.m. time period, Saturday and Sunday. At all other times, the bridge would be operated in accordance with the existing regulations. This change is being made so that the temporary regulations can be evaluated to determine their effect in relieving vehicular traffic congestion in the vicinity of the bridge, while still providing for the reasonable needs of navigation.

DATES: These temporary regulations become effective on 13 July 1987 and terminate on 21 August 1987.

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

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

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking (NPRM) was not published for these regulations and they are being made effective in less than 30 days after **Federal Register** publication. Following normal rulemaking procedures would be impracticable. Implementation of these temporary regulations is necessary to gather data during July and August, which are the periods of heaviest boating activity. Persons affected or concerned with these temporary regulations are invited to comment on their feasibility and impact on both marine and vehicular traffic, including observed effects and any suggestions for changes. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in, the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope. If a determination is made to permanently change the regulations, a notice of proposed rulemaking will be published to afford the public further opportunity for comment at that time.

Drafting Information

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

Discussion of the Temporary Regulations

The City of Seattle has experienced long-term vehicular traffic congestion in the vicinity of the Montlake Bridge. It believes the congestion is caused by bridge openings during periods of heavy vehicular traffic. It has presented data which indicates that southbound vehicular traffic across the Montlake Bridge frequently reaches volumes of 1900 vehicles per hour during the 12:30 p.m. to 6:30 p.m. time period. Other data presented indicates that it would take approximately 77 minutes for vehicular flow to return to normal after a 4-minute bridge opening during this period of high traffic volume. The City feels that traffic flow problems might be alleviated by reducing the number of bridge openings during and immediately before periods of peak vehicular traffic. The temporary regulations will be monitored and evaluated for their effects on both vehicular and marine traffic. The existing regulations will be in effect at all times other than those covered by the temporary regulations.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, the Coast Guard is temporarily amending Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

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

2. Section 117.1051 is amended by revising paragraph (d) introductory text and adding a new paragraph (e), as follows:

§ 117.1051 Lake Washington Ship Canal.

* * * * *

(d) The draws of the Ballard Bridge, mile 1.1, Fremont Bridge, mile 2.6, and University Bridge, mile 4.3, shall open on signal, except that:

* * * * *

(e) The draws of the Montlake Bridge, mile 5.2, shall be operated in accordance with paragraph (d) of this section, except that:

(1) During the period 13 July 1987 through 21 August 1987, the draws need not open from 3:30 p.m. to 6:30 p.m. Monday through Friday for vessels of less than 1,000 tons, unless the vessel has in tow a vessel of over 1,000 tons, except under emergency conditions when the Seattle City Engineer is notified.

(2) During the period 13 July 1987 through 31 July 1987, from 12:30 p.m. to 3:30 p.m., Monday through Friday, and from 12:30 p.m. to 6:30 p.m., Saturdays and Sundays, the draw will open on the hour and ½ hour for the passage of vessels.

(3) During the period 3 August 1987 through 21 August 1987, from 12:30 p.m. to 3:30 p.m., Monday through Friday, the draw will open every hour on the ½ hour for the passage of vessels, and from 12:30 p.m. to 6:30 p.m., Saturdays and Sundays, the draw will open every ¼ hour for the passage of vessels.

Dated: June 23, 1987.

G.A. Penington,

Captain, U.S. Coast Guard Acting Commander, 13th Coast Guard District.

[FR Doc. 87-15398 Filed 7-6-87; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD2 87-06]

Safety Zone; Arkansas River Mile 149.0 to Mile 151.0

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Arkansas River at mile 149.0 to 151.0. The safety zone is needed to protect commercial and recreational marine traffic from a safety hazard associated with under water blasting in the vicinity of mile 150 on the Arkansas River. The blasting was contracted by the U.S. Army Corps of Engineers in order to remove bedrock from the river bottom which will facilitate safe navigation by commercial interests in the future. Entry into this zone during blasting is prohibited.

DATES: This regulation becomes effective on 23 June 1987 and is terminated on 09 September 1989. Comments on this regulation must be received on or before 15 October 1987.

ADDRESS: Comments should be mailed to Commander, Second Coast Guard District, 1430 Olive St., St. Louis, MO 63103-2398. The comments will be available for inspection and copying at 1430 Olive St., Room 310, St. Louis, MO 63103-2398. Normal office hours are between 7:30 a.m. and 4:00 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Coast Guard Marine Safety Office, Memphis, TN (901) 521-3941.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The request for this regulation was not received until 11 June 1987, and there was not sufficient time remaining to publish a proposal in advance of the event for which the regulation is needed. Likewise, there was not sufficient time to provide for a delayed effective date.

Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under "ADDRESS" in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulation may be changed.

Drafting Information

The drafter of this regulation is Lt. D.G. Atkinson, project officer for the Captain of the Port.

Discussion of the Regulation

The Coast Guard is establishing a safety zone on the Arkansas River at mile 149.0 to 151.0. The safety zone is needed to protect commercial and recreational marine traffic from a safety hazard associated with under water blasting in the vicinity of mile 150 on the Arkansas River. The blasting was contracted by the U.S. Army Corps of Engineers in order to remove bedrock from the river bottom which will facilitate safe navigation by commercial interests in the future. Actual delays of vessel traffic should not exceed fifteen to twenty minutes. Traffic will be denied access to the blasting area during a short period from shortly before to shortly after the detonation of charges. The detonation of explosive charges will occur daily between the hours of 5:30 p.m. and 7:30 p.m., Monday through Saturday. Prior to the detonation of charges there will be a safety boat stationed up river and a boat stationed down river sounding sirens to stop and warn vessels of the pending detonation. These boats will be equipped with marine band radios for communication on channels 16 and 13 VHF/FM. The boats will also have direct communication with personnel at the blast site. In addition, there will be warning signs located on the river bank, up river at mile 150.8 and down river at mile 149.2, warning vessel traffic of the blasting hazard. Personnel on scene at the blast site will maintain radio communication with the lockmasters at the locks number eight and number seven above and below mile 150. The lockmasters will assist in informing and coordinating commercial vessel traffic. Entry into this zone is prohibited during periods of blasting.

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. Vessel traffic delays will be minimal and are consistent with the regular nature of river traffic delays. Vessel operators can easily avoid delays by slight adjustment to their schedules. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

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

Final Regulation

In consideration of the foregoing, Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

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

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

2. A new § 165.T226 is added to read as follows:

§ 165.T226 Safety Zone: Arkansas River from mile 149.0 to mile 151.0.

(a) *Location:* The following area is a safety zone: From mile 149.0 to mile 151.0 on the Arkansas River.

(b) *Effective date:* 23 June 1987.

(c) *Regulation:* (1) In accordance with the general regulations in § 165.23 of this Part, entry into this zone is prohibited

unless authorized by the Captain of the Port Memphis, TN.

(2) This safety zone is in effect on 23 June 1987. It terminates on 09 September 1989.

Dated: June 16, 1987.

M.J. Donohoe,

CDR, U.S. Coast Guard, Captain of the Port, Memphis, Tennessee.

[FR Doc. 87-15395 Filed 7-6-87; 8:45 am]

BILLING CODE 4910-14-M

ADVISORY COUNCIL ON HISTORIC PRESERVATION

36 CFR Part 800

Protection of Historic Properties

AGENCY: Advisory Council on Historic Preservation.

ACTION: Final rule; correction.

SUMMARY: The Advisory Council on Historic Preservation is correcting minor, nonsubstantive errors to the final rule, 36 CFR Part 800, "Protection of Historic Properties."

FOR FURTHER INFORMATION CONTACT: John M. Fowler, (202)-786-0503).

SUPPLEMENTARY INFORMATION: The final rule of 36 CFR Part 800 appeared at 51 FR 31115 on September 2, 1986. This document corrects several incorrect internal references.

Dated: June 30, 1987.

John M. Fowler,

Deputy Executive Director.

PART 800—[AMENDED]

Therefore, 36 CFR Part 800 is corrected as follows:

§ 800.6 [Corrected]

On page 31121, second column, in § 800.6(a)(2), the reference reading "§ 800.6(a)(1)(iii)" is corrected to read "§ 800.6(a)(1)(ii)." On page 31121, third column, in paragraph (c)(2), the reference to "§ 800.6(a)" is corrected to read "§ 800.6(b)."

§ 800.10 [Corrected]

On page 31123, second column, in line 1 of § 800.10, the paragraph designation "(a)" is removed.

§ 800.12 [Corrected]

On page 31124, first column, in § 800.12 (a), the reference to "36 CFR 78.2" is corrected to read "36 CFR 78.3."

[FR Doc. 87-15336 Filed 7-6-87; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Gopher Tortoise (Gopherus polyphemus)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the western population of the gopher tortoise to be a threatened species. This population occurs from the Tombigbee and Mobile Rivers in Alabama west to southeastern Louisiana. The historic western gopher tortoise habitat has been reduced more than 80 percent by conversion to urban areas, croplands, and pasturelands. Certain forest management practices, such as prevention of fires and clear-cutting, have also reduced the quality of some remaining habitats. Taking of gopher tortoises has had a serious effect on some populations. All these problems are magnified by the turtle's fragmented range, the great length of time required for tortoises to reach sexual maturity, and by their low reproductive rate. This determination implements the protection provided by the Endangered Species Act of 1973 (Act), as amended.

DATES: The effective date of this rule is August 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, Jackson Mall Office Center, Suite 316, 300 Woodrow Wilson Avenue, Jackson, Mississippi 39213.

FOR FURTHER INFORMATION CONTACT: Mr. Dennis B. Jordan at the above address (601/965-4900, FTS 490-4900).

SUPPLEMENTARY INFORMATION:

Background

The gopher tortoise (*Gopherus polyphemus*) was described in 1802 F. M. Daudin. It is a large (shell 15-37 centimeters or 5.9-14.6 inches long) dark-brown to grayish-black terrestrial turtle with elephantine hind feet, shovellike forefeet, and a gular projection beneath the head of the yellowish, hingeless plastron or undershell (Ernst and Barbour 1972). It ranges along the coastal plain from South Carolina through Florida to southeastern Louisiana.

The gopher tortoise most often lives on well-drained sandy soils in transitional (forest and grassy) areas (Ernst and Barbour 1972). It is commonly associated with a pine overstory and an open understory with a grass and forb groundcover and sunny areas for nesting (Landers 1980). The Service estimates that present ownership distribution of gopher tortoise habitat is approximately two-tenths in National Forest, one-tenth in other public ownership, three-tenths in forest industry, and four-tenths in other private ownership (USDA 1978a).

Conversion of gopher tortoise habitat to urban areas, croplands, and pasturelands along with adverse forest management practices has reduced the western portion of the historic range of the gopher tortoise by more than 80 percent. Fragmentation of the western range accentuates those impacts. Populations in marginal or degraded habitats generally need periodic but regular immigration of individuals from adjacent areas with "good" habitat (often referred to as the "rescue effect"). This fragmentation is primarily due to habitat conversion or loss and the natural distribution of these habitats. Many areas with degraded habitats no longer have adjacent populations in close enough proximity to supply individuals for immigration. With reduced or non-existent immigration, many populations are eventually lost.

Taking gopher tortoises for sale or use as food or pets has also had a serious effect on some populations. The seriousness of the loss of adult tortoises is magnified by the length of time required for tortoises to reach sexual maturity and their low reproductive rate. Current estimates of human predation and road mortality alone are at levels that could offset any annual addition to the population. Sightings of gopher tortoises have become rare in many areas and the ones sighted are much smaller than in the past (Diemer 1984).

The gopher tortoise was included in a Notice of Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species (Candidate List) (December 30, 1982; 47 FR 58454) as a species in Category 2. Category 2 included taxa for which information then in possession of the Service indicated that proposing to list the species was possibly appropriate, but for which available data were not judged sufficient to support a proposed rule. In 1983 the Service selected the gopher tortoise as a species of special emphasis, and developed a Regional Resource Plan for it. On July 18, 1984, Drs. Ren Lohoefener and Lynne Lohmeier submitted a petition to list the western population of the gopher tortoise. The petition and accompanying status report were

accepted as providing substantial information that the requested action may be warranted. The report attached to the petition was sent out for expert review, together with a request for comments on the substantiality of its methods and conclusions, the petitioned action, and any other relevant data. Of the 17 responses received, 14 provided comments or additional information that supported the petitioned action. Two reviewers recommended against listing the western population separately, and one recommended adoption of harvest restrictions only. On July 26, 1985, the Service made a 12-month finding that the action requested by the petitioners was warranted but precluded by other listing actions. The proposed rule published on July 8, 1986 (51 FR 24723) constituted the next required petition finding. The status of the eastern population of the gopher tortoise is still under review by the Service and State conservation agencies.

Summary of Comments and Recommendations

In the July 8, 1986, proposed rule (51 FR 24723) 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 *Biloxi Sun-Herald* on July 26, 1986, the *Bogalusa Daily News* on July 28, 1986, the *Hattiesburg American* on July 27, 1986, the *Laurel Leader-Call* on July 26, 1986, and *The Mobile Press/Register* on July 26, 1986, which invited general public comment. Comments were received from 16 parties. No public hearing was requested and none was held.

Fourteen parties supported the listing; these including Mississippi and Louisiana, conservation organizations, professional societies, college professors, and private individuals. The Alabama Department of Conservation and Natural Resources did not perceive an advantage in listing the gopher tortoise in Alabama. The Mississippi State Highway Department expressed opposition to the proposal, but made recommendations should this population be listed (see below). Many parties provided data further substantiating or clarifying the threats to the species.

Written comments obtained during the comment period are covered in the following discussion. Comments of similar content are grouped in a number of general issues. These issues and the Service's response to each are discussed below.

Issue 1: Endangered status was recommended as opposed to threatened. *Response:* The Service believes the category of threatened more accurately describes the biological status of the species. It does not appear to face imminent extinction now, but is likely to become an endangered species in the foreseeable future if past trends continue.

Issue 2: Listing of the species over its entire range was recommended. *Response:* Although the same threats are impacting the species rangewide, there are insufficient data to support listing populations east of the Tombigbee and Mobile Rivers in Alabama. Eastern populations will remain in category 2 of the Candidate List until data show that these populations warrant listing, or that they should be dropped from consideration.

Issue 3: Designation of critical habitat was recommended. *Response:* Critical habitat was not proposed for the gopher tortoise due to the severity of the problem of taking. Section 4 of the Act requires designation of critical habitat concurrent with listing to the extent prudent and determinable. Because overcollecting threatens the western population of the gopher tortoise it is not prudent to designate critical habitat (see "Critical Habitat" section). The Service will provide more detailed distributional information to any Federal agency and others interested in protecting habitat.

Issue 4: Several commenters recommended certain management actions such as surveys, relocation, and the avoidance of clearcutting, planting of young pines, even-aged pine culture, timber land treatment, and Army maneuvers. *Response:* The Service will coordinate with agencies that have gopher tortoise populations and habitat to develop beneficial management techniques.

Issue 5: The U.S. Forest Service recommended a public education program to reduce the taking of gopher tortoises. *Response:* The Service acknowledges this recommendation and expects to include an objective for education in the recovery plan for this population.

Issue 6: The Mississippi State Highway Department (MSHD) recommended that the Final Rule exempt those projects that had cleared the NEPA process but had not yet been constructed. *Response:* Section 7 of the Act and its implementing regulations require Federal agencies to insure that any of their actions do not jeopardize the continued existence of an endangered or threatened species. Exemptions can only be granted by the Endangered Species Committee under section 7(h); there is no provision in the Act that specifically allows for exemption of projects that have cleared NEPA requirements.

Issue 7: MSHD was concerned about the potential conflict between an estimated 6,000 road construction and maintenance projects that will take place over the next 20 years, and the gopher tortoise. The Highway Department's concern stemmed mostly from the lack of detailed maps of the gopher tortoise in the proposed rule. MSHD suggested that, if a detailed map of the tortoise's range and suitable habitat were revealed, only 6 projects would require a review (assumed to be a section 7 biological opinion). This was the basis for the Department's recommendation to designate critical habitat (see Issue 3). *Response:* Although the Service cannot predict how many projects will be affected by this listing, the Service agrees that many of these projects may not overlap the range of the gopher tortoise, and hence, would not require consultation. In addition, many of these projects, such as road maintenance, may not jeopardize the continued existence of the gopher tortoise or its habitat. Regarding the lack of detailed distribution maps in the proposed rule, the Service believes that the publication of such maps would be detrimental to this population (see Issue 3). However, the Service will provide detailed location and habitat needs information to MSHD and any other involved State or Federal agency.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the western population of the gopher tortoise should be classified as threatened. 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 western population of the gopher tortoise (*Gopherus polyphemus*) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* According to Lohoefener and Lohmeier (1984), only 147,313 hectares (364,000 acres) of pine

forested uplands with sandy soils, that provide suitable habitat, remain within the western range of the gopher tortoise. This reflects a habitat loss of 82 percent, although an additional 94,907 hectares (234,000 acres) of pine forested uplands exist that could provide additional habitat if they were managed with the tortoise's well-being taken into account. However, an overall decline in forest area in these States is likely (USDA 1978c). There was a statewide longleaf/slash pine acreage reduction of 24 percent in Mississippi from 1967 to 1983 (USDA 1973a, 1978b, 1983a), 12 percent in Alabama from 1972 to 1982 (USDA 1973b, 1983b), and 18 percent in Louisiana from 1967 to 1980 (USDA 1965, 1975, 1980). Land use changes from forest to agriculture and growth of urban areas are responsible for most of this loss. In Mississippi over the next 30 years, according to the Land Use Center, Mississippi Cooperative Extension Service, cropland is expected to double and pastureland will increase by 40 percent. Much of the crop and pasture acreage will come from flat to gently sloping forestland. Within the tortoise's range, human population projections indicate an increase of approximately 50 percent in Mississippi from 1980 to 2000 (according to the Land Use Center, Mississippi Cooperative Extension Service). A 53 percent human population increase occurred in Louisiana from 1970 to 1980, with less than a 10 percent increase during the same period of time in Alabama (Lohoefener and Lohmeier in press).

In addition, certain forest management practices are adversely modifying gopher tortoise habitat. The gopher tortoise requires an open forest floor with grasses and forbs for food and sunny areas for nesting (Landers 1980). Regular burning or thinning of trees is required to maintain this type of habitat. Private landowners may not manage their forest in a way that provides suitable gopher tortoise habitat. Development of thick underbrush and the closing of forest canopies (both due to lack of fires or thinning procedures), or clearcutting destroys food plants, inhibits nesting, and causes tortoises to relocate to the edge of roadsides and ditch banks, increasing their susceptibility to human predation and vehicle mortality. One year after timber removal in South Carolina, Wright (1982) found no hatchling gopher tortoises, a 66 percent loss of junveniles, and a 32 percent loss of adults. In another area that was site prepared and planted to pine 30 years ago, he found the smallest gopher tortoise population of several areas he compared, and no hatchlings or juveniles.

Forest management on the DeSoto National Forest will probably be more compatible with the gopher tortoise than on private forests, but the National Forest is only 22 percent of the total western range (Lohoefener and Lohmeier 1984; USDA 1984). The greatest problem for the gopher tortoise caused by typical forest management is probably the closed canopy of young pine stands. Alternative forest management schemes will ultimately determine the impact of forestry operations on the gopher tortoise. The effects of habitat loss and modification are magnified by the fragmented nature of the sand ridges within the western range of the gopher tortoise (Lohoefener and Lohmeier 1984) (see discussion in the "Background" section on the effects of fragmentation). Other possible minor habitat modification may also result from training maneuvers of the U.S. Army in DeSoto National Forest. Although the plan on the DeSoto National Forest is to plant longleaf pine on suitable sites, which is beneficial to gopher tortoises, the amount of this vegetation type continues to decline (Means and Grow, 1985).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Gopher tortoises are collected for use or sale as food or as pets. Research in Florida has shown up to 20 percent of a colony has been taken at one time by "gopher pullers" (Taylor 1981), and Lohoefener and Lohmeier (1984) have documented a 4.8 percent annual human predation rate in Mississippi. The impact of this activity is magnified by the taking of mostly adults, or the reproducing segment of the population. The number of tortoises taken for pets is unknown, although the New Orleans Nature Center reports about 20 tortoises per year turned in by residents.

C. *Disease or predation.* The gopher tortoise suffers a heavy natural predation loss of almost 97 percent through the first two years of life (Landers 1980; Wright 1982). There is additional predation on juveniles and adults from two years to maturity, but the magnitude is unknown. Deterioration of habitat, and subsequent movement of tortoises into marginal habitats near roads and ditches, probably increase tortoise mortality rates. When present in roadside habitats tortoises are killed by vehicles and individuals, are easier to collect, and are more susceptible to predation.

D. *The inadequacy of existing regulatory mechanisms.* The gopher tortoise is on the Mississippi State List of Endangered Species, and is considered a game animal in Alabama with no open season. Both of these actions offer some protection against taking. Lacey Act provisions are also applicable for these two States. The U.S. Forest Service has recently issued a closure order for taking gopher tortoises within DeSoto National Forest. Federal listing will enhance these protection efforts and provide protection which does not presently exist in Louisiana in relation to taking. Federal listing could also result in increased consideration for tortoise habitat in management practices on Federal lands. Some modifications of forest management practices on the DeSoto National Forest in particular could be advantageous. Listing will also protect tortoise habitat on other areas where Federal funding or permits would be required (e.g., road construction).

E. *Other natural or manmade factors affecting its continued existence.* The previously discussed threats are accentuated by the length of time required for gopher tortoises to reach sexual maturity and their low reproductive rate. Females take 13 to 21 years to reach sexual maturity (19 to 21 years as far north as southwestern Georgia), and lay an average of only 5.8 eggs per clutch (Landers and McRae 1980; Landers *et al.* 1982; Lohoefener and Lohmeier 1984). There is some evidence to indicate that all females may not nest every year (Lohoefener and Lohmeier 1984; Wright 1982). Documented human predation and road mortality alone may already be at a level which would offset any annual recruitment to the population computed from these data. After subtracting all other mortality of juveniles and adults, such as that due to predators other than humans, or crushing of nests and juveniles during site preparation for tree planting, the likelihood of population decline is even greater. Declines of this nature are suggested in comparisons of recent status survey results. Auffenberg and Franz (1982) estimated a population density of 0.713 tortoises per hectare (.29 per acre) in Mississippi and 0.97 tortoises per hectare (.39 per acre) in Alabama in 1975, whereas Lohoefener and Lohmeier (1984) estimated a density of 0.107 and 0.32 per hectare (.04 and .13 per acre) in those States, respectively, in the early 1980's. Lohoefener and Lohmeier (1984) were also able to document only 11 active burrows in Louisiana in 1981, and only one remaining in 1984. Although these estimates may not be strictly comparable because of different

methodologies, there is an indicated decline in population densities ranging from 67 percent in Alabama to 91 percent in Louisiana.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the western population of the gopher tortoise as threatened. Even though the previously discussed threats are currently impacting the gopher tortoise, it may be some time before the species is in danger of extinction. Therefore, it seems more appropriate to list the gopher tortoise as threatened (defined as likely to become in danger of extinction within the foreseeable future throughout all or a significant portion of its range) rather than endangered. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factor B in the "Summary of Factors Affecting the Species," the gopher tortoise is threatened by taking. Publication of critical habitat descriptions would make this species even more vulnerable and increase enforcement problems. Therefore, it would not be prudent to determine critical habitat for the western population of the gopher tortoise at this time.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking 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. Activities by Federal agencies (including funding) that modify habitat or change land use could affect the gopher tortoise. Such activities could include certain timber management practices of the Department of Agriculture, military training activities within the National Forest by the Department of Defense, and federally funded road projects. Only relatively minor precautionary constraints should be needed to avoid impacts associated with most federally sponsored activities.

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 a 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 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 enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, 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.

On July 1, 1975, the gopher tortoise was included in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The effect of this listing is that export permits are required before international shipment may occur. Such shipment is strictly regulated by CITES member nations to prevent it from being detrimental to the survival of the species.

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).

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Author

The primary author of this final rule is Mr. John J. Pulliam, III (see **ADDRESSES** section) at 601/965–4900, FTS 490–4900.

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 reads 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 "Reptiles," 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						
REPTILES							
Tortoise, gopher	*Gopherus polyphemus*	USA (AL, FL, GA, LA, MS, SC)	Wherever found west of Mobile and Tombigbee Rivers in AL, MS, and LA.	T	281	NA	NA

Dated: June 18, 1987.

Susan Reece,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–15334 Filed 7–6–87; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 52, No. 129
Tuesday, July 7, 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 AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 418

[Amdt. No. 2; Doc. No. 4365S]

Wheat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Wheat Crop Insurance Regulations (7 CFR Part 418), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Wheat Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly proposed 7 CFR Part 401, General Crop Insurance Regulations (401.101, Wheat Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 will be a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and will substantially reduce: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than August 6, 1987, to be sure of consideration.

ADDRESSES: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC, during regular business hours, Monday through Friday.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 31, 1990.

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

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

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

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

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

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has proposed to publish in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 418 will be effective only through the end of the 1987 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Wheat Endorsement will be published as an endorsement to 7 CFR Part 401 (401.101, Wheat Endorsement), and become effective for the 1988 and succeeding crop years. Upon final publication, the provisions of the Wheat Crop Insurance Regulations, now contained in 7 CFR Part 418, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 418 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 418

Crop insurance, Wheat.

Proposed Rule

Part 418—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the subpart heading to the Wheat Crop Insurance Regulations (7 CFR Part 418), as follows:

1. The authority citation for 7 CFR Part 418 continues to read as follows:

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

2. The subpart heading in 7 CFR Part 418 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC, on June 5, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–15387 Filed 7–6–87; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 419

[Amdt. No. 3; Doc. No. 43665]

Barley Crop Insurance Regulations

AGENCY: Federal Corp Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Barley Crop Insurance Regulations (7 CFR Part 419), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Barley Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separtate document that the provisions currently contained in this Part will be issued as an endorsement to the newly proposed 7 CFR Part 401, General Crop Insurance Regulations (401.103, Barley Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 will be a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and will substantially reduce: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than August 6, 1987, to be sure of consideration.

ADDRESSES: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 31, 1990.

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

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

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

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

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

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has proposed to publish in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 419 will be effective only through the end of the 1987 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Barley Endorsement will be published as an endorsement to 7 CFR Part 401 (401.103, Barley Endorsement), and become effective for the 1988 and succeeding crop years. Upon final publication, the provisions of the Barley Crop Insurance Regulations, now contained in 7 CFR Part 419, would be susperseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 419 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 419

Crop insurance, Barley.

Proposed Rule

PART 419—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the subpart heading to the Barley Crop Insurance Regulations (7 CFR Part 419), as follows:

1. The authority citation for 7 CFR Part 419 continues to read as follows:

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

2. The subpart heading in 7 CFR Part 419 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC on June 5, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-15390 Filed 7-6-87; 8:45 am]

BILLING CODE 3410-08-M

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7 CFR Part 427

[Amdt. No. 2; Doc. No. 4367S]

Oat Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Oat Crop Insurance Regulations (7 CFR Part 427), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Oat Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly proposed 7 CFR Part 401, General Crop Insurance Regulations (401.105, Oat Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 will be a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and will substantially reduce: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than August 6, 1987, to be sure of consideration.

ADDRESS: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 31, 1990.

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

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

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

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

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

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has proposed to publish in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 427 will be effective only through the end of the 1987 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Oat Endorsement will be published as an endorsement to 7 CFR Part 401 (401.105, Rye Endorsement), and become effective for the 1988 and succeeding crop years. Upon final publication, the provisions of the Oat Crop Insurance Regulations, now contained in 7 CFR Part 427, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 427 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 427

Crop insurance, Oat.

Proposed Rule

PART 427—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the subpart heading to the Oat Crop Insurance Regulations (7 CFR Part 427), as follows:

1. The authority citation for 7 CFR Part 427 continues to read as follows:

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

2. The subpart heading in 7 CFR Part 427 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC, on June 5, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87-15388 Filed 7-6-87; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 429

[Amdt. No. 2; Doc. No. 4368S]

Rye Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Rye Crop Insurance Regulations (7 CFR Part 429), effective for the 1988 crop year. The intended effect of this proposed rule is to maintain the effectiveness of the present Rye Crop Insurance Regulations only through the 1987 crop year. It is proposed in a separate document that the provisions currently contained in this Part will be issued as an endorsement to the newly proposed 7 CFR Part 401, General Crop Insurance Regulations (401.106, Rye Endorsement), effective for the 1988 and succeeding crop years. 7 CFR Part 401 will be a standard set of regulations and a master policy for insuring most crops authorized under the provisions of the Federal Crop Insurance Act, as amended, and will substantially reduce: (1) The time involved in amendment or revision; (2) the necessity of the present repetitious review process; and (3) the volume of paperwork processed by FCIC. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comments, data, and opinions on this proposed rule must be submitted not later than August 6, 1987, to be sure of consideration.

ADDRESSES: Written comments, data, and opinions on this proposed rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250. Written comments will be available for public inspection in the Office of the Manager, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC during regular business hours, Monday through Friday.

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

SUPPLEMENTARY INFORMATION: This section has been reviewed under USDA procedures established by Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is December 31, 1990.

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

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

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

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

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

Background

FCIC has published over 40 policies to cover insurance on that many different crops. Many of the regulations and policies contain identical language, which, if changed requires that over 40 different policies be changed, both in the Code of Federal Regulations (CFR) and the printed policy language. This repetition of effort is both inefficient and expensive. FCIC, therefore, has proposed to publish in 7 CFR Part 401, one set of regulations and one master policy to contain that language which is identical in most of the policies and regulations.

As revisions on individual policies are necessary, FCIC proposes to publish a "crop endorsement" which will contain the language of the policy unique to that crop, and any exceptions to the master policy language necessary for that crop. When an endorsement is published as a section to Part 401, effective for a subsequent crop year, the present policy contained in a separate part of Chapter IV will be terminated at the end of the crop year then in effect.

In order to clearly establish that 7 CFR Part 429 will be effective only through the end of the 1987 crop year, FCIC herein proposes to amend the subpart heading of these regulations to specify that such will be the case.

It is proposed that the new Rye Endorsement will be published as an endorsement to 7 CFR Part 401 (401.106, Rye Endorsement), and become effective for the 1988 and succeeding crop years. Upon final publication, the provisions of the Rye Crop Insurance Regulations, now contained in 7 CFR Part 429, would be superseded. Therefore, FCIC proposes to amend the subpart heading to provide that 7 CFR Part 429 be effective for the 1986 and 1987 crop years only.

List of Subjects in 7 CFR Part 429

Crop insurance, Rye.

Proposed Rule

Part 429—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend the subpart heading to the Rye Crop Insurance Regulations (7 CFR Part 429), as follows:

1. The authority citation for 7 CFR Part 429 continues to read as follows:

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

2. The subpart heading in 7 CFR Part 429 is revised to read as follows:

Subpart—Regulations for the 1986 and 1987 Crop Years

Done in Washington, DC, on June 5, 1987.

E. Ray Fosse,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 87–15386 Filed 7–6–87– 8:45 am]

BILLING CODE 3410-08-M

UNITED STATES INFORMATION AGENCY

22 CFR Part 502

[Rulemaking No. 4—Propaganda as Educational and Cultural Material]

World-Wide Free Flow (Export-Import) of Audio-Visual Materials; Propaganda

AGENCY: United States Information Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: In accordance with an order of the United States District Court of the Central District of California the United States Information Agency (USIA) seeks comments as to whether it should initiate a rulemaking to modify regulations found at 22 CFR Part 502 which implement the international *Agreement for facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character* (Beirut Agreement of 1948). The USIA also seeks comments as to how the present regulations can be modified if amendment of the regulations is determined to be necessary or appreciate.

DATES: Comments on this notice will be accepted September 8, 1987.

ADDRESS: Interested persons should submit relevant views or agreements to Merry Lymn, Attorney Advisor, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485–7976. Communications should refer to docket number and title. A copy of each communication will be available for public inspection by advance appointment during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Merry Lymn, Attorney Advisor, Room 700, United States Information Agency, 301 4th Street SW., Washington, DC 20547, (202) 485–7976.

SUPPLEMENTARY INFORMATION: In accordance with an order of the United States District Court of the Central District of California the United States Information Agency (USIA) seeks comments as to whether it should initiate a rulemaking to modify regulations found at 22 CFR Part 502 which implement the international *Agreement for Facilitating the International Circulation of Visual and Auditory Materials of an Educational, Scientific, and Cultural Character* (Beirut Agreement of 1984) 17 U.S.T. 1579, T.I.A.S. No. 6116, 197 U.N.T.S. 3. The USIA also seeks comments as to how the present regulations can be modified if amendment of the regulations is determined to be necessary or appropriate.

The Beirut Agreement was adopted by the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1984 after several years of negotiations. It entered into force on August 12, 1954. While the United States was on the chief initiators of the treaty and signed the treaty on September 13, 1949, it did not ratify the Agreement until May 26, 1960. The United States formally implemented the Beirut Agreement by statute (Pub. L. 89–634, 80 Stat. 879) on October 8, 1966.

The goal of the Beirut Agreement, as stated in its Preamble, is to promote "the free flow of ideas by word and image" to encourage "the mutual understanding of peoples * * *." To this end, the treaty provides a mechanism for exempting qualifying audio-visual materials from import duties and licensing requirements, whereby the country of production affirms that a material comes within the treaty's terms, and the importing country then determines for itself whether a duty exemption is appropriate.

The Agreement (Art. I) defines audio-visual materials as "educational, scientific and cultural" for purposes of favorable import treatment

> (a) When their primary purpose of effect is to instruct or inform through the development of a subject or aspect of a subject, or when their content is such as to maintain, increase or diffuse knowledge, and augment international understanding and goodwill; and
>
> (b) When the materials are representative, authentic, and accurate; and
>
> (c) When the technical quality is such that it does not interfere with the use made of the material.

An owner of the basic rights of the material seeking exemption from the otherwise required duties must apply for a certificate from the appropriate government agency in the country of production, which attests that in the agency's view the material is of an educational, scientific or cultural character within the meaning of Article I" (Art. IV, ¶¶1–2). The certificate is then submitted to the importing country, which makes its own independent determination as to whether the material should be subject to duty (¶4). The decision of the importing country "shall be final," although it will "give due consideration" to the exporting country's views (¶6).

The United States is one of 29 signatories to the Beirut Agreement; an additional 28 nations participate informally; and the United States recognizes the certificates of 15 more.

Pub. L. No. 89–634, broadly delegates to the USIA, as implementing Agency, the duty "to take appropriate measures for the carrying out of the provisions of the Agreement including the issuance of regulations." In turn, the USIA has issued implementing regulations (22 CFR Part 502), including several "substantive criteria" to determine whether a given film is "educational, scientific and cultural" as those terms are internationally understood. These substantive criteria are found at 22 CFR 502.6.

Prior to formal implementation, the State Department, and then the USIA, administered the treaty informally, by issuing certificates within the internationally understood definition of educational. This required that interpretive criteria be applied. The State Department adopted a *Code of Policies* in 1953. These policies were published in the **Federal Register** December 24, 1953 by the USIA. Upon formal implementation of the treaty in 1967, the policies were published as regulations. The interpretive criteria, in accordance with the international understanding of the definition of educational, excludes audio-visual materials the primary purpose or effect of which is to amuse or entertain, to present news coverage, to advertise, or to persuade to a point of view (propagandize). Congress was aware of this interpretation. The *Congressional Record* of May 4, 1967 states (H 5097):

> USIA has, in fact, been certifying American goods for export to Beirut Agreement countries for some years. They have refused to approve materials whose primary purpose is merely to amuse or entertain; when the intent of the material is to stimulate the use of a patented process of product, advertise a particular organization or individual, or economic or political propaganda; when it lends itself to misinterpretation or misrepresentation of the U.S. or other counties, their people or institutions; and where the material has not already been produced at the time of application.
>
> Presumably, USIA will rule against the importation of foreign materials which fall into these categories.

The application of the Agreement was reviewed internationally in 1967 at the Meeting of Government Experts to Review the Application of the Agreements on the Importation of Educational, Scientific and Cultural Material. At this meeting the general interpretation of the Agreement embodied in the U.S. regulations was accepted. UNESCO adopted the U.S.-Canada interpretation of the Agreement in its "Guide to the Operation of the Agreement for facilitating the international circulation of visual and auditory materials of an educational, scientific and cultural character."

The official Report of the Meeting stated:

> Several speakers commented on their experience in interpreting this article which defines the standards for determining the eligibility of visual and auditory materials for certification and recognition (authentication of certification) under the terms of the Agreement. None reported any significant difficulty with either function. It was

generally agreed that in order to qualify for certification, such material must be primarily instructional or informational in character, and, if it interpreted life in a country, it should do so in such a way as to contribute to international understanding and goodwill. It was also pointed out that the operative words of the article are "instruct", "inform" and "diffuse knowledge". (Meeting of Governmental Experts to Review the Application of the Agreement on the Importation of Educational, Scientific and Cultural Materials (Palais des Nations, Geneva, 20–29 November 1967) COM/C's/184/10 Pairs, 24 May 1968, page 30.)

The practice, as described by Canada and the United States, was accepted and incorporated into guidelines of states wishing to become party to the Agreement.

Accordingly, at 22 CFR 502.6(a)(3), the Agency incorporated verbatim the treaty's definition of "educational, scientific, and cultural." 22 CFR 502.6(b)(3) provides that

> The Agency does not certify or authenticate materials which by special pleading attempt generally to influence opinion, conviction or policy (religious, economic, or political propaganda), to espouse a cause, or conversely, when they seem to attack a particular persuasion. Visual and auditory materials intended for use only in denominational programs or other restricted organizational use in moral or religious education and which otherwise meet the criteria set forth under paragrpah (a) of this section and paragraph (b)(5) of this section, may be determined eligible for certification in the judgment of the Agency.

And, 22 CFR 502.6(b)(5) provides that

> The Agency does not regard as augmenting international understanding or good will and cannot certify or authenticate any material which may lead itself to misinterpretation, or misrepresentation of the United States or other countries, their peoples or institutions, or which appear to have as their purpose or effect to attack or discredit economic, religious, or political views or practices.

Sections (b)(3) and (b)(5) embody the international standards recognized by UNESCO and participating nations for implementing the Beirut Agreement. Taken together with (a)(3) (which is verbatim treaty language) the regulations reflect the international understanding that propaganda is not included within the definition of "educational, scientific or cultural" materials covered by the treaty.

As a result of litigation commenced in December 1985, the United States District Court for the Central District of California declared that 22 CFR 502.6(a), 502.6(b) (3) and (5) are facially inconsistent with the First and Fifth Amendments to the United States Constitution, in that, in the courts' view the regulations are insufficiently precise and impermissably allow the USIA to consider the specific contents of the materials in order to determine whether they constitute propoganda. *Bullfrog Films Inc.* v. *Wick*, 646 F. Supp. 492 (C.D. Cal. 1986), *appeal pending*, No. 86–6630 (Ninth Circuit). The District Court "permanently enjoin[ed] defendants from enforcing said regulations and denying 'educational' certificates to any film under the Beirut Agreement, based on said regulations . . .," and ordered USIA to reconsider the eligibility of six films at issue in the litigation for certification under the Beirut Agreement under standards consistent with the First and Fifth Amendments. 646 F. Supp. at 510–11. On December 3, 1986, the District Court clarified its Order, stating that the agency may choose to await the promulgation of new regulations before making certification decisions on audio-visual materials. The court did not comment on the other interpretive regulations which require denial of certificates to materials the primary purpose of which is to present news coverage, entertain or advertise, (also constitutionally protected speech) as they were not in issue.

In accordance with the District Court's Orders, USIA requests public comments on whether 22 CFR 502.6(a), 502.6(b) (3) and (5) can be written and, if so, in what manner to make the regulations consistent with the terms and requirements of both the United States Constitution and the Beirut Agreement. As noted above, USIA has appealed the District Court's Orders to the United States Court of Appeals for the Ninth Circuit. In the event the Agency is successful on that or any subsequent appellate review as to the constitutionality of the challenged regulations, it is not the Agency's intention to modify the existing regulations. However, during the pendency of the appeal, the Agency will consider all written comments in deciding whether and, if determined appropriate, how to redraft the challenged regulations in accordance with the Dsitrict Court's Orders. Any new regulations must implement the terms and requirements of the Beirut Agreement.

Therefore, the Agency specifically requests comments on whether and how the challenged regulations can be redrafted in a way which would both satisfy the District Court's ruling and comply with the terms and requirements of the Beirut Agreement, as interpreted by the United States, UNESCO and the international community.

List of Subjects in 22 CFR Part 502

Education, Imports, Trade agreements.

This document is issued pursuant to the authority of 5 U.S.C. 301, 19 U.S.C. 2051, 2052, 22 U.S.C. 1431 *et seq.*, E.O. 11311, 31 FR 13413, 3 CFR 1966–1970 Comp. page 593.

Dated: June 26, 1987.

Marvin L. Stone,

Acting Director, United States Information Agency.

[FR Doc. 87–15358 Filed 7–6–87; 8:45 am]

BILLING CODE 8230–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Proposed Regulatory Program Amendment; Non-Prime Farmland Provisions; Ohio

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of a proposed amendment submitted by Ohio as a modification to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

The amendment submitted consists of proposed changes to the non-prime farmland provisions to allow the submission of any two years of yield data of crop harvest as demonstration that the crop harvest on the mined area equals or exceeds the average county yield for comparable crops.

This notice sets forth the times and locations that the proposed amendment will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on August 6, 1987; if requested, a public hearing on the proposed amendment is scheduled for 1:00 p.m. on August 3, 1987; and requests to present oral testimony at the hearing must be received on or before 4:00 p.m. July 22, 1987.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Ms. Nana Rose Hatfield, Field Office Director, Columbus Field Office, Office of Surface Mining

Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone (614) 866–0578. If a hearing is requested, it will be held at the same address. Copies of the Ohio program, the proposed amendment, a listing of any scheduled public meeting, and all written comments received in response to this notice will be available for public review at the following locations during normal business hours Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Room 5131, 1100 "L" Street, NW., Washington, DC 20240.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Cener, Pittsburgh, PA 15220.

Ohio Department of Natural Resources, Division of Reclamation, Foundation Square, Building B–3, Columbus, OH 43224.

Each requestor may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Columbus Field Office.

FOR FURTHER INFORMATION CONTACT: Mr. Nina Rose Hatfield (Director), 614–866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Ohio program was made effective by the conditional approval of the Secretary of Interior. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11 and 935.15.

II. Discussion of the Proposed Amendment

By letter dated May 6, 1987 (Administrative Record No. OH–937), the Ohio Department of Natural Resources (ODNR), Division of Reclamation, submitted a proposed amendment to the Ohio program at Ohio Administrative Code (OAC) section 1501:13–9–15 concerning revegetation standards.

Ohio proposes to amend OAC section 1501:13–9–15(F)(4)(c) concerning the collection of yield data for a final bond release. The amended rule would allow the submission of any two years of yield data of crop harvest that meets or exceeds the average county yields for comparable crops to be adequate for demonstrating revegetation success for non-prime farmlands.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by ODNR satisfies the requirements of 30 CFR 732.15 for the approval of State program amendment. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in the rulemaking, and include explanations in support of the comment's recommendations. Comments received after the time indicated under "DATES" or at locations other than Columbus Ohio Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by the close of business on July 22, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the Columbus Field Office by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

1. *Compliance with the National Enviornmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C., 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from the requirement to prepare a Regulatory Impact Analysis, and the regulatory review by OMB is not required.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 24, 1987.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 87–15306 Filed 7–6–87; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 935

Proposed Regulatory Program Amendment; Normal Husbandry Practices; Ohio

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing receipt of a proposed amendment package

submitted by Ohio as a modification to the State's permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining and Control and Reclamation Act of 1977 (SMCRA).

The amendments submitted consist of proposed changes to the husbandry practices and reforestation provisions to allow the repair of rills and gullies on cropland and reforested land and the replanting of trees (reinforcement planting) on reforested land as normal husbandry practices. As normal husbandry practices, these activities would not restart the period of extended responsibility for final bond release. This amendment package also contains changes to clarify several reforestation provisions.

This notice sets forth the times and locations that the Ohio program proposed amendments will be available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed for the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on August 6, 1987; if requested, a public hearing on the proposed amendment is scheduled for 1:00 p.m. on August 3, 1987; and requests to present oral testimony at the hearing must be received on or before 4:00 p.m., July 22, 1987.

ADDRESSES: Written comments and requests to testify at the hearing should be directed to Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, OH 43232; Telephone (614) 866–0578. If a hearing is requested, it will be held at the same address.

Copies of the Ohio program, the amendment, a listing of any scheduled public meeting, and all written comments received in response to this notice will be available for public review at the following locations, during normal business hours Monday through Friday, excluding holidays:

Office of Surface Mining Reclamation and Enforcement, Room 5315A, 1100 "L" Street, NW., Washington, DC 20240.

Office of Surface Mining Reclamation and Enforcement, Eastern Field Operations, Ten Parkway Center, Pittsburgh, PA 15220.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 2242 South Hamilton Road, Columbus, OH 43232.

Ohio Division of Reclamation; Fountain Square, Building B–3, Columbus, OH 43224

Each requester may receive, free of charge, one single copy of the proposed amendment by contacting the OSMRE Columbus Field Office.

FOR FURTHER INFORMATION CONTACT: Ms Nina Rose Hatfield (Director), 614–866–0578.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Ohio program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background, revisions, modifications, and amendments to the Ohio program submission, as well as the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11 and 935.15.

II. Discussion of the Proposed Amendments

By letter dated April 17, 1987 (Administration Record No. OH–0931), the Ohio Department of Natural Resources (ODNR) submitted proposed amendments to the Ohio program at Ohio Administrative Code section 1501:13–9–15 concerning revegetation standards. The proposed changes are briefly summarized below:

OAC sections 1501:13–9–15(F)(12) and F(12)(B) concerns the repair of rills and gullies on cropland and forestland. The amended rules would consider the repair of rills and gullies on those areas to be a non-augmentative practice and would, therefore, not restart the five-year period of extended liability for final bond release.

OAC section 1501:13–9–15(F)(12)(c) concerns the replanting of trees in areas where the post-mining land use requires woody plants as the primary vegetation. The amended rule would consider the replanting of trees as a reinforcement measure and a non-augmentative practice.

OAC sections 1501:13–9–15(A)(1)(a), (F)(8), (F)(8)(e)(i), (F)(8)(f)(i), (F)(9), (F)(10), and (F)(11) would be changed to clarify several reforestation provisions.

The full text of the proposed program amendment submitted by Ohio is available for public inspection at the addresses listed above. The Director now seeks public comment on whether the proposed amendments are no less effective than the Federal regulations. If approved, the amendments will become part of the Ohio program.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17, OSMRE is now seeking comment on whether the amendment proposed by ODNR satisfies the requirements of 30 CFR 732.15 for the approval of State program amendments. If the amendment is deemed adequate, it will become part of Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **"DATES"** or at locations other than Columbus Ohio Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **"FOR FURTHER INFORMATION CONTACT"** by the close of business on July 22, 1987. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and who wish to do so will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. A summary of the meeting will be included in the Administrative Record.

Public Meeting

Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting at the Columbus Field Office by contacting

the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance in the Administrative Record. A written summary of each public meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

1. *Compliance with the National Environmental Policy Act:* The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C., 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. *Executive Order No. 12291 and the Regulatory Flexibility Act:* On August 28, 1981, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, for this action OSMRE is exempt from requirement to prepare a Regulatory Impact Analysis, and regulatory review by OMB is not required.

The Department of the Interior has determined that this rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule would not impose any new requirements; rather, it would ensure that existing requirements established by SMCRA and the Federal rules would be met by the State.

3. *Paperwork Reduction Act:* This rule does not contain information collection requirements which require approval by OMB under 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: June 24, 1987.

Carl C. Close,

Assistant Director, Eastern Field Operations.

[FR Doc. 87-15305 Filed 7-6-87; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CCGD5-87-055]

Drawbridge Operations Regulations; Kent Island Narrows, MD

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a revised proposal to change the regulations governing operation of the drawbridge on U.S. Route 50/301 across Kent Island Narrows near Grasonville, Maryland, to eliminate bridge openings during peak vehicular traffic periods on weekends during the summer months. This supplemental proposal supersedes the proposal published in the **Federal Register** on May 8, 1987 (52 FR 17413).

This proposal eliminates the current openings at 9:00 a.m. on Saturdays and 8:00 p.m. on Sundays and Monday holidays. It adds an opening at 3:30 p.m. on Sundays and Monday holidays. It also extends the Saturday opening schedule to Fridays, when Friday is a holiday. The Friday schedule would be in effect on the Thursdays before Friday holidays.

DATES: Comments must be received on or before November 30, 1987.

ADDRESSES: Comments should be mailed to Commander (oan), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments and other materials referenced in this notice and the previous notice of proposed rulemaking will be available for inspection and copying at the above address, Room 609. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, at the above address, or telephone number (804) 398-6222.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended change in the proposal.

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

Drafting Information

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

Discussion of Proposed Regulations

On May 8, 1987, a notice of proposed rulemaking was published in the **Federal Register** (52 FR 17413) at the request of the Maryland Congressional Delegation, the Governor of Maryland, and the Maryland Department of Transportation. They petitioned the Coast Guard to amend the regulations for this drawbridge by eliminating the 9 a.m. and 12 noon openings on Saturdays and the 8 p.m. opening on Sundays during the summer months. The purpose of the requested change was to provide relief to the massive traffic congestion that devleops on U.S. Route 50/301 on summer weekends during peak vehicular traffic periods.

The State provided evidence that showed that, since 1982, the number of vehicles across the bridge on summer Saturdays and Sundays has increased by 26% and 24%, respectively, while the number of boats going through the bridge on these days had remained fairly constant. Serious traffic problems result when bridge openings occur during hours when one-way vehicular volumes exceed 2,000 vehicles per hour. The record shows that, in 1986, one-way vehicular traffic across the bridge during the hours of 9 a.m. and 12 noon on Saturdays, and 8 p.m. on Sundays, averaged 2,433, 2,301, and 2,485 respectively. Vehicular backups from the bridge in both directions as a result of bridge openings during these hours were from five to 15 miles long. The total number of vehicles crossing the bridge in both directions during these three hours in 1986 averaged 11,209, while the number of boats using the bridge during the same hours averaged 29. This represented a vehicle to boat ratio of 400:1.

In addition to the obvious traffic problems encountered by motorists traveling on U.S. route 50/301, the State asserted that there are other problems associated with massive congestion created on the highway when the drawbridge opens. Local residents have a difficult time making short-range motor trips in and about their local area. Businesses in the area lose customers because of the inaccessibility to the highway. The local people are concerned that emergency vehicles will not have an accessible route to area locations during periods of excessive congestion. Wasted fuel consumption, overheated vehicles, an increased number of automobile accidents, and the unruly and unsanitary behavior of irate motorists caught in lengthy queues have also been cited as problems directly resulting from traffic backups caused by bridge openings.

In order to evaluate the State's proposal, temporary deviations from the regulations contained in 33 CFR 117.561

were put in effect on May 23, 24, and 25, 1987, May 30, 1987, June 13 and 14, 1987, and June 20, 1987. The deviations tested the effectiveness of the requested change by eliminating the 9 a.m. and 12 noon openings on May 23 and June 13, 1987, and the 8 p.m. opening on May 24 and May 25, Memorial Day, and June 14, 1987.

On May 30 and June 20, only the 9 a.m. opening was eliminated, and the other provisions of the current schedule remained in effect.

On May 31 and June 6, 7, 21, 27, and 28, the current schedule was in effect.

The results of these tests have been evaluated, and the impacts on highway and marine traffic on those six weekends weighed to determine if the requested change resulted in a substantial improvement in vehicular traffic flow without unreasonably restricting marine traffic. This information was also compared to vehicle and marine traffic counts from previous years.

During the test periods, the Maryland Department of Transportation compiled data on vehicle counts, boat counts, length of drawbridge openings, duration of openings, length of vehicle backups, and reasons for the backups along U.S. Route 50/301 within fifteen miles of the bridge to determine whether the backups are, in fact, as a direct result of drawbridge openings or can be attributed to other causes. On three of these weekends, the Coast Guard also collected data.

This supplemental proposal is based on the initial comments received, our observations of highway and marine traffic, the data furnished by the State of Maryland, and informal and formal surveys of marine interests since the publication of the notice of proposed rulemaking in the Federal Register on May 8, 1987.

In response to the notice of proposed rulemaking, the Coast Guard received 52 written comments. Thirty of these opposed the State's proposal. They were from marine-related businesses, boat owners/operators, and organizations representing boating and marine business interests. The basis for their opposition rests primarily on: Adverse economic impacts to marine-related businesses; hardship on boaters; elimination of Kent Narrows as a desirable boating center due to key weekend bridge openings being eliminated; infeasibility of boats, especially sailboats, transiting around Kent Island due to distance and safety factors; and the unreasonableness of further sacrificing boat openings to provide a solution to a highway traffic problem that is attributable to sources other than drawbridge openings.

Twenty four responses were in favor of the State's proposal. They came from the County Commissioner's Office, the County Department of Parks and Recreation, and local residents. None of these comments cited reasons for their support of the proposal. They stated only that they are in favor of it.

On May 14, 1987, the Coast Guard held a meeting on Kent Island with area marine-oriented business owners and organizations representing the interests of boaters and marine-related businesses to obtain their views on the State's proposed schedule. Also in attendance were representatives of Maryland State Highway Administration and Queen Anne County Commissioner's office. A verbatim transcript of the meeting was made. Thirteen attendees, other than Coast Guard and State Highway Administration representatives, spoke concerning the State's proposed schedule. Two speakers from the County Commissioner's Office stated they are in favor of the State's proposal, since elimination of the 3 peak-hour openings would help ease highway traffic congestion and emergency vehicles would not be delayed from crossing the bridge while on emergency missions. One speaker, a waterfront developer was noncommittal since the location of his business is not affected by bridge openings. Ten speakers, representing Kent Island marine-related businesses and organizations, who represent boaters and marine businesses, were opposed to the State's proposal. Their opposition is based on the following: Severe adverse economic impact on area marinas and marine-related businesses; boaters will avoid Kent Narrows if bridge openings are further restricted, which will hurt the local economy; the route around Kent Island is too long and dangerous; boating for weekend sailors will be ruined; traffic problems are not the result of bridge openings, but rather an inadequate roadway system; and if boaters must sacrifice, they need at least one opening between 6 a.m. and 3 p.m. on Saturdays and one opening after 1 p.m. on Sundays.

In addition to the May 14 meeting, the Coast Guard developed a Kent Island business survey form. This questionnaire was distributed to Kent Island Marinas and marine-related business owners. Six businesses responded. All but one indicated that if the State's proposal is adopted, their businesses will be severely depressed or destroyed. One owner stated his business has already been devastated by the current restrictive schedule, which has driven away customers. One owner cited losses of hundreds of thousands of dollars, if the State's schedule is adopted. One, a restaurant owner with a small number of boats slips, stated the State's proposal will have no effect on his restaurant, but would improve the moods of motorists.

On June 4, 1987, the Coast Guard held a public hearing on the State's proposed schedule at the Stevensville Middle School, Stevensville, Maryland. A verbatim transcript of the hearing was made. 44 people attended. 27 people spoke in or recorded opposition to the State's proposal. Ten people spoke in favor of or recorded support for the State's proposal. Four people recorded no comment. Three were not recorded at all. Those opposed consisted of boat owners, marina owners/operators, marine-related business owners, associations that represent boaters and marine businesses, and local residents who are also boaters. Their reasons for opposition to the proposal were the same as those stated in the discussions above.

Those in favor of the State's proposal consisted of the representative from the State Highway Administration, the sheriff's office, the County Commissioner's office, the volunteer fire department, and local residents. Their reasons for support, again, were based on belief that elimination of the 3 openings will help ease highway traffic congestion; emergency vehicles would not be stopped by bridge openings; and local residents would have less weekend traffic congestion on the island to deal with.

At the request of Congressman Roy Dyson, the previous Coast Guard District Commander, RADM B.F. Hollingworth, met with him and the Maryland State Highway Administrator on May 20 and June 22, 1987, to discuss the State's proposed drawbridge schedule. On both occasions, the Highway Administrator reiterated the State's desire to eliminate the 9 a.m. and 12 noon openings on Saturdays and the 8 p.m. opening on Sundays. the District Commander presented the Coast Guard's views on the matter, and indicated that, based on comments received and observations by the Coast Guard to date, it appears the State's schedule would not provide for the reasonable needs of navigation. Summaries of Coast Guard meetings, surveys, data gathered during test weekends with analyses, and observations were discussed. Several proposals and counter-proposals were discussed. RADM Hollingsworth,

speaking for the Coast Guard, finally indicated that based on all information we have thus far, we intend to test an alternate schedule for the remainder of the boating season that would retain the 12 noon opening on Saturdays, and replace the 8 p.m. opening on Sunday evening with a 3:30 p.m. opening. He stated that this schedule seems to meet the minimum needs of navigation as stated by boaters and marine interests, while still balancing the needs of vehicular traffic across the bridge during peak traffic hours. It was stated that a final decision could not be made until all public comments were in on the current and this proposed schedule.

From the comments received and our observations, it has become apparent that while the elimination of drawbridge openings does improve the movement of highway traffic by eliminating some of the lengthy backups and other associated problems during peak traffic periods along the Route 50/301 corridor, eliminating the openings proposed by the State of Maryland and Maryland Congressional Delegation would not meet the reasonable needs of navigation. It would severely restrict the movement of vessels along the sheltered waters of the Eastern Chesapeake Bay and pose a safety threat.

Therefore this revised proposal is being submitted for public comment. This proposal represents a compromise. It eliminates the current openings at 9:00 a.m. on Saturdays and 8:00 p.m. on Sundays and Monday holidays. The data indicates that these are times when the traffic along the highway corridor is particular heavy. It retains the 12 noon opening on Saturdays and adds an opening at 3:30 p.m. on Sundays and Monday holidays. While the traffic at these times is still significant, the traffic counts are lower than at other times that would provide meaningful access to the boaters.

It also extends the Saturday opening schedule to Fridays, when Friday is a holiday. And, the Friday schedule would be in effect on the Thursday before holidays.

In addition to this proposal, a temporary rule will be published in a separate document in the **Federal Register.** This temporary rule will enable us to evaluate this proposal during the remainder of the summer and early fall boating season. This action is being taken under 33 CFR 117.43. The temporary deviations from the existing regulations will only be effective on the dates listed in the temporary rule.

Economic Assessment and Certification

The proposed regulations, as revised, are considered to be non-major under Executive Order 12291 on Federal Regulations and non-significant under the Department of Transportations regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this revised proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The proposed regulation will have no effect on commercial navigation or on any industries that depend on the waterborne movement of commodities or raw materials for their operation. The economic impact on marinas and other small, water-related businesses in the Kent Island area is not expected to be significant.

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

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

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

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499, 49 CFR 1.46; 33 CFR 1.05–1(g), 33 CFR 117.43.

2. In § 117.561 the intoductory text, (b) introductory text, (b)(1) through (b)(4), and (c) are revised to read as follows:

§ 117.561 Kent Island Narrows.

The draw of the U.S. Route 50/301 bridge, mile 1.0, Kent Island Narrows, operates as follows:

* * * * *

(b) From May 1 through October 31:

(1) On Monday (except when Monday is a holiday) through Thursday (except with Thursday is the day before a Friday holiday), the draw shall open on signal on the hour from 7 a.m. to 7 p.m., but need not be opened at any other time.

(2) On Friday (except whan Friday is a holiday) and on Thursday when it is the day before a Friday holiday, the draw shall open on signal on the hour from 6 a.m. to 3 p.m. and at 8 p.m., but need not be opened at any other time.

(3) On Saturday and on a Friday holiday, the draw shall open on signal at 6 a.m. and 12 noon and on signal on the hour from 3 p.m. to 8 p.m., but need not be opened at any other time.

(4) On Sunday and on a Monday holiday, the draw shall open on signal on the hour from 6 a.m. to 1 p.m. and at 3:30 p.m., but need not be opened at any other time.

* * * * *

(c) The draw shall open on signal for public vessels of the United States, State, or local government vessels used for public safety purposes, commercial vessels, and vessels in distress.

Dated: June 29, 1987.

A.D. Breed,

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

[FR Doc. 87–15396 Filed 7–6–87; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD5–87–051]

Drawbridge Operation Regulations; Ship Channel, Great Egg Harbor Bay, Somers Point-Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule.

SUMMARY: At the request of the New Jersey Department of Transportation, the Coast Guard is considering a change to the regulations governing the Route 52 drawbridge over Ship Channel, Great Egg Harbor Bay, at mile 0.5, between Somers Point and Ocean City, New Jersey. This proposal would limit the openings to the hour and half hour between 10:00 a.m. and 8:00 p.m. on Saturdays, Sundays, and Federal holidays from Memorial Day through Labor Day. The current requirement for 24 hours notice for an opening between 11:00 p.m. and 7:00 a.m. would remain in effect. The draw would open on signal at all other times. This proposal should accommodate the needs of vehicular traffic, while still providing for the reasonable needs of navigation.

DATE: Comments must be received on or before September 30, 1987.

ADDRESSES: Comments should be mailed to the Commander, Fifth Coast Guard District (ob), C/O CGD1(obr), Bldg., 135A, Governors Island, NY 10004. The comments and other materials referenced in this notice will be available for inspection and copying at that address. Normal office hours are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: William C. Heming, Chief, Bridge Branch, First Coast Guard District (212) 668–7994.

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

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

Drafting Information

The drafters of this notice are Luis B.G. de Armas, project manager, First Coast Guard District Bridge Branch, and CDR Robert J. Reining, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations

This proposal is being made in an effort to relieve vehicular traffic from 10 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays from Memorial Day through Labor Day. Vehicular traffic is at its peak during this period. It is also hoped that synchronizing openings of this bridge with the Route 52 drawbridge across Beach Thorofare will minimize repeat delays to vehicular traffic.

During the past five years the number of drawbridge openings has increased. The total number of drawbridge openings for vessels was 684 in 1981, 934 in 1982, 772 in 1984, 889 in 1985, and 924 in 1986. Similarly, the peak summer vehicular traffic hours have increased on weekends and holidays.

A temporary rule (CGD5–87–029) is being published under the authority of 33 CFR 117.43 to evaluate this proposal for a sixty day period.

The current regulations require the brige to open on signal, except from 11:00 p.m. to 7:00 a.m. During those hours the draw opens on signal if at least 24 hours notice is given.

This proposal would limit the openings to the hour and half hour between 10:00 a.m. and 8:00 p.m. on Saturdays, Sundays, and Federal holidays from Memorial Day through Labor Day. The current requirement for 25 hours notice for openings between 11:00 p.m. and 7:00 a.m. would remain in effect. The draw would open on signal at all other times. The bridge will be required to open on signal at any time for public vessels of the United States, vessels towing other vessels, and vessels in distress.

This proposal is being made because of reported conflicts between land and marine traffic during periods of peak vehicular traffic and a belief by town officials that synchronized openings with the Route 52 drawbridge across Beach Thorofare will minimize delays to vehicular traffic.

Economic Assessment and Certification

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

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. The change in the regulations will permit a more orderly flow of both vehicular and recreation marine traffic. It will permit each mode of traffic to schedule its transits of the bridge to minimize a delay. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

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

PART 117—DRAWBRIDGE OPERATIONS REGULATIONS

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

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

2. Section 117.753 is revised to read as follows:

§ 117.753 Ship Channel, Great Egg Harbor Bay.

The draw of the Route 52 (Ship Channel) bridge, mile 0.5, between Somers Point and Ocean City, shall open on signal:

(a) Except from Memorial Day through Labor Day from 10 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the draw must open only on the hour and half-hour;

(b) Except from 11:00 p.m. to 7:00 a.m., the draw must open only if at least 24 hours advance notice is given; and

(c) At any time for public vessels of the United States, vessels with another vessel in tow, and vessels in distress.

Dated: June 29, 1987.

A.D. Breed,

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

[FR Doc. 87–15397 Filed 7–6–87; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Parts 140 and 143

[CGD 84–098a]

Self-Inspection of Fixed OCS Facilities

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to issue regulations concerning the inspection of fixed facilities on the Outer Continental Shelf (OCS). Presently the regulations state that each OCS facility is subject to an annual on-site inspection by the Coast Guard. This rulemaking proposes to require the owner or operator of fixed OCS facilities to conduct an inspection at intervals not to exceed 12 months and report the results of that inspection to the Coast Guard. This proposal would allow the required annual inspection to be conducted incident to other owner/operator inspections, maintenance, or operations. The Coast Guard would focus the efforts of available marine inspectors on inspections of manned fixed facilities, particularly those which have a poor safety record and would perform additional inspections of other fixed OCS facilities sufficient to provide oversight of the self-inspection program.

DATES: Comments must be received on or before August 21, 1987.

ADDRESSES: Comments may be mailed to Commandant (G-CMC/21) (CGD 84–098a), U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593. Comments will be available for inspection or copying at the Office of Marine Safety Council (G-CMC), Room 2110, at the above address, between the hours of 8 a.m. and 4 p.m., Monday through Friday, except holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LCDR Alan J. Cross, Office of Marine Safety, Security and Environmental Protection, (202) 267–2307.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written comments, data, or arguments. Each comment should include the name and address of the person submitting the comment,

reference the docket number (84–098a) and the specific section of the proposal to which each comment applies, and give the reason for the comments. Persons desiring acknowledgment that their comments have been received should enclose a stamped, addressed postcard or envelope.

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

Drafting Information

The principal persons involved in drafting this proposal are LCDR Alan J. Cross, Project Manager, Office of Marine Safety, Security and Environmental Protection and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Background and Objectives

Under the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA'78) the Coast Guard and the Minerals Management Service (MMS), of the Department of Interior, share responsibility for promulgating regulations which provide for a scheduled on site inspection, at least once a year, of each facility on the OCS subject to regulation under the Act. The facilities addressed by this rulemaking are fixed platforms that are generally engaged in oil production or developmental drilling, most of which are located in the Gulf of Mexico. There are approximately 3100 fixed platforms on the OCS of the United States of which approximately 850 are manned.

Although OCSLAA'78 assigns joint responsibility to both the Coast Guard and MMS for many of the safety issues related to these facilities, the Coast Guard's regulatory interest has centered primarily around lifesaving and firefighting equipment, evacuation procedures, aids to navigation, and workplace safety issues. MMS's regulatory interest has, on the other hand been directed primarily toward production and drilling equipment and procedures, pollution abatement, and safety of production and drilling operations. The specific division of areas of responsibility has been agreed to by the two agencies in a Memorandum of Understanding. Coast Guard inspection goals are reflected in regulations promulgated by the Coast Guard that are contained in Part 140 of Title 33, Code of Federal Regulations. These regulations call for an annual inspection, by Coast Guard marine inspectors, of the safety equipment under its cognizance. However, due to the lack of available resources, the Coast Guard has been unable to consistently meet this goal. As a result, the Coast Guard is considering alternate inspection methods.

An increased Coast Guard inspection program was considered. In addition to placing an increased burden on the taxpayer, it provides little incentive for facility owners and operators to maintain safety equipment since, under OCSLAA'78, the owner/operator must be given a reasonable time after notification of a deficiency to take corrective action and penalties can be assessed only if corrective action is not taken within the time given. Thus, owners and operators could neglect their own safety programs and rely on the inspections conducted by the Coast Guard. As long as the deficiencies identified by the Coast Guard were corrected within a reasonable time, no penalties are incurred and the cost of the inspection program is borne by the taxpayer rather than by the industry.

A program utilizing Coast Guard approved independent inspectors hired by the owner/operator of the facility was also considered. In addition to the burden on the inspectors in obtaining approval, this would impose substantial additional expense on the industry. Consideration was also given to combining Coast Guard and MMS inspection activities, however, this would result in overlapping enforcement activities and would continue all inspection at government expense. The alternative selected was a program of self-inspection with continued Coast Guard oversight. This minimizes the cost to the industry and, by allowing available Coast Guard resources to be concentrated on critical areas, would improve safety on the OCS. On March 7, 1985, the Coast Guard published an Advanced Notice of Proposed Rulemaking (ANPRM) (50 FR 9290) entitled "Revison of the Regulations on Outer Continental Shelf Activities" (CGD 84–098). One of several subjects discussed in the ANPRM concerned inspection of fixed OCS facilities. This proposed rulemaking concerns only the inspection program.

The proposal would satisfy the requirements of OCSLAA'78 by requiring that annual inspections of fixed OCS facilities be conducted by personnel of the facility's owner or operator or by a third party employed by the owner or operator. Under this program, the inspectors would complete an inspection report form, which the owner or operator would verify and forward to the Coast Guard. The efforts of the Coast Guard inspectors could then be focused on unannounced inspections of fixed facilities, particularly those which are manned or which have a poor safety record. The Coast Guard would continue to allocate resources to those inspections to provide a means of monitoring compliance with, and effectiveness of, the self-inspection program. The proposal would not affect the inspection program carried out by MMS covering, among other items, blowout and pollution prevention.

Discussion of the Comments to the ANPRM

Of the 697 comments received to the ANPRM, only 23 addressed the self-inspection issue. Seventeen of the 23 comments were from owners of fixed OCS facilities and industry organizations who supported the basic concept of self-inspection, provided the program was flexible enough to allow use of existing resources. Five comments neither supported nor opposed the concept, and one opposed it.

Nine comments urged the Coast Guard to replace the term "self-certification," as used in the ANPRM, with "self-inspection"; because, this term more accurately describes the proposed process. These proposed regulations do not use the term "self-certification."

Eleven comments requested that the Coast Guard allow the facility owner or operator to decide who should inspect the facility. Proposed § 140.102(d) would simply make the owner or operator of a fixed OCS facility responsible for the required inspections and contains no limitations on who actually conducts the inspection. Presently, many OCS facility owners utilize the services of contractors to conduct required inspections and servicing of fire fighting equipment, aids to navigation equipment, and lifeboats. The Coast Guard considers the arrangement between the fixed OCS facility owner or operator and the third party inspector as strictly contractual in nature and, as such, would not relieve the owner or operator of responsibility for complying with the applicable regulations.

Nine comments requested that the Coast Guard provide a checklist to assist in identifying what equipment and systems must be inspected. Seven comments suggested that such a checklist would also help to eliminate duplications of MMS requirements. The items included in the proposed form were selected to impose the minimum reporting burden consistent with the

Coast Guard's safety mission. The form has been designed to cover both manned and unmanned facilities. The Coast Guard recognizes that many of the items are applicable only to fixed manned facilities. Having only a single form covering all items subject to inspections was considered to be more feasible than having separate forms for manned and unmanned fixed facilities because many unmanned facilities are equipped with fire fighting and lifesaving equipment similar to that on manned facilities. However, the information reported for most unmanned facilities will be substantially less than that requested for manned facilities. A proposed checklist/inspection report has been prepared and is included here for public comment, on both arrangement of the form and content.

BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION
U.S. COAST GUARD
CG 5432 (Ed. 6-87)

FIXED OCS FACILITY INSPECTION REPORT

FOR C.G. USE ONLY
I.D. NO.

Facility Name _____ Manned ___ Unmanned ___ Number of Persons on Board _____
OCS Area/Block _____ MMS Lease No. _____ Operator(s) _____ Owner(s) _____
Person In Charge _____ Name & _____ Name & _____
Facility Telephone _____ Address _____ Address _____

INSPECTION ITEMS - ALL FACILITIES	Def	Cor	Out
1. Workplace Safety 33 CFR 142			
2. Rails/Guards/Grating 33 CFR 143.110			
3. Personnel Landings 33 CFR 143.105			
4. Means of Escape 33 CFR 143.101			
-primary -			
-secondary -			
5. Helo Deck Perimeter 33 CFR 143.110			
6. Lights/Warning Devices 33CFR 143.15			
7. Firefighting Equip 33 CFR 145			
type and number :			
portable _____ -			
semi-portable _____ -			
fixed _____ -			
location -			
size -			
agent -			
INSPECTION ITEMS - UNMANNED FACILITIES			
8. Lifesaving Equipment 33CFR 144.10-1			
9. Other Lifesaving Equipment (See Instructions)			
INSPECTION ITEMS - MANNED FACILITIES			
10. Emer Comms Equip 33 CFR 144.01-40			
11. Station Bill 33 CFR 146.130			
12. Emergency Drills 33 CFR 146.125			
-conducted monthly -			
-record keeping -			
13. Life Preservers 33 CFR 144.01-20			
-number: _____ -			
-equipment -			
-markings -			
-stowage -			
14. Work Vests 33 CFR 146.20			
-number: _____ -			
-separate stowage -			
15. Ringbuoys 33 CFR 144.01-25			
-number: _____ -			
-equipment -			
-markings -			
-stowage -			
16. General Alarm Sys 33 CFR 146.105			
-markings 33 CFR 146.135 -			
17. Manning of Surv Craft 33CFR 146.120			
18. First Aid Kit 33 CFR 144.01-30			
19. Litter 33 CFR 144.01-35			

INSPECTION ITEM	Def	Cor	Out
20. Lifesaving Appliances 33 CFR 144			
a. type:			
Lifefloat__ Liferaft__ Lifeboat__			
approval no. _____			
location			
condition			
equipment/markings			
servicing (date _____)			
launching devices			
weight test (date _____)			
operational test (date _____)			
b. type:			
Lifefloat__ Liferaft__ Lifeboat__			
approval no. _____			
location			
condition			
equipment/markings			
servicing (date _____)			
launching devices			
weight test (date _____)			
operational test (date _____)			
c. type:			
Lifefloat__ Liferaft__ Lifeboat__			
approval number _____			
location			
condition			
equipment/markings			
servicing (date _____)			
launching devices			
weight test (date _____)			
operational test (date _____)			
d. type:			
Lifefloat__ Liferaft__ Lifeboat__			
approval number _____			
location			
condition			
equipment/markings			
servicing (date _____)			
launching devices			
weight test (date _____)			
operational test (date)			
21. Personnel Record Location 33 CFR 141.35			

LIST OF OUTSTANDING ITEMS/COMMENTS (Attach additional pages as necessary)

FACILITY OWNER'S OR OPERATOR'S ACKNOWLEDGEMENT

Name _____ Title _____ Signature/Date _____

8

BILLING CODE 4910-14-C

Instructions

General

Facility Name—Enter official facility name/designation.

Manned/Unmanned—Check appropriate space.

Number of Persons on Board—Enter number of person on board on the day of the inspection.

Person in Charge—Enter the full name of the person in charge.

Operator—Fill in name and address of company operating the facility.

Owner—Fill in name and address of leaseholder.

OCS Area/Block—Enter standard OCS area abbreviation and block number.

Facility Telephone—Enter telephone number if so equipped.

Inspection Items

Def.—Refers to the total number of deficiencies per item found during this inspection.

Cor.—Refers to the number of deficiencies per item that were corrected this inspection.

Out.—Refers to number of deficiencies per item remaining outstanding/uncorrected.

Enter the number of deficiencies found, the number of deficiencies corrected, and the number of deficiencies that remain outstanding for each item in the appropriate box (Cor. + Our. = Def.) Enter N/A for any item that is not applicable.

ITEM NUMBERS 1 THROUGH 7 MUST BE COMPLETED FOR ALL FACILITIES, BOTH MANNED AND UNMANNED.

ITEM NUMBERS 8 AND 9 MUST BE COMPLETED FOR ALL UNMANNED FACILITIES.

ITEM NUMBERS 10 THROUGH 21 MUST BE COMPLETED FOR ALL MANNED FACILITIES.

Instructions for Specific Item Numbers

7—Type and number—enter the number of portable/semi-portable fire extinguishers and/or fixed firefighting equipment on board in the appropriate spaces, location/size/agent—use Table 33 CFR 145.10(a) to determine compliance.

9—Any lifesaving equipment on an unmanned platform that is not required by 33 CFR 144.10–1 must meet the standards contained in 144.01–1 through 144.01–40. Where such additional equipment is installed/located on the facility the appropriate item should be completed under the INSPECTION ITEM-MANNED FACILITY section of the form.

10—Emer. Comms. Equip.—refers to emergency communication equipment.

13, 14, 15—Number—enter the number of preservers/vests/buoys on board in the appropriate spaces.

20—Fill in one subsection (a,b,c, and d) for each piece of primary lifesaving equipment, type—check the appropriate space, servicing—enter the date the item was last serviced, weight/operational test—enter the date of the last test.

21—Personnel Record Location—enter the address of the location of the required record.

If additional space is needed for any item, enter the applicable item number and the appropriate data in the comments section.

List of Outstanding Items/Comments

Enter a brief description of each outstanding deficiency and the proposed corrective action. Enter comments as appropriate. Attach additional pages as necessary.

Owner's/Operator's Acknowledgement

Enter name, title, and signature/date of owner's/operator's representative acknowledging the particulars of the inspection.

Two comments suggested that the program include inspection of underwater portions of fixed OCS facilities. However, under the December 18, 1980, Memorandum of Understanding between the Coast Guard and Minerals Management Service (MMS) (46 FR 2199; January 8, 1981), this aspect of fixed facility inspection is the responsibility of MMS.

Three comments requested that the Coast Guard extend the self-inspection concept to mobile offshore drilling units (MODUs). While this suggestion might appear to have merit, the MODU inspection requirements in Subchapter I–A of 46 CFR Chapter I are based on statutes which would not permit the regulatory extension of self-inspection to MODUs.

One comment recommended that, in addition to self-inspections, the Coast Guard conduct spot-checks based on the "track-record" of the facility and unannounced follow-up safety inspections. The proposed self-inspection program would be subject to continuing Coast Guard oversight. Coast Guard marine inspectors would conduct inspections of facilities selected through an examination of reported casualties and complaints and continue with the Coast Guard's program of unannounced inspections of randomly selected, fixed OCS facilities to ensure the reliability of the self-inspection program.

Discussion of Proposed Amendments

The proposed changes would establish a self-inspection program on all fixed facilities on the Outer Continental Shelf (OCS) of the United States.

Proposed § 140.101. The title of this provision would be changed from "General inspection requirements" to "Inspection by Coast Guard marine inspectors". Paragraph (b) of this provision would eliminate any apparent conflict with the self-inspection provision in proposed §140.103(d) by replacing "inspect" with "may inspect". Proposed new paragraph (d) is existing § 140.102(a). This proposal would move it to the section for inspection by Coast Guard marine inspectors to clarify its applicability to all OCS units inspected by Coast Guard marine inspectors. Paragraph (e) is new and proposes that fixed OCS facilities installed after the effective date of these regulations would be inspected initially by Coast Guard marine inspectors. Existing § 140.102 is being removed. The substantive provisions are relocated in proposed § 140.101 and § 143.210.

Proposed § 140.103. This is a new section that would set forth the requirements for conducting and reporting inspections of fixed OCS facilities. Paragraph (a) proposes that the owners or operators of each fixed OCS facility is responsible for ensuring that their facility is inspected annually to determine compliance with the requirements of this subchapter. Proposed paragraph (b) would allow the initial inspection of a new fixed OCS facility by the Coast Guard to satisfy the requirements of paragraph (a) for an annual inspection. New paragraph (c) proposes that the owner or operator, utilizing proposed Form CG 5432, would submit the results of the self-inspection to the Officer in Charge, Marine Inspection, within 10 days after the completion of the entire inspection. Paragraph (d) proposes that for new fixed OCS facilities, the 12-month period under paragraph (a) of this section begins with the initial inspection. For existing fixed OCS facilities, the Officer in Charge, Marine Inspection, would assign a date on which to begin the 12-month period for determining the date of the annual inspection. This would allow inspections to be distributed throughout a 12-month period.

Proposed § 140.105. This section is similar to existing § 140.103 on deficiencies and hazards discovered during an inspection by a Coast Guard marine inspector. Proposed paragraph (a) is similar to existing § 140.103(c) but

specifies who is responsible for ensuring that defective lifesaving and fire fighting equipment is mutilated so as to be no longer serviceable for the purpose for which it was originally intended. Proposed paragraph (b) is existing § 140.103(a) on deficiencies and hazards discovered during an inspection by a Coast Guard marine inspector. Paragraph (c) proposes procedures to handle deficiencies discovered during self-inspections of fixed OCS facilities. New paragraph (d) would describe how outstanding deficiencies or hazards reported by the owner or operator on proposed Form CG 5432 are handled by the Officer in Charge, Marine Inspection.

Proposed § 143.210. This proposal would designate the existing paragraph as new paragraph (a). New proposed paragraph (b) is similar to existing § 140.102(c), which is being relocated to a section more in keeping with its subject matter.

Regulatory Evaluation

While the parent proposed regulations, entitled "Revision of Regulations for Outer Continental Shelf Activities" (CGD 84–098), are considred to be non-major under Executive Order 12291 but significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979), this extracted portion, entitled "Self-Inspection of Fixed OCS Facilities" (CGD 84–098a), is considered to be non-major and non-significant under the same Executive Order and DOT policies.

A draft regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the Office of the Marine Safety Council, Room 2110, U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC, (202) 426–2307, from 8 a.m. to 4 p.m. copies may also be obtained by contacting that office.

For the Coast Guard to conduct scheduled annual inspections of all OCS facilities would require the expenditure of approximately $.76M. This is in addition to inspections of MODU's, inspections in response to worker complaints, and unannounced inspections conducted as oversight of the OCS safety program and reflects the operational economies achieved by scheduling multiple inspections wherever practicable. If the proposal is adopted, the Coast Guard would not require the $.76M to conduct scheduled inspection but would need to increase unannounced inspections to ensure that the self-inspection program was being carried out properly. It is estimated that $.19M would be required to achieve approximately 25% inspections. The degree of ovesight could possibly be reduced after experience is gained with the self-inspection program.

Economic Factors

The economic impact of the proposed self-inspection requirements would be minimal for many fixed OCS facilities because virtually all owners and operators already conduct some degree of self-inspection on their facilities. However, some owners and operators lack in-house expertise to properly conduct the proposed self-inspection and would have to contract with a third party to conduct all or part of the proposed self-inspection program are estimated to be $196.100. The primary means of transportation is expected to be by helicopter, although available vessels may be used for transportation to unmanned facilities in close proximity to other facilities equipped with helicopter decks. Transportation to and from facility inspections is assumed to be provided by existing transportation 70% of the time, 30% of the inspections are assumed to require a dedicated helicopter. This is expected to result in an additional transportation cost of $294,150.

It would take an annual expenditure of approximately 980 man-days to conduct the inspections of 3074 facilities and thereby collect the information necessary to complete form CG 5432. Additionally, we estimate that it would take between 15 and 30 minutes to fill out the proposed Form. The total information collection burden is estimated to be 9,440 man-hours. The dollar cost to collect the information is included in the estimated inspection costs. The maximum additional cost to complete the proposed form is estimated to be $38,425.

The total economic burden of the proposed self-inspection program is estimated to be the total of additional transportation costs, personnel costs, and costs to complete the form. This total is $528,675 or $.53M. These estimates are considered conservative because they do not take into account all the economies associated with combining the transportation of inspectors with other transportation needs or combining the required annual inspection with inspections, maintenance, or operations that are conducted otherwise.

The net result of the proposal would be to shift a function that would require the expenditure by the government of $.76M to the industry, at an estimated cost of $.53M. Increased oversight inspections to ensure program reliability would require estimated annual government expenditures of $.19M initially, but could be reduced in the future. Specific comments on these costs estimates are solicited from all interested and knowledgeable parties. These rules would not affect State and local governments and would have a negligible effect on costs to consumers.

Safety Factors

The principal benefit of this proposal is expected to be an overall improvement is safety. The Coast Guard, by allowing industry to take care of the mandated annual inspection, will be able to focus its resources on those fixed OCS facilities that are manned, have a poor safety record or are the subject of worker complaints. Further, since the Coast Guard will be conducting oversight inspections (spot-checks) of randomly selected manned facilities many of these facilities will receive multiple inspection during any one year. It is anticipated that every manned facility will receive at least one inspection by the Coast Guard during the first year of the program. The number of facilities inspected and the number of inspections per facility will be adjusted in subsequent years to assure that safety is not jeopardized and that the effectiveness of the self-inspection program is not compromised.

Additionally, inspection reports and casualty reports will be reviewed for inconsistencies and analyzed by Coast Guard field units and Coast Guard Headquarters. This will allow the Coast Guard to better evaluate the safety performance of individual operators and will provide a mechanism whereby industry trends may be identified or predicted.

Combining 100% self-inspection with additional Coast Guard oversight inspection results in an inspection coverage significantly in excess of 100%. Using even the accepted minimum value of a human life, if even one life is saved each year, the total cost of the program will be cost effective.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard must consider whether the rule it is proposing is likely to have significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). These regulations would affect owners and operators of fixed OCS

facilities. Because of the extremely high costs of these fixed OCS facilities, their owners and operators tend to be major corporations or subsidiaries of major corporations.

For the above reasons, the Coast Guard certifies that this proposal will not have a significant economic impact on a substantial number of small entities. If, however, you feel that your business may qualify as a small entity and that the proposed rules would have a significant economic impact on the business, please notify the Coast Guard (see ADDRESSES) and explain why you feel your business qualifies and in what way and to what degree the proposed regulations would economically affect your business.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in §§ 140.103 and 140.105. They have been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Persons desiring to comment on these information collection requirements should submit their comments to: Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard. Persons submitting comments to OMB are also requested to submit a copy of their comments to the Coast Guard as indicated under "ADDRESSES".

Environmental Assessment

The Coast Guard has considered the environmental impact of the regulations and concluded that preparation of an environmental impact statement is not necessary. An environmental assessment with a finding of no significant impact has been prepared and is on file in the rulemaking docket.

List of Subjects

33 CFR Part 140

Administrative practice and procedure, Authority delegation, Continental shelf, Incorporation by reference, Law enforcement, Marine safety, Reporting and recordkeeping.

33 CFR Part 143

Continental shelf, Incorporation by reference, Marine safety.

In consideration of the foregoing, Parts 140 and 143 of Title 33 of the Code of Federal Regulations are proposed to be amended as follows:

PART 140—GENERAL

1. The authority citation for Part 140 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1348(c), 1356; 49 CFR 1.46(z).

2. In § 140.101, the section heading and paragraph (b) are revised and new paragraphs (d) and (e) are added to read as follows:

§ 140.101 Inspection by Coast Guard marine inspectors.

* * * * *

(b) Under the direction of the Officer in Charge, Marine Inspection, marine inspectors may inspect units engaged in OCS activities to determine whether the requirements of this subchapter are met. These inspections may be conducted with or without advance notice at any time deemed necessary by the Officer in Charge, Marine Inspection.

* * * * *

(d) Coast Guard inspections of foreign units recognize valid international certificates accepted by the United States, including Safety of Life at Sea (SOLAS), Loadline, and Mobile Offshore Drilling Unit (MODU) Code certificates for matters covered by the certificates, unless there are clear grounds for believing that the condition of the unit or its equipment does not correspond substantially with the particulars of the certificate.

(e) Coast Guard marine inspectors conduct an initial inspection of each new fixed OCS facility to detemrine whether the facility is in compliance with the requirements of this subchapter.

§ 140.102 [Removed]

3. By removing § 140.102, Foreign units.

4. By revising § 140.103 to read as follows:

§ 140.103 Annual inspection of fixed OCS facilities.

(a) The owner or operator of each fixed OCS facility shall ensure that the facility is inspected, at intervals not to exceed 12 months, to determine whether the facility is in compliance with the requirements of this subchapter.

(b) The initial inspection of a new facility under § 140.101(e) meets the requirements for an inspection under paragraph (a) of this section.

(c) When an inspection is conducted under the direction of the owner or operator of a facility, the reuslts of the inspection must be recorded on Form CG 5432. The owner or operator shall submit the completed Form CG 5432 to the Officer in Charge, Marine Inspection, within 10 days after completion of the inspection.

(d) For new facilities installed on the OCS after [the effective date of the reuglations], the 12 month period under paragraph (a) of this section begins with the initial inspection under § 140.101(e). The Officer in Charge, Marine Inspection, assigns facilities operating on the OCS on [the effective date of these regulations] a date for beginning the 12 month period under paragraph (a) of this section, allowing at least 90 days before the next inspection is due.

5. By revising § 104.105 to read as follows:

§ 140.105 Correction of deficiencies and hazards.

(a) Lifesaving and fire fighting equipment which is found defective during an inspection and which, in the opinion of the inspector, cannot be satisfactorily repaired must be so mutilated in the presence of the inspector that it cannot be used for the purpose for which it was originally intended. Lifesaving and fire fighting equipment subsequently determined to be unrepairable must be similarly mutilated in the presence of the person making that determination.

(b) Any deficiency or hazard discovered during an inspection by a Coast Guard marine inspector is reported to the unit's owner or operator, who shall have the deficiency or hazard corrected or eliminated as soon as practicable and within the period of time specified by the Coast Guard marine inspector.

(c) Deficiencies and hazards discovered during an inspection of a fixed OCS facility under § 140.103(a) must be corrected or eliminated, if practicable, before the Form CG 5432 is submitted to the Officer in Charge, Marine Inspection. Deficiencies and hazards that are not corrected or eliminated by the time the Form is submitted must be indicated on the Form as "outstanding". Upon receipt of a Form CG 5432 indicating outstanding deficiencies or hazards, the Officer on Charge, Marine Inspection, informs, by letter, the owner or operator of the fixed OCS facility of the deficiencies or hazards and the time period specified to correct or eliminate the deficiencies or hazards.

(d) Where a deficiency or hazard remains uncorrected or uneliminated after the expiration of the itme specified for correction or elimination, the Officer in Charge, Marine Inspection, initiates appropriate enforcement measures.

PART 143—DESIGN AND EQUIPMENT

6. The auhtority citation for Part 143 is revised to read as follows:

Authority: 43 U.S.C. 1333(d)(1), 1347(c), 1348(c), 1356(a)(2); 49 CFR 1.46(z).

7. By revising § 143.210 to read as follows:

§ 143.210 Letter of compliance.

(a) The Officer in Charge, Marine Inspection, determines whether a mobile offshore drilling unit which does not hold a valid Coast Guard Certificate of Inspection meets the requirements of §§ 143.205 or 143.207 relating to design and equipment standards and issues a letter of compliance for each unit which meets the requirements. Inspection of the unit may be required as part of this detemrination.

(b) A letter of compliance issued under paragraph (a) of this section is valid for one year or until the MODU departs the OCS for foreign operations, whichever comes first.

Dated: June 29, 1987.

P.A. Yost,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 87-15401 Filed 7-6-87; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3222-4]

Assessment of Municipal Waste Combustor Emissions Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Response to petition for rulemaking and advance notice of proposed rulemaking (ANPRM).

SUMMARY: This notice describes the results of EPA's preliminary assessment of air emissions from municipal waste combustors (MWC) and provides EPA's response to petitions filed August 5, 1986, by the Natural Resources Defense Council (NRDC) and the States of New York, Connecticut, and Rhode Island. Based on the assessment, the Administrator has judged that MWC emissions may reasonably be anticipated to contribute to the endangerment of public health and welfare. As a result, this action also constitutes advance notice of EPA's intent to propose regulation of MWC emissions from new or modified MWC under section 111(b) of the Clean Air Act (CAA).

The EPA intends to regulate one or more designated pollutants (pollutants not regulated under sections 108–110 or 112) thus invoking section 111(d). (See 40 CFR Part 60, Subpart B.) Section 111(d) and the Subpart B regulations require issuance by EPA of existing source guidelines followed by the development by States of specific emission standards for existing MWC. In the development of the section 111(d) guidelines, the Agency will consider the distribution of health risks as well as other impacts. Today's notice also provides EPA's present schedule for the new source regulation and the implementation of the section 111(d) requirements.

In making this determination, EPA grants the NRDC et al. requests for a determination on MWC emissions and for revision of the existing new source performance standard (NSPS) for incinerators, but denies petitioner's request for the application of section 112 to MWC or constituents of MWC emissions. Responses to petitioners' requests for a finding that constituents of MWC emissions can reasonably be anticipated to be carcinogenic or otherwise toxic are set forth in the notice; however, the Administrator has made the preliminary determination that, in view of the broad range of health effects and the multiple constituents of NWC emissions, the use of section 111(b) and 111(d) constitutes the most appropriate, comprehensive regulatory strategy for control of these emissions.

This notice also describes recent operational guidance issued through EPA's Regional Offices for use by State and local authorities in the review of prevention of significant deterioration (PSD) permits pursuant to the requirements of Part C of the Act and 40 CFR 51.24. The guidance identifies operating conditions and control technology that, in EPA's judgment, constitutes best available control technology (BACT) for new and modified MWCs that is required by the PSD regulations.

Also, through this notice, EPA solicits public comment on this preliminary determination and advance rulemaking notice. Any comments will be considered in carrying out the anticipated actions announced today.

DATES: *Comments.* Written comments on the determination and regulatory strategy should be received on or before September 8, 1987.

ADDRESS: *Comments.* Comments should be submitted (in duplicate if possible) to: Central Docket Section (A–130), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, ATTN: Docket No. A–86–16. The Central Docket Section is located at the offices of the U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street, SW, Washington, DC. The docket may be inspected between 8:00 a.m. and 4:30 p.m. on weekdays, and a reasonable fee may be charged for copying.

Information relevent to today's determination is available in the public rulemaking docket for this action (A–86–16) located at the above address. Copies of available documents listed in the Supplementary Information section of this notice will also be available through the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161. Where NTIS numbers have been assigned, the ordering number and cost are identified.

FOR FURTHER INFORMATION CONTACT: For the MWC preliminary assessment and determination: Robert G. Kellam, Pollutant Assessment Branch (MD–12), Strategies and Air Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, NC. 27711 (Telephone: Commercial—919–541–5646/FTS 629–5646).

For the section 111 rulemaking: James U. Crowder, Industrial Studies Branch (MD–13), Emission Standards and Engineering Division, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711 (Telephone: Commercial—919–541–5596/FTS 629–5596).

SUPPLEMENTARY INFORMATION:

Availability of Related Information

"Municipal Waste Combustion Study" U.S. Environmental Protection Agency, June 1987, EPA/530–SW–87–021A.

Emissions Data Base for Municipal Waste Combustors
EPA/530–SW–87–021B

Combustion Control of Organic Emissions
EPA/530–SW–87–021C

Flue Gas Cleaning Technology
EPA/530–SW–87–021D

Cost of Flue Gas Cleaning Technologies
EPA/530–SW–87–021E

Sampling and Analysis
EPA/530–SW–87–021F

Assessment of Health Risks Associated with Exposure to Municipal Waste Combustion Emissions
EPA/530–SW–87–021G

Characterization of the Municipal Waste Combustion Industry
EPA/530–SW–87–021H

Recycling of Solid Waste
EPA/530–SW–87–021I

"Methodology for the Assessment of Health Risks Associated with Multiple Pathway Exposure to Municipal Waste Combustor Emissions," draft submitted for review to the Science Advisory Board, U.S.

Environmental Protection Agency, October 1986.
"Health Assessment Document for Inorganic Arsenic, Final Report," U.S. Environmental Protection Agency, EPA 600–8–83–021F, March 1984 (NTIS–84–190891, Cost $24.95).
"Health Assessment Document for Beryllium, Review Draft," U.S. Environmental Protection Agency, EPA 600–8–84–026B, April 1, 1986 (NTIS–86–183944, Cost $18.95).
"Health Assessment Document for Cadmium," U.S. Environmental Protection Agency, EPA 600–8–81–023, October 1981 (NTIS–82–115163, Cost $28.95).
"Updated Mutagenicity and Carcinogenicity Assessment of Cadmium, Final Report," U.S. Environmental Protection Agency, EPA 600–8–83–025F, June 1985 (NTIS–85–243533, Cost $24.95).
"Health Assessment Document for Chromium, Final Report," U.S. Environmental Protection Agency, EPA 600–8–83–014F, August 1984 (NTIS–85–115905, Cost $30.95).
"Health Assessment Document for Chlorinated Benzenes, Final Report," U.S. Environmental Protection Agency, EPA 600–8–84–015F, January 1985 (NTIS–85–150332, Cost $43.00).
"Ambient Water Quality Criteria for Chlorinated Phenols," U.S. Environmental Protection Agency, EPA 440–5–80–032, October 1980 (NTIS–81–117434, Cost $18.95).
"Ambient Water Quality Criteria for 2-Chlorophenol," U.S. Environmental Protection Agency, EPA 440–5–80–034, October 1980 (NTIS–81–117459, Cost $13.95).
"Ambient Water Quality Criteria for 2,4-Dichlorophenol," U.S. Environmental Protection Agency, EPA 440–5–80–042, October 1980 (NTIS–81–117533, Cost $13.95).
"Health Assessment Document for Polychlorinated Dibenzo-p-Dioxins, Final Report, U.S. Environmental Protection Agency, EPA 600–8–84–014F, September 1985 (NTIS–86–122546, Cost $46.95).
"Assessment of Health Risks to Garment Workers and Certain Home Residents from Exposure to Formaldehyde, Draft Report," U.S. Environmental Protection Agency, April 1987.
"Summary Review for Health Effects Associated with Chlorine and Hydrogen Chloride: Health Issue Assessment, Review Draft," U.S. Environmental Protection Agency, ECAO–R–065A, March 1986.
"Air Quality Criteria for Lead, Volumes I to IV, Final Draft," U.S. Environmental Protection Agency, EPA 600–8–83–028B, June 1986 (NTIS–87–142378 Set, Cost $105.50).
"Mercury Health Effects Update, Final Report," U.S. Environmental Protection Agency, EPA 600–8–84–019F, August 1984 (NTIS–85–1639961HS, Cost $18.95).
"Health Effects Assessment for Polycyclic Aromatic Hydrocarbons (PAHs)," U.S. Environmental Protection Agency, EPA 540–1–86–013, September 1984 (NTIS–86–134244, Cost $13.95).
"Health Effects Assessment for Benzo(a)Pyrene," U.S. Environmental Protection Agency, EPA 540–1–86–022, September 1984 (NTIS–86–134335, Cost $11.95).
"Health Effects Assessment for Polychlorinated Biphenyls, Final Report," U.S. Environmental Protection Agency, EPA 540–1–86–004, September 1984 (NTIS–86–134152, Cost $13.95).

Copies of individual volumes of the "Municipal Waste Combustion Study" will be available through the NTIS at the address provided under ADDRESSES. Copies of EPA's health assessment documents (HADs) are also available through the NTIS. Information on the availability of the HADs can also be obtained from the Office of Research and Development (ORD) Publications, CERI–FR, U.S. Environmental Protection Agency, Cincinnati, Ohio 45268 (Telephone: 513–684–7562 commercial/684–7562 FTS).

Introduction and Background

The combustion of municipal solid waste (MSW) represents an increasingly important element of the solid waste disposal program in the U.S. At the present time, 111 combustors incinerate over 6 million tons of MSW annually. Although this amount represents only 5–6 percent of the MSW generated in the U.S. each year, EPA estimates that, by the mid-1990s, combustion could account for as much as 25 percent of the nation's MSW disposal in as many as 300 facilities.

The anticipated growth in the MWC industry is largely the result of a consistent growth in the volume of MSW and increasing concern about the continous availability and environmental impacts of the traditional disposal alternative of landfilling. While 80 percent of MSW is currently disposed of in roughly 10,000 landfills nationwide, many of these facilities are nearing capacity and the siting of new landfills, particularly in heavily populated areas, has become increasingly difficult.

To guide municipalities in making waste management decisions, EPA is presently developing revisions to the existing 40 CFR Part 257 Criteria for Classification of Solid Waste Disposal Facilities and Practices under Subtitle D of the Resource Conservation and Recovery Act (RCRA). EPA plans to propose the revised criteria in August 1987.

Although the combustion of MSW does not eliminate the need for landfilling, since the residual ash must be disposed of, it does reduce the volume of the waste by 70–90 percent, greatly extending the life of operating landfills. Modern resource recovery combustors also offer the ability to recover energy from the combustion process in the form of steam or hot water, energy that can be used to offset the energy requirements of the facility or offered for sale to industrial customers or the local utility net.

Disposal of municipal waste by combustion, however, releases potentially harmful pollutants into the air. The EPA's regulatory interest in MWC can be traced to the promulgation in 1974 of a new source performance standard (NSPS) for particulate matter (PM) emissions from municipal incinerators under section 111(b) of the CAA. The standard required covered incinerators constructed or modified after the date of proposal of the NSPS to limit PM emissions to 0.08 grains PM per dry standard cubic foot (dscf) of exhaust gas. Similarly, in 1986 EPA promulgated a PM standard for new, large industrial boilers of 0.1 pounds PM per million BTU (approximately equivalent to 0.03 gr/dscf). Since heat recovery facilities are equipped with boilers, new resource recovery MWC that process roughly 200 tons per day (tpd) or more of municipal waste are subject to the 1986 NSPS. The present NSPS, however, were developed to control emissions of particulate matter and were not intended to address health concerns specific to individual constituents of this class of compounds or other components of MWC emissions.

In 1984, in section 102 of the Hazardous and Solid Waste Amendments (HSWA) to RCRA, Congress directed EPA to report on the magnitude of dioxin risks from MWC and ways in which dioxin emissions could be minimized. In addition, over the period 1984–1985, EPA's Office of Air and Radiation, in the course of assessing candidate air toxics, identified MWCs as a potentially significant source category. In June 1985 the Administrator announced EPA's air toxic strategy which included the commitment to assess source categories such as MWC that emit multiple pollutants.

The following sections of this notice describe the methods and results of EPA's analysis of MWC emissions, the basis for the Administrator's announced actions, and EPA's schedule for subsequent actions.

Municipal Waste Combustion Study

Concurrent with the publication of this notice, EPA is issuing a comprehensive, integrated study of the municipal waste combustion industry. The study represents the collection and organization of a growing body of technical data that ranges from techniques for the sampling and analysis of stack emissions to a preliminary assessment of the potential public

health risks posed by municipal waste combustor emissions. Other technical volumes issued as part of the study include: A compilation of the emission data base for MWC, available techniques for combustion control of organic emissions, a summary of available information on flue gas cleaning technology, an analysis of the cost of flue cleaning devices, and a description of recycling strategies for solid waste.

The Municipal Waste Combustion Study is intended to serve several purposes. First, it provides useful information to industry, the legislative, regulatory and regulated communities, and the public on the state of EPA's knowledge regarding municipal waste combustion. In addition, by identification of gaps in the knowledge base, the study will guide further research. The study provides data and analysis upon which EPA's regulatory actions are based. Elements of the study relevant to this notice are summarized in the sections that follow.

Sources and Emissions

The MWC industry is divisible into three principal design subcategories: massburn, modular, and refuse derived fuel fired (RDF) facilities. Existing massburn and modular facilities can be further classified as either heat recovery, for those facilities recovering heat from the exhaust gases to generate steam or electricity, or non-heat recovery. The massburn and modular facilities usually combust the waste without any preprocessing other than the removal of large noncombustible items that cannot pass through the feed system. The massburn units are usually field erected and range in size from 50 to 1000 tons per day of refuse feed capacity. Modular combustors are typically shop-fabricated and range in size from 5 to 100 tons per day of refuse fired.

The third major class burns RDF and has per unit design capacities ranging from 250 to 1000 tons per day. The RDF facilities have boilers incorporated into the design of the facility and all recover heat, generating either steam or electricity. While some RDF facilities are designed to be co-fired with fossil fuels, units firing RDF only are of primary concern in this analysis. The number and the total installed design capacity (tons of refuse per day) of existing MWC facilities are summarized in Table 1.

TABLE 1.—EXISTING AND PLANNED MWC FACILITIES BY DESIGN TYPE

Design type	Installed or projected design capacity [a] (tons per day)	Number of facilities
Existing Facilities:		
Massburn		
With heat recovery	20,100	24
Without heat recovery	13,000	21
Subtotal	33,100	45
Modular		
With heat recovery	3,900	39
Without heat recovery	600	17
Subtotal	4,500	56
RDF		
With heat recovery	11,400	10
Without heat recovery	0	0
Subtotal	11,400	10
Total	49,000	111
Projected Facilities:		
Massburn [b]	113,000	118
Modular [c]	5,000	24
RDF	39,000	31
Undetermined [d]	36,000	37
Total	193,000	210

[a] Installed design capacity applied to existing facilities; projected applied to planned facilities.

[b] Includes both overfeed stoker and rotary combustor designs.

[c] Includes both starved air and excess air designs.

[d] Design type has either not been specified or data on design type was not provided in the references. For the purposes of analysis, these facilities are subsequently allocated to the design categories based on the proportion of waste throughput for each category.

In view of the anticipated growth in the MWC industry, EPA's analysis also includes estimates of the number and capacity of new facilities expected in the near term. Capacity growth projections for MWC facilities through the year 2000 range from 120,000 tons per day (Franklin Associates) to 250,000 tons per day (Frost and Sullivan). The EPA's estimates of the number of projected facilities and the projected design capacity in tons per day are summarized in Table 1. Included in the data presented are planned facilities which are not yet operating, but are either under construction, have contracts for construction, have contracts under negotiation or have been formally proposed. Where the design of projected combustors was indeterminate, facilities are allocated to design categories for the purposes of analysis in the ratio of total waste throughput for each design type.

The evaluation of stack emissions from MWCs is limited to those emission constituents for which emission test data and some indication of public health or welfare concern are available. Data were sufficient for analysis of 13 pollutants or pollutant classes. Estimates of annual baseline emissions of these compounds and several criteria pollutants (particulate matter, carbon monoxide, nitrogen oxides, and sulfur oxides) are presented in Tables 2 and 3. The baseline emission estimates for existing facilities (Table 2) include consideration of air pollution control devices in place. National estimates reflect extrapolation of existing test data for individual sources to the source categories by estimated annual waste throughput. The emission factors used to estimate both metal and organic emissions were developed from data presented in EPA's Municipal Waste Combustion Study, Emissions Data Volume, EPA (1987b).

TABLE 2.—ESTIMATED STACK EMISSION FROM EXISTING MWC FOR SELECTED POLLUTANTS

	Current Emissions (kg/yr)			
	Massburn	RDF	Modular	Rounded total
Arsenic	2,300	120	240	2,700
Beryllium	20	80	<1	100
Cadmium	7,700	140	2,600	10,400
Carbon monoxide	13,300,000	6,370,000	404,000	20,000,000
Chlorobenzenes	3260	500	23	3780
Chlorophenols	4690	640	23	5350
Chromium+ [e]	450	140	6	600
Chlorinated dioxins [f] and dibenzofurans (CDD/CDF)	16.7	7.1	.09	24

TABLE 2.—ESTIMATED STACK EMISSION FROM EXISTING MWC FOR SELECTED POLLUTANTS—Continued

	Current Emissions (kg/yr)			
	Massburn	RDF	Modular	Rounded total
Formaldehyde	53,100	3,890	1,640	58,600
Hydrogen chloride	31,000,000	12,500,000	4,240,000	47,700,000
Lead	270,000	14,000	56,600	341,000
Mercury	65,500	1,100	1,800	68,000
Nitrogen oxides	22,400,000	7,800,000	280,000	30,500,000
Particulate matter	8,300,000	1,300,000	780,000	10,400,000
Polychlorinated biphenyls (PCB)	2	4,960	6	4,970
Polycyclic aromatic hydrocarbons (PAH)	490	460	5	955
Sulfur oxides	7,000,000	4,900,000	1,000,000	13,000,000

[1] The terms dioxins and dibenzofurans generally refer to a group of 75 chlorodibenzo-para-dioxin compounds and 135 chlorodibenzofuran compounds, each having similar chemical and physical properties.

TABLE 3—ESTIMATED STACK EMISSIONS FROM PROJECTED MWC FACILITIES FOR SELECTED POLLUTANTS [1]

	Current emissions (kg/yr)			
	Massburn	RDF	Modular	Rounded total
Arsenic	12,100	750	140	13,000
Beryllium	43	540	<1	580
Cadmium	16,300	880	2,740	19,900
Carbon monoxide	56,600,000	27,200,000	710,000	84,500,000
Chlorobenzenes	390	2,120	4	2,510
Chlorophenols	780	2,720	4	3,500
Chromium^{+6}	960	910	680	2,550
Chlorinated dioxins [1] and dibenzofurans	2.5	18.1	.2	21
Formaldehyde	109,000	6,600	2,900	119,000
Hydrogen chloride	139,000,000	48,400,000	7,130,000	194,500,000
Lead	572,000	87,600	600,200	1,260,000
Mercury	139,000	7,220	1,940	148,000
Nitrogen oxides	95,700,000	33,300,000	4,900,000	134,000,000
Particulate matter	17,600,000	8,300,000	830,000	26,700,000
Polychlorinated biphenyls (PCB)	9.1	21,200	1	21,200
Polycyclic aromatic hydrocarbons (PAH)	2,090	1,970	8.5	4,070
Sulfur oxides	34,800,000	26,900,000	1,400,000	63,100,000

[1] Emissions estimates based on facilities with good particulate matter control equipment.

For the population of projected MWC facilities, emissions were estimated using model plants and emission test data from the newer, well-operated existing MWC facilities (Table 3). Design capacities selected for the model plants were 500, 1000, and 3000 tons per day for massburn facilities, 1500 and 3000 tons per day for the RDF facilities, and 100, 250, and 400 tons per day for the modular facilities. The metal and organic emission factors varies by combustor technology. Baseline control efficiency assumed good particulate control equipment, with 99 percent control efficiency and good combustion to reduce organic emissions. All new facilities were assumed to include heat recovery equipment. No acid gas control equipment was assumed for the baseline analysis. The selection of emission baselines is described in detail in EPA's Muncipal Waste Combustion Study, Assessment of Health Risks (1987a).

Emission Control Techniques

Significant advances have been made in recent years in the development of air pollution control technologies for MWCs. These advances in technology have now made it commercially feasible to remove a wide range of pollutants from the combustion gases before exiting the stock and discharging into the air.

Environment Canada and the U.S. EPA have been actively testing both full-scale and pilot-scale systems to determine control efficiencies of pollutants emitted during the combustion of municipal solid waste. Such investigations require testing of specific pollutants preceding and exiting the control device. Environment Canada has reported the control efficiencies of a pilot-scale dry alkaline scrubber in combination with a baghouse system (fabric filters) operated on a 227 metric ton massburn MWC (Klicius, 1986). At temperatures varying from 110°C to 200°C the overall removal efficiencies for CDDs and CDFs were greater than 99 percent. Other organics such as chlorobenzenes, polychlorinated biphenyls and chlorophenols were removed to a lesser extent, but generally better than 95 percent at operating temperatures between 125° and 140°C. A high rate of particular capture was also observed with a measured PM outlet concentration of less than 0.02 grains per dry standard cubic foot at 122 percent CO_2. Hydrogen chloride and sulfur dioxide acidic gases were reduced 90 percent and 70 percent, respectively. Emissions of metal constituents were controlled at a rate greater than 99 percent. It was observed that, given its low boiling point, mercury emissions were poorly controlled unless the temperature of the combustion gas was reduced to below 140°C, in which case it was possible to remove 80–90 percent of the mercury. These high rates of control efficiencies over a wide spectrum of pollutants have been corroborated by EPA in recent field testing of a full-scale day alkaline scrubber/fabric filter system operating on a 550 metric ton per day massburn heat recovery facility.

The mechanisms of organic pollutant capture by dry alkaline scrubbers are not clear. It is postulated that condensation and capture in the physical form of particulates or aerosols is an important mechanism, but chemical reaction with caustic reagents is also a possibility. To take advantage of these collection phenomena, a control strategy could include steps to lower the flue gas temperature, subject the gas to caustic sorbents, and collect the particles with an efficient PM collector. Combinations of equipment would be required to implement this strategy; dry alkaline scrubber combined with an ESP or dry alkaline scrubber combined with a fabric filter would be probable choices. A few data are available showing the effectiveness of the combination of dry alkaline scrubber with a fabric filter for the control of CDDs and CDFs as well as other

organics, acid gases, and metals. Data showing the effectiveness of a dry alkaline scrubber with an ESP are more limited. With this control strategy, it is likely that population exposure and subsequent cancer risk posed by MWC emissions can be reduced by over an order of magnitude.

The EPA has estimated the capital and annualized costs of controlling emissions with these devices (EPA, 1987d). A model plant approach was used in sizing and costing of the emission control systems. Generally it has been calculated that the additional annual cost of a dry alkaline scrubber with particulate capture compared to particulate capture alone is $4 to $9 per ton of waste burned for massburn facilities, $4 to $5 per ton for refuse derived fuel facilities, and $5 to $12 per ton of capacity for modular systems. The dry alkaline scrubber/ESP system is generally slightly more costly to operate than the dry alkaline scrubber/fabric filter system.

Health Effects

The potential effects on human health of exposure to MWC emissions have not been determined by epidemiological study. In the absence of direct human or animal evidence, EPA has evaluated the individual chemical constituents based on published health effects data. Information on EPA's current state of knowledge on the identified pollutants is contained in the health assessment documents previously listed. This information, together with estimates of population exposure, was used to estimate the health risks to the U.S. population posed by MWC emissions.

Exposure Assessment

Estimation of the potential human health risks associated with pollutants emitted from the stacks of MWCs requires estimation of the concentrations of specific constituents to which the population may be exposed and determination of the magnitude of population exposure. In the absence of monitored ambient air levels, EPA used mathematical models to predict the dispersion of emissions and subsequent potential for human exposure.

Estimates of population exposure to pollutants in the ambient air resulting from MWC emissions were developed using EPA's Human Exposure Model (HEM). The HEM accepts as inputs the locations and emission characteristics of actual or representative sources. This information is combined with census and meteorological data contained in the model to estimate the magnitude and distribution of population exposure.

In the exposure analysis a distinction was made between existing and projected MWCs based on the fact that MWC technology currently marketed represents a distinct improvement in design, operation, and pollution control when compared to facilities built a decade ago. Thus, exposure and risk assessment was performed on two distinct categories of MWC technologies: existing and projected MWCs. These broad categories of MWCs were further broken down into the design subcategories of MWC technologies: massburn, RDF and modular incinerators. For existing facilities a further distinction was made as to whether massburn facilities recovered energy during combustion. The purpose of disaggregation of the technologies was to permit, to the extent available, the use of technology-specific emissions test data in the prediction of ambient air concentrations in the vicinity of each facility. For existing MWCs, an exposure analysis of each facility operating in the U.S. was conducted. Projected MWC were represented by model plants developed from information obtained from State permits describing size, capacity and stack parameters of planned units. The massburn and RDF model plants were randomly assigned to urban and suburban locations, and the modular model plants were placed in mainly rural locations to reflect actual trends in technology. Population exposure was extrapolated to the nation from the model plants by the projected national throughput for each technology subcategory.

For both existing and projected facilities, assumptions were made regarding baseline control of pollutant emissions. For the existing combustor population, the baseline scenario assumed uniform use of electrostatic precipitators (ESPs) because available emissions data were collected from ESP-controlled units. A variety of PM control devices are actually in place on existing units. Baseline conditions assumed 20 percent control of organic pollutants and current levels of particular matter control. Metal emissions were assumed to be proportional to PM emissions with the exception of mercury which was assumed to be in vapor phase above 200°C and therefore not subject to capture with ESPs alone. For the projected population, baseline conditions assumed the uniform application of ESPs, although some States are requiring more stringent control. The analysis of projected facilities was reflective of current Federal requirements for new construction. Organic pollutant and PM emissions (with the exception of mercury noted above) were assumed to be controlled by 20 percent and 99 percent, respectively, and metal emissions were assumed to be controlled in proportion to particulate emissions. No control of inorganic acid gases such as sulfur dioxide or hydrogen chloride was assumed for baseline conditions of either existing or projected facilities. The analysis of projected MWCs also assumed that good combustion control to minimize the formation and emission of organic pollutants was in place at all planned facilities. A more detailed description of direct inhalation exposure modeling is described elsewhere (EPA, 1987a).

Noncarcinogenic Impacts of MWC Emissions

As shown in Tables 2 and 3, with the exception of hydrogen chloride emissions, the criteria pollutants constitute a much larger proportion of the stack emissions from both existing and projected MWCs compared to the potentially toxic constituents evaluated. These pollutants include particulate matter (PM), sulfur oxides (SO_x), carbon monoxide (CO), and nitrogen oxides (NO_x). For each pollutant, emissions are in the range of tens of thousands of megagrams (metric tons) per year, in contrast to emissions in a range of kilograms per year for the remaining pollutants studied except for hydrogen chloride. Although the present analysis focuses on the potentially toxic constituents of MWC emissions, the substantially larger emissions of PM, SO_x, CO, and NO_x would also be subject to regulatory consideration. The health and welfare effects associated with exposure to these pollutants are described in the relevant EPA criteria documents (EPA, 1979; EPA, 1982a; EPA, 1982b).

The EPA also evaluated the potential adverse, but noncarcinogenic health effects associated with inhalation exposure to lead and mercury emissions from MWCs. Comparisons were made between the predicted maximum modeled ambient air concentrations and the existing ambient air quality standard for lead and the national emission standards for hazardous air pollutants (NESHAP) ambient guideline for mercury. The modeling results predicted no long-term concentrations above the present ambient lead standard of 1.5 $\mu g/m^3$ (quarterly average) or the mercury NESHAP ambient guideline of $\mu g/^3$.

National Estimates of Cancer Risk

For MWC emissions a major health effect of concern is cancer. The exposure estimates obtained from the HEM are combined with estimates of carcinogenic potency ("unit risk") to calculate a probability of cancer. The unit risk estimate for an air pollutant is defined as a rough but plausible estimate of the upper limit of the lifetime cancer risk that could occur in a population in which all individuals are exposed continuously from birth throughout their lifetimes to a unit concentration, (e.g., 1 $\mu g/m^3$) of the carcinogen in the air they breathe. It is not likely that the true risks would be higher than the estimated risk, and they may be considerably lower.

By combining the estimates of public exposure with the unit risk estimates, two measures of excess cancer risk are calculated: the aggregate population risk expressed as an annual cancer incidence and the maximum individual lifetime risk expressed as a lifetime probability of cancer for the most exposed populations. Estimates of maximum individual lifetime risk are usually expressed in exponential notation. A probability of contracting cancer of 1 chance in 10,000 is written as $10-4$, 1 chance in 1,000,000 as $10-6$, etc.

The ranges of the estimated cancer risk resulting from inhalation exposure to predicted ambient concentrations of the carcinogens evaluated in MWC emissions are summarized in Table 4. These ranges of risk result from the uncertainties inherent in estimating carcinogenicity for the compounds and classes of compounds of concern. As noted in the Health Effects section of this notice, evidence of carcinogenicity may be available for only discrete chemical compounds, and yet environmental exposures are often associated with classes of compounds. The calculation of the cancer risk ranges is described in the Municipal Waste Combustion Study (EPA, 1987a).

TABLE 4.—RANGES IN THE CONTRIBUTION OF MWC EMISSION CONSTITUENTS TO ESTIMATED ANNUAL CANCER INCIDENCE AND MAXIMUM INDIVIDUAL LIFETIME CANCER RISK

Pollutant	Existing MWC annual cancer incidence [a,d]	Existing MWC maximum individual risk range [b,e]	Projected MWC annual cancer incidence [a,d]	Projected MWC maximum individual risk range [b,e]
Chlorinated dioxins and dibenzofurans (CDD/CDF)	2 to 40	10^{-6} to 10^{-3}	0.8 to 20	10^{-6} to 10^{-4}
Chlorophenols	0.0001 to 0.0003	10^{-9} to 10^{-8}	0.0001 to 0.0003	10^{-10} to 10^{-9}
Chlorobenzenes	0.009 to 0.02	10^{-7} to 10^{-6}	0.004 to 0.01	10^{-9} to 10^{-7}
Formaldehyde	0.009	10^{-8}	0.02	10^{-8} to 10^{-7}
Polycylic aromatic hydrocarbons	0.01 to 0.6	10^{-7} to 10^{-5}	0.05 to 3.0	10^{-7} to 10^{-5}
Polychlorinated biphenyls	0.02	10^{-8} to 10^{-5}	0.2	10^{-9} to 10^{-6}
Arsenic	0.2	10^{-7} to 10^{-4}	0.1	10^{-8} to 10^{-7}
Beryllium	0.02	10^{-9} to 10^{-6}	0.001	10^{-11} to 10^{-8}
Cadmium	0.2	10^{-6} to 10^{-4}	0.2	10^{-7} to 10^{-6}
Chromium+6	0.2	10^{-7} to 10^{-4}	0.1	10^{-7} to 10^{-6}
Rounded Total:[c]	2 to 40	10^{-6} to 10^{-3}	2 to 20	10^{-6} to 10^{-4}

[a] The ranges in annual cancer incidence reflect assumptions made regarding the potential carcinogenicity of classes of organic compounds.
[b] The ranges in maximum individual lifetime cancer risk reflect differences in emissions and the evaluation of emissions from MWC technologies within the existing and proposed categories.
[c] Apparent errors in totals are due to intentional rounding to one significant figure.
[d] Annual cancer incidence is defined as the average number of excess cancer cases expected annually in the exposed population.
[e] Maximum individual risk is defined as the probability of contracting cancer following a lifetime exposure at the maximum modeled long-term ambient concentration. The probability is expressed as a negative exponent of 10. A risk of 1 chance in 10,000 is expressed as 10^{-4}.

Welfare Effects of Hydrogen Chloride Emissions

Among the pollutants measured in stack gases from MWCs are acid gases. Hydrogen chloride gas (HCl) is of particular concern to EPA because of the magnitude of the emissions from this source category. The EPA has modeled ambient concentrations of HCl for both the existing and projected population of MWCs. Modeled ambient HCl concentrations were compared to the results of preliminary studies by the Texas Air Control Board (TACB, 1987) on the association between chloride concentrations and materials damage. The TACB work suggests that damage, primarily the corrosion of ferrous metals, occurs at annual average chloride levels of approximately 3 $\mu g/m^3$. The EPA's modeling indicates that a majority of existing MWCs may exceed this level. The analysis also indicates that projected facilities, particularly larger massburn and RDF units, and all sizes of modular units, could exceed this limit.

Results of Preliminary Analysis of Indirect Exposure

Although the quantitative analysis of health and welfare impacts was limited to those from direct inhalation of MWC emissions, EPA has also begun a preliminary analysis of the potential for exposure from the deposition of emitted pollutants and subsequent human contact through indirect exposure pathways. The analysis of indirect exposure pathways was intended to study whether prolonged stack emissions of pollutants that deposit over time onto the soil surface could contribute significantly to the total exposure from ingestion of contaminated soil and foods and dermal contact with the soil.

Exposures resulting from 30 years and 100 years of continuous deposition of pollutants were examined at a facility operating in Virginia, representing a reasonable worst-case scenario for existing MWCs, and a model plant facility in western Florida representing planned MWCs. Thirty years was chosen to represent the probable lifetime of an MWC facility; the 100-year scenario assumed replacement of the facility several times.

The EPA's Science Advisory Board (SAB) has recently reviewed the indirect exposure assessment methodology, and has commented favorably, noting that the procedure is a considerable improvement over other multimedia risk assessment methodologies previously developed by EPA (Hartung, 1987). However, the SAB identified several

areas in the methodology that need further development.

This methodology is currently being evaluated to incorporate the suggestions of the SAB. In addition, chemical fate parameter data selected for the model were found in the published literature, but have not been peer reviewed for this use. Because of the preliminary nature of the methodology and assumptions, EPA feels that the results cannot be interpreted quantitatively at this time.

Subject to the above assumptions and uncertainties, the preliminary analysis suggests that, for some persistent organic constituents (dioxins, PCBs, and chlorobenzenes), indirect exposures to emissions deposited over long periods may be comparable to exposures through direct inhalation. Exposure of children (through mouthing behavior) to deposited lead and mercury also appears to warrant further analysis. Indirect exposures do not appear to be of concern for other constituents studied, including nickel, hexavalent chromium, beryllium, and formaldehyde.

Risk Assessment Uncertainties

There are a number of assumptions underlying the quantitative estimates of direct inhalation cancer risk that can yield either over or underestimates of the risk posed by MWC air emissions. For example, in the absence of information on the potential interactions among the constituents of MWC emissions, EPA has assumed that the risks attributable to the potentially carcinogenic constituents are additive. While this assumption is consistent with EPA's guideline on cancer risk assessment (51 FR 33992, September 24, 1986), these estimates may not be representative of the actual risks posed.

Classes of compounds such as the CDD/CDF also may require simplifying assumptions in the estimation of risk. For this purpose, EPA has developed an interim method of using "toxicity equivalence factors" to evaluate structurally similar compounds in the absence of carcinogenicity bioassay data for each constituent of the class (EPA, 1987c).

The estimation of ambient air cancer risks for a single compound also includes a number of areas of uncertainty. For example, the unit risk estimate, a measure of carcinogenic potency that is a key element of the risk assessment, may be derived from human or animal data or a combination of both. Allowances must be made, however, for the differences between the occupational exposure levels of most epidemiological studies and the much lower levels characteristic of general population exposure. Mathematical models used to extrapolate from animal test data must also consider this difference as well as the biological differences between species. The potency factors developed are generally regarded as 95 percent upper confidence limits of the probable cancer risk associated with exposure to a unit concentration (e.g., 1 ug/m^3).

Uncertainty is also introduced in the evaluation of human exposure. Again, simplifying assumptions are often necessary to deal with gaps in the technical data: Number and locations of sources, source configuration, control status, and pollutant emissions. In the modeling of emissions to obtain predicted ambient concentrations, error may be introduced by the presence of complex terrain or unrepresentative meteorological conditions. Finally, the matching of exposed populations to predicted concentrations is subject to assumptions about the composition, mobility, and proximity of residents in the vicinity of emitting sources.

Summary of Effects

The EPA's preliminary analysis of MWC emissions is based on the evaluation of 17 emission constituents for which emission test data and some information on human health or welfare effects is available. For the most part, these constituents are either present in the waste feed in very small amounts or are formed from other constituents in the process of combustion. The results of EPA's multi-pollutant analysis are presented below.

Noncarcinogenic Effects: The EPA's analysis identified potential health or welfare concerns among the constituents of MWC emissions that warrant consideration. First, from the standpoint of magnitude of emissions, the criteria pollutants, PM, SO_x, CO, NO_x, constitute a larger proportion of MWC stack emissions than the potentially toxic constituents evaluated, and also potentially represent significant health and welfare concerns. Each of these pollutants will require further analysis to quantify the extent of that potential. Second, evaluation of baseline emissions of mercury and lead presented as direct inhalation exposure did not indicate that NESHAPS ambient guideline of 1, ug/m^3 for mercury or the NAAQS for lead of 1.5 ug/m^3 (quarterly average) would be exceeded for new or existing MWCs. The preliminary analysis of indirect exposure, while not complete, suggests that under worst case assumptions, ingestion exposure to deposited lead and mercury emissions may in some circumstances contribute appreciably to total environment lead and mercury exposure.

Although beryllium and mercury are presently regulated as hazardous air pollutants for non/carcinogenic effects, lead is subject to a national ambient air quality standard under sections 108–110 and cannot be concurrently regulated under section 112. The health effects associated with low level exposure to lead (effects on the blood forming system and central nervous system (CNS) deficits in children) meet the section 111 criteria of "endangerment of public health." Similarly, predicted ambient levels of hydrogen chloride (HCl) emitted from MWC have not been associated with adverse health effects but may be sufficiently high to cause materials damage (corrosion of ferrous metals), a welfare effect which also meets the requirements for regulation under section 111 of the CAA, but is not regulable under section 112.

Cancer Risk: Several potentially carcinogenic metals (arsenic, beryllium, cadmium, chromium) are emitted from MWC in trace quantities. Under reasonable worst case assumptions, the nationwide inhalation cancer risk associated with these emissions is estimated to be as high as 0.5 cases per year (annual incidence) for existing sources and 0.4 annual incidence from the projected population of MWC. Maximum individual lifetime cancer risk for the trace metals ranges from 10–4 to 10–9 for existing facilities and 10–6 to 10–11 for the projected population of combustors.

With the exception of the chlorinated dioxins and dibenzofurans (CDD/CDF), the organic carcinogens, or classes that include carcinogens, studied (chlorobenzenes, chlorophenols, formaldehyde, PAH, PCB) are estimated to pose cancer risks similar to the trace metals: 0.05–0.7 annual incidence and 10–5–10–9 maximum individual risk from existing sources and 0.2–3.0 annual incidence and 10–5–10–9 maximum individual risk from the projected facilities.

As is evident from Table 4, most of the estimated cancer risk is attributable to the class of CDD/CDF, measured as the equivalent to 2,3,7,8-TCDD (EPA 1987c). There remain basic questions concerning the mechanism of carcinogenesis of dioxins and related compounds. The models used to estimate the plausible, upper 95 percent confidence limit of carcinogenic potency of compounds such as dioxin implicitly assume that the substance acts directly to initiate cancer. If, however, dioxin acts as a promoting agent, as some scientists believe, to amplify the carcinogenic response of other direct acting carcinogens, the present model

may not be appropriate. A change of this nature in the assumption on which the cancer potency estimate is based could lead to some reduction in the estimates of CDD/CDF cancer risks presented in Table 4.

In summary, the potential health and welfare impacts of MWC emissions span a broad range of concerns. These include from the quantifiable, though relatively low, risks of cancer associated with several trace constituents as well as the significantly higher but much more uncertain cancer risks posed by the predicted emission of CDD/CDF. Also, there is the possibility of noncarcinogenic effects associated with PM, SO_2, CO, and NO_x emissions as well as chronic exposure to lead and mercury and potential welfare implications of HCl emissions. In making today's judgment, the Administrator has considered not only the nature and the magnitude of the estimated health impacts, but the applicability and effectiveness of the regulatory mechanisms available under the CAA.

Conclusions

Based upon the results of EPA's preliminary analysis, the Administrator has determined that municipal waste combustor emissions may reasonably be anticipated to contribute to the endangerment of public health and welfare and warrant further regulation under section 111(b) and 111(d) of the CAA. Although some trace constituents of these emissions are known or probable human carcinogens, in the Administrator's judgment, the range and types of health and welfare effects and the range and uncertainties of estiamted cancer risks do not warrant the listing of MWC emissions as a hazardous air pollutant under section 112 of the CAA. Further, section 112 could not be used to address particular constituents of concern or subgroups of emissions from this same category including lead and hydrogen chloride emissions.

Given the range of pollutants, the range of effects and uncertainties concerning risk, and the varying availability of the regulatory authorities under sections 108–110, and section 112, the Administrator judges that the use of section 111 offers advantages over the other available regulatory mechanisms. Section 111 was determined to be appropriate for the mixture of MWC emissions due to its applicability to a range of pollutants including trace constituents which may be potentially carcinogenic. Section 112 was rejected due to the low levels of estimated risks for most of the constituents, the technical uncertainties and unresolved scientific issues associated with the higher risks for chlorinated dioxins and dibenzofurans, and the presence of other pollutants of concern that would not meet the criteria for listing and regulation under section 112. With the development of regulations under section 111, however, EPA will continue to review during the regulatory process, as new information becomes available, the potential health risks associated with the toxic constituents in MWC emissions and, if appropriate, re-evaluate its conclusions concerning the use of section 112.

NSPS developed under section 111(b) apply to sources built after proposal, an important factor in view of accelerated pace of growth in this industry, EPA intends that the NSPS under section 111(b) will regulate one or more designated pollutants and invoke section 111(d) for the issuance of existing source guidelines for use by States in the development of additional emission standards for existing MWC. (See section 111(d) and 40 CFR Part 60, Subpart B.) In the Administrator's judgment, this process will permit a more thorough evaluation of existing MWCs than would be feasible in a general rulemaking at the Federal level. The EPA is considering enhancement of the process of developing the existing source guidelines through the comprehensive use of EPA's information gathering rule under section 114 of the CA to obtain better information on the existing source population as well as opportunities for improved operation and emission control.

In both the development of the NSPS and the guidelines for existing sources, the Administrator intends to consider the full spectrum of the potential impacts of regulation. Such impacts would include but not be limited to: Estimation of health and welfare risks and risk reductions obtainable, indirect benefits accruing from concomitant reductions in other regulated pollutants (e.g., particular matter, sulfur dioxide, volatile organic compounds), other environmental impacts, and the costs of control.

With the publication of the notice, EPA will initiate development of an NSPS and section 111(d) guidance for MWCs. The following schedule of actions are currently anticipated for these actions:

Proposal of NSPS (new sources).	Nov. 1989
Issuance of Draft Guidelines (existing sources).	Nov. 1989 [1]
Promulgation of NSPS	Dec. 1990
Issuance of Final Guidelines (existing sources).	Dec. 1990
State Plan Due (existing sources).	Sept. 1991

[1] EPA intends to amend 40 CFR Part 60.22(a) to provide that draft guidelines may be published after proposal of an NSPS for a designated pollutant.

The EPA intends to revise, under section 111(b) of the CAA, the existing new source performance standards that apply to MWCs. As provided by section 111, the NSPS reflect the best technological systems of continuous emission reduction that have been demonstrated for MWCs, considering costs, any non-air quality health environmental impacts, and energy requirements. The standards will include emission limits and quantitative requirements for monitoring.

Operational Guidance on Control Technology for New Sources

On June 22, 1987, the Administrator remanded for reconsideration the concurrence by Region IX of EPA on a PSD permit for the H-power MWC to be constructed in Honolulu, Hawaii (Thomas, 1987). The remand, in part, clarifies EPA's position that acid gas scrubbers constitute available technology for excess air MWCs that fire refuse-derived fuel. The EPA has subsequently issued operational guidance through its Regional Offices (Emison, 1987) for use by State and local agencies with PSD permitting authority.

The operational guidance is intended to be followed by States and local agencies in reviewing best available control technology (BACT) determinations in PSD permits. The EPA believes that the guidance will promote consistency in control requirements, and reduce delay and confusion in the permitting process. At the same time, it will allow permitting authorities to give appropriate consideration to local factors in making case-by-case BACT determinations as required under law.

Consistent with the Administrator's finding in the H-Power remand, the guidance expands consideration of acid gas scrubbers as one component of available technology for modular, starved-air MWCs and massburn, excess air MWCs, as well as RDF-fired, excess air MWCs. The guidance also includes as a second component of available technology, consideration of combustion control for carbon monoxide. Acid gas scrubbers followed by fabric filters or electrostatic precipitators are deemed effective in controlling potentially toxic organic and metal pollutants, as well as acid gases other than sulfur dioxide. Combustion controls are found effective in

controlling potentially toxic organic pollutants.

The technical basis for the operational guidance is documented in the Agency comprehensive study of MWC described in the *Availability of Related Information* section of this notice.

Response to NRDC et al. Petitions

On August 5, 1986, NRDC and the States of New York, Rhode Island, and Connecticut petitioned the Administrator of EPA to regulate air emissions from MWCs under the Clean Air Act. Specifically, the petitioners requested that EPA:

1. Make health effect determinations and listing decisions under section 111, as well as revise the existing NSPS for municipal waste combustors;
2. Make health effect determinations and listing decisions under section 112;
3. Regulate certain pollutant subgroups under sections 111 and 112; and
4. Establish a schedule for regulatory action based on the statutory time frames under sections 111 and 112.

EPA's responses to these petitions are as follows:

1. Under section 111, the Administrator finds that MWC emissions may reasonably be anticipated to endanger public health or welfare, and announces his intent to regulate one or more designated pollutants from MWC emissions under subsection (b) for new sources, including revision of the existing NSPS, and under subsection (d) for existing sources. Based on the range of pollutants in MWC emissions, the range of effects and uncertainties concerning risks from them, and the regulated status of certain of the pollutants, the Administrator judges that section 111 is the appropriate regulatory mechanism to address the MWC source category.

2. EPA does not now intend to regulate MWC emissions of components thereof under section 112, and is therefore not listing them under that section for three reasons. First, section 111 will allow EPA to regulate the full range of health and welfare effects of MWC emissions; section 112 is limited to serious health effects. See section 112(a)(1). Second, standards under section 112 may only apply to pollutants for which no standard has been set under sections 108–109. For this reason, section 112 would not be available for subgroups such as PM, SO_x CO, and NO_x or for lead. Third, section 111(d) plans for existing MWCs will take into account such relevant factors as the remaining useful lives of MWCs and the cost of emission controls on a case-by-case basis. Section 111(d)(1); 40 CFR 60.24(d), (f). The EPA believes that such case-by-case consideration is appropriate to deal with the case-specific issues that will be raised by retrofitting emission controls on existing MWCs; case-by-base consideration would be more difficult under section 112, which is generally directed toward national standards. Finally, EPA anticipates that the regulation of MWCs under section 111 will substantially control emissions that may present health concerns and that additional standards under section 112 would therefore not be necessary. However, EPA will continue to review these conclusions during the regulatory process and, if appropriate, re-evaluate its conclusions concerning the use of section 112.

The EPA has prepared health assessment documents (HADs) for many of the potentially toxic constituents present in MWC emissions. The HADs contain EPA's specific judgments on the health effects due to these pollutants. The EPA notes that it has already regulated under section 112 three pollutants that are found in MWC emissions: Arsenic, beryllium, and mercury. Also, EPA has been evaluating three other pollutants found in MWC emissions—cadmium, chromium, and formaldehyde—to determine if regulation of them under section 112 is warranted. *See, e.g.*, 50 FR 24317 (June 10, 1985) (chromium); 50 FR 42000 (October 16, 1985) (cadmium). Assessments are also underway for fluorides and selenium. These evaluations go beyond the scope of MWC emissions because they deal with emissions of the pollutants from all stationary sources, not merely MWCs. Finally, EPA had previously determined not to separately regulate chlorinated benzenes, copper, and certain nickel compounds, which are pollutants found in MWC emissions, under the CAA. See 50 FR 32628 (August 13, 1985) (chlorinated benzenes); 50 FR 34135 (September 25, 1986) (nickel subsulfide, nickel carbonyl); 52 FR 5496 (February 23, 1987) (copper).

3. As to regulating specific subgroups, EPA will consider petitioners' recommendations in determining the designated pollutant or pollutants to regulate under section 111. For the reasons stated above none of them will be regulated under section 112 at the present time.

4. EPA intends to act on the schedule shown above in this notice.

Lee M. Thomas,
Administrator.

June 30, 1987.

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[FR Doc. 87–15370 Filed 7–2–87; 9:18 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 73

Standards of Conduct; Provisions Governing Employees Who Are Members of Indian Tribes and Alaska Native Corporations

AGENCY: Office of the Secretary, HHS.

ACTION: Proposed rule.

SUMMARY: The Secretary of Health and Human Services proposes to amend the Department of Health and Human Services Standards of Conduct Regulations to add specific provisions relating to Indian and Alaska Native employees of the Indian Health Service. These provisions are proposed to prohibit employees from holding certain elected or appointed positions in tribal government without the approval of the Director, Indian Health Service. It is also proposed to clarify that mere membership in a tribe, band, pueblo or corporation and financial interests in an Indian or Alaskan Native corporation do not constitute conflicts of interests for employees. The Secretary has determined that Part 73 applies to Indian and Alaska Native employees; therefore, these provisions are appropriate.

In addition, the Secretary is proposing to amend the sections of the regulation dealing with the criminal prohibitions on outside activities and post employment activities to reflect the exceptions to those provisions for employees assigned to tribal organizations under the Intergovernmental Personnel Act and for fomer employees employed by tribes.

Although the Secretary normally publishes the Standards of Conduct as a final rule, these revisions are being issued as a proposed rule because of their effect on tribes and the interests of tribal governing bodies and the desirability of receiving comments from interested parties before finalizing these amendments.

DATE: Comments must be received on or before September 8, 1987.

ADDRESS: Comments may be addressed to Darrel J. Grinstead, Associate General Counsel, Business and Administrative Law Division, Department of Health and Human Services, Room 5362, 330 Independence Avenue, NW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Mary M. McNamara, Chief, Administrative Law Branch, Business and Administrative Law Division, Department of Health and Human Services, 330 Independence Avenue, SW., Washington, DC 20201 (Telephone 202–475–0153).

SUPPLEMENTARY INFORMATION: More than half of the employees in the Indian Health Service are currently Indian or Alaska Native members of federally recognized tribes, bands, pueblos or corporations and that number is increasing. These employees cannot and should not absolve themselves of tribal membership or ownership in Indian or Alaskan Native corporations in order to avoid conflicts between their tribal affiliation and official duties. By law the Indian Health Service gives preference in employment to Indians and Alaska Natives. In recognition of those factors and the fact that the Standards of Conduct Regulations are based in part on the federal conflict of interst statutes, 18 U.S.C. 201, *et. seq.*, the Secretary proposes to make specific provision for Indian and Alaska Native employees.

Sections 203 and 205 of Title 18, U.S. Code prohibit federal employees from engaging in representational activities on behalf of others before the federal Government. Because there is no provision for waiver of those provisions and because it is an inherent function of members of many of the governing bodies of the tribes, bands, pueblos and corporations to represent the organizations and their members before agencies of the Government, the holding of elective or appointive office of a governing body must be carefully considered. Since the advent of the Indian Self-Determination Act (Pub. L. 93–638) in 1975, there have been steadily increasing contracting activities between the Indian Health Service and tribes. Service on a tribal council by an Indian Health Service employee is in our view, incompatible with HHS Standards of Conduct (45 CFR 73.735–701(a) and (b)) because it creates an appearance of a conflict of interest, and because serving on a tribal council is inevitably so important and so time consuming that it will cause an interference with an employee's ability to fully function in his primary employment. The Secretary therefore proposes that employees may not hold such offices unless the likelihood that an actual or potential conflict of interst or the appearance of a conflict could result is outweighed by special circumstances. Examples of such circumstances are when the tribe appoints its leaders through a traditional or religious ceremony and where failure to service would involve extreme personal, financial or other hardship to the individual.

Section 208 of Title 18 U.S.C. Code prohibits an employee of the executive branch from participating personally and substantially as a Government employee in any proceeding, application, request for a ruling, contract, claim controversy or other particular matter in which he, his spouse or minor child or non-governmental organization in which he is employed or otherwise serving, has a financial interest. That prohibition does not apply if the head of the agency determines that the financial interest is too remote or too inconsequential to affect the integrity of the employee's services to the Government. The Secretary is proposing to determine that mere membership in a tribe, band or pueblo, or ownership of interests in an Indian or Alaska Native corporation, is not a disqualifying interest for conflict of interest purposes.

List of Subjects in 45 CFR Part 73

Standards of conduct, Outside activities.

PART 73—[AMENDED]

Title 45 CFR Part 73 is amended to read as follows:

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

Authority: 5 U.S.C. 7301; E.O. 11222, May 8, 1965; 5 CFR 735.104.

§§ 73.735–709 and 73.735–710 [Redesignated as 73.735–710 and 73.735–711]

2. Sections 73.735–709 and 73.735–710 are redesignated as 73.735–710 and

73.735–711 and §§ 73.733–709, 73.735–702(e), 73.735–804(c), and 73.735–1401(c) are proposed to be added.

§ 73.735–709 Provisions relating to holding office in Indian and Alaska Native organizations.

(a) The Secretary has determined that Indian and Alaska Native regular or special government employees of the Indian Health Service are subject to the provisions of this part.

(b) Due to the criminal prohibitions on certain outside activities set forth in § 73.735–702 and the nature of the activities ordinarily involved in serving on the governing body of a tribe, band, pueblo or corporation, it is necessary to assure that a conflict of interest will not occur as a result of such service in either an elective or appointive position, and to assure that no appearance of a conflict of interest is created.

(1) Persons employed in the Indian Health Service who are eligible to seek tribal office may not, without the prior approval of the Director of the Indian Health Service as required by § 73.735–708(b) of this part, become a candidate for office in their local tribe or be appointed to a position on the official governing body of the tribe, band, pueblo or corporation.

(2) The Director, Indian Health Service may approve in writing on a case by case basis an employee's written request to serve as an elected or appointed member of a tribal governing body only if the applicant has demonstrated to the Director's satisfaction that service on the governing body will not interfere with the employee's ability to fully function in his employment with the Indian Health Service, and the potential that a real or apparent conflict of interest could result is outweighed by the special considerations of the case based on the following criteria:

(i) The tribe appoints its leaders through traditional or religious ceremony and failure to serve if appointed would be considered as an abrogation of one's honor and duty; or

(ii) Compliance would involve extreme personal, financial or other hardship to the individual.

(3) An Indian Health Service employee who becomes a candidate for a position on a governing tribal body without having obtained prior administrative approval to serve in the position must resign his or her federal position if he or she is elected and decides to serve, or face possible disciplinary action under § 73.735–1201 of this part.

(4) Requests will be reviewed on an individual basis and any approvals will require that all duties associated with tribal business be carried out on other than official time, that the requestor will exempt himself/herself from representing the tribe in any dealings with the federal government [§ 73.735–702], and that the requestor acknowledge that information available to the individual through employment in the Indian Health Service is privileged information and shall not be used in deliberations while serving as a member of the governing body.

§ 73.735–702 [Amended]

* * * * *

(e) As an additional exception to the above, the Indian Self Determination Act, 25 U.S.C. 450i(f), provides that the restrictions of 18 U.S.C. 205 do not apply to federal employees detailed or assigned to tribal organizations pursuant to the Intergovernmental Personnel Act (5 U.S.C. 3372). Such employees must, in writing, advise the head of the agency with which they are dealing on behalf of a tribe, of any personal and substantial involvement they may have had as an officer or employee of the United States in connection with the matter concerned.

§ 73.735–804 [Amended]

* * * * *

(c) An individual waiver will not be required in the case of Indian and Alaska Native employees of the Indian Health Service for membership in his or her tribe, band or pueblo or for holding a financial interest in a tribal corporation. Nor will individual waivers be required for such employees who own or lease tribal lands. The Secretary has determined pursuant to section 208(b)(2) of Title 18, U.S. Code that such interests are too remote and too inconsequential to affect the integrity of the services of the employee. Notwithstanding this waiver, when employees are presented with an official matter involving more than one such entity and they are members of, or have a financial interest in, one of the tribes, bands, or pueblos involved, they must observe the prohibitions set forth in § 73.735–508 of this part.

§ 73.735–1401 [Amended]

* * * * *

(c) As an exception to the provisions of 18 U.S.C. 207 and the regulations cited above, the Indian Self-Determination Act [25 U.S.C. 450i(f)] authorizes former employees who are employed by Indian tribes to act as agents or attorneys for, or to appear on behalf of, such tribes in connection with any matter in which the United States is a party or has a direct and substantial interest therein. However, if such a former employee has had personal and substantial involvement as a federal employee in the matter concerned, he must first advise in writing the head of the agency before which he is appearing, of his prior involvement in the matter.

Otis R. Bowen,

Secretary.

June 9, 1987.

[FR Doc. 87–15234 Filed 7–6–87; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 2, 31, 34, 58, 71, 76, 91, 95, 107, 108, 109, 146, 147, 167, 176, 181, 189, and 193

[CGD 84–044]

Hazardous Materials Used as Ships' Stores On Board Vessels

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to revise the rules for hazardous materials used as ships' stores on board vessels. Except for minor amendments, the present rules have remained unchanged since January 18, 1941. Many of the citations, terms, and definitions have become outdated. This revision would update the text. Also, it would cross reference existing Department of Transportation Hazardous Materials regulations and Consumer Product Safety Commission labeling regulations to reduce the paperwork burden for industry and the Coast Guard, while maintaining the current level of safety. Materials presently listed which are no longer used as ships' stores would be removed.

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

ADDRESSES: Comments may be mailed to Commandant [G–CMC/21](CGD 84–044), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001. Comments will be available for inspection or copying at the Office of the Marine Safety Council, Room 2110, at the above address, between the hours of 8 a.m. and 3 p.m., Monday through Friday, except holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. C. Rivkin, Hazardous Materials Branch, Office of Marine Safety, Security and Environmental Protection (202) 267–1217.

SUPPLEMENTARY INFORMATION:
Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments. Each comment should include the name and address of the person submitting the comment, reference the docket number (CGD 84–044) and the specific section of the proposal to which each comment applies, and include sufficient detail to indicate the basis on which each comment is made. Persons desiring acknowledgment that their comments have been received should enclose a stamped, addressed postcard or envelope.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held at a time and place to be set in a later notice in the **Federal Register** if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are Mr. Carl Rivkin, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Related Projects

On March 22, 1984, the Coast Guard published a notice of proposed rulemaking in the **Federal Register**, entitled "Carriage and Use of Liquefied and Non-liquefied Flammable Gas as Cooking Fuels on Vessels Carrying Passengers for Hire" (57 FR 10685), which would allow the use of liquefied petroleum gas (LPG) and compressed natural gas (CNG) as fuel for cooking on passenger vessels (CGD 83–013). The requirements in the present proposal (CGD 84–044) relating to cooking fuels (proposed § 147.50) restate the existing regulations. This section would be amended to conform to CGD 83–013, above, when that rulemaking is published as a final rule.

Under a separate rulemaking project, entitled "Revision of the Regulations on Outer Continental Shelf Activities" (CGD 84–098), the Coast Guard plans to propose that the hazardous ships' stores regulations be made applicable to OCS facilities. The hazards associated with the use of these materials on OCS facilities is comparable to those on vessels. Comments on this project should reference docket number CGD 84–098.

Background and Discussion of Proposed Amendments

The regulations governing the use of hazardous materials as ships' stores (46 CFR Part 147) were first published in the **Federal Register** on January 18, 1941. Except for minor amendments and additions of new paragraphs, the basic document remains primarily as first issued. The cross references, terminology, and definitions used in the ships' stores regulations have become outdated and the Coast Guard's regulatory responsibilities have been expanded. To account for these discrepancies and to simplify the regulations, the Coast Guard is proposing to revise Part 147 and to align references throughout Title 46, such as those referring to the testing and marking of fire extinguisher cylinders, with the newly revised part.

In 1941, all shipping regulations governing the definitions, handling, packaging, labeling, marking, and stowing of packaged hazardous materials on vessels were found in 46 CFR Part 146. On July 1, 1976, the bulk of these regulations were transferred and consolidated into the Department of Transportation (DOT) Hazardous Materials Regulations in 49 CFR Parts 100–179 (41 FR 15972); and some of the provisions in 46 CFR Part 146, which are still referenced in 46 CFR Part 147, were removed. The ships' stores regulations in Part 147 have never been amended to reflect these actions. This has created confusion in the use of the ships' stores regulations. To resolve this problem, the references must be corrected.

To avoid duplication and inconsistency, the proposed regulations would cross reference the definitions for "combustible liquid", "compressed gas", "flammable liquid", and "hazardous material" used in the DOT Hazardous Material Regulations. The DOT definitions would be used, rather than existing Coast Guard definitions in Title 46, because the DOT definitions apply to packaged materials (e.g., most ships' stores), whereas the existing Coast Guard definitions are oriented toward bulk materials. The DOT definitions differ slightly from those in existing Title 46, because they use different temperature ranges for both combustible and flammable liquids.

The proposal would permit hazardous ships' stores which are packaged in small quantities intended for across-the-counter retail sale to be used without individual product certification under proposed § 147.22. These products are designated "consumer commodities", as defined in proposed § 147.3. By permitting their use without certification, the Coast Guard could eliminate certification cost and permit a broader choice of products, while maintaining a reasonable level of safety. The use of consumer commodities without certification would reduce information collection requirements, cutting down the paperwork burden for industry and the Coast Guard.

The existing regulations list the hazardous materials in Table S of § 147.05–100. Many of these materials are no longer used as ships' stores. By deleting the outdated materials in this proposal, the Coast Guard finds that it would be clearer and simpler to list the remaining materials in a section format, rather than in a table. Therefore, this change is being proposed.

The present regulations in Part 147 do not permit gasoline or diesel oil without certification. The Coast Guard recognizes the need for using gasoline and diesel oil as fuel for portable auxiliary equipment and certain emergency equipment, such as lifeboats and rescue boats. Therefore, the proposed new section (§ 147.45(a)) includes stowage and handling requirements for flammable and combustible liquids, such as gasoline and diesel oil.

On 26 August 1983, many of the laws relating to vessels and seamen in Title 46 of the U.S. Code were revised (Pub. L. 98–89) and their provisions consolidated and renumbered. The Coast Guard's general authority to promulgate regulations for ships' stores on inspected vessels is now located in 46 U.S.C. 3306. Therefore, the authority citations in this proposal have been amended to reflect this statutory change.

Incorporation by Reference

Proposed § 147.7 lists material incorporated by reference in proposed §§ 147.45(f), 147.90(a), and 147.105. Copies of this material are available for inspection at U.S. Coast Guard Headquarters, Room 1216, 2100 Second Street SW., Washington, DC 20593–0001. Copies of the material may be obtained at the addresses listed in proposed § 147.7(c).

Before the final rule is published, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation

These proposed regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034;

February 26, 1979). The economic impact of this proposal has been found to be so minimal that further evaluation is unnecessary.

The principal objectives of this proposal are to simplify existing requirements and to update the regulations to take into account changes in laws and related regulations. This proposal would not increase costs already imposed by the existing regulations but would reduce overall costs for both industry and the Coast Guard.

Under present regulations, manufacturers of hazardous products intended for use as ships' stores must first apply to the Coast Guard in writing to obtain a ships' stores certificate for their product. Proposed § 147.27(c) would eliminate the need for Coast Guard certification of hazardous ships' stores which are consumer commodities and save the applicants approximately $347.00 per application for these consumer commodities. For the approximately 20 new applications received each year that fall within this category, the industry-wide savings would be approximately $6,940.00. In addition, the Coast Guard would save the approximately 60 manhours ($872.00) required annually to process these applications.

Also, this proposal would eliminate the need to have certificates renewed every three years (existing 46 CFR 147.03–9). This change would save industry approximately $28.00 per renewal for the approximately 48 certificates due for renewal each year and save the Coast Guard approximately 72 manhours per year or $946.40.

Coast Guard inspections of vessels to determine compliance with Part 147 are conducted at the same time as other planned or routine inspections. This proposal would not require added manpower.

In conclusion, the proposed regulations would not create new costs, but would reduce applicant and Coast Guard costs and simplify the regulations for the maritime industry.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard must consider whether the rule it is proposing is likely to have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

As described in the Regulatory Evaluation section above, the effect of this proposal is to reduce Coast Guard and industry costs. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if promulgated, would not have a significant economic impact on a substantial number of small entities. If, however, you feel that your business may qualify as a small entity and that the proposed rules would have a significant economic impact on your business, please notify the Coast Guard (see "ADDRESSES") and explain why you feel your business qualifies and in what way and to what degree the proposed regulations would economically affect your business.

Paperwork Reduction Act

This proposed rulemaking contains information collection requirements in the following sections: §§ 147.9, 147.22, 147.30, and 147.60(c)(2). These items have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved by the OMB. Part 147 has been assigned OMB Control Number 2115–0139.

Environmental Assessment

The Coast Guard has considered the environmental impact of the proposed regulations and concluded that, under section 2.B.2.1. of Commandant Instruction M16475.1B, these proposals are categorically excluded from further environmental documentation. The proposed regulations revise existing regulations to improve formating and readability and to remove materials no longer used as ships' stores.

List of Subjects

46 CFR Part 2

Fire protection, Law enforcement, Marine safety, Penalties, Vessels.

46 CFR Part 31

Barges, Flammable materials, Law enforcement, Marine Safety, Tank vessels.

46 CFR Part 34

Barges, Fire prevention, Marine Safety, Tank vessels.

46 CFR Part 58

Marine safety, Oil and gas exploration, Vessels.

46 CFR Part 71

Foreign trade, Law enforcement, Marine safety, Passenger vessels, Reporting requirements.

46 CFR Part 76

Marine safety, Passenger vessels.

46 CFR Part 91

Cargo vessels, Law enforcement, Marine safety, Reporting requirements.

46 CFR Part 95

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 107

Continental shelf, Incorporation by references, Marine resources, Marine safety, Oil and gas exploration, Vessels.

46 CFR Part 108

Continental shelf, Fire prevention, Incorporation by references, Marine resources, Marine safety, Oil and gas exploration, Vessels.

46 CFR Part 109

Continental shelf, Incorporation by references, Marine resources, Marine safety, Oil and gas exploration, Reporting requirements, Vessels.

46 CFR Part 146

Arms and munitions, Hazardous materials transportation, Labeling, Marine safety, Packaging and containers, Reporting requirements.

46 CFR Part 147

Arms and munitions, Explosives, Hazardous materials transportation, Incorporation by reference, Marine safety, Radioactive materials, Reporting requirements.

46 CFR Part 167

Fire prevention, Marine safety, Reporting requirements.

46 CFR Part 176

Marine safety, Passenger vessels.

46 CFR Part 181

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 189

Marine safety, Oceanographic vessels.

46 CFR Part 193

Fire prevention, Marine safety, Oceanographic vessels.

For the reasons set out in the preamble, Title 46, Parts 2, 31, 34, 58, 71, 76, 91, 95, 107, 108, 109, 146, 147, 167, 176, 181, 189, and 193 of the Code of Federal Regulations are proposed to be amended as follows:

PART 2—VESSEL INSPECTIONS

1. The authority citation for Part 2 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

2. By revising § 2.75–60 to read as follows:

§ 2.75–60 Certification of hazardous ships' stores.

Hazardous ships' stores, as defined in § 147.3 of this chapter, must not be brought on board or used on any vessel unless they meet the requirements of Part 147 of this Chapter.

PART 31—INSPECTION AND CERTIFICATION

3. The authority citation for Part 31 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

4. In § 31.10–18, by revising Table 31.10–18(b), footnote 1, and Table 31.10–18(c), footnote 1, to read as follows:

§ 31.10–18 Fire fighting equipment: General—TB/ALL.

* * * * *

(b) * * *

Table 31.10–18(b)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections and discharge hoses of semi-portable carbon dioxide and halon extinguishers much be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

(c) * * *

Table 31.10–18(c)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide and halon extinguishers much be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 34—FIRE FIGHTING EQUIPMENT

5. The authority citation for Part 34 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b)

6. In § 34.15–20, by revising paragraph (i) to read as follows:

§ 34.15–20 Carbon dioxide storage—T/ALL.

* * * * *

(i) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with §§ 147.60 and 147.65 of this chapter.

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

7. The authority citation for Part 58 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

8. In § 58.20–5, by revising paragraph (b) to read as follows:

§ 58.20–5 Design.

* * * * *

(b) For refrigeration systems other than those for reliquefaction of cargo, only those refrigerants under § 147.90 of this chapter are allowed.

PART 71—INSPECTION AND CERTIFICATION

9. The authority citation for Part 71 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

10. In § 71.25–20, by revising Table 71.25–20(a)(1), footnote 1, and Table 71.25–20(a)(2), footnote 1, to read as follows.

§ 71.25–20 Fire detecting and extinguishing equipment.

(a) * * *

(1) * * *

Table 71.25–20(a)(1)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections and discharge hoses of semi-portable carbon dioxide and halon extinguishers much be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

(2) * * *

Table 71.25–20(a)2)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems much be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 76—FIRE PROTECTION EQUIPMENT

11. The authority citation for Part 76 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

12. In § 76.15–20, by revising paragraph (i) to read as follows:

§ 76.15–20 Carbon dioxide storage.

* * * * *

(i) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with §§ 147.60 and 147.65 of this chapter.

PART 91—INSPECTION AND CERTIFICATION

13. The authority citation for Part 91 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

14. In § 91.25–20, by revising Table 91.25–20(a)(1), Note 1, and Table 95.25–20(a)(2), Note 1, to read as follows:

§ 91.25–20 Fire Extinguishing equipment.

(a) * * *

(1) * * *

Table 91.25–20(a)(1)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections and discharge hoses of semi-portable carbon dioxide and halon extinguishers much be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

(2) * * *

Table 91.25–20(a)2)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems much be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 95—FIRE PROTECTION EQUIPMENT

15. The authority citation for Part 95 is revised to read as follows:

Authority: 43 U.S.C. 3306; 49 CFR 1.46(b).

16. In § 95.25–20, by revising paragraph (i) to read as follows:

§ 95.15–20 Carbon dioxide storage.

* * * * *

(i) All cylinders used for storing carbon dioxide must be fabricated, tested , and marked in accordance with §§ 147.60 and 147.65 of this chapter.

PART 107—INSPECTION AND CERTIFICATION

17. The authority citation for Part 107 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 1333; 46 U.S.C. 3306; 46 APP. U.S.C. 86; 49 CFR 1.46. Section 107.05 also issued under 44 U.S.C. 3507; 49 CFR 1.45.

18. In § 107.235, by revising the note following paragraph (b)(3) to read as follows:

§ 107.235 Servicing of hand portable fire extinguishers, semi-portable fire extinguishers and fixed fire-extinguishing systems.

* * * * *

(b) * * *

(3) * * *

Note: All carbon dioxide cylinders and discharge hoses of semi-portable carbon dioxide and halon extinguishers must be tested and marked in accordance with §§ 147.60 and 147.65 of this chapter.

PART 108—DESIGN AND EQUIPMENT

19. The authority citation for Part 108 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 46 App. U.S.C. 86; 49 CFR 1.46(b), (n)(6).

20. In § 108.431, by revising the section heading and adding a new paragraph (c) to read as follows:

§ 108.431 Carbon dioxide systems: General.

* * * * *

(c) Each carbon dioxide system cylinder must be fabricated, tested, and marked in accordance with §§ 147.60 and 147.65 of this chapter.

§ 108.451 [Amended]

21. In § 108.451, by removing paragraph (h).

PART 109—OPERATIONS

22. The authority citation for Part 109 is revised to read as follows and all other authority citations are removed:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306; 46 App. U.S.C. 86; 49 CFR 1.46. Sections 109.411 and 109.413 also issued under 46 U.S.C. 6101 Section 109.431 also issued under 46 U.S.C. 10104.

23. By revising § 109.558 to read as follows:

§ 109.558 Hazardous ships' stores.

The master or person in charge shall ensure that hazardous ships' stores, as the term is defined in § 147.3 of this chapter, which are used on board a unit are accepted, handled, stowed, and used only in accordance with Part 147 of this chapter.

PART 146—TRANSPORTATION OR STORAGE OF MILITARY EXPLOSIVES ON BOARD VESSELS

24. The authority citation for Part 146 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

25. In § 146.01–5, by revising paragraph (b) to read as follows:

§ 146.01–5 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

Subchapter N part or section where identified or described	Current OMB control No.
§ 146.02–20	2115–0054
§ 146.29–13	2115–0013
Part 147	2115–0139

26. By revising Part 147 to read as follows:

PART 147—HAZARDOUS SHIPS' STORES

Subpart A—General Provisions

Sec.
147.1 Purpose and applicability.
147.3 Definitions.
147.5 Commandant (G–MTH); address.
147.7 Incorporation by reference.
147.9 Waivers.

Subpart B—Hazardous Ships' Stores Permitted On Board Vessels

147.15 Hazardous ships' stores permitted on board.
147.20 Hazardous products required to be certified.
147.22 Certification procedure.
147.27 Hazardous materials and products not required to be certified.

Subpart C—Labeling, Stowage, and Special Requirements

147.30 Labeling.
147.40 Certified hazardous ships' stores; stowage.
147.45 Flammable and combustile liquids.
147.50 Fuel for cooking, heating, and lighting.
147.60 Compressed gases.
147.65 Carbon dioxide and halon fire extinguishing systems.
147.70 Acetylene.
147.85 Oxygen.
147.90 Refrigerants.
147.95 Explosives.
147.100 Radioactive materials.
147.105 Anesthetics, drugs, and medicines.

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

Subpart A—General Provisions

§ 147.1 Purpose and applicability.

(a) This part prescribes the regulations designating what hazardous materials may be on board vessels subject to this part for use as ships' stores and prescribes requirements for the certification, labeling, stowage, and use of those materials.

(b) This part applies to all vessels documented or numbered under the laws of the United States, except for "recreational vessels" as the term is defined in 46 U.S.C. 2101(25).

Note. The Captain of the Port or District Commander may prohibit the unsafe use or stowage of hazardous ships' stores on foreign vessels in the navigable waters of the United States under 33 CFR 160.109.

§ 147.3 Definitions.

As used in this part:

"Accommodation, control, or service spaces" means living quarters, including walkways, dining rooms, galleys, pantries, lounges, lavatories, cabins, staterooms, offices, hospitals, cinemas, and game and hobby rooms; areas containing controls for equipment and navigation; workshops, other than those forming part of machinery spaces; and store rooms adjacent to these spaces.

"Certified hazardous ships' stores" means hazardous ships' stores that are certified under § 147.22 of this part.

"Combustile liquid" means "combustible liquid" as the term is defined in 49 CFR 173.115(b).

"Compressed gas" means "compressed gas" as the term is defined in 49 CFR 173.300.

"Consumer commodity" means a commodity, such as a polish, insecticide, cleaning compound, or distillate, that is packaged and distributed in a form and quantity intended for sale through retail sales establishments.

"Flammable liquid" means "flammable liquid" as the term is defined in 49 CFR 173.115(a).

"Hazardous material" means "hazardous material" as the term is defined in 49 CFR 171.8.

"Hazardous product" means a product in any form or quantity which contains hazardous materials and is offered under a trade name or trademark.

"Hazardous ships' stores" means ships' stores that are or contain hazardous materials.

"Proper shipping name" means the name of the hazardous ships' stores shown in Roman print (not in italics) in 49 CFR 172.101.

"Ships' stores" means materials which ae on board a vessel for the upkeep, maintenance, safety, operation, or navigation of the vessel (except for fumigants under Part 147A of this chapter, for fuel and compressed air used for the vessel's primary propulsion machinery, or for fixed auxiliary equipment) or for the safety or comfort of the vessel's passengers or crew.

"Technical name" means the recognized chemical name used in scientific or technical publications.

§ 147.5 Commandant (G–MTH); address.

Commandant (G–MTH) is the Marine Technical and Hazardous Materials Division of the Coast Guard Office of Marine Safety, Security and Environmental Protection. The address is Commandant (G–MTH–1), U.S. Coast Guard Headquarters, Washington, DC 20593–0001, and the telephone number is (202) 267–1217.

§ 147.7 Incorporation by reference.

(a) In this part, portions or the entire text of certain standards and specifications are incorporated by reference as the governing requirements for materials, equipment, tests, or procedures to be followed. These standards and specification requirements specifically referred to in this part are the governing requirements for the subject matters covered, unless specifically limited, modified, or replaced by the regulations.

(b) These materials are incorporated by reference into this part under 5 U.S.C. 552(a) with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. In that table is found citations to the particular sections of this part where the material is incorporated. To enforce any edition other than the one listed in paragraph (c) of this section, notice of the change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, DC 20408 and at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. Copies may be obtained from the sources indicated in paragraph (c) of this section.

(c) The materials approved for incorporation by reference in this part are:

American Boat and Yacht Council, Inc. (ABYC), P.O. Box 806, Amityville, NY 11701
ABYC H–25–81—Portable Fuel Systems and Portable Containers for Flammable Liquids, May 12, 1981.

American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE),
Publication Sales Department, 1791 Tullie Circle, NE, Atlanta, GA 30329
ANSI/ASHRAE 34–78—Number Designation of Refrigerants.

Public Health Service, Department of Health and Human Services (DHHS),
Superinteandent of Ducuments, U.S. Government Printing Office, Washington, DC 20402
DHHS Publication No. (PHS) 84–2024—The Ship's Medicine Chest and Medical Aid at Sea, revised 1984.

Underwriters Laboratories, Inc. (UL),
Publications Stock, 333 Pfingsten Road, Northbrook, IL 60062
UL 30—Standard for Metal Safety Cans, 7th Ed., March 11, 1985, revised March 3, 1987.
UL 1185—Standard for Portable Marine Fuel Tanks, Second Edition, March 13, 1978, revised July 6, 1984.
UL 1313—Standard for Nonmetallic Safety Cans for Petroleum Products, 1st Ed., March 15, 1982, revised March 22, 1985.
UL 1314—Standard for Special-Purpose Containers, 1st Ed., July 7, 1983, revised September 23, 1986.

§ 147.9 Waivers.

(a) Any requirement in this part may be waived on a case by case basis if it is determined by Commandant (G–MTH) that the requirement is unreasonable or impracticable under the circumstances and that an acceptable level of safety can be maintained.

(b) Requests for issuance of a waiver must be in writing and contain a detailed explanation of—

(1) Why the requirement is unreasonable or impracticable; and

(2) What measures will be taken to maintain an acceptable level of safety.

Subpart B—Hazardous Ships' Stores Permitted On Board Vessels

§ 147.15 Hazardous ships' stores permitted on board.

(a) Except as permitted under paragraph (b) of this section, all hazardous ships' stores on board vessels must be certified under § 147.20 or listed in § 147.27.

(b) When a vessel is in a foreign port and a certified hazardous product deemed necessary by the master is unavailable, an uncertified substitute may be used. However, the substitute must be removed from the vessel when the vessel arrives at a port where a certified replacement is available. The uncertified hazardous product must be labeled in English with the product's contents and first aid instructions in the event of personel contact, including antidotes in the event of ingestion, or must have an English translation of this information affixed to the product.

§ 147.20 Hazardous products required to be certified.

(a) Hazardous ship's stores not listed in § 147.27 must be certified under § 147.22.

(b) Certified hazardous products are listed in "Hazardous Products Certified by the Coast Guard for Use as Ships' Stores". This list is available from Commandant (G–MTH) at the address given in § 147.5.

§ 147.22 Certification procedure.

(a) To request certification of a hazardous product for use as ship's stores, the applicant must submit a request to Commandant (G–MTH) containing the following information, as applicable:

(1) Name and address of the applicant and of the product's manufacturer.

(2) Trade name under which the product is marketed.

(3) A description of the product's container.

(4) If a compound or mixture, the technical name of each ingredient and the percent composition of each ingredient in the compound or mixture.

(5) Hazard classification of the product under 49 CFR 173.2.

(6) Physical state of the product (i.e. solid, liquid, or gas).

(7) Temperature and pressure ranges in which the product may be safely used.

(8) Compatibility of the product with respect to other hazardous materials as indicated in Table 1 of 49 CFR 176.83.

(9) If the product is composed, in whole or in part, of an explosive ingredient, the percentage of the explosive ingredient.

(10) A copy or facsimile of the label under which the product is marketed that includes the information required by § 147.30, other than the information to be provided by the Coast Guard under § 147.30(b).

(b) After reviewing the request, Commandant (G–MTH) may require additional information, as necessary. If the request is approved by Commandant (G-MTH), a letter of approval with labeling information required by § 147.30(b) is issued to the applicant and the product is listed in "Hazardous Products Certified by the Coast Guard for Use as Ships' Stores". If the request is denied, Commandant (G–MTH) so informs the applicant. Denial by Commandant (G–MTH) constitutes final agency action.

(c) Certification under this section is valid only for the product described in the request for certification. Alteration of the product's composition by the manufacturer invalidates the certification.

§ 147.27 Hazardous materials and products not required to be certified.

The following hazardous materials and products are permitted on board vessels for use as ships' stores without certification under § 147.22 if the requirements of Subpart C of this part are met:

(a) Consumer commodities.

(b) Anesthetics, drugs, and medicines.

(c) Compressed gases, as follows:

(1) Acetylene.

(2) Air.

(3) Argon.

(4) Carbon dioxide.

(5) Halon.

(6) Helium.

(7) Nitrogen.

(8) Oxygen.

(9) Refrigerants.

(d) Alcohol and kerosene for heating, cooking, or lighting.

(e) Liquefied and non-liquefied petroleum gas for heating, cooking, or lighting or for portable auxiliary equipment.

(f) Gasoline and diesel oil for portable auxiliary equipment.

(g) Paint and paint products having an open cup flash point greater than 80°F.

(h) Radioactive materials.

(i) Ships' signal and emergency equipment.

Subpart C—Labeling, Stowage, and Special Requirements

§ 147.30 Labeling.

(a) Except as provided in paragraph (c) of this section, the immediate receptacle, container, or package containing hazardous ships' stores must be labeled in English with the following information concerning the contents:

(1) Technical name or proper shipping name.

(2) For hazardous ships' stores other than liquid fuels, manufacturer's or supplier's name and address.

(3) Hazard classification under 49 CFR 172.101 and 173.2.

(4) For certified hazardous ships' stores, ships' signal and emergency equipment and anesthetics, drugs, and medicines, step by step procedures for proper use.

(5) For certified hazardous ships' stores and anesthetics, drugs, and medicines, first aid instructions in the event of personnel contact, including antidotes in the event of ingestion.

(b) In addition to the information required under paragraph (a) of this section, except as provided in paragraph (c) of this section, the immediate receptacle, container, or package containing certified hazardous ships' stores must be labeled in English with the following statement, including the assigned certification number, date of issue, and specified restrictions:

U.S. Coast Guard Hazardous Ships' Stores Certification

Certification Number: ———— Date of Issue: ———— This product is certified by the Coast Guard under 46 CFR 147.22 for use as ships' stores. Certification by the Coast Guard indicates only that the product is acceptable for use as ships' stores and in no way attests that the product is effective for its intended purpose. The following restrictions apply to the use of this product as ships' stores: *(Insert restrictions specified by Commandant (G-MTH)).*

(c) Hazardous ships' stores that are consumer commodities labeled in accordance with the Federal Hazardous Substances Act Regulations in 16 CFR Part 1500 need not be labeled as specified in paragraph (a) and (b) of this section.

§ 147.40 Certified hazardous ships' stores; stowage.

In addition to other requirements in this part, certified hazardous ships' stores must be stowed in accordance with any special stowage requirements contained in the certificate.

§ 147.45 Flammable and combustible liquids.

(a) This section applies to the stowage and transfer of flammable and combustible liquids (including gasoline and diesel oil), other than liquids used as fuel for cooking, heating, and lighting under § 147.50.

(b) No flammable or combustible liquids may be stowed in any accommodation, control, or service space (other than a paint locker).

(c) No more than 19 liters (five gallons) of flammable liquids may be stowed in any machinery space. The flammable liquids must be in containers of 3.8 liters (one gallon) or less.

(d) No more than 208 liters (55 gallons) of combustible liquids may be stowed in any machinery space.

(e) An aggregate of more than 7.6 liters (two gallons) of flammable or combustible liquids stowed outside of an accommodation, control, or service space (other than a paint locker) or of a machinery space must be stowed in a paint locker that is marked with a warning sign indicating flammable or combustible liquid storage.

(f) Flammable and combustible liquids used as fuel for portable auxiliary equipment must be stored in—

(1) Integral tanks that form part of the vessel's structure;

(2) An independent tank meeting the requirements of Subpart 58.50 of Part 58 of this chapter;

(3) A container meeting the requirements of Subpart D of 49 CFR 173.119 for the storage of flammable or combustible liquids;

(4) A portable outboard fuel tank meeting the specifications of ABYC H-25-81 or one identified by Underwriters Laboratories as meeting the specifications of UL 1185;

(5) A portable safety container identified by Underwriters Laboratorsie as meeting the specifications of UL 30 or UL 1313; or

(6) A portable safety container identified by Underwriters Laboratories as meeting the requirements of UL 1314.

(g) Each portable container of flammable or combustible liquid used for portable auxiliary equipment must be stowed in a paint locker or an open location designated by the master.

(h) Fuel tanks for portable auxiliary equipment using flammable or combustible liquids may only be refilled on a vessel—

(1) By using a container described in paragraphs (f)(2), (f)(4), or (f)(5) of this section which has a capacity not exceeding 23 liters (6 gallons); or

(2) In the case of portable outboard fuel tanks described in paragraph (f)(3) of this section, in accordance with paragraph (i) of this section.

(i) Portable containers or portable outboard fuel tanks may be refilled from a larger container of flammable or combustible liquid on the weather deck of a vessel, other than a small passenger vessel subject to Subchapter T of this chapter, provided that—

(1) A drip pan of adequate size is used to collect any drippings; and

(2) At least one Coast Guard approved Type B, Size I, fire extinguisher is within three meters (9.75 feet) of the refilling location.

§ 147.50 Fuel for cooking, heating, and lighting.

(a) Flammable and combustible liquids and gases not listed in this section are prohibited for cooking, heating, or lighting on any vessel.

(b) Fluid alcohol is prohibited for cooking, heating, or lighting on ferry vessels.

(c) Liquefied or non-liquefied gas is prohibited for cooking, heating, or lighting on ferry and passenger vessels but may be used on cargo vessels, if the system in which it is used is approved by the Commandant (G-MTH).

(d) Kerosene is prohibited for cooking, heating, or lighting on ferry vessels, unless the following conditions are met:

(1) Pressure or gravity feed must be used.

(2) Where wet priming is used in a cooking device, the device must have a catch pan not less than three fourths of an inch deep secured inside the frame of the device or a metal protector under the device with at least a three fourths inch flange to form a pan.

(3) Where wet priming is used, a non-flammable priming liquid must be used.

(4) Fuel tanks for fixed stoves must be separated from the stove and mounted in a location open to the atmosphere or mounted inside a compartment with an outside fill and vent.

(5) Fuel lines must have an easily accessible shut-off valve at the tank.

(6) If the fuel tank is outside of a stove compartment, a shut-off valve must be fitted at the stove.

§ 147.60 Compressed gases.

(a) *Cylinder requirements.* Cylinders used for containing hazardous ships' stores that are compressed gases must be:

(1) Constructed in accordance with Subpart C of 49 CFR Part 178 or exempted under 49 CFR Part 107;

(2) Filled, marked, and inspected in accordance with 49 CFR 173.301 through 173.308; and

(3) Except as provided in § 147.65, maintained and retested in accordance with 49 CFR 173.34.

(b) *Stowage and care of cylinders.* (1) Cylinders must always be secured and, when not in use, they must be stowed in a rack in an upright position, with the valve protection cap in place.

(2) Lockers or housings must be vented to the open air near the top and bottom for positive circulation of vapors.

(3) Cylinders must be protected from all sources of heat which may cause the cylinders to be heated to a temperature higher than 130°F.

(c) *Pressure vessels other than cylinders.* Pressure vessels, other than cylinders subject to paragraph (a) of this section, used for containing ships' stores that are compressed gases must—

(1) Be constructed and inspected in accordance with Part 54 of this chapter; and

(2) Carry only nitrogen or air, unless permission is granted by Commandant (G–MTH) to do otherwise.

§ 147.65 Carbon dioxide and halon fire extinguishing systems.

(a) Carbon dioxide or halon cylinders forming part of a fixed fire extinguishing system must be retested, at least, every 12 years. If a cylinder is discharged and more than five years have elapsed since the last test, it must to retested before recharging.

(b) Carbon dioxide or halon cylinders must be rejected for further service when they—

(1) Leak;

(2) Are dented, bulging, severely corroded, or otherwise in a weakened condition;

(3) Have lost more than five percent of their tare weight; or

(4) Have been involved in a fire.

(c) Cylinders which have contained carbon dioxide or halon and have not been tested within five years must not be used to contain another compressed gas on board a vessel, unless the cylinder is retested and re-marked in accordance with § 147.60 (a)(2).

(d) Flexible connections in distribution piping of semi-portable or fixed carbon dioxide fire extinguishing systems and discharge hoses in semi-portable carbon dioxide fire extinguishing systems must be renewed or tested at a pressure of 6.9 MPa (1000 psi). At test pressure, the pressure must not drop at a rate greater than 1.03 MPa (150 psi) per minute for a two minute period. The test must be performed when the cylinders are retested.

(e) Flexible connections in the distribution piping of fixed halon fire extinguishing systems must be tested at a pressure of one and one-half times the cylinder service pressure. At test pressure, the pressure must not drop at a rate greater than 1.03 MPa (150 psi) per minute for a two minute period. The test must be performed when the cylinders are retested.

§ 147.70 Acetylene.

No more than 17 m^3 (600 standard cubic feet) of acetylene may be on board a vessel at any time.

§ 147.85 Oxygen.

No more than 85 m^3 (3000 standard cubic feet) of oxygen may be on board a vessel at any time.

§ 147.90 Refrigerants.

(a) Only refrigerants listed in ANSI/ASHRAE 34–78 may be used as ships stores.

(b) Refrigerants, once in a vessel's operating systems, are not covered by the ship's stores regulations.

§ 147.95 Explosives.

(a) *Certified hazardous ships' stores.* Except as provided for elsewhere in this subchapter, explosives, as defined in 49 CFR 173.50, which are certified hazardous ships' stores must be stowed in a magazine which is constructed and located in accordance with 49 CFR 176.135 through 76.159.

(b) *Small arms ammunition.* (1) No person shall bring, have in their possession, or use on board a vessel any small arms ammunition, except by express permission of the master of the vessel.

(2) All small arms ammunition must be stowed in a locked metal magazine or locker. The key to the locker must be kept in the possession of the master or a person designated by the master.

(c) *Ships' signals and emergency equipment.* (1) Explosive ships' signals and emergency equipment, including pyrotechnic distress signals and line throwing equipment, and their containers must meet the requirements of §§ 160.38 and 160.066 of this chapter.

(2) All pyrotechnic distress signals, rockets, and powder for line throwing guns must be stowed in accordance with the requirements of 49 CFR 176.83.

§ 147.100 Radioactive materials.

(a) Radioactive materials used as radioactive tracers or sealed sources must not be brought on board, used in any manner, or stored on the vessel, unless the use of the materials is authorized by a current license issued by the Nuclear Regulatory Commission (NRC) under 10 CFR Parts 30 and 34.

(b) Stowage of radioactive materials must conform to the requirements of the NRC license.

§ 147.105 Anesthetics, drugs, and medicines.

Anesthetics, drugs, and medicines must be stowed and dispensed in accordance with the DHHS Publication No. (PHS) 84–2024.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

27. The authority citation for Part 167 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

28. In § 167.45–1, by revising the section heading and paragraph (a)(8) to read as follows:

§ 167.45–1 Steam, carbon dioxide, and halon fire extinguishing systems.

(a) * * *

(8) Carbon dioxide and halon cylinders carried on board nautical school ships must be tested and marked in accordance with the requirements of §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 176—INSPECTION AND CERTIFICATION

29. The authority citation for Part 176 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

30. In § 176.25–25, by revising the introductory text of paragraph (c) and the introductory text of the note following paragraph (c)(3) to read as follows:

§ 176.25–25 Fire extinguishing equipment.

* * * * *

(c) In addition to the other requirements of this section, §§ 147.60 and 147.65 of this chapter requires that—

* * * * *

(3) * * *

Note: Section 147.65 of this chapter includes a requirement that the cylinder must be retested and remarked under the following conditions.

* * * * *

PART 181—FIRE PROTECTION EQUIPMENT

31. The authority citation for Part 181 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

32. In § 181.20–30, by revising paragraph (c) to read as follows:

§ 181.20–30 Cylinders.

* * * * *

(c) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with the requirements of §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 189—INSPECTION AND CERTIFICATION

33. The authority citation for Part 189 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

34. In § 189.25–20, by revising footnote 1 to Table 189.25–20(a)(1) and footnote 1 to Table 189.25–20(a)(2) and removing the Note after footnote 1 to Table 189.25–20(a)(2) as follows:

§ 189.25–20 Fire extinguishing shipment.

(a) * * *

(1) * * *

Table 189.25–20(a)(1)

* * * * *

[1] Cylinders must be tested and marked and all flexible connections and discharge hoses of semiportable carbon dioxide and halon extinguishers must be tested or renewed as required in §§ 147.60 and 147.65 of this chapter.

* * * * *

(2) * * *

Table 189.25–20(a)(2)

* * * * *

[1] Cylinders must be tested and marked and all flexible connections on fixed carbon dioxide and halon systems must be tested or renewed as required in §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 193—FIRE PROTECTION EQUIPMENT

35. The authority citation for Part 193 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46(b).

36. In § 193.15–20, by revising paragraph (i) to read as follows:

§ 193.15–20 Carbon dioxide storage.

* * * * *

(i) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with the requirements of §§ 147.60 and 147.65 of this chapter.

Dated: July 1, 1987.

J. W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 87–15400 Filed 7–6–87; 8:45 am]

BILLING CODE 4910–14–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1804, 1812, 1832, 1842, 1847, and 1852

Changes to NASA FAR Supplement

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice invites written comments on a NASA proposal to amend the NASA Federal Acquisition Regulation Supplement, Ch. 18 of the Federal Acquisition Regulations System in Title 48 of the Code of Federal Regulations. These changes consist of a number of miscellaneous revisions.

DATE: Comments are due not later than August 6, 1987.

ADDRESS: Comments should be addressed to NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: W. A. Greene, Procurement Policy Divison (Code HP), Office of Procurement, NASA Headquarters, Washington, DC 20546, Telephone: 202–453–2119.

SUPPLEMENTARY INFORMATION:

Background

Five clauses developed by NASA field installations for local use have been identified during a NASA Headquarters review as having a significant effect beyond the internal operating procuredures of the agency as described in Pub. L. 98–577, Small Business and Federal Procurement Competition Enhancement Act of 1984. These clauses are proposed for inclusion in the NASA FAR Supplement.

Impact

The Dirctor, Office of Management and Budget (OMB), by memorandum dated December 14, 1984, exempted certain agency procurement regulations from Executive Order 12291. The proposed regulations fall in this category. NASA certifies that these regulations will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The regulations impose no burdens on the public within the ambit of the Paperwork Reduction Act, as implemented at 5 CFR Part 1320.

List of Subjects in 48 CFR Parts 1804, 1812, 1832, 1842, 1847 and 1852

Government procurement.

S. J. Evans,

Assistant Administrator for Procurement.

1. The authority citation for 48 CFR Parts 1804, 1812, 1832, 1842, 1847 and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1804—ADMINISTRATIVE MATTERS

2. Part 1804 is amended by adding Subpart 1804.74, consisting of 1804.7401, to read as follows:

Subpart 1804.74—Observance of Legal Holidays

1804.7401 Contract clause.

The contracting officer shall insert the clause at 1852.204–73, Observance of Legal Holidays, in cost reimbursement contracts when work will be performed at a NASA installation and it is desired that contractor employees observe the same holidays as government employees. This clause may be appropriately modified for fixed price contracts. If notification to a contractor of government holidays would be useful in administering any contract, the contracting officer shall use Alternate I.

PART 1812—CONTRACT DELIVERY OR PERFORMANCE

3. In Subpart 1812.1, 1812.104–70 is amended by adding paragraph (c) to read as follows:

1812.104–70 Additional clauses.

* * * * *

(c) The contracting officer shall insert the clause at 1852.212–72, Partial Shipments, in solicitations and contracts when a quantity specified for a line item to be delivered is more than one unit and/or when the schedule contains more than one line item to be delivered, and partial shipments by the contractor will not adequately meet the Government's overall needs.

PART 1832—CONTRACT FINANCING

4. In Subpart 1832.1, 1832.111–70 is amended by adding paragraph (e) to read as follows:

1832.111–70 NASA contract clauses.

* * * * *

(e) The contracting office shall insert the clause at 52.232–79, Payment for On-site Preparatory Costs, in solicitations and contracts for construction on a

fixed-price basis where progress payments are contemplated and pro rata payment of these costs to the contractor is appropriate.

PART 1842—CONTRACT ADMINISTRATION

5. Part 1842 is amended by adding Subpart 1842.70, consisting of 1842.7001, to read as follows:

Subpart 1842.70—Technical Direction

1842.7001 Contract clause.

The contracting officer shall insert the clause at 1852.242–70, Technical Direction, in cost reimbursement solicitations and contracts where it is contemplated that a contracting officer's technical representative will conduct inquiries, request studies, or transmit information or advice to the contractor within the scope of the contract requirement.

PART 1847—TRANSPORTATION

6. Part 1847 is amended by adding Subpart 1847.70, consisting of 1847.7001, to read as follows:

Subpart 1847.70—Protection of the Florida Manatee

1847.7001 Contract clause.

The contracting officer shall insert the clause at 1852.247–71, Protection of the Florida Manatee, in solicitations and contracts when deliveries or vessel operations, dockside work, or disassembly functions under the contract will involve use of the waterways inhabited by manatees (endangered marine mammals). The clause shall also be included in applicable subcontracts (including vendor deliveries).

PART 1852—SOLICITATION PROVISIONS AND CLAUSES

7. Subpart 1852.2 is amended by adding 1852.204–73, 1852.212–72, 1852.232–79, 1852.242–70, and 1852.247–71 to read as follows:

1852.204–73 Observance of legal holidays.

Insert the following clauses as prescribed in 1804.7401.

Observance of Legal Holidays

(a) The on-site government personnel observe the listed days as holidays:

New Year's Day	Labor Day
Martin Luther King's Birthday	Columbus Day
Washington's Birthday	Veterans' Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day

Any other day designated by Federal statute, Executive Order, or the President's proclamation.

(b) When any day falls on a Saturday, the preceding Friday is observed. When any such day falls on a Sunday, the following Monday is observed. Observance of such days by government personnel shall not by itself be cause for an additional period of performance, or entitlement of compensation except as set forth within the contract.

(c) All personnel assigned to this contract shall limit their observance of holidays set forth above. In the event the contractor's personnel work during a holiday other than those above, no form of holiday or other premium compensation will be reimbursed as either a direct or indirect cost. However, this does not preclude reimbursement for authorized overtime work where such work would have been overtime regardless of the status of the day as a holiday.

(d) When the center grants administrative leave to its government employees, contractor personnel working on-site should also be dismissed. However, the contractor agrees to continue to provide sufficient personnel to perform round-the-clock requirements of critical tasks already in operation or scheduled and shall be guided by the instructions issued by the contracting officer or his/her duly authorized representative.

(e) In each instance when administrative leave is granted to contractor personnel pursuant to (d) above as a result of inclement weather, potentially hazardous conditions, or other special circumstance, it will be without loss to the contractor. The cost of salaries and wages to the contractor for the period of any such excused absence shall be a reimbursable item of cost hereunder for employees in accordance with the contractor's established accounting policy.

(End of clause)

(ALTERNATE I)

(a) The on-site government personnel observe the listed days as holidays:

New Year's Day	Labor Day
Martin Luther King's Birthday	Columbus Day
Washington's Birthday	Veterans' Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day

Any other day designated by Federal statute, Executive Order, or the President's proclamation.

(b) When any day falls on a Saturday, the preceding Friday is observed. When any such day falls on a Sunday, the following Monday is observed. Observance of such days by government personnel shall not by itself be cause for an additional period of performance, or entitlement of compensation except as set forth within the contract.

(End of clause)

1852.212–72 Partial shipments.

Insert the following clause as prescribed in 1912.104–70(c).

Partial Shipments

Partial shipments will not be accepted unless authorized elsewhere in this contract or authorized by the contracting officer's representative at the time of delivery. The Government reserves the right to return partial shipments to the contractor, transportation charges collect.

(End of clause)

1852.232–79 Payment for On-Site Preparatory Costs

Insert the following clause as prescribed in 1832.111–70(e):

Payment for On-Site Preparatory Costs

Costs associated with on-site preparatory work (start-up or set-up costs) will be prorated over all work activities of a Critical Path Method (CPM) network or Progress Chart against which progress payments will be sought. Separate payment for on-site preparatory costs will not be made by the Government.

(End of clause)

1852.242–70 Technical direction.

Insert the following clause as prescribed in 1842.7001.

Technical Direction

(a) Performance of the work under this contract shall be subject to the written technical direction of the Contracting Officer's Technical Representative (COTR), who shall be specifically appointed by the contracting officer in writing. Technical direction is defined as a directive to the contractor which approves approaches, solutions, designs, or refinments; fills in details or otherwise completes the general description of work or documentation items; shifts emphasis among work areas or tasks; or otherwise furnishes guidance to the contractor. Technical direction includes the process of conducting inquiries, requesting studies, or transmitting information or advice by the COTR, regarding matters within the general tasks and requirements in Section C of this contract.

(b) The COTR does not have the authority to, and shall not, issue any instructions purporting to be technical direction which:

(1) Constitutes an assignment of additional work outside the Statement of Work;

(2) Constitutes a change as defined in the contract clause entitled "Changes";

(3) In any manner causes an increase or decrease in the total estimated contract cost, the fixed fee (if any), or the time required for contract performance;

(4) Changes any of the expressed terms, conditions, or specifications of the contract; or

(5) Interferes with the contractor's rights to perform the terms and conditions of the contract.

(c) All technical directions shall be issued in writing by the COTR.

(d) The contractor shall proceed promptly with the performance of technical directions duly issued by the COTR in the manner prescribed by this clause and within his/her authority under the provisions of this clause.

If, in the opinion of the contractor, any instructions or direction by the COTR falls within one, or more, of the categories defined in (b)(1) through (5) above, the contractor shall not proceed but shall notify the contracting officer in writing within five (5) working days after receipt of any such instruction or direction and shall request the contracting officer to take action as described herein. Upon receiving the notification from the contractor, the contracting officer shall either issue an appropriate contract modification within a reasonable time or advise the contractor in writing within thirty (30) days after receipt of the contractor's letter that:

(1) the technical direction is rescinded in its entirety; or

(2) the technical direction is within the scope of the contract, does not constitute a change under the "Changes" clause of the contract and that the contractor should proceed promptly with the performance of the technical direction.

(e) A failure of the contractor and contracting officer to agree that the technical direction is both within the scope of the contract and does not constitute a change under the "Changes" clause of the contract, or a failure to agree upon the contract action to be taken with respect thereto shall be subject to the provisions of the "Disputes" clause of this contract.

(f) Any action(s) taken by the contractor in response to any direction given by any person other than the contracting officer or the COTR shall be at the contractor's risk.

(End of clause)

1852.247-71 Protection of the Florida Manatee.

Insert the following clauses as prescribed in 1847.7001.

(a) Pursuant to the Endangered Species Act of 1973 (Pub. L. 93-205), as amended, and the Marine Mammals Protection Act of 1972 (Pub. L. 92-522), the Florida Manatee (Trichechus Manatus) has been designated as an endangered species, and the Banana and Indian Rivers within and adjacent to NASA's Kennedy Space Center (KSC) have been designated as a critical habitat of the Florida Manatee.

(b) Contractor personnel involved in vessel operations, dockside work and selected disassembly functions, shall be provided training relative to: (1) Habits and characteristics of the Florida Manatee, (2) provisions of the applicable laws, (3) personal liability of workers under the laws, and (4) operational restrictions imposed by KSC.

(c) All vessel operations shall be conducted within the posted speed restrictions, and vessels shall be operated at minimum controllable speeds in all KSC waters. Shallow water operations are prohibited.

(d) Training will be conducted by personnel of the U.S. Fish and Wildlife Service (USFWS). The contractor agrees to cooperate with the USFWS by allowing access at reasonable times and places (including shipboard) to USFW personnel, and by making available such contractor personnel as are required to have the training. Arrangements for training will be made as follows:

(1) For personnel involved in tug, barge, or marine operations, through the Lockheed Space Operations Contractor, Transportation Coordination Center, Kennedy Space Center, Florida, telephone (305) 867-2737.

(2) For all other personnel, through the Systems Training and Employee Development Branch, Code PM-TNG, telephone (305) 867-2737.

(e) The contractor shall incorporate the provisions of this clause in applicable subcontracts (including vendor deliveries).

(End of clause)

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This document proposes special migratory bird hunting regulations on Federal Indian reservations and ceded lands for the 1987-88 hunting season. This season will commence on September 1, 1987.

The U.S. Fish and Wildlife Service (hereinafter the Service) annually prescribes migratory bird hunting regulations frameworks to the States. this rule proposes migratory bird hunting regulations to be established for certain tribes on Federal Indian reservations and ceded lands in the 1987-88 hunting season.

DATES: The comment period for these proposed regulations will end August 6, 1987.

ADDRESSES: Comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240. Comments received on these proposed hunting regulations and tribal proposals will be available for public inspection during normal business hours in Room 536, Matomic Building, 1717 H Street, NW, Washington, DC. The Service's biological opinions resulting from its consultation under section 7 of the Endangered Species Act are available for public inspection in or are available from 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.

FOR FURTHER INFORMATION CONTACT: Rollin D. Sparrowe, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (202-254-3207).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.) authorizes and directs the Secretary of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the January 16, 1987, **Federal Register** (52 FR 1942-1944) the Service requested proposals from Indian tribes that wished to establish special migratory bird hunting regulations for the 1987-88 hunting season, under the interim guidelines published for this purpose on September 3, 1985, (at 50 FR 35762-35765). The guidelines were developed in response to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their full wildlife management authority to regulate hunting by both tribal and nontribal members on their reservations. The guidelines include possibilities for: (1) On-reservation hunting (including Indian Territory) by both tribal and nontribal members, with hunting by nontribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by surrounding State(s); (2) on-reservation hunting (including Indian Territory) by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and (3) off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines would have to be consistent with the closed season requirement mandated by the 1916 Migratory Bird Treaty with Canada. The guidelines are capable of application to those tribes that have recognized reserved hunting rights on Federal Indian reservations (including Indian Territory) and ceded lands. They also

apply to establishing migratory bird hunting regulations for nontribal members on reservations, including Indian Territory, where tribes have gained full wildlife management authority by judicial decisions or other means. In cases where the scope of tribal management authority is unclear, the Service, on request, will consult with tribal and State officials, with the aim of reaching mutual agreement on tribal hunting regulations. The service also will consult jointly with tribal and State officials in the State(s) where tribes may wish to establish special hunting regulations for tribal members on ceded lands.

Before developing the guidelines, the Service reviewed available information on the current status of migratory bird hunting on Federal Indian reservations and evaluated the impact that adoption of the guidelines likely would have on migratory birds. The Service has concluded that the size of the migratory bird harvest by tribal members hunting on their reservations is too small to have significant impacts on the migratory bird resource when compared with the much larger off-reservation sport harvest by non-Indians. The major area of concern related to hunting seasons for nontribal members on dates that are within Federal frameworks, but that are different from those established by the State(s) in which a Federal Indian reservation is located. A large influx of nontribal hunters onto a reservation at a time when the season is closed in the surrounding State(s) could result in adverse harvest impacts on one or more migratory bird species. The guidelines make such an event unlikely, however, bcause tribal proposals must include details on the harvest anticipated under the requested regulations; methods that will be employed to measure or monitor harvest (bag checks, mail questionnaires, etc.); steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would impact seriously on the migratory bird resources; and tribal capabilities to establish and enforce migratory bird hunting regulations. Based on a review of tribal proposals, the Service may require modifications, and regulations may be established experimentally, pending evaluation and confirmation of harvest information obtained by the tribes.

The Service recognizes that as the guidelines are tested over time, some changes may be needed, and they should not be viewed as inflexible. Nevertheless, the Service believes that they provide reasonable and necessary standards to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection.

Review of Comments Received on Notice Requesting Hunting Season Proposals from Indian Tribes

In a June 9, 1987, letter from The Wildlife Legislative Fund of America, Mr. James W. Goodrich, Senior Vice President, commented on the January 16, 1987, **Federal Register** notice in which the Service requested tribal proposals. In his letter, Mr. Goodrich recognized that there are treaty-based reasons for differential treatment of Indians and non-Indians when migratory bird hunting regulations are established, and that the Service cannot ignore certain Indian claims. However, he asked the Service to set forth and interpret the treaty language in each case so that non-Indians can better understand and accept the reason for the special hunting regulations.

In response, the Service notes that reserved hunting rights for Indian tribes may be recognized or granted by treaty, executive order, statute, agreement, or other law. If a tribe has a Federal Indian reservation, members generally possess reserved hunting rights unless such rights were clearly relinquished by treaty or have been modified by statute. The question of reserved hunting rights on off-reservation ceded lands is more complex, and the Service will carefully scrutinize the legal basis for all such requests. Thus far, only the Great Lakes Indian Fish and Wildlife Commission (representing various Chippewa Indian Tribes) has requested special hunting regulations for tribal members on ceded lands.

Hunting Season Proposals From Indian Tribes and Organizations

The Service received requests from nine tribes and Indian organizations for special migratory bird hunting regulations for the 1987–88 hunting season. Six of them had special regulations in the 1987–87 hunting season.

The proposed regulations for the different tribes are shown below. It should be noted that this proposed rule, and a final rule to be published later in an August 1987, **Federal Register**, will include tribal regulations for both early and late hunting seasons. The early season begins on September 1 each year and includes species such as mourning doves and white-winged doves. The late season usually begins on or around October 1 and includes most waterfowl species. Because final regulations for Indian tribes must be established by September 1, the proposed and final regulations for most tribal hunting seasons are described in relation to the season dates, season length, and limits that will be permitted when final Federal frameworks are announced for early and late season regulations. For example, the daily bag and possession limits for mourning doves on reservations in the Southwestern United States will be shown as "Same as permitted Western Management Unit States under final Federal frameworks," and limits for ducks will be shown as the same that will be permitted Pacific Flyway States. The proposed frameworks for early season regulations are scheduled for early July publication in the **Federal Register**, and final Federal frameworks will be published in early August. Proposed late season frameworks for waterfowl and coots will be published in mid-August, and the final Federal frameworks for the late season will be published in a mid-September **Federal Register**. The Service will notify affected tribes of season dates, bag limits, etc., as soon as final frameworks are established. It should be stressed here that no action is required by tribes that wish to observe the migratory bird hunting regulations established by the state in which a reservtion is located.

1. Penobscot Indian Nation, Old Town, Maine

During the 1985–86 and 1986–87 hunting seasons, the tribe requested and the Service approved a general migratory bird hunting season for both tribal and nontribal members under regulations adopted by the State, and a sustenance season that applied only to tribal members. During both sustenance seasons the Service requested that the tribe carefully monitor the black harvest because of concern regarding its population status. The tribe confirmed that the black duck harvest was negligible in size.

In a January 27, 1987 proposal, the tribe again requested special regulations for tribal members in Penobscot Indian Territory, an area that includes but is much larger than the reservation. The tribe proposed a 1987–88 hunting season of 73 days (September 19–November 30), with a daily bag limit of 4 ducks, including no more than 1 black duck and 2 wood ducks. The daily bag limit for geese would include 3 Canada geese, 3 snow geese, or 3 in the aggregate. When the sustenance and Maine's general waterfowl hunting season overlap, the daily bag limit for tribal members will be only the larger of the two bag limits. All other Federal regulations pertaining

to waterfowl hunting will be observed by tribal members, except that shooting hours will be from one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Penobscot Indian Territory will adhere to the waterfowl regulations established by the State of Maine.

The Service notes that these proposed regulations are similar to those established last year and proposes to approve the tribal request.

2. Jicarilla Apache Tribe, Jicarilla Indian Reservation, Dulce, New Mexico

The Jicarilla Apache Tribe has recognized full wildlife management authority on the reservation, and last year, the Service approved special regulations for both tribal members and nonmembers that provided for an earlier opening and a shorter waterfowl hunting season than for the State. Daily bag and possession limits were the same as final frameworks permitted Pacific Flyway States for ducks and New Mexico for geese. There was little increase in harvest as a result of the earlier opening date.

For the 1987–88 hunting season, the tribe has requested the earliest opening date permitted Pacific Flyway States for ducks, with a November 30 closing date. Daily bag and possession limits also would be the same as permitted the Pacific Flyway under Federal frameworks. The tribe requested closure of goose hunting because of a transplantation program on the reservation. The Service concludes that the special regulations established for the 1986–87 hunting season had no adverse effects and proposes to approve the tribal proposal for the 1987–88 hunting season.

3. White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona

The White Mountain Apache Tribe has recognized full wildlife management authority and has asked for special regulations that would apply to both tribal members and nonmembers in the 1987–88 hunting season. The tribe requested that latest waterfowl season dates and the same bag limits permitted Pacific Flyway States under final Federal frameworks. The tribe asked that the hunting regulations for band-tailed pigeons, mourning doves and any other migratory game birds not mentioned, be the same or as similar as possible to the regulations established for these species by the State of Arizona in the 1986–87 hunting season. The waterfowl season dates requested by the White Mountain Apache Tribe are unlikely to result in an appreciable increase in harvest above its usual small size, and the Service proposes to approve the tribal request. However, the Service requests that the tribe monitor the harvest in the 1987–88 hunting season.

4. Colorado River Indian Tribes, Colorado River Indian Reservation, Parker, Arizona

The Colorado River Indian Reservation is located in Arizona and California. Beginning with the 1985–86 hunting season, the Service has established the same migratory bird hunting regulations on the reservation as in the Colorado River Zone in California. The tribes requested regulations for the 1987–88 hunting seaons that are similar to those that were established in the 1986–87 hunting season. The Service notes that there is continuing concern regarding the low numbers of pintails, mallards, and other ducks, and that there also is concern about the population status of mourning doves in the Western Management Unit. Consequently, while the regulations frameworks for these species have not been announced, it may be necessary to establish more restrictive regulations for these species in the 1987–88 hunting season. However, as requested by the tribes, the Service proposes to establish the same regulations on the reservation as will be established in the Colorado River Zone. As in the past, the regulations would apply to tribal and nontribal hunters.

5. Klamath Tribe, Chiloquim, Oregon

The Klamath Tribe has gained the judicially recognized right to hunt on lands within the exterior boundaries of its former reservation and has requested special tribal regulations for the 1987–88 hunting season. The Service intends to consult soon with tribal officials for the purpose of reaching mutually acceptable regulations, under the interim guidelines implemented for this purpose.

6. Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin

Beginning with the 1985–86 hunting season, various bands of the Lake Superior Tribe of Chippewa Indians have exercised judicially recognized off-reservation hunting rights on ceded lands. The specific regulations were establishment by the Service, in consultation with the Wisconsin Department of Natural Resources and the Great Lakes Indian Fish and Wildlife Commission (which represents the various tribes). Prior to the 1986–87 season, the Michigan Department of Natural Resources agreed to accommodate a tribal season on ceded lands in the western portion of the State's Upper Peninsula, and the Service approved special regulations for Chippewa Tribal members in both Michigan and Wisconsin. The duck and goose harvest in both States was small, and there was no indication that the special seasons caused any displacement of waterfowl that resulted in reduced hunting opportunity for non-Indians when the regular State hunting seasons opened. The Great Lakes Indian Fish and Wildlife Commission has again requested special regulations for hunting by tribal members in Michigan and Wisconsin, and for the first time, requested a special season on ceded lands in Minnesota.

Wisconsin officials have voiced some concern about the regulations proposed by the tribes. The chief concern relates to the potential effects that an early season might have on the State's program to establish local breeding populations of Canada geese. The Service believes that further consultation is needed in regard to tribal regulations in Wisconsin and intends to work for a prompt and mutually acceptable agreement in time for the 1987–88 hunting season. Michigan officials have raised no objections to continuing the early season.

In an April 30, 1987, letter to the Service, the Minnesota Department of Natural Resources pointed out that Minnesota is not bound by the *Voigt* decision that recognized off-reservation hunting rights of Chippewa Indians on ceded lands in Wisconsin, and indicated that the State will not recognize hunting rights in the treaty area in Minnesota until a court with jurisdiction over the State acknowledges and defines the extent of the rights involved. On May 28, 1987, Service representatives met jointly with officials from the Great Lakes Indian Fish and Wildlife Commission and the State in an effort to reach a mutually acceptable agreement for special regulations that would apply to ceded lands in Minnesota. At the meeting, it was stressed that the United States Government has recognized the Indian hunting rights decided in the *Voigt* case, and the Service has negotiated acceptable regulations, not only in Wisconsin but in Michigan as well, even though the *Voigt* decision did not specifically address ceded lands outside of Wisconsin. The Service notes, however, that the treaties construed by The Seventh Circuit Court in *Voigt* cover ceded lands within Minnesota, as well as Michigan and Wisconsin. If such a season were established in Minnesota, the Service believes that the harvest by a limited number of tribal members

would total less than 500 ducks and 60 geese and would be too small to have adverse effects on the migratory bird resource. Therefore, the Service finds no biological reason to oppose the special season on certain ceded lands in Minnesota. However, the Service notes that the State of Minnesota has the authority under the 1918 Migratory Bird Treaty Act (as amended) to establish more restrictive migratory bird hunting regulations than are permitted by the Service under final Federal frameworks, and the State often has exercised this authority in establishing waterfowl hunting regulations. The Service will continue to strive for a mutually acceptable agreement in time for the 1987–88 hunting season.

7. Shoshone-Bannock Tribes, Fort Hall Indian Reservation, Fort Hall, Idaho

The Shoshone-Bannock Tribes have a major waterfowl management program that attracts substantial numbers of non-Indian hunters. Almost all of the reservation is in tribal ownership. The tribes claim full wildlife management authority, but the Idaho Fish and Game Department has disputed tribal jurisdiction, especially on non-Indian lands within the reservation. Prior to the 1985–86 and 1986–87 hunting seasons, the Service established duck hunting regulations by zones that included both the reservation and off-reservation lands. The regulations were requested by the tribes and provided for different hunting season dates than in the remainder of the State. The Service agreed to these season dates because it seemed likely that they would provide some additional protection to mallards and pintails, and the State concurred with the zoning arrangement. The regulations established on the reservation applied only to nontribal members.

In the past, migratory bird hunting regulations for the Fort Hall Indian Reservation were established concurrently with regulations for the remainder of the State. This was possible because migratory game birds included in early season regulations are not hunted on the reservation. However, as requested, the Shoshone-Bannock Tribes responded to the January 16, 1987, **Federal Register** notice and requested the following regulations for nontribal hunters for the 1987–88 hunting season:

A. *Ducks* (including Mergansers)

Season Length and Dates: Same season length as permitted Pacific Flyway States under final Federal frameworks to be announced. If 79 hunting days permitted as in 1986–87 tribal season would run continuously with later opening and earlier closure (e.g., tribal season in 1988–87 season was October 11–December 28).

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

B. *Geese* (including Canada, Black Brant, White-Fronted, and Snow)

Season Length and Dates: Same season length as permitted Pacific Flyway States under final Federal frameworks to be announced. If 86 hunting days permitted as in 1986–87, tribal season would run continuously with later opening and earlier closure (e.g., tribal season in 1986–87 was October 11–January 4). Tentatively, tribal duck and goose seasons would commerce on same date, preferably a Saturday.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

C. *Coots*

Season Length and Dates: Same season length as permitted Pacific Flyway States under final Federal frameworks to be announced. If 79 hunting days permitted as in 1986–87, tribal season would run continuously with later opening and earlier closure (e.g., tribal season in 1986–87 ran from October 11–December 28).

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

D. *Common Snipe*

Season Length and Dates: Same season length as permitted Pacific Flyway States under final Federal frameworks to be announced. If 79 hunting days permitted as in 1986–87, tribal season would run continuously with later opening and earlier closure (e.g., tribal season in 1986–87 ran from October 11–December 28).

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks to be announced.

E. *General Conditions:* Nontribal members will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his person a valid Migratory Bird Hunting and Conservation Stamp, or duck stamp, signed in ink across the face. Special regulations established by the Shoeshone-Bannock Tribes also apply on the reservation.

The regulations requested by the tribes are essentially the same as in the 1986–87 hunting season and take into account changes that may be necessary when final Federal frameworks are announced. The Service has no objection to establishing reservation-wide regulations or to including the same surrounding lands that, together with the reservation, formed a special hunting zone in the 1986–87 hunting season. The Service intends to consult promptly with State and tribal officials so that the final regulations for the Fort Hall Indian Reservations can be made final with those for other tribes in mid-August.

8. Confederated Salish and Kootenai Tribes, Flathead Indian Reservation, Pablo, Montana

On June 5, 1987, the Confederated Salish and Kootenai Tribes submitted a proposal to establish reservation-wide waterfowl hunting regulations for nontribal members in the 1987–88 hunting season. The tribes requested the same bag limits and other regulations that will be permitted Pacific Flyway States under final Federal frameworks, but indicated that they will close the goose season after November 30, 1987, in a portion of the reservation, and if necessary, may establish other regulations of a more restrictive nature. The tribes indicated that implementation of the regulations should not cause a significant change in waterfowl harvest on the reservation and that the process for reviewing data through the Flathead Valley Canada Goose Committee would not be changed. Members of the Committee include personnel in the Service, Bureau of Indian Affairs, Montana Department of Fish, Wildlife and Parks, and the Confederated Salish and Kootenai Tribes. The tribes stated that they have conducted intensive waterfowl research since 1982, and that under provisions of a hunting and fishing ordinance, are ready to proceed with waterfowl management on the reservation.

The Service notes that the guidelines provide an opportunity for reservation-wide migratory bird hunting regulations for nontribal members. However, if a significant portion of a reservation includes lands owned by nontribal members, as is the case on the Flathead Indian Reservation, the affected State must concur with the regulations unless the tribe has gained full wildlife management authority as the result of a judicial decision or by some other means. The Service has no biological

objections to the request received from the Confederated Salish and Kootenai Tribes but must defer action on the proposal pending consultation with the State of Montana.

9. Navajo Nation, Navajo Indian Reservation, Window Rock, Arizona

In the 1985–86 and 1986–87 hunting seasons, the Service established uniform migratory bird hunting regulations for both tribal and nontribal members on the Navajo Indian Reservation (in parts of Arizona, New Mexico, and Utah). The tribe has full wildlife management authority on the reservation.

The tribe has asked that uniform regulations be established again throughout the reservation. The requested migratory bird hunting regulations generally are more restrictive than final Federal frameworks permit for States in the Pacific Flyway, and the Service therefore intends to establish the following regulations on the Navajo Indian Reservation for the 1987–88 hunting season, contingent on receipt of a written request signed by an authorized tribal official:

A. *Ducks (including Mergansers).*

Season Dates: October 10–December 6.

Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks.

B. *Canada Geese (Season closed on other geese)*

Season Dates: December 26–January 10

Daily Bag and Possession Limits: 2 daily. Possession limit 4.

C. *Other Migratory Game Birds.*

1. *Coots and Common Moorhens.*
Season Dates: October 10–December 6.
Daily Bag and Possession Limits: Same as permitted Pacific Flyway States under final Federal frameworks.
2. *Mourning Doves.*
Season Dates: September 1–September 30.
Daily Bag and Possession Limits: Same as permitted Western Management States under final Federal frameworks.
3. *Band-tailed Pigeons.*
Season Dates: September 1–September 30.
Daily Bag and Possession Limits: Same as permitted Western Management States under final Federal frameworks.

D. *General Conditions:* Tribal and nontribal members will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his person a valid Migratory Bird Hunting and Conservation Stamp, or duck stamp, signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

Public Comment Invited

Based on the results of recently completed migratory game bird studies, and having due consideration for any data or views submitted by interested parties, this proposed rulemaking may result in the adoption of special hunting seasons for migratory game birds beginning as early as September 1, 1987, on certain Federal Indian reservations (including Indian Territory) and ceded lands. Taking into account both reserved hunting rights and the degree to which tribes have recognized full management authority, the regulations for tribal or for both tribal members and nonmembers may differ from those established by States in which the reservations and ceded lands are located. The regulations will specify open seasons, shooting hours, and bag and possession limits for rails, gallinules (including moorhen), woodcock, snipe, band-tailed pigeons, mourning doves, white-winged doves, ducks, and geese.

The Director intends that finally adopted rules be as responsive as possible to all concerned interests. Therefore, he desires to obtain the comments and suggestions on these proposals from the public, other concerned governmental agencies, tribal and other Indian organizations, and private interests, and he will take into consideration the comments received. Such comments, and any additional information received, may lead the Director to adopt final regulations differing from these proposals.

Special circumstances in the establishment of these regulations limit the amount of time that the Service can allow for public comments. Two considerations compress the time in which this rulemaking process must operate: The need, on the one hand, for tribes and the Service to establish final regulations before September 1, 1987, and on the other hand, the unavailability before late July of specific reliable data on this year's status of waterfowl. Therefore, the Service believes that to allow a comment period past August 6, 1987 is contrary to the public interest.

Comment Procedure

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may participate by submitting written comments to the Director, (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 536, Matomic Building, Washington, DC 20240. Comments received will be available for public inspection during normal business hours at the Service's Office of Migratory Bird Management in Room 536 in the Matomic Building, 1717 H Street, NW. Washington, DC 20240. All relevant comments on the proposals received no later than August 6, 1987 will be considered.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" 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, an August 1985, environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the Service.

Nontoxic Shot Regulations

On January 15, 1987 (at 52 FR 1636), the Service proposed nontoxic shot zones for the 1987–88 waterfowl hunting season. This proposed rule was sent to all affected tribes and to Indian organizations for comment. The final rule on nontoxic shot zones for the 1987–88 hunting season is scheduled for July publication in the **Federal Register**.

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 insure that any action authorized, funded or carried out . . . is not likely to jeopardize the continued existence of any endangered species of threatened species or result in the destruction or adverse modification of [critical] habitat . . . ." Consequently, the Service has initiated section 7 consultation under the Endangered Species Act for the proposed hunting seasons on Federal Indians reservations and ceded lands.

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. These regulations have been determined to be major under Executive Order 12291, and they have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act. This determination is detailed in the aforementioned documents which are available upon request from the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536, Matomic Building, Washington, DC 20240. As noted in the March 13, 1987, **Federal Register**, the Service plans to issue its Memorandum of Law for migratory hunting regulations at the same time the first of the annual hunting rules is completed. This rule does not contain any information collection requiring approval by OMB under 44 U.S.C. 3504.

Authorship

The primary author of this proposed rulemaking is Fant W. Martin, 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.

The rules that eventually will be promulgated for the 1987–88 hunting season are authorized under the Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 et seq.), as amended.

Dated: July 1, 1987.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–15313 Filed 7–6–87; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 52, No. 129
Tuesday, July 7, 1987

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

State of Maryland Nonstructural Shore Erosion Control Cost-Share Program; Determination of Primary Purpose of Amounts That May Be Excluded From Income Under Section 126 of the Internal Revenue Code of 1954, as Amended

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that all state cost-share payments made under the Maryland Nonstructural Shore Erosion Control Cost-Share Program are made primarily for the purpose of soil and water conservation and protecting or restoring the environment. This determination is in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended by section 543 of the Revenue Act of 1978 and the Technical Corrections Act of 1979. The determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Wayne Cawley, Jr., Secretary, Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, Maryland 21401, (301) 841–5880; or Director, Land Treatment Program Division, Soil Conservation Service, USDA, P.O. Box 2890, Washington, DC 20013, (201) 382–1870; or Director, Coastal Resources Division, Tidewater Division, Department of Natural Resources, B–3 Tawes State Office Building, Annapolis, Maryland 21401, (301) 269–3782.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, 26 U.S.C. 126, as amended by the Revenue Act of 1978 and the Technical Corrections Act of 1979, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that payments are made "primarily for the purpose of soil and water conservation, protecting or restoring the environment, improving forests, or providing a habitat for wildlife. . . ." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR Part 14, and makes a "primary purpose" determination for the payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that the payments made to a person under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The Maryland Nonstructural Shore Erosion Control Cost-Share Program is authorized by Maryland Annotated Code, Section 8–1004. It is funded through an appropriation voted on by the General Assembly wherein general funds are made available to assist landowners and occupiers with the installation of various nonstructural shore erosion control practices for the purpose of soil and water conservation and protecting or restoring the environment. Cost-share payments accomplish one or more of the following purposes:

(1) To conserve, enhance, and protect land and water resources;

(2) To provide for soil conservation, prevent further degradation of Chesapeake Bay waters, and help provide for their restoration; and

(3) To increase the amount and quality of both terrestrial and aquatic wildlife habitat.

Procedural Matters

The Department of Agriculture has classified this determination as "not major" in accordance with Executive Order 12291 and Secretary's Memorandum No. 1512–1. The Secretary has determined that these program provisions will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in cost to consumers, individuals, industries, government agencies, or geographic regions; and will not cause significant adverse effects of competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Maryland Nonstructural Shore Erosion Cost-Share Program, "Primary Purpose Determination for Federal Tax Purposes," Record of Decision, has been prepared and is available upon request from the Director, Land Treatment Program Division, Soil Conservation Service, P.O. Box 2890, Washington, DC 20013, or the Maryland Department of Agriculture, 50 Harry S. Truman Parkway, Annapolis, Maryland 21401.

Determination

As required by section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures of the Maryland Nonstructural Shore Erosion Control Cost-Share Program. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all cost-share payments made under this program are for soil conservation or protecting or restoring the environment. Subject to further determination by the Secretary of the Treasury, this determination permits payment recipients to exclude from gross income, for federal income tax purposes, allowable part of such payments made under the Maryland Nonstructural Shore Erosion Control Cost-Share Program.

Signed at Washington, DC, on June 30, 1987.

Richard E. Lyng,

Secretary.

[FR Doc. 87–15318 Filed 7–6–87; 8:45 am]

BILLING CODE 4310–16–M

Agricultural Marketing Service

[Marketing Agreement 146]

Peanuts; 1987 Crop, Incoming and Outgoing Quality Regulations and Indemnification

Pursuant to the provisions of sections 5, 31, 32, 34 and 36 of the marketing agreement regulating the quality of domestically produced peanuts heretofore entered into between the Secretary of Agriculture and various handlers of peanuts (30 FR 9402) and upon recommendation of the Peanut

Administrative Committee established pursuant to such agreement and other information, it is hereby found that the appended "Incoming Quality Regulation—1987 Crop Peanuts," "Outgoing Quality Regulation—1987 Crop Peanuts," and the "Terms and Conditions of Indemnification—1987 Crop Peanuts," which modify or are in addition to the provisions of sections 5, 31, 32, and 36 of said agreement will tend to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937, as amended, and of such agreement and should be issued.

The Peanut Administrative Committee has recommended that the appended regulations and the Terms and Conditions of Indemnification be issued to implement and effectuate the provisions of the aforementioned sections of the marketing agreement. The peanut crop year begins July 1 and procedures and regulations for operations under the agreement should be established promptly affording handlers maximum time to plan their operations accordingly. The handlers of peanuts who will be affected hereby have signed the marketing agreement authorizing the issuance hereof. They are represented on the Committee which has prepared and recommended these quality regulations and terms and conditions of indemnification for approval.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing agreements issued pursuant to the Agricultural Marketing Agreement Act, and regulations issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Information collection requirements contained in these regulations and terms and conditions of indemnification have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581–0067.

The 1987 Incoming Quality Regulation differs in one way from the 1986 regulation. Paragraph (b)(2) is changed to provide handlers additional flexibility in handling farmers' stock peanuts containing more than 10.49 percent foreign material. Currently, handlers may receive or acquire such peanuts if they are held separately until milled. However, this has placed an undue burden on some handlers with limited storage space. To alleviate this burden, paragraph (b)(2) will also allow handlers to handle or receive peanuts containing more than 10.49 percent foreign material if they are moved over a sand-screen before storage, or if the peanuts are shipped directly to a plant for prompt shelling. This action should facilitate the orderly movement of peanuts from buying points to storage or to shelling plants, as the case may be.

The Outgoing Quality Regulation for 1987 crop peanuts is the same as was in effect for 1986 crop peanuts.

Several changes are made in the Terms and Conditions of Indemnification for 1987 crop peanuts. The Indemnification Value for "additional peanuts" will be reduced to 45 percent of 43 cents per pound or the established Indemnification Value, per category, of "quota peanuts," whichever is lower. The Indemnification Value for "additional peanuts" for the 1986 crop year was 55 percent of the value of "quota peanuts." This reduction is to reflect anticipated market prices for "additional peanuts" and to insure that the Indemnification Value of such peanuts remains below those prices.

Other changes in the Terms and Conditions will reduce the Committee's indemnification costs by establishing a maximum payment of 43 cents per pound for "quota peanuts" and 19.35 cents per pound for "additional peanuts," plus authorized allowances for remilling, blanching, and other costs on all 1987 crop peanuts which are indemnified (including residue from remilled or blanched lots). Market prices are used in computing indemnification values. The maximum payment will limit the amount that market price changes can inflate indemnification payments to handlers.

Upon consideration of the Committee recommendation and other available information, the appended "Incoming Quality Regulation—1987 Crop Peanuts," "Outgoing Quality Regulation—1987 Crop Peanuts," and the "Terms and Conditions of Indemnification—1987 Crop Peanuts," are hereby approved.

Dated: June 30, 1987.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

Incoming Quality Regulation—1987 Crop Peanuts

The following modify section 5 of the peanut marketing agreement and modify or are in addition to the restrictions of section 31 on handler receipts or acquisitions of peanuts:

(a) Modification of Section 5, Paragraphs (b), (c), and (d)

Paragraphs (b), (c), and (d) of section 5 of the peanut marketing agreement are modified as to farmers' stock peanuts to read respectively as follows:

(b) *Segregation 1.* "Segregation 1 peanuts" means farmers' stock peanuts with not more than 2 percent damaged kernels nor more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.*

(c) *Segregation 2.* "Segregation 2 peanuts" means farmers' stock peanuts with more than 2 percent damaged kernels or more than 1.00 percent concealed damage caused by rancidity, mold, or decay and which are free from visible *Aspergillus flavus.*

(d) *Segregation 3.* "Segregation 3 peanuts" means farmers' stock peanuts with visible *Aspergillus flavus.*

(b) Moisture and Foreign Material

(1) *Moisture.* Except as provided under paragraph (e) *Seed peanuts,* and for field dried farmers' stock peanuts produced in the Southwestern area which are delivered to the buying station in bags, no handler shall receive or acquire peanuts containing more than 10.00 percent moisture: *Provided,* That peanuts of a higher moisture content may be received and dried to not more than 10.00 percent moisture prior to storing or milling, and Southwestern-area-field-dried peanuts delivered to the buying station in bags may contain up to 10.49 percent moisture. On farmers' stock, such moisture determinations shall be rounded to the nearest whole number, except, that when the moisture determination is 10.01 percent to 10.49 percent, the determinations shall be recorded the same as is prescribed for shelled peanuts. On shelled peanuts, the determinations shall be carried to the hundredths place and shall not be rounded to the nearest whole number.

(2) *Foreign material.* No handler shall receive or acquire farmers' stock peanuts containing more than 10.49 percent foreign material, except that peanuts having a higher foreign material content may be received or acquired if they are held separately until milled, or moved over a sand-screen before storage, or shipped directly to a plant for prompt shelling. The term "sand-screen"

means any type of farmers' stock cleaner which, when in use, removes sand and dirt.

(c) Damage

For the purpose of determining damage, other than concealed damage, on farmers' stock peanuts, all percentage determinations shall be rounded to the nearest whole number.

(d) Loose Shelled Kernels

(1) Handlers may separate from the loose shelled kernels received with farmers' stock peanuts those sizes of kernels which ride screens with the following or larger slot openings: Runner—16/64 x 3/4 inch; Spanish and Valencia—15/64 x 3/4 inch; Virginia—15/46 x 1 inch. If so separated, those loose shelled kernels which ride the screens may be included with shelled peanuts prepared by the handler for inspection and sale for human consumption: *Provided,* That no more than 5 percent of such loose shelled kernels are kernels which would fall through screens with such minimum prescribed openings. Those loose shelled kernels which do not ride the screens shall be removed from the farmers' stock peanuts and shall be held separate and apart from other peanuts and disposed of for inedible use as provided in paragraph (g) of the Outgoing Quality Regulation. If the kernels which ride the prescribed screen are not separated from the kernels which do not ride the prescribed screen, the entire amount of loose shelled kernels shall be removed from farmers' stock peanuts and shall be so held and so delivered or disposed of. For the purpose of this regulation, the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls and found in deliveries of farmers' stock peanuts.

(2) Each handler shall be required to submit to the Committee a flow chart for each plan operation diagraming the procedures and equipment used in the removal of loose shelled kernels and in the processing of splits. Upon any subsequent changes in such flow, procedures, or equipment, the handler shall submit to the Committee a revised flow chart reflecting those changes.

(e) Seed Peanuts

A handler may acquire and deliver for seed purposes farmers' stock peanuts which meet the requirements of Segregation 1 peanuts. If the seed peanuts are produced under the auspices of a State agency which regulates or controls the production of seed peanuts, they may contain up to 3 percent damaged kernels and have visible *Aspergillus flavus,* and, in addition, the following moisture content, as applicable:

(1) For such seed peanuts produced in the Southeastern and Virginia-Carolina areas, they may contain up to 10.49 percent moisture except Virginia type peanuts which are not stacked at harvest time may contain up to 11.49 percent moisture; and (2) for seed peanuts produced in the Southwestern area, they may contain up to 10.49 percent moisture.

However, any such seed peanuts with visible *Aspergillus flavus* shall be stored and shelled separate from other peanuts, and any residual not used for seed shall not be used or disposed of for human consumption unless it is determined to be wholesome by chemical assay for aflatoxin. A handler whose operations include custom seed shelling may receive, custom shell, and deliver for seed purposes farmers' stock peanuts, and such peanuts shall be exempt from the Incoming Quality Regulation requirements and, therefore, shall not be required to be inspected and certified as meeting the Incoming Quality Regulation requirements, and the handler shall report to the Committee as requested the weight of each lot of farmers' stock peanuts received on such basis on a form furnished by the Committee. However, handlers who acquire seed peanut residuals from their custom shelling of uninspected (farmers' stock) seed peanuts or from another sheller or producer who has or has not signed the marketing agreement shall hold and/or mill such residuals separate and apart from other receipts or acquisitions of the handler, and such residuals which meet Outgoing Quality Regulation requirements may be disposed of by sale to human consumption outlets, and any portion not meeting such requirements shall be disposed of by sale as peanuts failing to meet human consumption requirements pursuant to paragraph (i) of the Outgoing Quality Regulation.

(f) Oilstock

Handlers may acquire for disposition to domestic crushing or export to countries other than Canada and Mexico farmers' stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption. The provision of section 31 of the marketing agreement restricting acquisitions of such peanuts to handlers who are crushers is hereby modified to authorize all handlers to act as accumulators and acquire, from other handlers or non-handlers, Segregation 2 or 3 farmers' stock peanuts. Handlers may also acquire from other handlers shelled or fragmented peanuts originating from Segregation 2 or 3 farmers' stock or the entire mill production of shelled or fragmented peanuts from Segregation 1 farmers' stock or lots of shelled peanuts originating from Segregation 1 peanuts and which have been positive lot identified as specified in paragraph (d) of the Outgoing Quality Regulation which failed to meet the requirements for human consumption pursuant to paragraph (a) of the Outgoing Quality Regulation: *Provided,* That all such acquisitions are held separate from Segregation 1 peanuts acquired for milling or from edible grades of shelled or milled peanuts. Handlers may commingle the Segregation 2 and 3 peanuts or keep than separate and apart as provided in paragraph (j) of the Outgoing Quality Regulation. Further disposition or commingling of such peanuts shall be only as provided in paragraph (1) of the Outgoing Quality Regulation. Handlers who acquire farmers' stock peanuts of a lower quality than Segregation 1 or grades or sizes of shelled peanuts or cleaned inshell peanuts which fail to meet the requirements for human consumption shall report such acquisition as prescribed by the Committee. To be eligible to receive or acquire Segregation 2 or 3 farmers' stock peanuts and shelled or "fragmented" peanuts originating therefrom, a handler shall pay to the Area Association a fee for the purpose of covering cost of supervision of the disposition of such peanuts.

(g) Segregation 2 and 3 Control

To assure the removal from edible outlets of any lot of peanuts determined by Federal or Federal-State Inspection Service to be Segregation 2 or Segregation 3, each handler shall inform each employee, country buyer, commission buyer, or like person through whom the handler receives peanuts of the need to receive and withhold all lots of Segregation 2 and Segregation 3 peanuts from milling for edible use. If any lot of Segregation 2 or Segregation 3 farmers' stock peanuts is not withheld but returned to the producer, the handler shall cause the Inspection Service to forward immediately a copy of the inspection certificate on the lot to the designated office of the handler and a copy to the

Committee which shall be used only for information purposes.

(h) Farmers' Stock Storage and Handling Facilities

Handlers shall report to the Committee, on a form furnished by the Committee, all storage facilities or contract storage facilities which they will use to store acquisitions of current crop Segregation 1 farmers' stock peanuts, and all such storage facilities must be reported prior to storing of any such handler acquisitions. Handlers shall also report to the Committee the locations at which they will receive or acquire current crop farmers' stock peanuts. All such storage facilities shall have reasonable and safe access to allow for inspection of the facility and its contents. All such storage facilities must be of sound construction, in good repair, and built and equipped so as to provide suitable storage and sufficient safeguards to prevent moisture condensation and provide adequate protection for farmers' stock peanuts. All breaks or openings in the walls, floors, or roofs of the facilities shall have been repaired so as to keep out moisture. Elevator pits and wells must be kept dry and free of moisture at all times. Insect control procedures must be carried out in such a manner as to prevent undesirable moisture in the storage facilities. Any conditions in warehouses, elevators, pits, transportation equipment, including trucks and hopper cars, and other farmers' stock handling equipment conducive to the growth or spread of *Aspergillus flavus* mold shall be corrected to the satisfaction of the Committee. The Committee may make periodic inspections of farmers' stock storage and handling facilities and farmers' stock peanuts stored in such facilities to determine if handlers are adhering to these requirements.

(i) Shelled Peanuts

Handlers may acquire from other handlers, for remilling and subsequent disposition to human consumption outlets, shelled peanuts (which originated from "Segregation 1 peanuts") that fail to meet the requirements specified for human consumption in paragraph (a) of the Outgoing Quality Regulation. Any lot of such peanuts must be accompanied by a valid inspection certificate for grade factors, an aflatoxin assay certificate, and must be positive lot identified. Transactions made in this manner shall be reported to the Committee by both the buyer and seller on a form provided by the Committee. Peanuts acquired pursuant to this paragraph shall be held and milled separate and part from other receipts or acquisitions of the receiving handler, and further disposition shall be regulated by paragraph (h)(1) of the Outgoing Quality Regulation.

(j) Inedible Quality Shelled Peanuts for Disposition to Animal Feed

Handlers may receive or acquire from other handlers, for further milling and/or processing and subsequent disposition for use as domestic animal feed, shelled peanuts that fail to meet the requirements specified for human consumption in paragraph (a) of the Outgoing Quality Regulation. Any lot of such peanuts received or acquired for such further disposition shall be positive lot identified and covered by a valid grade inspection certificate issued by a Federal or Federal-State Inspector. Transactions made in this manner shall be reported to the Committee by both the buyer and seller on a form provided by the Committee. Peanuts received or acquired pursuant to this paragraph shall be held, milled, and/or processed separate and apart from peanuts destined to human consumption outlets and further disposition shall be regulated as provided from in paragraph (m)(2) of the Outgoing Quality Regulation.

Outgoing Quality Regulation—1987 Crop Peanuts

The following modify or are in addition to the peanut marketing agreement restrictions of section 32 on handler disposition of peanuts:

(a) Shelled Peanuts

No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless appropriate samples for pretesting have been drawn in accordance with paragraph (c) of this regulation, or which if of a category not eligible for indemnification are not certified "negative" as to aflatoxin, or which contain more than (1) a total of 1.50 percent unshelled peanuts and damaged kernels; (2) a total of 2.50 percent unshelled peanuts and damaged kernels and minor defects except for "No. Two Viriginia," which may not exceed 3.00 percent; (3) 9.00 percent moisture; or (4) 0.10 percent foreign material in peanuts "with splits" and peanuts of U.S. grade, other than U.S. splits, or 0.20 percent foreign material in U.S. splits and other edible quality peanuts not of U.S. grade. The lot size of such peanuts in bulk or bags shall not exceed 200,000 pounds. Fall through in such peanuts shall not exceed 4 percent except that in peanuts other than "No. Two Virginia" fall through consisting of either split and broken kernels or whole kernels shall not exceed 3 percent and fall through of whole kernels in Runners or Virginias "with splits" shall not exceed 3 percent or 2 percent on Spanish "with splits." The term "fall through" as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Screens used for determining fall through in peanuts covered by this paragraph (a) shall be as follows:

Type	Screen openings	
	Split and broken kernels	Whole kernels
Runners	17/64 inch round.	14/64 x 3/4 inch slot.
Spanish and Valencia.	15/64 inch round.	13/64 x 3/4 inch slot.
Virginia except "No. 2 Virginia".	17/64 inch round.	14/64 x 1 inch slot.
"No 2 Virginia".	17/64 inch round only for split, broken and whole kernels	

("No. Two Virginia" means Virginia type peanuts that meet requirements of U.S. No. 2 Virginia grade peanuts except for tolerances for: (1) Damage or unshelled peanuts and minor defects; and (2) sound peanuts and portions of peanuts which pass through the prescribed screen. Such tolerances shall be the same as those listed heretofore in this paragraph. Runners, Spanish, or Virginia "with splits" means shelled peanuts which do not contain more than (a) 15 percent splits; (b) for Spanish, 2.00 percent whole kernels which will pass through 15/64 x 3/4 inch slot screen; for Runners, 3.00 percent whole kernels which will pass through 16/64 x 3/4 inch slot screen; and for Virginias, 3.00 percent whole kernels which will pass through 15/64 x 1 inch slot screen; and (c) otherwise meet specification of U.S. No. 1 grade).

(b) Cleaned Inshell Peanuts

No handler shall ship or otherwise dispose of cleaned inshell peanuts for human consumption: (1) With more than 1.00 percent kernels with mold present unless a sample of such peanuts, drawn by an inspector of the Federal or Federal-State Inspection Service, was analyzed chemically by laboratories approved by the Committee or by a U.S. Department of Agriculture laboratory (hereinafter referred to as "USDA laboratory") and found to be wholesome relative to aflatozin; (2) with more than

2.00 percent with damaged kernels; (3) with more than 10.00 percent moisture; or (4) with more than 0.50 percent foreign materials. The lot size of such peanuts in bags or bulk shall not exceed 200,000 pounds.

(c) Pretesting Shelled Peanuts

Each handler shall cause appropriate samples of each lot of edible quality shelled peanuts to be drawn by an inspector of the Federal or Federal-State Inspection Service. The gross amount of peanuts drawn shall be large enough to provide for a grade analysis, for a grading check-sample, and for three 48-pound samples for aflatoxin assay. The three 48-pound samples shall be designated by the Federal or Federal-State Inspection Service as "Sample #1," "Sample #2," and "Sample #3" and each sample shall be placed in a suitable container and "positive lot identified" by means acceptable to the Inspection Service and the Committee. Sample #1 may be prepared for immediate testing or Sample #1, Sample #2, and Sample #3 may be returned to the handler for testing at a later date. However, before shipment of the lot to the buyer (receiver), the handler shall cause Sample #1 to be ground by the Federal or Federal-State Inspection Service or a USDA or designated laboratory in a "subsampling mill" approved by the Committee. The resultant ground subsample from Sample #1 shall be of a size specified by the Committee and be designated as "Subsample 1–AB" and at the handler's or buyer's option, a second subsample may also be extracted from Sample #1. It shall be designated as "Subsample 1–CD." Subsample 1–CD may be sent as requested by the handler or buyer, for aflatoxin assay, to a laboratory listed on the most recent Committee list of approved laboratories that can provide analyses results on such samples in 36 hours. Subsample 1–AB shall be analyzed only in USDA or designated laboratories. Both Subsamples 1–AB and 1–CD shall be accompanied by a notice of sampling signed by the inspector containing, at least, identifying information as to the handler (shipper), the buyer (receiver), if known, and the positive lot identification of the shelled peanuts. A copy of such notice covering each lot shall be sent to the Committee office.

The samples designated as Sample #2 and Sample #3 shall be held as aflatoxin check-samples by the Inspection Service or the handler and shall not be included in the shipment to the buyer until the analyses results from Sample #1 are known. Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #2 to be ground by the Inspection Service in a "subsampling mill." The resultant ground Subsample from Sample #2 shall be of the size specified by the Committee and it shall be designated as "Subsample 2–AB." Upon call from the USDA or designated laboratory or the Committee, the handler shall cause Sample #3 to be ground by the Inspection Service in a "subsampling mill." The resultant ground subsample from Sample #3 shall be of the size specified by the Committee and it shall be designated as "Subsample 3–AB." Subsamples 2–AB and 3–AB shall be analyzed only in USDA or designated laboratories and each shall be accompanied by a notice of sampling. A copy of each such notice shall be sent to the Committee office and the cost of delivery of Subsamples 2–AB and 3–AB to the laboratory and the cost of assay on them shall be at the Committee's expense.

All costs involved in sampling and testing Subsample 1–CD shall be for the account of the buyer of the lot and at his expense. The cost of assay on Subsample 1–AB and a portion of the cost (specified by the Committee) of drawing the three 48-pound samples, grinding of Sample #1 and preparation and delivery of Subsample 1–AB to the laboratory shall be for the account of the buyer. However, if the handler elects to pay for these costs, the handler shall charge the buyer the amount specified by the Committee when the handler invoices the peanuts and, if more than one buyer, on a pro rata basis. Any remaining costs of drawing the three 48-pound samples, grinding of Sample #1 and preparation and delivery of Subsample 1–AB shall be for the account of the handler and shall be shown on the grade analysis certificate covering the lot. When any of the samples or subsamples have been lost, misplaced, or spoiled and replacement samples are needed, the entire cost of drawing the replacement samples shall be for the account of the handler. The results of each assay shall be reported to the buyer listed on the notice of sampling and, if the handler desires, to the handler. If a buyer is not listed on the notice of sampling, the results of the assay shall be reported to the handler who shall promptly cause notice to be given to the buyer, of the contents thereof, and such handler shall not be required to furnish additional samples for assay.

(d) *Identification*

Each lot of shelled or cleaned inshell peanuts shipped or otherwide disposed of for human consumption shall be identified by positive lot identification procedures. For the purpose of this regulation, "positive lot identification" of a lot of shelled or inshell peanuts is a means of relating the inspection certificate to the lot covered so that there can be no doubt that the peanuts delivered are the same ones described on the inspection certificate. The crop year that is shown on the positive lot identification tags, or other means of positive lot identification shall accurately describe the crop year in which the peanuts in the lot were produced. Such procedure on bagged peanuts shall consist of attaching a lot numbered tag bearing the official stamp of the Federal or Federal-State Inspection Service to each filled bag in the lot. The tag shall be sewed (machine sewed if shelled peanuts) into the closure of the bag except that in plastic bags the tag shall be inserted prior to sealing so that the official stamp is visible. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and if in other containers by other means acceptable to the Federal or Federal-State Inspection Service and to the Committee. All lots of shelled or cleaned inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures.

(e) *Reinspection*

Whenever the Committee has reason to believe that peanuts may have been damaged or deteriorated while in storage, the Committee may reject the then effective inspection certificate and may require the owner of the peanuts to have a reinspection to establish whether or not such peanuts may be disposed of for human consumption.

(f) *Inter-plant Transfer*

Any handler may transfer peanuts from one plant owned by him to another of his plants or to commercial storage, without having such peanuts positive lot identified and certified as meeting quality requirements, but such transfer shall be only to points within the same production area and ownership shall have been retained by the handler. Upon any transferred peanuts being disposed of for human consumption, they shall meet all the requirements applicable to such peanuts.

(g) *Loose Shelled Kernels, Fall Through and Pickouts*

(1) Loose shelled kernels which do not ride screens with the following slot openings: Runner—16/64 x 3/4 inch; Spanish and Valencia—15/64 x 3/4 inch; Virginia—15/64 x 1 inch; and fall through and pickouts shall be disposed of only by sale as domestic oil stock, by crushing, or as specified in paragraph

(g)(3) or paragraph (m), hereinafter. For the purpose of this regulation: The term "non-edible quality peanuts" described in this paragraph means loose shelled kernels, fall through, and pickouts; the term "loose shelled kernels" means peanut kernels or portions of kernels completely free of their hulls, either as found in deliveries of farmers' stock peanuts or those which fail to ride the screens prescribed in paragraph (d)(1) of the Incoming Quality Regulation; the term "fall through" has the same meaning as in paragraph (a) of this regulation; and the term "pickouts" means those peanuts removed during the final milling process at the picking table, by electronic equipment, or otherwise during the milling process.

(2) All loose shelled kernels, fall through, and pickouts shall be kept separate and apart from other milled peanuts that are to be shipped into edible channels. Such categories may be kept separate or be commingled in the same lot and shall be bagged in suitable new bags or clean used bags or placed in bulk containers acceptable to the Committee. Such peanuts shall be identified by positive lot identification procedures set forth in paragraph (d) but using a red tag, and such peanuts shall be inspected by the Federal or Federal-State Inspection Service and a certification made on each lot as to moisture and foreign material content. Such lot size, whether in bags or bulk, shall not exceed 200,000 pounds.

(3) In addition to disposition outlets specified in paragraph (g)(1), such peanuts (loose shelled kernels, fall through, and pickouts) may be disposed of, with prior approval by the Committee for each such disposition, for use in research projects performed by institutions which are supported or sponsored with State or Federal funds. Fall through that has been sampled and determined negative as to aflatoxin content may be disposed of for use as wild-life feed or bait for rodents in labeled containers approved by the Committee. Each category of non-edible quality peanuts described in paragraph (g)(1) and identified as prescribed in paragraph (g)(2) may be exported in bulk or bags to countries other than Mexico or Canada pursuant to the provisions prescribed for such disposition in paragraph (l)(1) or (l)(2) of this regulation or they may be moved to another handler for such disposition. Sales or transfer of such peanuts, to exporters who are not handlers under the marketing agreement, shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Such peanuts may be disposed of to domestic crushing as "unrestricted" if they are certified negative as to aflatoxin content and may be commingled at the crusher with any other category of peanuts determined by paragraph (l)(l) of this regulation to be eligible for such "unrestricted" crushing. Non-edible quality peanuts described in paragraph (g)(1) which have not been certified negative as to aflatoxin are not eligible for "unrestricted" crushing buy may be disposed of to domestic crushing as "restricted" and may be commingled at the crusher with any other category of peanuts described in paragraph (1)(2). Such non-edible quality peanuts may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separte and apart from peanuts on which supervision is required. However, if non-edible quality peanuts described in paragraph (g)(1) are exported or crushed in commingle with peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing on all categories of peanuts included in such commingling. All movement and disposition of such inedible quality peanuts shall be reported by the handler as prescribed by the Committee.

Meal produced from peanuts which are disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use. To prevent use of restricted meal for feed, handlers shall either denature it or restrict its sale to licensed or registered U.S. fertilizer manufacturers or firms engaged in exporting who will export such meal for non-feed use or sell it to the aforesaid fertilizer manufacturers. Handlers or crushers may detoxify positive tested meal, have it retested, and if such meal is found negative as to aflatoxin content, it may be disposed of for feed use. Handlers may also move "restricted" meal to a licensed operator, approved by USDA, FDA, or other government agencies, for detoxification. Such meal may also be used for research purposes, subject to the approval of the Executive Subcommittee. However, loose shelled kernels, fall through, and pickouts and meal from such peanuts in specifically identified lots not exceeding 200,000 pounds may be sampled by the Federal or Federal-State Inspection Service or by the Area Association if authorized by the Committee, and tested for aflatoxin in laboratories approved by the Committee or by a USDA laboratory, at handler's or crusher's expense, and if such meet Committee standards, the meal may be disposed of for feed use.

(4) Notwithstanding any other provisions of this regulation or of the Incoming Quality Regulation, a handler may transfer non-edible quality peanuts described in paragraph (g)(1) to another plant within his own organization or transfer or sell such peanuts to a crusher for crushing. Sales or transfer of restricted peanuts to domestic crushers who are not handlers under the agreement shall be made only on the condition that they agree to comply with the terms of this paragraph (g) and all other applicable requirements of this regulation, including the reporting requirements.

(h) *Peanuts Failing Quality Requirements*

(1) Handlers may sell to or contract with other handlers, for further handling, shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a). Lots of peanuts disposed of in this manner must be accompanied by a valid grade inspection certificate, an aflatoxin assay certificate and must be positive lot identified. Transactions made in this manner shall be reported to the Committee by both the seller and buyer on a form provided by the Committee. Any such peanuts acquired by handlers pursuant to paragraph (i) of the Incoming Quality Regulation shall be held and milled separate and apart from other receipts or acquisitions of the receiving handler and further disposition shall be regulated by the requirements specified heretofore or pursuant to paragraph (h)(3) hereinafter.

(2) Handlers may blanch or cause to have blanched positive identified shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements of paragraph (a) of this regulation because of excessive damage, minor defects, moisture, or foreign material or are positive as to aflatoxin: *Provided,* That such lots of peanuts contain not in excess of 8 percent damage and minor defects combined or 2 percent foreign material. Handlers who move such peanuts to a blancher, shall report to the Committee, on a form furnished by the Committee, movement of each such lot and the title shall be retained by the handler until the peanuts are blanched and certified by an inspector of the Federal or Federal-State Inspection Service as meeting the requirements for disposal into human consumption outlets. To be eligible for disposal into human consumption

outlets, such peanuts after blanching, must meet specifications for unshelled peanuts, damaged kernels, minor defects, moisture, and foreign material as listed in paragraph (a) of this regulation and be accompanied by an aflatoxin certificate determined to be negative by the Committee. The residual peanuts, excluding skins and hearts, resulting from blanching under these provisions, shall be bagged and red tagged and disposition shall be that such peanuts are returned to the handler for further disposition under the provisions of paragraph (g)(3) of the Outgoing Quality Regulation; *or* in the alternative, if such residuals are positive lot identified by a Federal or Federal-State Inspection Service, they may be disposed of by the blancher to domestic crushing or a Committee approved exporter. Blanching under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such blanching.

(3) Handlers may dispose of positive identified shelled peanuts (which originated from "Segregation 1 peanuts") which fail to meet the requirements of paragraph (a) of the Outgoing Quality Regulation: (a) To domestic crushing, (b) to export to countries other than Canada and Mexico, provided they meet fragmented requirements, (c) to crushers who are not handlers but are approved by the Committee, (d) to other handlers for crushing or fragmenting and exportation, or (e) to domestic animal feed use or to other handlers for such disposition, pursuant to paragraph (m) of the Outgoing Quality Regulation. Sales or transfer of such peanuts to exporters who are not handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Each lot of such peanuts shall have been positive lot identified as prescribed in paragraph (d). Handlers may dispose of such peanuts as "unrestricted": *Provided,* That each lot has been sampled and assayed for aflatoxin as specified in paragraph (c) and determined to be negative as to aflatoxin by the Committee. Handlers who have acquired any such unrestricted peanuts from another handler or from their own operations may commingle such peanuts with those from their own operations at the crusher, or during the fragmenting operation or after fragmenting for further disposition as "unrestricted" pursuant to the provisions of paragraph (l)1) of this regulation. Lots of peanuts covered by the provisions of this paragraph (h)(3), which have not been assayed for aflatoxin content or which have been assayed and determined to be unwholesome as to aflatoxin by the Committee, are not eligible for disposition as "unrestricted." Therefore, the disposition of such peanuts to export or domestic crushing shall be as "restricted." However, handlers who have acquired such restricted peanuts from another handler may commingle such peanuts with those from his own operations at the crusher, or during the fragmenting operation, or after fragmenting for further disposition as restricted pursuant to the provisions of paragraph (l)(2). Peanuts regulated by this paragraph (h)(3) may be disposed of to domestic crushing or export without supervision by the Area Association if they are held separate and apart from peanuts on which supervision is required. However, if any such peanuts are commingled with peanuts on which supervision is required, the handler shall cause the Area Association to supervise the commingling and fragmenting for disposition to export and the commingling and domestic crushing on all categories of peanuts included in such commingling. All movement and disposition of peanuts covered by the provisions of this paragraph shall be reported by the handler as prescribed by the Committee.

(4) Handlers may contract with Committee approved remillers for remiling shelled peanuts (which originated from Segregation 1 peanuts) that fail to meet the requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulation: *Provided,* That such lots of peanuts contain not in excess of 8 percent damage and minor defects combined or 10 percent fall through or 2 percent foreign material. Lots of peanuts moved under these provisions must be accompanied by a valid grade inspection certificate and an aflatoxin assay certificate and must be positive lot identified. Handlers who move such peanuts to an approved remiller shall report to the Committee, on a form furnished by the Committee, the movement of each such lot. The title of such peanuts shall be retained by the handler until the peanuts have been remilled and certified by the Federal or Federal-State Inspection Service as meeting the requirements for disposition to human consumption outlets specified in paragraph (a), and be accompanied by an aflatoxin certificate determined to be negative by the Committee. Remilling under these provisions may include composite remilling of more than one such lot of peanuts owned by the same handler. However, such peanuts owned by one handler shall be held and remilled separate and apart from all other peanuts. The residual peanuts resulting from remilling under these provisions shall be bagged and red-tagged and disposed of to domestic crushing by the approved remiller or they may be returned to the handler for disposition under the provisions of paragraph (g)(3) of the Outgoing Quality Regulation. Remilling under the provisions of this paragraph shall be performed only by those firms who agree to procedures acceptable to the Committee and who are approved by the Committee to do such remilling.

(i) *Residuals From Seed Peanuts*

Handlers who receive and custom shell for seed purposes farmers' stock peanuts (which have not been inspected and certified as meeting the Incoming Quality Regulation) shall hold and mill peanuts acquired as residuals from such operations separate and apart from peanuts acquired as Segregation 1 farmers' stock. Likewise, any such residuals received or acquired from a handler or non-handler, shall be held and milled separate and apart in the same manner. Residuals that meet requirements of the Outdoing Quality Regulation may be disposed of by sale to human consumption outlets or to another handler and any portion in positive identified lots not meeting such requirements: (1) May be handled and disposed of pursuant to the provisions of paragraph (h) of this regulation; or (2) shall be disposed of to domestic crushing or export pursuant to the provisions of paragraph (g).

(j) *Segregation 2 and 3 Farmers' Stock Disposition*

(1) Handlers who have acquired Segregation 2 and 3 farmers' stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation may commingle such peanuts or keep them separate and apart. The Segregation 3 farmers' stock peanuts or commingled Segregation 2 and 3 farmers' stock peanuts may be moved or disposed of in bags or bulk: (a) To other handlers for shelling, fragmenting, or crushing, or (b) to crushers who are not handlers but are approved by the Committee. Handlers may shell such peanuts and move or dispose of the shelled peanuts in bulk or bags: (a) To other handlers for fragmenting or crushing, or (b) to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided hereinafter in paragraph (l)(2) for

"restricted" export to countries other than Canada and Mexico, or for "restricted" domestic crushing. Prior to exportation, the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for "fragmented" peanuts in paragraph (l)(1) and shall be assayed for aflatoxin by a USDA laboratory or a laboratory approved by the Committee. Shelling, fragmenting, and crushing of Segregation 3 peanuts or commingled Segregation 2 and 3 peanuts shall be done only under the supervision of the Area Association and any such peanuts may be commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting for disposition to export or the further commingly and domestic crushing. All movement and disposition of Segregation 3 peanuts or commingled Segregation 2 and 3 peanuts and shalled or fragmented peanuts originating therefrom shall be reported by the handler as prescribed by the Committee.

(2) Handlers who have acquired Segregation 2 farmers' stock peanuts pursuant to paragraph (f) of the Incoming Quality Regulation and held them separate and apart from Segregation 3 peanuts may commingle the Segregation 2 farmers' stock with Segregation 1 farmers' stock for disposition to domestic crushing or export as inedibles. The Segregation 2 farmers' stock peanuts or commingled Segregation 1 and 2 farmers' stock peanuts may be moved or disposed of in bulk or bags: (a) To other handlers for shelling, fragmenting, or crushing, or (b) to crushers who are not handlers but are approved by the Committee. Handlers may shell the Segregation 2 or commingled Segregation 1 and 2 peanuts and move or dispose of the shelled peanuts: (a) To another handler for fragmenting or crushing; or (b) to crushers who are not handlers but are approved by the Committee and further disposition shall be as provided in paragraph (l)(1) of this regulation. Prior to exportation the shelled peanuts shall be certified by the Federal or Federal-State Inspection Service as meeting the requirements specified for fragmented peanuts also in paragraph (l)(1). If the shelled peanuts from Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts are held separate and apart from Segregation 3 peanuts and any restricted categories of shelled peanuts, no aflatoxin assay shall be required. Shelling, fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association. The shelled peanuts from Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts may be further commingled with other categories of shelled peanuts for disposition to export or domestic crushing. However, if such further commingling occurs, the handler shall cause the Area Association to supervise the further commingling and fragmenting. All movement and disposition of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts and shelled or fragmented peanuts originating therefrom shall be reported by the handler as prescribed by the Committee.

(k) *Segregation 1 Farmers' Stock Disposition*

(1) In addition to milling (shelling, cleaning, etc.) Segregation 1 farmers' stock peanuts for disposition to human consumption or seed outlets, handlers may dispose of Segregation 1 farmers' stock peanuts to export or to other handlers for such disposition. All such dispositions to export shall be reported by the handler as requested by the Committee.

(2) In addition to the disposition outlets specified in paragraph (k)(1), handlers may dispose of Segregation 1 farmers' stock peanuts in bags or bulk to other handlers for shelling, fragmenting, or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. Handlers may commingle Segregation 1 farmers' stock peanuts with Segregation 2 farmers' stock peanuts or keep them separate and apart, and may shell such peanuts and move or dispose of the shelled peanuts in bulk or bags to other handlers for fragmenting or crushing. Such peanuts may also be disposed of to crushers who are not handlers but are approved by the Committee. However, the shelling, fragmenting, and disposition of such Segregation 1 farmers' stock peanuts shall be done only under the supervision of the Committee and the Area Association and all peanuts handled under the provisions of this paragraph (k)(2), for disposition to export or domestic crushing, shall be milled and disposed of pursuant to paragraph (j)(2) in lieu of the provisions specified in paragraphs (a), (b), (c), (d), (g), (h), and (i) of this regulation. The movement and disposition of all peanuts handled under the provisions of this paragraph (k)(2), shall be reported by the handler as prescribed by the Committee.

(l) *Handling, Commingling, and Disposition of Shelled Peanuts not Meeting Quality Requirements for Human Consumption*

(1) The following categories of shelled peanuts may be disposed of to domestic crushing or to export as "unrestricted":

(a) The entire mill production of shelled peanuts from Segregation 1 farmers' stock pursuant to paragraph (k)(2).

(b) The entire mill production of shelled peanuts from Segregation 2, or commingled Segregation 1 and 2 farmers' stock pursuant to paragraph (j)(2).

(c) Positive lot identified lots of shelled "peanuts failing quality requirements" determined negative as to aflatoxin pursuant to paragraph (h)(3).

(d) Positive lot identified lots of loose shelled kernels, fall through, or pickouts determined negative as to aflatoxin pursuant to paragraphs (g) (1), (2), and (3).

(e) Positive lot identified lots of loose shelled kernels, fall through, and pickouts commingled and determined negative as to aflatoxin pursuant to paragraphs (g) (2), and (3).

(f) Positive lot identified lots of seed peanut residuals determined negative as to aflatoxin pursuant to paragraph (i).

Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts while fragmenting them or after they have been fragmented: (1) With any other category of peanuts described in this paragraph, and (2) with any category of "unrestricted" shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for disposition to export to countries other than Canada and Mexico. However, such peanuts, prior to exportation, shall be certified as meeting fragmented requirements. For the purpose of this regulation, the term "fragmented" means that not more than 30 percent of the peanuts shall be whole kernels that ride the following screens, by type: Spanish $^{15}/_{64}$ x $^{3}/_{4}$ inch slot; Runner $^{16}/_{64}$ x $^{3}/_{4}$ inch slot; and Virginia $^{15}/_{64}$ x 1 inch slot. Sales or transfer of such peanuts to exporters who are not handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Handlers who acquire from other handlers or from their own operations any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher:

(1) With any other category of peanuts described in this paragraph, and (2) with any category of unrestricted shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling and the resultant meal may be disposed of without restriction. To be eligible for such unrestricted disposition (crushing or export), such peanuts, before commingling and after commingling, shall be kept separate and apart from all "restricted" peanuts. Shelling, fragmenting, and crushing of Segregation 2 peanuts or commingled Segregation 1 and 2 peanuts shall be done only under the supervision of the Area Association and if any shelled peanuts originating therefrom are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting and the commingling and crushing on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts described heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

(2) The following categories of shelled peanuts may be disposed of to domestic crushing or to export as "restricted":

(a) The entire mill production of shelled peanuts from Segregation I farmers' stock pursuant to paragraph (k)(2) of the Outgoing Quality Regulation.

(b) The entire mill production of shelled peanuts from Segregation 2 or commingled Segregation 1 and 2 farmers' stock pursuant to paragraph (j)(2).

(c) The entire mill production of shelled peanuts from Segregation 3 or commingled Segregation 2 and 3 farmers' stock pursuant to paragraph (j)(i).

(d) Positive lot identified lots of shelled "peanuts failing quality requirements" pursuant to paragraph (h)(3).

(e) Positive lot identified lots of loose shelled kernels, fall through, or pickouts pursuant to paragraphs (g) (1), (2), and (3).

(f) Positive lot identified lots of loose shelled kernels, fall through and pickouts commingled pursuant to paragraphs (g) (2), and (3).

(g) Positive lot identified lots of seed peanut residuals pursuant to paragraph (i).

Handlers who acquire, from other handlers, or from their own operations, any of the categories of shelled peanuts described heretofore in this paragraph (l)(2) may commingle such peanuts while fragmenting them or after they have been fragmented with any other category of peanuts described in this paragraph and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling with disposition to export to countries other than Canada and Mexico as "restricted." Prior to such exportation, the peanuts shall be assayed for aflatoxin by a USDA laboratory or a laboratory approved by the Committee. The handler's "in-land" bill of lading and his invoice covering the shipment shall include the following statement: "The peanuts covered by this bill of lading (or invoice) are limited to crushing only and may contain aflatoxin." Sales or transfer of such peanuts to exporters who are not handlers under the marketing agreement shall be made only to exporters who agree to procedures acceptable to the Committee and are approved by the Committee to do such exporting. Handlers who acquire, from other handlers or from their own operations, any of the categories of shelled peanuts described heretofore in this paragraph may commingle such peanuts at the crusher with any other category of peanuts described in this paragraph (l)(2) and with any category of shelled peanuts acquired from CCC and determined by CCC to be eligible for such commingling for "restricted" domestic crushing. Meal produced from peanuts disposed of to crushing as "restricted" shall be used or disposed of as fertilizer or other non-feed use, pursuant to the provisions of paragraph (g)(3). Shelling, fragmenting, and crushing of Segregation 2 peanuts, Segregation 3 peanuts and the entire mill production of Segretation 1 peanuts handled pursuant to paragraph (k), shall be done only under supervision of the Area Association and if any of such categories of peanuts are commingled with any of the other categories of shelled peanuts described heretofore in this paragraph, the handler shall cause the Area Association to supervise the commingling and fragmenting on all categories of peanuts included in such commingling. All movement and disposition of the categories of peanuts described heretofore in this paragraph shall be reported by the handler as prescribed by the Committee.

(m) *Disposition of Shelled Peanuts for Use as Domestic Animal Feed*

(1) Handlers may sell to or contract with other handlers, for further milling and/or processing for use in domestic animal feed, shelled peanuts which fail to meet requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulation. Lots of peanuts disposed of in this manner must be positive lot identified and accompanied by a valid grade inspection certificate. Transactions made in this manner shall be reported to the Committee by both the seller and the buyer, on a form provided by the Committee. Any such peanuts acquired by the receiving handler for disposition to use as domestic animal feed shall be held and milled separate and apart from peanuts destined to human consumption outlets, and further disposition shall be regulated as provided for in paragraph (m)(2), hereinafter.

(2) Handlers may dispose of, for use as domestic animal feed, shelled peanuts which fail to meet requirements for disposition to human consumption outlets heretofore specified in paragraph (a) of the Outgoing Quality Regulation: *Provided*, That each lot of peanuts so disposed of is (1) treated with a coloring or dyeing solution approved and prescribed by the Committee; (2) handled and shipped under positive lot identification procedures, (except for bulk loads, red tags shall be used and marked, "For Animal Feed-Not for Human Consumption"); (3) assayed for aflatoxin and covered by a valid "negative" aflatoxin certificate; and (4) inspected by the Federal or Federal-State Inspection Service and a certification made as to moisture, foreign material content, and that a minimum of 80 percent of the peanuts must show evidence of the dye or coloring agent, which is the Committee's requirement specified for dyeing or coloring. Each lot of inedible quality peanuts disposed of for use as domestic animal feed shall be reported to the Committee by the handler as prescribed by the Committee on a form provided by the Committee, and the handler's bill of lading and his invoice covering the shipment of each such lot shall include the following statement: "The peanuts covered by this bill of lading (or invoice) are for animal feed only and are not to be used for human consumption."

Terms and Conditions of Indemnification—1987 Crop Peanuts

For the purpose of paying indemnities on a uniform basis pursuant to section 36 of the peanut marketing ageement effective July 12, 1965, each handler shall promptly notify or arrange for the buyer to notify the Manager, Peanut Administrative Committee, of any lot of cleaned inshell or shelled peanuts, milled to the outgoing quality requirements and into one of the categories listed in the final paragraph of these terms and conditions, on which

the handler has withheld shipment or storage or the buyer, including the user division of a handler, has withheld usage due to a finding as to aflatoxin content as shown by the result of chemical assay.

If the chemical assay results on samples drawn prior to shipment pursuant to paragraph (c) of the Outgoing Quality Regulation are so high in aflatoxin content that a lot of peanuts should be handled pursuant to these Terms and Conditions, the handler shall certify to the Committee within ten (10) days of the date shown on the aflatoxin certificate whether the milling of the peanuts in the lot was supervised by the Area Association as "additional peanuts." For the purposes herein, the term "additional peanuts" means any peanuts other than "quota peanuts" which are milled under the supervision of the Area Association.

To be elibigle for indemnification, such a lot of peanuts shall have been inspected and certified as meeting the quality requirements of the agreement, shall have met all other applicable regulations issued pursuant thereto, including the pretesting requirements in paragraphs (a) and (c) of the Out-going Quality Regulation and the lot identification shall have been maintained. If the Committee concludes, based on assays to date or further assays, that the lot is so high in aflatoxin that it should be handled pursuant to these Terms and Conditions, and such is concurred in by the Agricultural Marketing Service, the lot shall be accepted for indemnification. If the lot is covered by a sales contract, the lot may be rejected to the handler.

In an effort to make such eligible peanuts suitable for human consumption, and to minimize indemnification costs, the Committee and the Agricultural Marketing Service shall, prior to disposition for crushing cause all suitable lots to be remilled or custom blanched or both.

"Custom blanching" means the process which involves blanching peanuts, and the subsequent removal of damaged peanuts for the purpose of eliminating aflatoxin from the lot. The process may be applied to either an original lot or the new lot which results from remilling. Custom blanching shall be performed only by those firms determined by the Committee to have the capability to remove the aflatoxin and who agree to such terms, conditions and rates of payment as the Committee may find to be acceptable.

If the Committee and the Agricultural Marketing Service conclude that such lot is not suitable for remilling or custom blanching, the lot shall be declared to crushing and shall be disposed of by delivery to the Committee at such point as it may designate. The indemnification payment for "quota peanuts" so disposed of shall be 43 cents per pound, or the indemnification value of the lot of peanuts as hereinafter provided for "quota peanuts," less five cents per pound, whichever is lower. The indemnification payment for "additional peanuts" so disposed of shall be the indemnification value as hereinafter provided for "additional peanuts," less three cents per pound. Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be included in the indemnification payment if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the Outgoing Quality Regulation. Payment shall be made to the handler as soon as practicable after delivery of the peanuts to the Committee. The salvage value for peanuts declared for crushing shall be paid to, and retained by, the Committee to offset indemnification expense.

If it is concluded that the lot should be remilled or custom blanched, expenses shall be paid by the Committee on those lots which, on the basis of the inspection occurring prior to shipment, contained not more than 1.00 percent damaged kernels other than minor defects. Lots with damage in excess of 1.00 percent of such inspection shall be remilled without reimbursement from the Committee for milling or freight, but otherwise shall be indemnifiable the same as lots with not more than 1.00 percent damage.

The indemnification value of peanuts delivered to the Committee for indemnification shall be as listed in the third from the last paragraph of these terms and conditions.

The indemnification payment on peanuts declared for remilling, and which contain not more than 1.00 percent damaged kernels other than minor defects, shall include an allowance for remilling of two and one-half cents per pound on the original weight. The indemnification payment on the pounds of peanuts removed in the process and not cleared for human consumption shall be: For "quota peanuts," 43 cents per pound, or the indemnification value as hereinafter provided for "quota peanuts," whichever is lower; and for "additional peanuts," the indemnification value as hereinafter provided for "additional peanuts." Transportation expenses (excluding demurrage, loading and unloading charges, custom fees, border re-entry fees, etc.) from the handler's plant or storage to the point within the Continental United States or Canada where the rejection occurred and from such point to a delivery point specified by the Committee shall be included in the indemnification payment if the lot is found by the Committee to be unwholesome as to aflatoxin after such lot had been certified negative as to aflatoxin prior to being shipped or otherwise disposed of for human consumption by the handler pursuant to requirements of the Outgoing Quality Regulation. On lots on which the remilling is not successful in making the lot wholesome as to aflatoxin and such lots of peanuts are declared for custom blanching after remilling, the indemnification payment shall be the blanching cost, plut the transportation costs from origin (whether handler or buyer premises) to point of blanching and on unsold lots from point of blanching to handler's premises and 43 cents per pound or the applicable indemnification value, whichever is lower, of the weight of reject peanuts removed from the lot. On lots which are custom blanched without remilling, the indemnification payment shall be determined in the same manner.

Claims for indemnification on current crop year peanuts may be filed by any handler sustaining a loss as a result of a buyer withholding from human consumption a portion or all the product made from a lot of peanuts which has been determined to be unwholesome due to aflatoxin. The Committee shall pay, to the extent of the raw peanut equivalent value of the peanuts used in the product so withheld, such claims as it determines to be valid.

Payment shall be made to the handler claiming indemnification or receiving the rejected lot as soon as practicable after receipt by the Committee of such evidence of remilling or custom blanching and clearance of the lot for human consumption as the Committee may require and the delivery of the peanuts not cleared for human consumption to the delivery point designated by the Committee. If a suitable reduction in the aflatoxin content is not achieved on any lot which is remilled or custom blanched, or both, the Committee shall declare the entire lot for indemnification, and the indemnification payment rate on "quota

peanuts" shall be 43 cents per pound, or the indemnification value as hereinafter provided for "quota peanuts," less five cents per pound, whichever is lower, plus other applicable costs authorized heretofore, and the indemnification payment for "additional peanuts" shall be the indemnification value for "additional peanuts" as hereinafter provided for "additional peanuts," less three cents per pound, plus other applicable costs authorized heretofore. However, the Committee shall refuse to pay indemnification on any lot(s) where it has reason to believe that the rejection of the peanuts arises from failure of the handler to use reasonable measures to receive and withhold from milling for edible use those Segregation 3 peanuts tendered to him either directly by a producer or by a country buyer, commission buyer or other like person. Furthermore, any misrepresentation by a handler in reporting acquisition, composition or disposition of any lot or lots of peanuts by such handler shall cause indemnification payments with respect to any such claim filed with the Committee by the handler on current crop year peanuts to be withheld unless the Committee finds that such action was inadvertent.

Remilling may occur on the premises of any handler signatory to the marketing agreement or at such other plant as the Committee may determine. However, if the Committee order remilling of a lot which has been found to contain aflatoxin prior to shipment from the locality of original milling, the Committee shall not pay freight costs should the handler move said lot to another locality for remilling.

Notice of claims for indemnification on peanuts of the current year shall be received by the Committee on later than November 1, following the end of the current crop year.

Each handler shall include, directly or by reference, in his sales contract the following provisions:

Buyer shall give the Peanut Administrative Committee (Committee) office notice of any request made to the Federal or Federal-State Inspection Service for an "appeal" inspection for aflatoxin. Results of the "appeal" inspection will be reported by the Federal or Federal-State Inspection Service or other designated lab to Committee management. If the Committee management determines that the test results of the "appeal" sample show the lot to be high in aflatoxin, Committee management shall inform the buyer and handler of the results. In this case, the buyer may apply to reject the lot and return it to the handler by filing a rejection letter with Committee management. Upon a determination of the Committee, confirmed by the Agricultural Marketing Service, authorizing rejection, such peanuts, and title thereto, if passed to the buyer, shall be returned to the seller, and such peanuts shall be reoffered to the buyer to satisfy the covering contract, pending successful remilling and/or blanching. Alternatively, seller may replace any rejected lot of peanuts with another lot if he elects to do so. Buyer must return the rejected lot to the seller within 45 days of the date on which Committee management informs buyer of the "appeal" sample test results, otherwise the buyer agrees that he forfeits the right to reject the lot and return it to the seller.

If the buyer's or receiver's name is shown on the certificates covering a lot which, upon the pretesting sampling procedure prescribed in paragraph (c) of the Outgoing Quality Regulation, exceeds Committee requirements for wholesomeness as to aflatoxin, such peanuts shall be offered to the buyer to satisfy the existing applicable contract, pending successful remilling and/or blanching. Alternatively, seller may replace any rejected lot of peanuts with another lot, if he elects to do so.

Seller shall, prior to shipment of a lot of shelled peanuts covered by this sales contract, cause appropriate samples to be drawn by the Federal or Federal-State Inspection Service from such lot, shall cause the sample(s) to be sent to a USDA laboratory or if designated by the buyer, a laboratory listed on the most recent Committee list of approved laboratories to conduct such assay, for an aflatoxin assay and cause the laboratory, if other than the buyer's to send one copy of the results of the assay to the buyer. The laboratory costs shall be for the account of the buyer and buyer agrees to pay them when invoiced by the laboratory or, in the event the seller has paid them, by the seller.

Any handler who fails to include such provisions in his sales contract shall be ineligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts covered by the sales contract.

In addition, should any handler enter into any oral or written sales contract which fixes the level of aflatoxin at which rejection may be made and hence conflicts with these terms and conditions, the handler doing so will not be eligible for indemnification payments with respect to any claim filed with the Committee on current crop year peanuts on or after the filing date of a claim under such contract, except upon the Committee's finding that acceptance of such contract was inadvertent; and for purposes of this provision a claim shall be deemed to be filed when notice of possible rejection is first given to the Committee.

Any handler who fails to conform to the requirements of paragraph (h) of the Incoming Quality Regulation shall be ineligible for any indemnification payments until such condition or conditions are corrected to the satisfaction of the Committee.

Any handler who fails to cause possitive lot identification on any lot of peanuts to accurately reflect the crop year in which such peanuts were produced, pursuant to paragraph (d) of the Outgoing Quality Regulation, shall be ineligible for any indemnification payments until such violation is corrected to the satisfaction of the Committee.

Any handler who fails to remove, hold, or dispose of loose shelled kernels pursuant to paragraph (d)(1) of the 1987 Incoming Quality Regulation or paragraph (g) of the 1987 Outgoing Quality Regulation shall be ineligible for any idemnification payments until such condition or conditions are corrected to the satisfaction of the Committee and/or any complaints of violations made by the Committee to the Secretary are resolved.

Categories eligible for indemnification are as follows:

Cleaned Inshell Peanuts—

(1) U.S. Jumbos.
(2) U.S. Fancy Handpicks.
(3) Valencia—Roasting Stock.[1]

U.S. Grade Shelled Peanuts—

(1) U.S. No. 1.
(2) U.S. Splits.
(3) U.S. Virginia Extra-Large.
(4) U.S. Virginia Medium.

Shelled Peanuts "With Splits"—

(1) Runners with splits which do not contain more than 15 percent splits or 3 percent whole kernels which will pass through $^{16}/_{64} \times {}^{3}/_{4}$ slot screen.

(2) Spanish with splits which do not contain more than 15 percent splits or 2 percent whole kernels which will pass through a $^{15}/_{64} \times {}^{3}/_{4}$ slot screen.

(3) Virginias with splits which do not contain more than 15 percent splits or 3 percent whole kernels which will pass through a $^{15}/_{64} \times 1$ slot screen.

Shelled Spanish Jumbos—

Spanish having not more than 5 percent kernels which fall through a $^{18}/_{64} \times {}^{3}/_{4}$ slot screen and which otherwise meet the grade requirements of U.S. No. 1 Spanish.

However, peanuts in any of the above categories shall not be eligible for indemnification if such peanuts: (1) Were milled from seed peanut residuals as referred to in the last sentence of paragraph (e) of the Incoming Quality Regulation and paragraph (i) of the Outgoing Quality Regulation; (2) failed

[1] Inshell peanuts with not more than 25 percent having shells damaged by discoloration, which are cracked or broken, or both.

the Outgoing Quality Regulation due to excessive damage and minor defects and such peanuts were subsequently blanched to remove such excess damage and minor defects pursuant to paragraph (h) of such regulation; (3) when shipped for human consumption outlets contained more than a total of 1.25 percent unshelled peanuts and damaged kernels or a total of 2.00 percent unshelled peanuts, damaged kernels and minor defects; and (4) were received or acquired from another handler pursuant to paragraph (i) of the Incoming Quality Regulation and were milled to meet requirements of the Outgoing Quality Regulation pursuant to paragraph (h) of such regulation.

For the purpose of paying indemnification beginning August 1, of the current crop year, the domestic market price for each category of peanuts shall be determined by averaging the price(s) listed in the Peanut Market News, per category, during the most recent four week period. Such weekly price calculations shall extend to May 31, of the current crop year and the average price per category as of May 31, 1988, shall be applied during the remainder of the crop year.

For the purpose of determining indemnification values, the term "quota peanuts" means peanuts marketed, or considered marketed, for domestic edible use, as defined by USDA–ASCS; and the term "additional peanuts" means any peanuts other than "quota peanuts" which are milled under the supervision of the Area Association.

The indemnification value for each category of "quota peanuts" eligible for indemnification, except U.S. Splits of all types, shall be the domestic market price established during the averaging period, whether at the time the notice of claim is first filed with the Committee, or at the time of disposition of the peanuts, less two cents per pound (on the pounds indemnified) or the most recent price category listed in the Peanut Market News, whichever is lower. The indemnification values of U.S. Splits categories shall be the domestic market price established during the averaging period, whether at the time the notice of claim is first filed with the Committee, or at the time of disposition of the peanuts, less three cents per pound, or the most recent price listed for the U.S. Splits category, whichever is lower.

The indemnification value for "additional peanuts" shall be equal to 45 percent of either 43 cents per pound or the established indemnification value, per category, of "quota peanuts," whichever is lower.

The grade categories to which the indemnification values shall be applied are as follows:

Runners [1]	Virginias	Spanish
Jumbo	U.S. extra large	Spanish jumbo.
Medium	U.S. medium	U.S. No. 1.
Select	U.S. No. 1	Spanish with splits.
No. 1 (−18+16 screens).	Virginias with splits.	
Mill run with or without splits.		
U.S. splits	U.S. splits	U.S. splits.

[1] Southeastern Peanut Association grades.

[FR Doc. 87–15320 Filed 7–6–87; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF COMMERCE

Office of the Secretary

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Economic Development Administration (EDA).

Title: Public Works Preapplication and Application.

Form Number: Agency—ED–101P, ED–101A; OMB–0601–0011.

Type of Request: Extension of a currently approved collection.

Burden: 300 respondents; 17,000 reporting hours.

Needs and Uses: This collection of information is used by State and local governments and eligible non-profit organizations to apply for public works grants under Pub. L. 89–136, as amended. The preapplication is needed to obtain preliminary information from potential applicants in order for EDA to evaluate the proposal before inviting an application. Application is needed to assure that applicants meet statutory and program requirements.

Affected Public: State or local governments and non-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Don Arbuckle, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3228 New Executive Office Building, Washington, DC 20503.

Dated: June 25, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–15307 Filed 7–6–87; 8:45 am]

BILLING CODE 3510–CW

International Trade Administration

[A–423–602]

Final Determination of Sales at Less Than Fair Value; Industrial Phosphoric Acid From Belgium

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that industrial phosphoric acid (IPA) from Belgium is being, or is likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of IPA from Belgium. We have notified the U.S. International Trade Commission (ITC) of our determinations, and we have directed the U.S. Customs Service to continue to suspend liquidation of all entries of IPA from Belgium that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in an amount equal to the dumping margin as described in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: July 7, 1987.

FOR FURTHER INFORMATION: Contact Mary Martin, Jessica Wasserman, or Barbara Tillman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377–2830, 377–1442 or 377–2438.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that IPA from Belgium is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). We made fair value comparisons on sales of IPA to the

United States by the respondent during the period of investigation, June 1, 1986, through November 30, 1986. The weighted-average margin is shown in the "Continuation of Suspension of Liquidation" section of this notice. We also determine that critical circumstances do not exist with respect to imports of IPA from Belgium.

Case History

Since the last **Federal Register** publication pertaining to this case (the preliminary determination of sales at less than fair value (52 FR 13263, April 22, 1987)), the following events have occurred. We conducted verification in Belgium from May 4 through 8, 1987, of the questionnaire response of Societe Chimique Prayon-Rupel (SCPR). On May 13, 1987, we verified the information provided by SCPR's independent selling agent, Nitron Chemical Corp. (Nitron), at Greenwich, Connecticut.

Petitioners and respondent filed initial briefs on June 5 and rebuttal briefs on June 9, 1987, and they waived their respective rights to a hearing in this case. Comments on the verification reports were submitted by each party on June 18, 1987.

Scope of Investigation

The product covered by this investigation is industrial phosphoric acid (IPA) provided for in item 416.30 of the *Tariff Schedules of the United States.*

Fair Value Comparisons

To determine whether sales of the subject merchandise in the United States were made at less than fair value, we compared the United States price to the foreign market value for the company under investigation as specified below. We made comparisons on virtually all of the sales of the product during the period of investigation, June 1 through November 30, 1986.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States price when the merchandise was purchased by an unrelated U.S. customer directly from the foreign manufacturer prior to importation. We calculated purchase price based on either packed or unpacked c.i.f. prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. inland insurance and unloading costs.

As provided in section 772(c) of the Act, we used the exporter's sales price, where appropriate, to represent the United States price for merchandise sold to unrelated purchasers after importation into the United States. We calculated the exporter's sales price based on the unpacked f.o.b. or c.i.f. price at SCPR's leased storage tanks in Bayonne, New Jersey, or Houston, Texas. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, U.S. duty, truck loading, overtime unloading charges, U.S. inland freight, U.S. inland insurance, U.S. indirect selling expenses (including the cost of leasing storage tanks, sampling and testing the merchandise, indirect selling expenses in Belgium for U.S. sales and U.S. inventory carrying costs), U.S. commissions to unrelated selling agents, U.S. discounts and U.S. credit expenses.

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value for IPA on sales in the home market. When comparing foreign market value to purchase price sales, we made deductions, where appropriate, from the home market price for inland freight, truck loading and prompt payment discounts. We added U.S. packing costs and commissions paid to unrelated selling agents in the U.S. market where appropriate. We allowed an offset for indirect selling expenses in the home market (which includes the cost of administrative indirect selling expenses, SCPR's and SCPR's related selling agent's (i.e. Zinchem-Benelux) indirect selling expenses, expenses for sampling and testing the merchandise, and home market inventory carrying costs) up to the amount of the commissions in the U.S. market in accordance with § 353.15(c) of the Commerce Regulations. We have made an adjustment under § 353.15(a) of the Commerce Regulations for differences in circumstances of sales for credit expenses in the United States and home market.

When comparing foreign market value to U.S. exporter's sales prices, we made deductions, where appropriate, from the home market price for inland freight, truck loading costs, credit expense, and prompt payment discounts. We allowed an offset for indirect selling expenses incurred on home market sales up to the amount of the indirect selling expenses plus commissions incurred for sales in the U.S. market, in accordance with § 353.15(c) of the Commerce Regulations.

We disallowed the following adjustments claimed by SCPR. SCPR claimed a circumstance of sale adjustment for "commissions" it pays on home market sales to its related selling agent Zinchem-Benelux, S.A. Alternatively, SCPR claimed that the full amount of the "commissions" should be allowed as an indirect selling expense. Pursuant to § 353.15 of our regulations, we have disallowed this deduction because SCPR did not establish that the "commissions" paid to its subsidiary are arms-length transactions. We have allowed a deduction for that portion of Zinchem-Benelux's "commissions" that are indirect selling expenses but only to the extent that we were able to verify such expenses.

Respondent also claimed a circumstance of sale adjustment on home market sales for water dilution costs. Because SCPR adds water to 80 percent assay IPA to produce 75 percent assay in both Belgium and the U.S., it is essential to the manufacture of 75 percent assay IPA. Therefore, we consider the cost of water dilution to be a production cost rather than a selling expense and no adjustment was allowed.

Finally, SCPR has withdrawn its claim, which we disallowed in the preliminary determination, for a level of trade adjustment based upon the difference in size between the U.S. and the Belgian markets.

Currency Conversion

For comparisons involving purchase price transactions, when calculating foreign market value, we made currency conversions from Belgian francs to U.S. dollars in accordance with § 353.56(a) of our regulations, using the certified daily exchange rates furnished by the Federal Reserve Bank of New York. For comparisons involving exporter's sales price transactions, we used the official exchange rate for the date of purchase pursuant to section 615 of the Trade and Tariff Act of 1984. We followed section 615 of the 1984 Act rather than § 353.56(a)(2) of the Commerce Regulations, as it supersedes that section of the Regulations.

Negative Determination of Critical Circumstances

Petitioners alleged that critical circumstances exist within the meaning of section 735(a)(3) of the Act, with respect to imports of IPA from Belgium. In determining whether critical circumstances exist, we must examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind or merchandise which is the subject of the investigation over a relatively short period.

In determining whether imports have been massive over a relative short period of time, we normally consider the following factors: (1) The volume and value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analysis of import statistics, we find that there is no reasonable basis to conclude that imports of IPA from Belgium have been massive over a relatively short period. Accordingly, we do not have to consider whether section 735(a)(3) of the Act applies to this case. Therefore, we have determined that critical circumstances do not exist with respect to imports of IPA from Belgium. We have notified the ITC of this determination.

Petitioners' Comments

Comment 1: Petitioners contend that the Department's final determination should include a deduction in the exporter's sales price to reflect indirect selling expenses incurred in Belgium in connection with SCPR's sales to the United States.

DOC Position: We agree. During verification, we gathered and verified information on SCPR's expenses in Belgium for the U.S. sales. These expenses have been included in U.S. indirect selling expenses as described in the "United States Price" section of this notice.

Comment 2: Petitioners argue that adjustments for credit expenses should be made on a transaction basis for the final determination.

DOC Position: After the preliminary determination, we obtained and verified the amount of days credit was outstanding on a transaction basis, and this information has been used for the final determination.

Comment 3: Petitioners contend that Zinchem-Benelux's expenses in seeking new customers and markets should be deleted from any adjustment that is allowed for indirect selling expenses in the home market.

DOC Position: We disagree. Seeking new customers and markets is part of the sales-related activities of a sales department. To the extent that such activities are not tied to a particular sale made during the period of investigation, as required by 19 CFR 353.15, they are indirect selling expenses.

Comment 4: Petitioners argue that storage tank depreciation and maintenance costs, which were claimed by respondent as indirect selling expenses in the home market, should be treated at least in part as manufacturing costs since these tanks are integral to the manufacturing process. Petitioners also contend that if tanks located in Belgium are used for IPA that is exported, a portion of the tanks' costs should be allocated as indirect selling expenses to export sales and be taken as a deduction from exporter's sales price.

DOC Position: We disagree. During verification, we found no evidence that the storage tanks are part of the manufacturing process. The storage tanks that are at issue did not, any anytime, hold raw material or any other substance other than fully-manufactured IPA. Therefore, we have no basis in law or fact for considering expenses associated with these tanks as production costs. With respect to the possible treatment of certain storage tank costs as U.S. indirect selling expenses, petitioners first raised this issue in their written brief of June 5, 1987—nearly a month after we had completed verification. During verification, we investigated numerous instances of indirect selling expenses incurred in Belgium on U.S. sales. We did not, however, receive information nor verify the nature and extent of storage tank costs incurred in Belgium on U.S. sales. Therefore, no such costs were included in the indirect selling expenses for U.S. sales.

Comment 5: Petitioners claim that the cost of preparing sales and shipping invoices in connection with home market sales should be treated as overhead and not as a direct selling expenses.

DOC Position: We agree that these administrative selling expenses are not direct expenses. They were not tied to, nor directly contingent upon, individual sales of IPA in the home market. However, we do not agree that these expenses are overhead. We verified that these costs were actually incurred and that they were indirectly related to home market sales of IPA. Therefore, as set out in the "Foreign Market Value" section of this notice, we have treated these items as indirect selling expenses.

Comment 6: Petitioners contend that an adjustment should be made for quality control costs on exporter's sales price transactions involving IPA at the Houston terminal. In its response, respondent acknowledged that it incurred an expense for sampling and testing IPA at the time the barges containing the imported acid are unloaded into the tank facilities. However, during verification, respondent maintained that no quality control expenses were incurred at the Houston terminal during the period of investigation. Accordingly, the Department should, on the basis of best information available, make an adjustment for quality control costs at the Houston terminal.

DOC Position: We disagree. We verified that respondent incurred no quality control costs at the Houston terminal for the period of investigation. It is not unusual to modify the response as a result of information gathered at verification. As the Act requires, we rely on verified information for our final determination.

Respondent's Comments

Comment 1: Respondent argues that the deduction made by the Department for inventory carrying costs in determining exporter's sales price is not authorized by law. Repondent contends that the inventory carrying cost deduction is not authorized by 19 U.S.C. 1677a(c) since it does not fall within the listed categories of expenses. Respondent further argues that the deducation is not authorized by 19 U.S.C. 1677a(d)(2)(A) which allows a deduction for costs that are "incident to bringing the merchandise from the place of shipment in the country of exportation to the place of delivery in the United States." Respondent further contends that the inventory carrying costs deduction is not authorized by 19 U.S.C. 1677b(a)(4) which states that due allowance may be made for "differences in circumstances of sale" because the Department's regulations require that the cost adjusted for must "bear a direct relationship to the sales which are under consideration" 19 CFR 353.15(a). Inventory carrying costs are not tied to a particular sale but rather are components of overhead.

DOC Position: We disagree. The Department has developed an established policy for taking into account inventory carrying costs in cases involving exporter's sales price transactions. See *Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada; Final Results of Antidumping Duty Administrative Review*, (51 FR 43230, December 1, 1986) (*Replacement Parts*). The authority for this policy is derived from 19 U.S.C. 1677a(e)(2) and § 353.10(e)(2) of the Commerce Regulations. In imputing inventory carrying costs as part of exporter's sales price, the Department

recognizes that the opportunity cost of holding inventory is a real expense that can be considered part of the company's sales operation rather than the production operation. Furthermore, it is an indirect selling expense rather than a direct selling expense because it is not tied directly to particular sales.

Comment 2: Respondent contends that if the Department makes an adjustment for inventory carrying costs as a circumstance of sale adjustment for exporter's sale price transactions, any excess of such cost in the U.S. market over the comparable Belgian market cost should be added to the foreign market value rather than subtracted from United States price.

DOC Position: We disagree. We have deducted Belgian inventory carrying costs from foreign market value, and U.S. inventory carrying cost from U.S. price as set out in the "Foreign Market Value" and the "United States Price" section of this notice, in accordance with sections 772(e)(2) and 773(a)(4)(B) of the Act.

Comment 3: Respondent argues that if an adjustment or deduction is made for inventory carrying costs, the period used for computing the cost for sales to the United States should be the period from exportation from Belgium to sale in the United States. The period used for computing inventory carrying costs with respect to exporter's sales price transactions should not include the average period the merchandise was in inventory in Belgium prior to exportation. Respondent further contends that in computing inventory carrying costs, the Department should consider SCPR's incremental cost of producing the merchandise concerned rather than the gross unit U.S. sales price minus freight charges, which was used in the preliminary determination. Respondent argues that fixed costs are not a proper element of inventory valuation for cost accounting purposes and that the Department recognized this principle in *Replacement Parts.*

Respondent also argues that in the event the Department makes a deduction for inventory carrying costs and uses the methodology for assigning inventory carrying costs adopted in the preliminary determination, it should subtract marine insurance and all commissions and other direct and indirect expenses in the United States. All of these costs are incurred after production of the merchandise concerned and therefore cannot be considered elements of inventory value.

DOC Position: We disagree. Inventory is held from the time of production to sale. Accordingly, it is appropriate to calculate the inventory carrying costs from the date of production. Respondent refused to provide information regarding its average cost of inventory.

Instead it simply provided information on its raw materials and energy costs. Therefore, for this final determination we have calculated inventory carrying costs on the basis of best information available and have based our calculation on gross unit price less freight.

Comment 4: Respondent argues that for the purpose of computing imputed U.S. credit expenses, the Department should not include the commissions paid U.S. selling agents in the amount theoretically financed, since commissions owed U.S. selling agents are not paid until payment is received by SCPR. In these circumstances, it is clear that the amount of the commissions is not a cost that SCPR must finance in the period between shipment and payment.

DOC Position: We disagree. SCPR's credit is an imputed cost, and the date of payment for any particular cost of producing and selling the IPA is not material to our calculation of the credit expense. We have followed our standard methodology for calculating imputed credit expense, multiplying gross unit price, by the short-term interest rate, and by the days credit was outstanding between shipment and payment for each transaction.

Comment 5: Respondent argues that in computing foreign market value, the Department should make a circumstance of sale adjustment for the direct selling expenses incurred by SCPR for the commissions it pays on home market sales to its related selling agent, Zinchem-Benelux, S.A. Respondent contends that if it is shown that the parties dealt with each other as if at arm's-length or that the commissions are directly related to particular sales, a circumstance of sale adjustment for commissions should be made. As evidence that the transactions between SCPR and Zinchem-Benelux are at arms-length, respondent states that the commission paid to Zinchem-Benelux is equal to or less than the commissions that SCPR pays to agents (some of which were unrelated to SCPR) in third country markets. Furthermore, respondent points out that Zinchem-Benelux has its own offices, financial statements, operational management and staff, and that the relationship between SCPR and Zinchem-Benelux is governed by a formal, written contract. Respondent contends that the facts establish that Zinchem-Benelux operates as an unrelated agent, and that the commissions directly relate to particular sales in the Belgian market.

DOC Position: We disagree. In general, the Department regards payments to related parties as merely intracompany transfers of funds. As such, these payments are considered to be part of the general expenses of the company, and not costs directly related to particular sales as required by 19 CFR 353.15. Furthermore, the level of commissions paid to agents in other markets is not determinative of whether commissions paid to related agents are reflective of arms-length transactions.

Comment 6: Respondent argues that if commissions paid to Zinchem-Benelux are not allowed as a circumstance of sale adjustment, then the full amount of the commissions (subject to the appropriate cap) should be allowed as an indirect selling expense.

DOC Position: We have treated Zinchem-Benelux's actual selling costs as indirect selling expenses as set out in the "Foreign Market Value" section of this notice. To the extent that the full amount of the commissions paid by SCPR exceeds the actual selling costs of Zinchem-Benelux, the additional amount is simply an intracompany transfer.

Comment 7: Respondent argues that circumstances of sale adjustments on home market sales should be made for: (a) Sales and shipping invoice preparation costs, (b) truck loading costs, and (c) water dilution costs. These were claimed as direct selling expenses in the response, but were not taken into account in the preliminary determination. They should be allowed—at the least—as indirect selling expenses in the Belgian market. Parallel treatment should be accorded the same expenses in the U.S. and Belgian markets.

DOC Position: We agree that parallel treatment should be accorded these expenses in both markets. We have allowed sales and shipping invoice preparation costs as indirect selling expenses. Truck loading costs are being allowed as direct charges, and the water dilution costs are considered to be part of the cost of production.

Comment 8: Respondent argues that the Department should take account of equalized rather than actual freight costs on U.S. sales. The amount included in the price to the purchaser in the United States was the equalized freight; therefore, it is that amount that should be deducted.

DOC Position: We disagree. Although the response stated that equalized freight (the cost of freight from the closest U.S. production facility) was

used in some transactions, information concerning the cost of such equalized freight was not supplied. Instead actual freight costs were provided and verified. Moreover, respondent did not provide any information on equalized freight at the verification. Since we are required to use verified information for our final determination, respondent's request in its post-verification brief is untimely.

Comment 9: Respondent argues that indirect selling expenses incurred in Belgium relating to SCPR's U.S. sales are below the *de minimis* level set by § 353.23 of the Department's regulations and should be disregarded.

DOC Position: We disagree. We gathered and verified information concerning SCPR's indirect expenses incurred in Belgium on U.S. sales. There is nothing in the regulation cited by respondent which prevents the Department from taking into account verified expenses.

Comment 10: Respondent argues that the deduction for quality control costs on exporter's sales price transactions from the Houston, Texas terminal should be zero since the Department verified that neither SCPR nor Nitron was charged or paid for sampling of IPA at the Houston terminal.

DOC Position: We agree. (See DOC Position to Petitioners' Comment 6).

Comment 11: Respondent points out that several currency conversion exchange rates used in the preliminary determination were other than those specified in the Customs Bulletin.

DOC Position: We have used the statutory exchange rates as described in the "Currency Conversion" section of this notice.

Verification

We verified the information used in making our final determination in accordance with section 776(a) of the Act. During verification we used standard verification procedures, including examination of relevant sales and financial records of the company under investigation.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of IPA from Belgium that are entered or withdrawn from warehouse, for consumption, on or after April 22, 1987, the date of publication of our affirmative preliminary determination notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the foreign market value of IPA from Belgium exceeds the United States price as shown in the table below. The cash deposit or bonding rate established in the preliminary determination shall remain in effect with respect to entries or withdrawals from warehouse made prior to the date of publication of this notice in the **Federal Register**. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	*Weighted-average margin percentage*
Societe Chimique Prayon-Rupel	14.67
All Others	14.67

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this notice. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing the U.S. Customs Service to assess an antidumping duty on IPA from Belgium entered, or withdrawn from warehouse, for consumption on or after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

May 29, 1987.

[FR Doc. 87-15365 Filed 7-6-87; 8:45 am]

BILLING CODE 3510-DS-M

[A-508-604]

Final Determination of Sales at Less Than Fair Value; Industrial Phosphoric Acid From Israel

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that industrial phosphoric acid (IPA) from Israel is being, or is likely to be, sold in the United States at less than fair value. We also determine that critical circumstances do not exist with respect to imports of IPA from Israel. We have notified the U.S. International Trade Commission (ITC) of our determinations, and we have directed the U.S. Customs Service to continue to suspend liquidation of all entries of IPA from Israel that are entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this notice, and to require a cash deposit or bond for each entry in the amount indicated in the "Continuation of Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: July 7, 1987.

FOR FURTHER INFORMATION CONTACT: David Levine, Ross Cotjanle, or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1673, 377-3534, or 377-0161.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that IPA from Israel is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735(a) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673d(a)). We made fair value comparisons on all sales of IPA to the United States by the respondent during the period of investigation, June 1, 1986, through November 30, 1986. The estimated weighted-average margin is 6.82 percent for Negev Phosphates Ltd. (NPL) and all other manufacturers, producers, and exporters in Israel of IPA.

Case History

Since the last **Federal Register** publication pertaining to this case [the preliminary determination of sales at less than fair value (52 FR 12952, April 20, 1987)], the following events have occurred. We conducted verification in Israel from May 10 through May 22,

1987, of the questionnaire response of NPL. Petitioners and NPL filed briefs on June 11, 1987, and rebuttal briefs on June 15, 1987, and they waived their respective rights to a hearing in this case. Additional comments were submitted by each party on June 16 and 17, 1987.

Scope of Investigation

The product covered by this investigation is industrial phosphoric acid (IPA), currently provided for in item 416.30 of the *Tariff Schedules of the United States*.

Fair Value Comparisons

To determine whether sales of IPA from Israel in the United States were made at less than fair value, we compared the United States price to the foreign market value for the company under investigation as specified below. We made comparisons on all U.S. sales of the product during the period of investigation, June 1, 1986, through November 30, 1986.

United States Price

As provided in section 772(b) of the Act, we used the purchase price of the subject merchandise to represent United States price since the merchandise was purchased by an unrelated U.S. customer directly from the foreign manufacturer prior to importation. We calculated purchase price based on the unpacked C&F prices to the unrelated purchaser in the United States. We made deductions, where appropriate, for foreign inland freight, certain terminal expenses at the Ashdod port, ocean freight, and certain directly related shipping charges (war insurance and bill of lading).

Foreign Market Value

In accordance with section 773(a)(1)(A) of the Act, we based foreign market value for IPA on sales in the home market. We made deductions, where appropriate, for inland freight, certain terminal expenses at the Ashdod port, a freight-related charge (truck weighing), packing, and quantity rebates. We made a circumstance of sale adjustment for differences in credit expenses incurred in both markets, in accordance with § 353.15(a) of our regulations.

We disallowed the following adjustments claimed by NPL. NPL claimed a level of trade adjustment to compensate for differences in levels of trade existing between the U.S. market and the home market for sales of IPA. Pursuant to § 353.19 of our regulations, we have disallowed this deduction because NPL did not establish during verification that quantifiable differences exist with regard to sales at different levels of trade in the home market.

NPL also claimed an adjustment for bad debt expenses. We disallowed this adjustment because we consider bad debt expenses to be indirect selling expenses since, under generally accepted accounting principles, bad debt is recovered over time by future price increases.

We disallowed NPL's request for an adjustment for Exchange Rate Risk Insurance Scheme (EIS) receipts related to its U.S. sales. These receipts represent compensation for the foreign exchange losses incurred by NPL between the date of each U.S. sale and the date of payment. Since, according to our regulations, we determine the amount of the U.S. price as of the date of sale and, thus, before it becomes affected by such losses resulting from the devaluation of the local currency relative to the currency of the outstanding foreign receivables, no adjustments for EIS receipts is appropriate. Similarly, the absence of EIS receipts for the sales in the home market does not represent a circumstance of sale expense because sales in the home market are made in local currency and are not subject to foreign currency fluctuations. EIS receipts do not qualify as directly related expenses under § 353.15 of our regulations. As we have determined in the companion countervailing duty investigation of IPA from Israel, the EIS is an export subsidy. Accordingly, we have instructed the U.S. Customs Service to collect estimated dumping duties reduced by the amount of estimated countervailing duties attributable to this export subsidy in accordance with seciton 772(d)(1)(D) of the Act.

Finally, NPL requested an offset for an expense it claimed was "tantamount to a commission" on each U.S. sale, and adjustments to foreign market value for quality control testing and truck dispatching costs. We have disallowed these claims. See DOC Positions to Respondent's Comments 2, 3, and 7.

Currency Conversion

As Federal Reserve certified exchange rates were not available, we made currency conversions from new Israeli shekels to U.S. dollars in accordance with § 353.56(a) of our regulations, using the International Monetary Fund (IMF) International Financial Statistics.

Negative Determination of Critical Circumstances

Petitioners alleged that critical circumstances exist within the meaning of section 735(a)(3) of the Act, with respect to imports of IPA from Israel. In determining whether critical circumstances exist, we must examine whether:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the merchandise which is the subject of the investigation over a relatively short period.

In determining whether imports have been massive over a relatively short period of time, we normally consider the following factors: (1) The volume an value of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. Based on our analyses of import statistics, we find that there is no reasonable basis to conclude that imports of IPA from Israel have been massive over a relatively short period. Accordingly, we do not have to consider whether section 735(a)(3) of the Act applies to this case. Therefore, we have determined that critical circumstances do not exist with respect to imports of IPA from Israel. We have notified the ITC of this determination.

Petitioners' Comments

Comment 1: Petitioners argue that a direct charge adjustment to home market prices for inland freight between NPL's production site at Arad and its terminal facilities at Ashdod, as well as storage costs incurred by NPL at its terminal facilities at Ashdod, should be disallowed because they claim these costs are at best indirect selling expenses. At the same time, petitioners contend that an appropriate adjustment to the U.S. price for these costs should be made because, with respect to the U.S. sales, these costs are direct charges. Petitioners cite *Siver Reed America, Inc. v. U.S.*, 581 F. Supp. 1298 (CIT 1984) which affirmed the Department's determination to disallow transportation costs of unsold typewriters from a factory to a central storage warehouse, because they were not related to particular home market sales.

DOC Position: We disagree. As required by section 1677a(d)(1)(A) and 1677b(a)(1) of the Act, the Department makes appropriate adjustments to both U.S. price and foreign market value for inland freight expenses incurred in the

home market in order to arrive at the net ex-factory price of the merchandise "packed ready for shipment to the United States." This practice has been approved by the courts. In *Smith-Corona Group, Consumer Products Division, SCM Corp. v. U.S.* 713 F. 2d 1568, 1571–1572 (Fed. Cir. 1983), *cert. den.* 104 S. Ct. 1274, the court noted in making fair value comparisons "[b]oth values are subject to adjustment in an attempt to reconstruct the price at a specific, 'common' point in the chain of commerce, so that value can be fairly compared on an equivalent basis."

Accordingly, we made deductions for inland freight and loading expenses in our calculations of the foreign market value, as well as inland freight, loading, ship surveying, and export documentation processing expenses in our calculation of the U.S. price.

The case cited by petitioners is not applicable to the facts of this investigation. In that case, the product sold in the home market was shipped to a separate warehouse for inventory storage, while the product sold to the U.S. was shipped directly to the port of exportation. Thus, the issue in *Silver Reed* was the Department's methodology with respect to inventory warehousing, not inland freight.

We did not allow any adjustments for the costs of NPL's storage facilities at the Ashdod port terminal, since these are general fixed costs of the company and not the variable costs which are related to the sales under investigation.

Comment 2: Petitioners argue that an adjustment to the home market price for payments NPL received under the Government of Israel's Exchange Rate Risk Insurance Scheme ("EIS") for export shipments of IPA to the United States should be disallowed since these payments have no relationship with home market prices. To the extent that countervailing duties will be imposed on IPA imports from NPL to offset export subsidies, the U.S. price will be adjusted under section 772(d)(1)(D) of the Act.

DOC Position: See the "Foreign Market Value" and the "Continuation of Suspension of Liquidation" sections of this notice. Although no adjustment to the U.S. price is warranted under section 772(d)(1)(D) until the countervailing duty is actually assessed on the subject merchandise, there is no reason to require a duplicate cash deposit or bond for that portion of the antidumping duty which cannot be ultimately assessed.

Comment 3: Petitioners allege that the date of sale for invoice number 1934 should be the date of shipment and not the date of a preliminary document contemplating the sale. Petitioners suspect that the purchase agreement may not have been a binding sales contract. Therefore, the date of sale should be based on the date of shipment, thus excluding this sale from the period of investigation.

DOC Position: We disagree. Although the actual shipments occurred outside of the period of investigation, we determined conclusively at verification that the primary terms of the sale (e.g., price and quantity) were established during the period of investigation. We have, therefore, included this sale in our calculation of foreign market value.

Comment 4: Petitioners contend that an adjustment to the home market price for certain packed sales in the home market should be disallowed since the price NPL charged did not include the cost of drums.

DOC Position: We disagree. Although the price paid by NPL's customer did not contain an additional charge for packing, NPL did incur packing costs for those drum sales. Therefore, the total price charged for these sales includes the cost of packing. Since NPL sells only in bulk to the United States, a packed sale in the home market must be adjusted for a difference in packing costs in order to make a proper comparison between the U.S. and foreign market prices.

Comment 5: Petitioners argue that since sales in the home market and the United States were financed largely by internally-generated funds, a home market interest rate should be used to calculate the credit expenses on both U.S. and home market sales.

DOC Position: We determined at verification that for the period of investigation NPL financed its sales of IPA to the United States with short-term dollar loans from the Bank of Israel's Export Shipments Fund. Since NPL finances its sales abroad and in the home market from two different sources of credit, in different currencies, and at different interest rates, it incurs different credit costs when selling in the two markets. We made an adjustment to the foreign market value for credit costs on sales made in each market using interest rates specific to the market in which each sale was made.

Respondent's Comments

Comment 1: Respondent argues that the receipt of EIS benefits constitutes additional revenue to the company resulting from export sales. A circumstance of sale adjustment should be made to home market prices since no comparable revenue is received on home market sales.

DOC Position: We disagree. See the "Foreign Market Value," Petitioners' Comment 2, and the "Continuation of Suspension of Liquidation" sections of this notice.

Comment 2: Respondent claims that the "margin" contained within the negotiated price formula between NPL and its U.S. customer is identical to a commission. Respondent argues that since NPL pays a commission on its U.S. sales, adjustment to home market price for indirect selling expenses incurred in Israel by NPL is appropriate.

DOC Position: We disagree. The buyer of a product cannot receive a commission *per se* for its own purchase, as would a sales agent. We verified that this expense, or "margin" as the company descirbes it, is a fixed percentage deducted from the price of each U.S. sale. A reduction of the sale price to a purchaser, in this case by a specific fixed rate, constitutes a discount, not a commission. In addition, this margin does not depend upon future sales by the U.S. customer; rather, this discount is received by the purchaser regardless of whether future sales are actually made.

Comment 3: Respondent argues that a circumstance of sale adjustment should be made for differences in the costs of quality control tests performed on shipments in the U.S. and home markets. They contend that these tests are specifically tied to each sale and are required by NPL's customers. As such, they are a "condition of the sale."

DOC Position: We disagree. To the extent that the respondent can substantiate that quality control tests were performed at the request of the customer and were a condition of the sale, we would make a circumstance of sale adjustment. At verification, we were provided with no documentation which would enable us to verify that these tests were a required condition of the sale. In addition, we were unable to verify the basis of respondent's calculation for the adjustment, *i.e.*, the number of hours required to perform each test. As such, NPL was unable to demonstrate that these costs are directly related to specific sales of IPA, as required by § 53.15 of our regulations.

Comment 4: Respondent argues that an October 1986 sale was a spot price sale and should not be considered to be in the ordinary course of trade. They argue that, due to special circumstances, this sale was made at a price substantially higher than the usual negotiated price for this customer and, accordingly, this sale should be disregarded in foreign market value calculations.

DOC Position: We disagree. We consider sales made at spot prices and those made pursuant to long-term

contractual relationships to be within the ordinary course of trade. Moreover, the terms under which this sale was made are consistent with the terms of other sales made in the home market. The sales price falls within the range of prices paid by other customers in the home market and, thus, we have included this sale in our foreign market value calculations.

Comment 5: Respondent argues that because its parent company, Israel Chemicals Ltd. (ICL), requires ICL companies to buy from sister companies unless they can get a better price elsewhere, the sales to the two related companies should be excluded from foreign market value calculations. In addition, these sales were made at significantly higher prices because of the special IPA concentrations each customer requires.

DOC Position: We disagree. We consider these sales to be in the ordinary course of trade as the prices are consistent with prices paid by other customers in the home market. In addition, the fact that ICL companies can purchase supplies elsewhere if they find a better price indicates that these sales to related companies are arm's length transactions. The special IPA concentrations required by the purchasers and the limited number of suppliers in the Israeli market are legitimate market reasons or commercial considerations for a company to charge a customer a higher price. These factors do not render these sales excludable from consideration in this investigation.

Comment 6: Respondent argues that fixed costs at NPL's Ashdod facility should not be deducted from either the home market or the U.S. sales price. These fixed costs are incurred irrespective of whether a shipment is made, while the variable costs incurred by NPL at Ashdod vary with each sale and are directly related to each specific shipment.

DOC Position: We agree. We consider these fixed costs to be general overhead expenses which the company incurs regardless of whether a particular sale is made. We deducted only the variable costs incurred at Ashdod which qualify as direct selling expenses because these costs are directly related to specific sales.

Comment 7: Respondent argues that an adjustment to foreign market value for NPL's truck dispatching costs on sales in the home market is appropriate since no comparable direct cost is incurred on export sales.

DOC Position: We disagree. We could not verify and quantify this expense because we were provided with no substantiating documentation which would enable us to verify truck dispatching costs. Therefore, we have not made this adjustment.

Verification

We verified the information used in making our final determination in accordance with section 776(a) of the Act. We used standard verification procedures, including examination of relevant sales and financial records of the company under investigation.

Continuation of Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to continue to suspend liquidation of all entries of IPA from Israel that are entered or withdrawn from warehouse, for consumption, on or after April 20, 1987, the date of publication of our affirmative preliminary determination notice in the **Federal Register.**

Normally, we would instruct the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the foreign market value of IPA from Israel exceeds the U.S. price, which in this investigation is 6.82 percent for NPL and all other manufacturers, producers, and exporters of IPA from Israel. However, Article VI.5 of the General Agreement on Tariffs and Trade provides that "[n]o . . . product shall be subject to both antidumping and countervailing duties to compensate for the same situation of dumping or export subsidization." This provision is implemented by section 772(d)(1)(D) of the Act which prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy, since there is no reason to require a cash deposit or bond for that amount. Therefore, the bonding rate in this investigation will be reduced by the rate attributable to the export subsidies found in the corresponding final countervailing duty determination. Accordingly, for duty deposit purposes, the bonding rate is 1.77 percent for NPL and all other manufacturers, producers, and exporters of IPA from Israel.

The cash deposit or bonding rate established in the preliminary determination shall remain in effect with respect to entries or withdrawals from warehouse made prior to the date of publication of this notice in the **Federal Register.** The suspension of liquidation will remain in effect until further notice.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration. The ITC will determine whether these imports materially injure, or threaten material injury to, a U.S. industry within 45 days of the publication of this final determination. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted as a result of the suspension of liquidation will be refunded or cancelled. However, if the ITC determines that such injury does exist, we will issue an antidumping duty order directing the U.S. Customs Service to assess an antidumping duty on IPA from Israel entered or withdrawal from warehouse, for consumption, on or after the suspension of liquidation, equal to the amount by which the foreign market value exceeds the United States price.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

June 29, 1987.

[FR Doc. 87-15366 Filed 7-6-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-423-603]

Final Negative Countervailing Duty Determination: Industrial Phosphoric Acid From Belgium

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that no benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Belgium of industrial phosphoric acid (IPA). In addition, because this final determination is negative, we need not reach the issue as to whether critical circumstances exist in this case.

We have notified the U.S. International Trade Commission (ITC) of our determination. We are directing the U.S. Customs Service to refund all cash deposits and release all appropriate bond with respect to

imports of the subject merchandise entered on or after the date of publication of our preliminary affirmative determination on February 5, 1987, and before the termination of suspension of liquidation ordered on June 5, 1987.

EFFECTIVE DATE: July 7, 1987.

FOR FURTHER INFORMATION CONTACT: Mark Linscott or Carole Showers, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202/377–8330 (Linscott), 202/377–3217 (Showers).

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that no benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Belgium of IPA. In accordance with section 705(a)(2) of the Act, because this final determination is negative, we need not reach the issue as to whether critical circumstances exist in this case.

Case History

Since the last **Federal Register** publication pertaining to this case [the notice of extension of the deadline date for this final determination (52 FR 5324, February 20, 1987], the following events have occurred. We received supplemental responses from respondents on March 11, 1987. We conducted verification in Belgium from April 21 through May 7, 1987, of the questionnaire responses of the Government of Belgium and Societe Chimique Prayon-Rupel (SCPR).

At the reqeust of counsel for petitioners and SCPR, a public hearing was held on May 27, 1987, to afford interested parties an opportunity to present views orally, in accordance with our regulations (19 CFR 355.35). Counsel for petitioners and SCPR filed pre-hearing briefs on May 20 and post-hearing briefs on June 5, 1987.

Scope of Investigation

The product covered by this investigation is industrial phosphoric acid (IPA), currently provided for in item 416.30 of the *Tariff Schedules of the United States.*

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring subsidization ("the review period") is calendar year 1985, which coincides with SCPR's fiscal year. In their responses and at verification, the Government of Belgium and SCPR provided data, including financial statements, for the applicable period.

Based upon our analysis of the petition, the responses to our questionnaires, verification, and written and oral comments filed by petitioners and respondents, we determine the following:

I. Programs Determined not to Confer Subsidies

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Belgium of IPA under the following programs:

A. 1982 Equity Investment in SCPR by SRIW

Petitioners allege that, in 1982, the Societe Regionale d'Investissement de Wallonie (SRIW), an investment corporation wholly owned by the regional government of Wallonie, invested in a bankrupt company, SCPR, in the form of shareholder equity and shareholder debt on terms inconsistent with commercial considerations. Petitioners base their allegations on the fact that SRIW subscribed to a disproportionately smaller share of subordinated shareholder loans than it did of two other forms of investment in SCPR and argue that this, in and of itself, amounts to a *prima facie* indication that SRIW's investment was not made on equal terms with the private shareholders' investments.

We verified that the "concordat proceedings" which liquidated the operations of two failing Belgian companies, Societe de Prayon (SP) and its subsidiary, Societe Industrielle de Prayon (SIP), fully adhered to Belgium's law of concordats and that SCPR was a wholly new entity, separate and distinct from SP and SIP. SP's and SIP's creditors approved the transfer of assets to SCPR, and an independent auditor expressed an opinion that the consideration paid by SCPR for SP and SIP assets was legitimate and fair. Finally, we confirmed that profitability studies conducted by one of the private investors prior to the formation of the SCPR joint venture justified optimistic expectations as to SCPR's future profitability.

In order to determine whether SRIW's investment in SCPR was made on terms inconsistent with commercial considerations, we analyzed the terms of this investment in light of normal commercial practices. In our preliminary determination, we found that SRIW made its investment "on the same terms and conditions, at the same price, and at the same time as the private shareholders," and we stated that this constituted "a *prima facie* indication that SRIW's investment was consistent with commercial considerations" (52 FR 3681, February 5, 1987).

Each of the investors in SCPR (SRIW, a private Belgian industrial consortium, a Moroccan phosphate company, and a private French engineering firm) took shares in three different forms of investment ifnstruments: straight equity, subordinated shareholder loans, and long-term debentures. Although SRIW paid the same per unit price (the same subscription price for equity and the same interest rates charged for debt) as did the private investors for each instrument, SRIW purchased proportionately less of the subordinated shareholder loans than it did of the other two forms, while the two largest private investors purchased proportionately more of the subordianted shareholder loans than they did of the other two forms.

If we limited our anlaysis to what each party paid on a per unit price basis for each instrument, we could conclude that SRIW purchased its shares in SCPR on the same terms and conditions as did the private investors. But to do this would require us to ignore the fact that an investor's rate of return will often vary with the relative proportions it takes of the several instruments which comprise this type of investment package. In such a situation, we cannot isolate our analysis of each individual instrument. Instead, all investment instruments must be analyzed as components within the composite investment package. Applying this type of analysis, we must conclude that, because the relative proportions that each party purchased in each instrument varied, per unit price does not necessarily provide a true basis for comparing terms and conditions nor expectations of future return.

Therefore, we must augment our analysis for determining whether SRIW's investment was consistent with commercial considerations. As we state in the Subsidies Appendix, we must determine whether the price paid by SRIW "rightly incorporates private

investors' perceptions of the company's future earning potential and worth." Typically, the price paid by private investors is dispositive.

If the government paid a higher per unit price for its equity shares than that paid by private investor, we would find the government's infusion to be inconsistent with commercial considerations. In this case, however, the government paid the same per unit price as that paid by private investors for each of three investment instruments but took a relatively lesser proportion of subordinated shareholder loans. Consequently, we must go beyond per unit price in our analysis of whether SRIW's investment was consistent with commerical considerations. This requires looking at whether the investment was reasonably perceived as ensuring a commercial rate of return to the investor, SRIW.

At verification we reviewed documentation on a contemporaneous investment that SRIW negotiated with Union Miniere, a private company which was the catalyst behind the SCPR joint venture. Under the terms of the investment package in SCPR, SRIW simultaneously purchased shares in a company called Umipray. Umipray was created pursuant to a large supply contract which guaranteed it a substantial rate of return over 15 years. Based on the record in this investigation, we conclude that the Umipray investment was inseparably linked to the SCPR investment, and that the investments in SCPR and Umipray should be analyzed as one package. Only by viewing SRIW's entire investment package can we accurately gauge SRIW's expectations of future return. Although SRIW's share in subordinated shareholder loans to SCPR was decreased, it was done so in order to accommodate SRIW's investment in Umipray. It is evident that acted commercially, given that its anticipated rate of return was comparable to that of the private investors, due to the Umipray component. We conclude that SRIW and the private investors invested with similar expectations of future returns.

For the reasons stated above, we determine that SRIW's investment in SCPR was not made on terms inconsistent with commercial considerations, and, therefore, does not confer a subsidy on IPA from Belgium.

B. 1985 Equity Infusion in SCPR by SRIW

Petitioners allege that SCPR's capital stock increase by its shareholders in 1985 was inconsistent with commercial considerations because the company was clearly not an attractive investment opportunity at that time.

In order to determine whether the 1985 equity infusion was made on terms inconsistent with commercial considerations, we again analyzed this infusion in light of normal commercial practices. In contrast to the original investments in SCPR in 1982, SRIW's and the private investors' 1985 infusion involved only one form of investment, straight equity purchases. Consequently, per unit price provides an accurate means for comparing terms and conditions between investors. We do not find this transaction inconsistent with commercial considerations because SCPR's private shareholders also contributed to the increase in capital stock at the same price and on the same terms and conditions as SRIW.

Accordingly, we determine that SRIW's equity infusion into SCPR in 1985 was not on terms inconsistent with commercial considerations and does not confer a subsidy on IPA from Belgium.

C. SNCI Short-Term Credit

The Societe National de Credit a l'Industrie (SNCI), a government lending institution, offers a variety of short- and long-term credit facilities in both Belgian and foreign currencies. At verification we found that SCPR had utilized a short-term line of credit during the last four months of the review period. We verified that interest rates charged on the SNCI loans were no lower than those charged on short-term credit lines from private sources. We also verified at the Belgian Central Bank and at the Belgian National Banking Association that SNCI rates are the standard commercial benchmarks for short-term credit in the Belgian economy. Therefore, we determine that short-term credits from SNCI are not on terms inconsistent with commercial considerations and do not confer a subsidy on IPA from Belgium.

II. Programs Determined Not To Be Used

We determine that manufacturers, producers, or exporters in Belgium of IPA did not use the following programs during the review period:

A. Programs Created by the 1970 Economic Expansion Law (EEL)

The Economic Expansion Law (EEL) of December 30, 1970, offers incentives to promote operations which establish new enterprises or expand existing ones within designated development zones and which contribute directly to the creation of new activities and new employment. The provisions of the EEL are approved, implemented, and administered by regional authorities of the Belgiam government. Companies which invest in the designated development zones, and whose projects have been approved, are eligible to receive various benefits under the EEL including: capital grants or interest rate reductions, loan guarantees, accelerated depreciation, tax exemptions (*i.e.*, real property, capital registration, and capital gains), contractual aid, and employment premiums.

SCPR has two separate production facilities in Belgium, one in Puurs which produces and sells IPA, and one in Engis which produces and sells various phosphate products. At Engis a relatively impure form of phosphoric acid is produced only at an intermediate stage in the downstream production of these phosphate products. Each facility was established as a self-contained unit, and we verified that neither requires nor utilizes inputs from the other.

At verification we found that (1) SCPR's plant at Puurs, the only plant producing IPA for sale to all markets, is not located in a development zone and has never received benefits under this program; and (2) SCPR's plant at Engis was located in a development zone from 1970–1982 and, thereafter, located in a "zone of possible exception" with project approval authorized on a case-by-case basis. According to the responses and to verified information, benefits were received by the Engis facility under the 1970 EEL. However, even though Engis is located in a development zone and received benefits under this program, evidence on the record clearly shows that phosphoric acid produced at Engis is not, and cannot be, sold to the United States as IPA.

Verified documentation on the record shows that all of the acid produced at Engis is for captive use only (*i.e.*, it is consumed internally by the Engis plant to manufacture other products). The documentation further shows that this acid contains impurities at a level that is not marketable in the United States and that the necessary modifications at Engis to further purify the acid would require substantial investments. We have been provided with purchasers' specifications, including those of petitioners, which show that the required levels of purity for the IPA demanded in the U.S. market are well below the impurity level of the acid produced at the Engis plant. Respondent has also documented unsuccessful company attempts to sell in the U.S. market a more impure form of the acid produced at the Puurs plant.

Because the acid produced in the facilities at Engis is not being exported to the United States, and because we determine that this acid cannot be sold in the U.S. market as IPA with its current level of impurities, we determine that any benefits received by the Engis plant do not benefit the production of the IPA which is sold in the United States.

B. SNCI Long-Term Credit

As discussed in section I.C. of this notice, SNCI offers a variety of credit facilities, including long-term loans, in both Belgian and foreign currencies. At verification we found that SCPR had no long-term loans outstanding during, or subsequent to, the review period.

C. Employment-Based Benefits

The Office National de l'Emploi (ONEM), offers funds for employee training programs and other employment-based benefits. We verified that SCPR has never applied for, nor received, benefits under any ONEM program.

D. Operating Subsidies

Petitioners allege that SCPR's annual reports for 1984 and 1985 show that the company received certain unspecified "operating subsidies." At verification we found that the "operating subsidies" in question consisted of certain research and development grants awarded by the Institute for the Encouragement of Scientific Research in Industry and Agriculture (IRSIA), an agency of the Government of Belgium, for laboratory research wholly unrelated to IPA. For purposes of this investigation, we determine that these grants were not used because they did not benefit the production of IPA.

E. Export Programs

At verification we discovered several export programs sponsored by the Ministry of Economic Affairs. These export incentives include export risk insurance, medium-term export financing, rebates of excise taxes associated with exports, and export marketing promotion. We verified that SCPR has never applied for, nor received, benefits under any of these programs for exports to the United States.

Petitioners' Comments

Comment 1: Petitioners contend that, despite differences in levels of purity and end-use, the phosphoric acids produced at the Puurs and Engis plants are both identical to the product under investigation, IPA.

DOC Position: Based on the evidence on the record, we consider that the phosphoric acid produced as an intermediate product at Engis, in contrast to that produced at Puurs, is not the IPA as currently required by U.S. purchasers. *See* section II.A. of this notice.

Comment 2: Petitioners argue that the Department has never required, nor did Congress intend, that a petitioner show that subsidy benefits accrue directly or solely to the exported products.

DOC Position: The Department does not require that subsidy benefits accrue directly or solely to the exported product. However, if in a particular case, documentation indicates that subsidies are either tied to a product not being exported to the United States or to facilities which produce that product, we will not include those subsidies in our final calculation. *[See Final Affirmative Countervailing Duty Determination: Potassium Chloride from Israel* (49 FR 36122, September 14, 1984); *Final Results of Countervailing Duty Administrative Review: Industrial Nitrocellulose from France* (52 FR 833, January 9, 1987)]. At verification we found that subsidies provided under the 1970 EEL are directly tied to production at Engis. As stated earlier in this notice (*see* section II.A.), the evidence on the record demonstrates that the phosphoric acid produced at Engis is not, and cannot be, exported to the United States as IPA. For purposes of this investigation, we requested from petitioners any form of evidentiary link that they could provide to refute this evidence. We have not received any documentation that accomplishes this. Therefore, based on verified data, and without evidence to the contrary, we have determined that the Engis acid is not, and cannot be, exported to the United States as IPA, and that subsidies tied to that production should not be included in this final determination.

Comment 3: Petitioners argue that, although subsidies under the 1970 EEL were disbursed only to the Engis plant, they also benefit the production at the Puurs plant by allowing it to focus exclusively on export quality acid.

DOC Position: We disagree. We have no evidence that benefits tied solely to the Engis plant have benefited the production of IPA at Puurs, which is an entirely separate production facility. The two plants are distant from one another, there are no internal transfers between them, and they do not share distribution, storage, or any other facilities. Furthermore, the benefits received by the Engis plant were tied specifically to the purchase of specialized machinery to be used in that plant. Even though SCPR has rationalized its production operations between the two plants, we have observed no vehicle through which these subsidies would have flowed to Puurs production.

Comment 4: Petitioners argue that, because the benefits available under the 1959 Economic Expansion Law, which has been found to be generally available in previous Belgian cases, are promulgated under a separate and distinct statute from those available under the 1970 Law, the Department should countervail the entire amount of subsidies received under the 1970 Law.

DOC Position: Because we have determined that the assistance disbursed under the 1970 Law to the Engis plant does not benefit, in any way, the production or exportation of the subject merchandise, petitioners' argument is rendered moot. *See* section II.A. of this notice.

Comment 5: Petitioners argue that SRIW chose to forego an increased rate of return when it agreed to its 1982 investiment in SCPR because it subscribed to a relatively lesser proportion of subordinated shareholder loans that it did of the other two components in the SCPR financing package. Petitioners contend that an analysis of rates of return and overall risk shows that subordinated shareholder loans were the most atrractive element in the financing package. They conclude that, given this disparity, it is evident that SRIW's investment was not made on the same terms as the private investments.

DOC Position: We disagree. each element in the financing package provided unique advantages to the investors. We cannot conclude that the subordinated shareholder loans were any more desirable than the other two investment instruments. Furthermore, our analysis shows that SRIW anticipated a future rate of return comparable to that anticipated by the private investors. *See* section I.A.

Comment 6: Petitioners argue that respondents, in claiming a link between the Umipray and SCPR investments, failed to provide evidence documenting the Umipray investment and that, in any event, SRIW apparently obtained its shares prior to its investment in SCPR. Petitioners conclude that respondents' bargain thesis is unsupportable.

DOC Position: We disagree. We have documentation provided in respondents' response, and we obtained documentation at verification, showing that (1) the Umipray transaction did occur and was linked, during negotiations, with the SCPR transaction.

(2) the transactions for the Umipray and SCPR investments occurred simultaneously, and (3) SRIW subsequently sold its interest in Umipray at a profitable return. *See* section I.A. of this notice.

Respondents' Comments

Comment 1: Respondents contend that the Engis plant does not produce a product of the same class or kind as the product under investigation and, furthermore, that the Engis phosphoric acid is not exported to the United States.

DOC Position: See DOC Position on Petitioners' Comment 1.

Comment 2: Respondents argue that SRIW's equity investments are not countervailable because they were made consistent with commercial considerations.

DOC Position: We agree. *See* sections I.A. and I.B. of this notice and DOC Position on Petitioners' Comment 5.

Verification

In accordance with section 776(a) of the Act, we verified the information used in making our final determination. During verification we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, tracing information in the responses to source documents, accounting ledgers, and financial statements, and collecting additional information that we deemed necessary for making our final determination.

Suspension of Liquidation

In accordance with our preliminary affirmative countervailing duty determination published on February 5, 1987, we directed the U.S. Customs Service to suspend liquidation on the products under investigation and to require that a cash deposit or bond be posted equal to the estimated net subsidy. The countervailing duty final determination was extended to coincide with the final antidumping duty determination on the same product from Belgium, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act). Under Article 5, paragraph 3 of the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (the "Subsidies Code"), provisional measures cannot be imposed for more than 120 days. Thus, we cannot impose a suspension of liquidation on the subject merchandise for more than 120 days without a final determination of subsidization and injury. Therefore, on June 3, 1987, we instructed the U.S. Customs Service to discontinue the suspension of liquidation on the subject merchandise entered on or after June 5, 1987.

In accordance with section 705(c)(2) of the Act, we are directing the U.S. Customs Service to refund all cash deposits and release all appropriate bonds for entries of the subject merchandise made after the publication of our preliminary affirmative determination on February 5, 1987, and before the termination of suspension of liquidation on June 5, 1987.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. Since this determination is negative, the investigation will be terminated upon the publication of this notice in the **Federal Register**. Hence, the ITC is not required to make a final injury determination.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

June 29, 1987.

[FR Doc. 87-15364 Filed 7-6-87; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-605]

Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid From Israel

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: We determine that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to manufacturers, producers, or exporters in Israel of industrial phosphoric acid (IPA). The estimated net subsidies and duty deposit rates are indicated in the "Suspension of Liquidation" section of this notice. In addition, we determine that critical circumstances do not exist in this case.

We have notified the U.S. International Trade Commission (ITC) of our determinations. If the ITC determines that imports of IPA materially injure, or threaten material injury to, a U.S. industry, we will direct the U.S. Customs Service to resume suspension of liquidation of all entries of IPA from Israel that are entered or withdrawn from warehouse, for consumption, on or after the date of publication of our countervailing duty order and to require a cash deposit on entries of the subject merchandise in an amount equal to the appropriate estimated net subsidy as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: July 7, 1987.

FOR FURTHER INFORMATION CONTACT: David Levine or Gary Taverman, Office of Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: 202/377-1673 (Levine), 202/377-0160 (Taverman).

SUPPLEMENTARY INFORMATION:

Final Determination

Based upon our investigation, we determine that benefits which constitute subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act), are being provided to manufacturers, producers, or exporters in Israel of IPA. For purposes of this investigation, the following programs are found to confer subsidies:

- Encouragement of Capital Investments Law Grants
- Long-Term Industrial Development Loans
- Bank of Israel Export Production Fund Loans
- Bank of Israel Export Shipment Fund Loans
- Bank of Israel Import-for-Export Fund Loans
- Exchange Rate Risk Insurance Scheme
- Encouragement of Research and Development Law Grants

Case History

Since the last **Federal Register** publication pertaining to this case [the notice of extension of the deadline date for this final determination (52 FR 5321, February 20, 1987)], the following events have occurred. We conducted verification in Israel from March 23 through April 3 and from May 10 through May 22, 1987, of the questionnaire responses of the Government of Israel and Negev Phosphates Ltd (NPL).

Petitioners, NPL, and the Israeli government filed briefs on June 10 and rebuttal briefs on June 12, 1987, and waived their respective rights to a hearing in this case. On June 8, 1987, Haifa filed comments on our preliminary determination.

Scope of Investigation

The product covered by this investigation is industrial phosphoric acid (IPA), currently provided for in item

416.30 of the *Tariff Schedules of the United States.*

Analysis of Programs

Throughout this notice, we refer to certain general principles applied to the facts of the current investigation. These principles are described in the "Subsidies Appendix" attached to the notice of *Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order* (49 FR 18006, April 26, 1984).

For purposes of this final determination, the period for which we are measuring subsidization ("the review period") is April 1, 1985, through March 31, 1986. In their responses and at verification, the Government of Israel and NPL provided data, including financial statements, for the applicable period.

There are two known manufacturers, producers, or exporters in Israel of IPA, NPL and Haifa. Haifa did not respond to our questionnaire and we were not able to verify any information related to Haifa, except for Government of Israel export statistics. Therefore, under each countervailable program we calculated benefits to Haifa based on the best information available. As best information available, we used the higher of either the rate we calculated for NPL (the other company under investigation) or a rate found in a past Israeli case.

We have calculated a company-specific estimated net subsidy rate in this final determination for Haifa because its estimated net subsidy rate is significantly different than the weighted-average country-wide rate (the weighted-average of NPL's and Haifa's rates). Since Haifa and NPL are the only two known producers and exporters of IPA in Israel, and since we have calculated a company-specific rate for Haifa, the estimated net subsidy for NPL and all others equals NPL's estimated net subsidy rate.

Based upon our analysis of the petition, the responses to our questionnaire, verification, and written comments filed by petitioners and respondents, we determine the following:

I. Programs Determined To Confer Subsidies

We determine that subsidies are being provided to manufacturers, producers, or exporters in Israel of IPA under the following programs:

A. The Encouragement of Capital Investments Law (ECIL) Grants

The purpose of the ECIL is to attract capital to Israel. In order to be eligible to receive various benefits under the ECIL, including investment grants, drawback grants, and capital grants, accelerated depreciation, and reduced tax rates, the applicant must obtain approved enterprise status. We discuss ECIL tax programs below under the section entitled "Programs Determined Not to be Used."

Approved enterprise status is obtained after review of information submitted to the Israel Ministry of Industry and Trade, Investment Center Division. The amount of the grant benefits received by approved enterprises depends on the geographic location of the eligible enterprise. For purposes of the ECIL, Israel is divided into three zones—Development Zone A, Development Zone B, and the Central Zone—each with a different funding level.

We verified that, since 1978, only investment projects outside the Central Zone have been eligible to receive grants. The Central Zone comprises the geographic center of Israel including its largest and most developed population centers. Because the grants are limited to enterprises located in specific regions, we determine that they constitute subsidies within the meaning of the Act.

NPL, which is located in Development Zone A, received ECIL investment, drawback, and capital grants for several projects. We verified that NPL's production at its Oron and Zin plants, where all but two of the funded projects were located, was unrelated to its IPA production. For the other two projects, some of the grants applied entirely to NPL's IPA production facility and some were for another facility. We verified that only 5.3 percent of the sales value of this other facility's production was devoted to the production of IPA and have, therefore, included only 5.3 percent of those grant values in our calculation of the benefit.

To calculate the benefit, we allocated these grants over ten years (the average useful life of assets in the chemical manufacturing industry, as determined under the U.S. Internal Revenue Service's Asset Depreciation Range System). Usually, to allocate benefits over time we use as our discount rate the firm's weighted cost of capital, which is an average of the company's marginal costs of debt and equity for the year in which the terms of the grant were approved. In this instance, however, NPL has no significant fixed-rate long-term debt. Instead, virtually all of its long-term loans bear variable interest rates. Therefore, we have used the interest rate in effect during the review period for non-preferential Israeli-sourced loans taken out in the same years that the grants were given as the discount rate. We have used those variable interest rates charged on dollar-linked long-term industrial development loans in the Central Zone (see next section). Based on this allocation methodology, we computed the benefit for IPA during the review period and then divided this amount by the value of NPL's total IPA sales during the review period. The estimated net subsidy for NPL is 0.48 percent *ad valorem.* As best information available, we determine that the estimated net subsidy for Haifa is 1.18 percent *ad valorem* based on our *Final Affirmative Countervailing Duty Determination: Potassium Chloride from Israel (Potash)* (49 FR 36122, September 14, 1984).

B. Long-term Industrial Development Loans

Prior to July 1985, approved enterprises were eligible to receive long-term industrial development loans funded by the Government of Israel. We verified that these loans, like the ECIL grants, were project-specific. They were disbursed through the Industrial Development Bank of Israel (IDBI) and other industrial development banks which no longer exist.

We verified that the long-term industrial development loans are provided to a diverse number of industries, including agricultural, chemical, mining, machine, and others. However, the interest rates charged on these loans vary depending on the Development Zone location of the borrower. The interest rates on loans to borrowers in Development Zone A are lowest, while those on loans to borrowers in the Central Zone are highest. Therefore, loans to companies in Zones A and B are at preferential terms relative to loans received by companies in the heavily populated and developed Central Zone. Because preferential terms are limited to companies located in certain regions, we determine that these loans are regional subsidies, countervailable to the extent that the applicable interest rates are less than those on loans to companies in the Central Zone.

NPL had loans outstanding under this program during the review period for projects at five of its plants, four of which are unrelated to IPA production and one of which is a rock processing facility which produces an input for IPA. The loans provided for this plant carry

the Zone A interest rates because of NPL's location. Therefore, we determine that NPL received countervailable benefits under this program because the interest rates charged NPL are less than those which would apply in the Central Zone.

To calculate a benefit under our normal long-term loan methodology, we would calculate the present value of interest savings accuring over the life of the loan and allocate that amount using an appropriate discount rate. However, the loans under this program have variable interest rates linked to changes in the dollar-shekel exchange rate. Therefore, we cannot calculate the present value of the interest savings, nor is there a single discount rate for allocating the benefits over time. Because of this, we have compared the interest that would have been paid on the variable-rate benchmark loan (*i.e.*, a loan available to firms in the Central Zone) to the interest paid on the preferential loan during the review period. We divided the difference in these amounts by NPL's total sales of IPA during the review period, which resulted in an estimated net subsidy of 0.06 percent *ad valorem* for NPL.

In this case, we were able to verify at the government that the interest rate on loans to companies located in the Central Zone is not limited and we were able to verify at NPL complete information concerning these loans. Accordingly, we used verified information for calculating the benefit received by NPL. However, we have no verified information concerning Haifa's use of long-term development loans, *i.e.*, loan amounts, terms and conditions of the loans, and interest rates paid. Therefore, we cannot apply to Haifa the methodology used to calculate NPL's benefit. As such, we have relied on the rate found in our *Final Affirmative Countervailing Duty Determination: Oil Country Tubular Goods from Israel (OCTG)* (52 FR 1649, January 15, 1987) as best information available (BIA) for purposes of estimating the net subsidy received by Haifa. Applying the highest rate found in a prior investigation is a standard Departmental practice for purposes of establishing a BIA rate. Therefore, the estimated net subsidy for Haifa is 5.02 percent *ad valorem*.

C. Bank of Israel Export Loans

The Government of Israel provided preferential short-term financing in local and foreign currencies to exporters in Israel through three export credit funds administered by the Bank of Israel (BOI).

In cases in which program-wide changes have occurred prior to a preliminary determination and where the changes are verifiable, the Department's practice is to adjust the duty deposit rate to correspond to the eventual duty liability. We have verified that since July 1985 the loans under these funds are provided only in foreign currencies and are no longer at preferential terms. Accordingly, we have taken this change into account by not including the BOI export loan benefits in the duty deposit rate.

1. Export Production Fund (EPF). Under the EPF, three-month loans are provided to exporters to finance export production. The amount which a company is able to borrow under this program is limited by a quota set by the BOI. The quota is based on the value of the company's exports, the product's value-added percentage, and the production cycle of the company. During the review period, NPL received loans under this program denominated in NIS prior to July 1985, and in U.S. dollars after July 1985.

Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates. We used as our benchmark for the NIS-denominated loans the national average non-directed short-term NIS lending rate, as provided by the BOI, adjusted for inflation. Comparing this benchmark to the interest rates charged on these loans, we determine that the loans were provided at preferential rates prior to July 1985 and are, therefore, countervailable. Dollar loans are not otherwise available in Israel and we were not able to obtain a benchmark interest rate for these loans from independent sources. We therefore used the benchmark applied to dollar loans under the Export Shipment Fund (see next section) in *Potash* and *OCTG*, which is the London Interbank Offered Rate (LIBOR) plus two percent. Since NPL paid interest on the loans at our benchmark rate, we determine that the company received no countervailable benefits under the dollar-denominated EPF loans.

To calculate the benefit from EPF loans, we allocated the interest savings over total exports during the review period because NPL did not segregate loans provided for IPA from loans for other products. On this basis, we calculated an estimated net subsidy of 0.65 percent *ad valorem* for NPL. The estimated net subsidy for Haifa is 2.78 percent *ad valorem* based on *OCTG*.

2. *Export Shipment Fund (ESF).* Under the ESF, loans are provided to exporters to enable them to extend credit in foreign currency to their overseas customers. Financing is granted on a shipment-by-shipment basis. Funding is provided after shipment of the goods and must be repaid within six months. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

We verified that NPL received only dollar-denominated loans under the ESF at the interest rate of LIBOR plus two percent. Since NPL paid interest on the loans at our benchmark rate, we determine that the company received no countervailable benefits under the ESF. The estimated net subsidy for Haifa is 0.41 percent *ad valorem* based on *Potash*.

3. *Import-for-Export Fund (IEF).* Under the IEF, exporters receive three-month loans in order to finance imported materials used for export production. Because only exporters are eligible for these loans, we determine that they are countervailable to the extent that they are provided at preferential rates.

We verified that NPL received dollar-denominated loans under the IEF during the review period, before and after July 1985. Comparing the benchmark interest rate (LIBOR plus two percent) to the rates charged on these loans, we determine that the pre-July 1985 loans were provided at preferential rates and are, therefore, countervailable. To calculate the benefit from these loans, we allocated the interest savings over total exports during the review period since NPL did not segregate loans for IPA from loans for other products. We thereby calculated an estimated net subsidy of 0.01 percent *ad valorem* for NPL. The estimated net subsidy for Haifa is 1.16 percent *ad valorem* based on *OCTG*.

D. Exchange Rate Risk Insurance Scheme

The Exchange Rate Risk Insurance Scheme (EISA), operated by the Israel Foreign Trade Risk Insurance Corporation Ltd. (IFTRIC), is aimed at insuring exporters against losses which result when the rate of inflation exceeds the rate of devaluation and the NIS value of an exporter's foreign currency receivable does not rise enough to cover increases in local costs.

The EIS scheme is optional and open to any exporter willing to pay a premium to IFTRIC. Compensation is based on a comparison of the change in the rate of devaluation of the NIS against a basket of foreign currencies with the change in the consumer price index. If the rate of inflation is greater than the rate of devaluation, the exporter is compensated by an amount equal to the difference between these

two rates multiplied by the value-added of the exports. If the rate of devaluation is higher than the change in the domestic price index, however, the exporter must compensate IFTRIC. The premium is calculated for all participants as a percentage of the value-added sales value of exports. IFTRIC changes this percentage rate periodically; but at any given time, it is the same for all exporters.

In determining whether an export insurance program provides a countervailable benefits, we examine whether the premiums and other charges are adequate to cover the program's long-term operating costs and losses. In *OCTG* and *Final Affirmative Countervailing Duty Determination: Certain Fresh Cut Flowers from Israel* (*Flowers*) (52 FR 3316, Feburary 3, 1987), we found that this program conferred a countervailable benefit on manufacturers, producers, or exporters in Israel of oil country tubular goods and flowers. In both those cases and in this case, we reviewed EIS data which showed that EIS operated at a loss from 1981 through 1985. In fact, in the five years of operation, there was only one month in which premiums received were greater than compensation paid out. We believe that five years, in this case, is a sufficiently long period to establish that the premiums and other charges are manifestly inadequate to cover the long-term operating costs and losses of the program. Therefore, we determine that this program confers an export subsidy on exports of IPA from Israel.

In calculating the benefit, we have taken into account the special features of this program. Under a typical insurance scheme, the users pay premiums and then receive a payment if the event being insurred against occurs. Under the Exchange Rate Risk Insurance Scheme, on the other hand, the user can receive a payment (if the inflation rate exceeds the depreciation rate) or must make an additional payment (if the depreciation rate exceeds the inflation rate).

Since the program has been in place, payments received by users have exceeded the payments they have made to the scheme. Thus, users of the scheme have virtually no risk of incurring additional payment costs, and the "premiums" serve only as a fee to obtain payment from the scheme. Therefore, we have calculated the benefit by allocating the amount of compensation NPL received from IFTRIC expressly for IPA exported to the United States, after deducting premiums paid, over the value of the company's exports of IPA to the United States during the review period. We thereby found an estimated net subsidy of 4.78 percent *ad valorem* for NPL. The estimated net subsidy for Haifa is 8.87 percent *ad valorem* based on *Flowers*.

E. Encouragement of Research and Development Law (ERDL) Grants

Petitioners alleged that manufacturers, producers, or exporters in Israel of IPA may benefit from research and development grants under this program. We verified that NPL directly received a grant under this program, which was unrelated to its production of IPA. Petitioners also alleged that NPL may have indirectly received benefits under this program for its IPA production through grants provided to its parent company, Israel Chemicals Ltd (ICL). Although we were unable to verify such grants to ICL, its 1985 Annual Report indicates that such grants were received. Since we have verified that the results of research funded by ERDL grants are not made publicly available, we determine these grants to be countervailable.

According to our grant methodology, we would normally gather information on such grants for the last ten years, which is the average useful life of assets in the chemical industry. However, because financial data were unavailable for years other than 1985, we used, as best information available, the total value of grants listed in ICL's 1985 Annual Report, provided in the petition, as representing the amount disbursed during the review period. We expensed this full amount to 1985 and divided by ICL's total consolidated sales, as reported in the Annual Report, to derive an estimated net subsidy for NPL and Haifa of 0.04 percent *ad valorem*.

II. Programs Determined Not To Confer Subsidies

We determine that subsidies are not being provided to manufacturers, producers, or exporters in Israel of IPA under the following programs:

A. Government of Israel Land Leases

Petitioners alleged that NPL receives preferential land leases on its IPA plant property from the Government of Israel. We verified that the Government of Israel appraises land values throughout Israel and neutrally applies terms on its land leases. We saw, for example, that the government appraised NPL's IPA plant property relative to the value of a neighboring company's property. Land lease rates are determined as a percentage of the appraised land value, and lease payments for all lessees in Israel are annually linked to the Israeli consumer price index to account for inflation. We verified that NPL and other companies paid land lease rates in accordance with this established practice. We therefore determine that the Israeli government does not provide preferential benefits under this program.

B. The Encouragement of Industry Law (EIL) Accelerated Depreciation and Further Tax Reductions

Petitioners alleged that manufacturers, producers, or exporters in Israel of IPA may receive accelerated depreciation and further tax reductions under the EIL.

We verified that benefits under the EIL are limited neither regionally nor to specific enterprises or industries, or groups of enterprises or industries. We also verified that, in fact, EIL tax benefits have been used by a wide variety of industries, including the machine, agriculture, construction, chemical, and hotel industries. Therefore, we determine that the EIL provides no countervailable benefits to manufacturers, producers, or exporters in Israel of IPA.

C. Provision of Rail Facilities by the Government of Israel

During our verification, we found that NPL ships its products over rail lines built by the Government of Israel. We verified that a few chemical companies comprise the main users of rail lines in the desert region of Israel, and that the government built these lines primarily for use by these companies. The government determined the feasibility of constructing the lines based on cost/profit analyses for itself and for the companies. The government made a profit on its cargo lines during the review period.

We held in our *Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Carbon Steel Wire Rod From Saudi Arabia* (51 FR 4206, 4210, February 3, 1986) that the provision of basic infrastructure does not confer a countervailable (subsidy) when the following three conditions are met:

(1) The government does not limit who can move into the area where the infrastructure has been built;

(2) The infrastructure that has been built is in fact used by more than a specific enterprise or industry, or group of enterprises or industries; and

(3) Those that locate there have equal access or receive the benefits of the infrastructure on the basis of neutral criteria.

Since we found that a limited number of chemical companies comprise almost all

users of the rail lines in the desert region, part (2) of our test is not met.

Given that the rail lines in the desert region appear to have been built for the almost exclusive use of a few chemical companies, we looked to see if the rates charged by the Government of Israel on these lines are preferential to rates charged by the government on lines which are not limited to a specific enterprise or industry, or group of enterprises or industries. The rail lines in northern Israel carry a variety of products, including many agricultural products. The Department has previously determined that agriculture constitutes more than a specific group of industries. Therefore, it is appropriate to compare the rates charged on the desert lines to the rates charged on the northern lines. We verified that NPL has paid higher rates than those charged other companies in other regions. On this basis, we have determined that NPL does not pay preferential rail rates in Israel.

Because NPL's rail rates are not preferential, we determine that the provision of rail facilities in the desert region does not confer a subsidy to manufacturers, producers, or exporters of IPA in Israel.

III. Programs Determined Not To Be Used

We determine that manufacturers, producers, or exporters of IPA in Israel did not use the following programs during the review period:

A. Foreign Investment Company Benefits

Petitioners alleged that under Amendment 15 to the ECIL a "Foreign Investment Company" is entitled to certain grants. NPL did not qualify for any benefits under this law.

B. Export Promotion Fund Benefits

Petitioners alleged that exporters in Israel may receive benefits under this program. We verified that NPL received foreign currency loans under this program only for its Paris office, but that it received no other benefits.

C. Preferential Accelerated Depreciation and Reduced Tax Rates Under the ECIL

Under section 42 of the ECIL, a company which has obtained approved enterprise status can choose to depreciate machinery and equipment at double the normal rate and buildings at four times the normal rate. We verified that NPL depreciated one of its buildings at the reate sanctioned by this ECIL section, but that this building was not related to its IPA production or sales. We also verified that NPL reported a tax loss, and therefore paid no taxes, on its IPA production facility during the review period. Therefore, the preferential tax rate allowed under section 47 of the ECIL did not apply to its IPA sales.

IV. Program Determined To Be Terminated

We determine that the following program has been terminated.

A. Property Tax Exemptions on Buildings and Equipment

Petitioners alleged that manufacturers, producers, or exporters in Israel of IPA may benefit from tax incentives that allow eligible enterprises a five-year exemption from payment of two-thirds of property taxes on buildings and a ten-year exemption for payment of one-sixth of property taxes on equipment. We verified that the exemptions were repealed by Amendment No. 17, ECIL, 5738–1979. Also, property taxes on industrial buildings and equipment were repealed for all taxpayers in Israel on April 1, 1981. Property tax exemptions referred to in section 53 of the ECIL are taxes on apartment buildings in residential areas.

Negative Determination of Critical Circumstances

Petitioners alleged that critical circumstances exist within the meaning of section 703(e)(1) of the Act with respect to imports of IPA from Israel. In determining whether critical circumstances exist, we must examine whether there is a reasonable basis to believe or suspect that: (1) The alleged subsidy is inconsistent with the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade ("the Subsidies Code"), and (2) there have been massive imports of the subject merchandise over a relatively short period.

In determining whether imports have been massive over a relatively short period of time, we have considered the following factors: (1) The volume and vale of the imports; (2) seasonal trends; and (3) the share of domestic consumption accounted for by the imports. A review of this information indicates that imports from Israel have not been massive over a relatively short period of time.

Since we have not found massive imports over a relatively short period of time, we do not need to consider whether the alleged subsidies are inconsistent with the Agreement. Therefore, we determine that critical circumstances do not exist.

Petitioners' Comments

Comment 1: Petitioners argue that the Department should follow its preliminary determination in finding countervailable and allocating the full amount of the grants made to the Arad rock processing facility over NPL's total sales. The Department should not use the allocation method proposed by respondents which is based on cost and value and relies in large part on intracompany sales. If only a portion of benefits to the Arad rock processing plant, however, are found countervailable, the allocation should be limited to sales from the Arad plant alone.

DOC Position: We verified that, in fact, NPL uses only a small portion of the rock processing facility's production in making IPA. We also verified, through NPL's cost and sales records, the relative values of the facility's production which is sold, used captively in the production of enriched phosphate, and used in the production of IPA. Therefore, we believe the benefits from grants provided expressly for the rock processing facility should be allocated proportionally to the products yielded by that facility.

Comment 2: Petitioners claim that an additional investment grant which the Department discovered during verification should be included in the calculation of the net subsidy amount.

DOC Position: We have included this grant for the Arad rock processing facility in our grant benefit calculation.

Comment 3: Petitioners assert that the Department should include in its final determination of net subsidies certain ECIL grants received by respondent in 1986 which are directly related to IPA production, but which were not included in the Department's preliminary finding.

DOC Position Because NPL received these grants after the review period, we have not included them in our grant benefit calculation. Any benefits from these grants would be covered in an administrative review conducted by the Department under section 751 of the Act, if one is requested.

Comment 4: Petitioners contend that certain subsidies made available to the Ashdod plant should be included in the subsidy calculation since the facilities at the Ashdod plant are involved with IPA.

DOC Position: We verified that there is no Ashdod plant. NPL has shipping and storage facilities at the Ashdod port. However, the port facilities for which NPL received Government of Israel assistance relate only to its shipment of rock phosphate. NPL's IPA port facilities

are wholly separate and did not benefit from any government assistance.

Comment 5: Petitioners claim that, with regard to the Export Shipment Fund (ESP), the Export Production Fund (EPF), and the Import-for-Export Fund (IEF), the lack of availability of dollar loans, except through government export programs, demonstrates their subsidy nature and their inconsistency with commercial considerations. Petitioners urge the Department to reconsider the use of LIBOR plus two percent as the benchmark rate.

DOC Position: We disagree. The mere absence of Israeli-sourced short-term dollar financing outside the BOI loan program does not, *per se*, make them subsidies. The limitation on foreign currency financing in Israel is a legitimate means by which the Government of Israel has chosen to control its foreign currency reserves. We also verified that, with BOI permission, companies in Israel, including NPL, may negotiate short-term (and long-term) foreign currency financing from foreign sources. For example, companies may receive suppliers' credits from foreign sources or other types of financing from foreign banks. We found that the interest rates on such foreign-sourced short-term financing varied, but did not exceed the rate of LIBOR plus two percent during the review period.

Comment 6: Petitioners argue that the lack of private long-term credit facilities and the corresponding need for government intervention in the marketplace to make such credit available should be conclusive proof of the subsidy nature of the long-term industrial development loans received by NPL. Moreover, the law by its own terms bestows a prohibited regional subsidy since the subsidized interest rate on the loans varies according to the ECIL "development zone" in which the recipient is located, with NPL located in the development zone receiving the lowest available rates.

DOC Position: We have determined that these loans are countervailable to the extent that the interest rates charged are lower than those charged companies located in the Central Zone. We disagree with petitioners' assertion that they are countervailable merely because long-term financing was otherwise not available from Israeli sources.

Comment 7: Petitioners believe that the benchmark for the long-term development loans should account for inflation and a reasonable profit margin and should be higher than the benchmark for short-term lending, reflecting the relatively greater return generally required by commercial lenders on long-term transactions. Since NPL's only non-governmental long-term borrowing was from its own parent company, the appropriate "adequate comparable commercial experience" on which a company-specific rate might be based does not exist in this case. The proper benchmark rate in this case, therefore, must be based on best information available, including those few long-term commercial loans to comparable companies examined at verification which were at rates considerably higher than the short-term rates used as a benchmark in the preliminary determination.

DOC Position: We agree that short-term rates are not appropriate. However, the few long-term loans outside the developmnet loan program which we saw at verification primarily came from foreign sources and many originated in foreign currencies. We therefore believe that the rates on these loans are less appropriate for measuring the benefit from this program than the generally available rates under the program itself, *i.e.*, those charged in the Central Zone, where no preference applies.

Comment 8: Petitioners assert that overall production, including IPA production, benefits either directly or indirectly from ECIL tax provisions. Although these tax benefits apparently have been provided to a wide variety of industries within Israel, "approval" for purposes of receiving the benfits depends on location within ECIL development zones. Thus, the benefits bestow a countervailable regional subsidy and should be included in the calculation of the net subsidy amount. Moreover, the department in a prior proceeding found that one of the economic criteria on which approval is based is export performance, thus raising the likelihood that ECIL benefits constitute a prohibited export subsidy as well.

DOC Position: We verified that ECIL tax benefits apply to specific approved projects. We also verified that NPL received no ECIL tax benefits pertaining to its production, sale, or exports of IPA. We therefore have determined that NPL received no countervailable ECIL tax benefits on IPA.

Comment 9: Petitioners argue that NPL and Haifa are the only Israeli producers who could benefit from the research and development (R&D) grants since they are the sole producers of IPA in Israel and economic barriers to entry into the industry are insurmountably high. There is no indication that Haifa has shared, or would be permitted to share, in the results of these research projects. The ERDL grants provided to NPL clearly benefit the production of IPA and should be included in the final amount of countervailable net subsidies. In addition, the official government records should be considered authoritative with respect to the second grant given to NPL and the full amount of this grant should be included in the net subsidy amount.

DOC Position: At verification we found discrepancies between government and NPL records of R&D grants provided to NPL. Because of many internal inconsistencies in the government records and virtually no internal inconsistencies in NPL's company records, we determined that NPL's records should be controlling. The R&D grant documented in NPL's records was unrelated to IPA production, so we did not include it in our subsidy calculation.

However, we did include in our benefit calculation of R&D grants the best information available regarding provisions to ICL because we were unable to verify such grant values and their ultimate beneficiary. We agree that the results of such R&D in Israel are not made publicly available. As best information available, we assumed that Haifa received the same benefits under this program as NPL.

Comment 10: Petitioners claim that the Government of Israel land leases constitute countervailable subsidies since both the amount of initial payments and the date of commencement of the obligation to pay rent vary according to location in a development zone. The lease does not appear to have been adjusted to take into account the real increase in land values in Israel. Petitioners urge the Department to compare the actual amount of rent paid by NPL to appropriate benchmark rates and include the amount of any preference in its final determination of net subsidies.

DOC Position: We verified that the Israeli government appraises land in commercial terms and bases initial rent on appraised land value. We also verified that the increase in the annual rents is linked to the CPI and that actual rent paid by NPL was consistent with this practice. We therefore determined that this program is not countervailable.

Comment 11: Petitioners contend that NPL's parent company, ICL, has received substantial investment grants and long-term loans from the Israeli government and it is likely that some of these benefits have flowed downward to NPL in the form of loans on preferential or non-commercial terms. The amount of any benefits conferred should be included in the final amount of countervailable subsidies. With respect to any benefits that the Department was

not permitted to investigate fully, the Department should use the annual reports of NPL and ICL as "best information available" for purposes of determining an appropriate subsidy amount.

DOC Position: At verification we saw in NPL's general ledger and accounting records that it maintains an "account" with ICL through which it receives and repays loans. We found that long-term loans provided to NPL by ICL were on commercial terms and that NPL repaid them in accordance with those terms.

The only government grants to ICL which we were not permitted to investigate fully were R&D grants and we have used the best information available concerning these grants to determine benefits which may have accrued to NPL. We verified that ECIL grants could not have been given to ICL.

Comment 12: Petitioners submit that government assistance in the construction and maintenance of the rail lines fails to satisfy the Department's three part infrastructure test and thus constitutes a countervailable subsidy. The Department should allocate an appropriate portion of the benefits over NPL's total production of IPA and include that amount in its final determination of net subsidies.

DOC Position: We disagree. See the section of this notice entitled "Analysis of Programs" for our full discussion of this issue.

Respondents' Comments

Comment 1: Respondents contend that essentially any company, located anywhere in Israel, can apply for an ECIL grant, and any company that can withstand an objective economic feasibility analysis concerning its project will become an approved enterprise. ECIL approval is generally available in Israel and has not been conferred selectively on a specific enterprise or industry, or group of enterprises or industries.

DOC Position: We verified that the benefits which accure under the ECIL grants vary regionally. Therefore, we have determined that, to the extent the benefits received by a company exceed those in the Central Zone, such benefits are countervailable subsidies.

Comment 2: Respondents claim that all approved enterprises, regardless of location in Israel, are entitled to the same tax benefits. Because of their wide availability and usage on the same terms throughout the country, ECIL tax benefits are generally available and do not confer countervailable subsidies. The amount and type of benefits do not vary among development zones.

DOC Position: We have determined that NPL received no ECIL tax benefits pertaining to its sale or production of IPA.

Comment 3: Respondents contend that the preliminary calculation of grants allocable to IPA should be adjusted to conform with the numbers verified by the Department and that, with respect to the Arad rock processing grants, the Department should allocate only that portion of grants applicable to rock that is incorporated into IPA over NPL's total sales of IPA since they claim that it was shown at verification that only a "minimal" percentage of the Arad rock processing grants benefits IPA. The additional amount "discovered" at verification is nothing more than a computer error and should not be included in the subsidy calculation.

DOC Position: We have allocated the grant benefits proportionally to the production yield of the rock processing facility. However, since we were unable to verify NPL's receipt of one relatively small grant, we have included it in our grant benefit calculation. See our responses to Petitioners' Comments 1 and 2.

Comment 4: Respondents argue that none of the grants received for Machtesh should be allocated to IPA sales since any benefit to NPL associated with operations at Machtesh expired when the plant closed and the assets purchased by the grants ceased to operate or be productive. If the Department should calculate a small benefit from these grants, the deposit rate should be zero since the last Machtesh grant was paid in August 1977, almost a full ten years from the date of the final determination.

DOC Position: Since a portion of the production left over from when the Machtesh plant was in operation was used in NPL's IPA production, we have apportioned the 1977 grant value similarly to our apportionment of Arad rock processing facility grants.

Comment 5: Respondents claim that the Department has examined all grants received by NPL since 1975. At verification it was shown that grants are tied to specific assets and that the company does not receive the grant money unless it can prove that it has already spent the money to purchase the designated assets. It was also shown that the facilities at Oron and Zin are not involved in IPA production, sales, or export. The Ashdod facility which received grants was related to rock phosphate and not to IPA production.

DOC Position: We agree. See the section of this notice entitled "Analysis of Programs."

Comment 6: Respondents claim that development loans given by the six industrial development banks, at their own risk, were widely distributed throughout Israel and were available to all sectors of Israeli industry. Basically, the same companies that obtained ECIL approval also received development loans.

DOC Position: We agree that these loans are available to many sectors within Israel. However, we have determined that the interest rates these loans bear very regionally and, thus, the loans are countervailable to the extent interest is less than that which would be due in the Central Zone.

Comment 7: Respondents point out that at verification NPL demonstrated that it was able to borrow long-term through its parent company, ICL, at an interest rate lower than the indexed development loan rate. Respondents argue that if a long-term rate is used as a benchmark, it is this company-specific rate that should be compared to the development loan rate.

DOC Position: We disagree. We believe the generally available rate for the long-term development loans in the Central Zone is a more appropriate benchmark because those loans are provided by the same sources within Israel, for the same durations, and for similar purposes as the development loans received by NPL. Moreover, this benchmark enables us to measure the exact benefit resulting from the preference which we have found to exist. See the section of this notice entitled "Analysis of Programs" for our discussion of this issue.

Comment 8: Respondents submit that ECIL grants and development loans were given for specific projects and only grants and loans at the Arad rock processing plant can be said to have benefited IPA production in any way. Loans and grants for Ashdod, Oron, and Machtesh are not related to IPA production and should not be included in any net subsidy calculation.

DOC Position: We have not included loans and grants not related to the production of IPA in our benefit calculations. See the section of this notice entitled "Analysis of Programs."

Comment 9: Respondents claim that ICL is not eligible for investment grants; only subsidiary manufacturing companies, such as NPL, are entitled to receive grants for investment projects. Since money is not given until after the specific investment is proven to have been made, it would be impossible for another ICL subsidiary, for example, to receive investment grant money and

divert it to NPL through the parent company, ICL.

DOC Position: We agree. See our response to Petitioners' Comment 11.

Comment 10: Respondents argue that any money received by NPL from its parent was raised through public offerings in Israel and no government money was used. Respondents submit that loans from ICL to NPL were at commercial rates and can be used as a benchmark comparison for development loans taken by the company.

DOC Position: We believe that because the long-term development loans are countervailable due to the regional variance in rates, the most appropriate benchmark rate is the one which applies in the Central Zone. See our responses to Petitioners' Comment 7 and Respondents' Comment 7.

Comment 11: Respondents content that it is premature to judge the Exchange Rate Risk Insurance Scheme operated by IFTRIC as a long-term loss. Becuase of unexpected and unprecedented inflation in Israel, IFTRIC was not able to forecast changes in inflation and currencies; now that inflation in Israel has been brought more under control, the EIS program will self-balance. Respondents thus urge the Department to give this program a bit more time before finding it a subsidy.

DOC Position: We verified that IFTRIC has operated this program at a loss since its inception over five years ago and that it is continuing to do so. We therefore believe sufficient time has elapsed for us to determine that this program confers a countervailable export subsidy.

Comment 12: Respondents claim that the ERDL grants are generally available and that they are, in fact, not grants since the recipient must pay royalties to the Chief Scientist's office equal to two percent of sales if the R&D is successful. If the Department should find these to be a subsidy, they cannot be attributed to IPA production.

DOC Position: We verified that one grant which went directly to NPL was unrelated to IPA. We also found that, according to its own records, NPL never paid any royalties related to this grant. We also found that any results of R&D funded under the ERDL are not made publicly available. Therefore, we have determined that those grants going to ICL, which we were unable to verify, conferred countervailable benefits which may have accrued to NPL.

Comment 13: Respondents assert the following with regard to the provision of rail facilities: (1) Previous to its construction, a feasibility study showed that the line was economically viable; (2) cargo lines in Israel were (and are) profitable and self-supporting; (3) NPL pays a commercial rate for rail services which is, in fact, higher than the rate charged other users of the lines; (4) the charge per unit to NPL for rail services is higher than the cost per unit of the lines; (5) there are no restrictions on access to the various lines and, in fact, the lines are used by several companies, not just NPL; and (6) the lines were built neither for nor at the request of NPL. Based on the foregoing, respondents argue that the railways servicing NPL cannot be considerd to provide a subsidy to that company.

DOC Position: We have not found rail lines to be countervailable. See the section of this notice entitled "Analysis of Programs" for our full discussion of this issue.

Comments by Haifa

Comment 1: Haifa contends that it should not have been required to respond to the Department's questionnaire, and that Haifa's refusal to respond in no way impeded this investigation.

DOC Position: We disagree. In our questionnaire, we requested that *all* manufacturers, producers, and exporters respond. Particularly when there are relatively few potential respondents in an investigation, and when it would be administratively feasible, we believe that full coverage of producers and exporters under investigation yields the most accurate case results. In the instant case, because Haifa chose not to respond or participate in any way throughout the investigation, we calculated an estimated net subsidy for Haifa based on the best information available.

Comment 2: Haifa argues that the best information applicable to Haifa should be the information we verified for NPL and that the rate assigned to Haifa should be the rate established for NPL.

DOC Position: We disagree that the best information applicable to Haifa is the information we verified for NPL. We have no way of determining the exact benefits received by Haifa under the countervailable programs. Therefore, in accordance with established Department practice, we adversely assumed that, under each program Haifa received the higher of either the benefits received by NPL or those found in any other Israeli case.

Section 607 of the Trade and Tariff Act of 1984 provides that a countervailing duty order—

> Shall presumptively apply to all merchandise of such class or kind exported from the country investigated, except that if—
>
> (A) the administering authority determines there is a significant differential between companies receiving subsidy benefits, or
>
> (B) a State-owned enterprise is involved,

The order may provide for differing countervailing duties. Section 355.20(d) of our proposed regulations, which states our current practice for determining the existence of a significant differential, provides in pertinent part that:

> (3) A significant differential is a difference of the greater of at least 10 percentage points, or 25 percent, from the weighted-average net subsidy calculated on a country-wide basis.

Since the estimated net subsidy rate we have found for Haifa differs significantly from the weighted-average country-wide rate, we have determined that a separate rate should be applied to Haifa.

Verification

In accordance with section 776(a) of the Act, except where noted in this determination, we verified the information used in making our final determination. During verification we followed standard verification procedures, including meeting with government and company officials, inspecting documents and ledgers, tracing information in the response to source documents, accounting ledgers, and financial statements, and collecting additional information that we deemed necessary for making our final determination.

Suspension of Liquidation

In accordance with our preliminary countervailing duty determination, published on February 5, 1987, we directed the U.S. Customs Service to suspend liquidation on the product under investigation and to require a cash deposit or bond equal to the estimated net subsidy. This final countervailing duty determination was extended to coincide with the companion final antidumping determination, pursuant to section 606 of the Trade and Tariff Act of 1984 (section 705(a)(1) of the Act). However, we cannot impose a suspension of liquidation on the subject merchandise for more than 120 days without the issuance of final affirmative determinations of subsidization and injury. Therefore, on June 3, 1987, we instructed the U.S. Customs Service to terminate the suspension of liquidation on the subject merchandise entered on or after June 5, 1987, but to continue the suspension of liquidation of all entries or withdrawals from warehouse, for consumption, of the subject merchandise entered between February 5, 1987, and

June 4, 1987. We will reinstate suspension of liquidation under section 703(d) of the Act, if the ITC issues a final affirmative injury determination, and require cash deposits on all entries of the subject merchandise in the amounts indicated below:

Manufacturer/producer/exporter	Estimated net subsidy (percent)	Duty deposit rate (percent)
Haifa Chemicals Ltd	19.46	15.11
All others	6.02	5.36

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order, without the written consent of the Deputy Assistant Secretary for Import Administration.

If the ITC determines that material injury, or the threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or cancelled. If, however, the ITC determines that such injury does exist, we will issue a countevailing duty order, directing Customs officers to assess countervailing duties on all entries of IPA from Israel entered, or withdrawn from warehouse, for consumption, as descried in the "Suspension of Liquidation" section of this notice.

This determination is published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Paul Freedenberg,

Assistant Secretary for Trade Administration.

June 29, 1987.

[FR Doc. 87-15368 Filed 7-6-87; 8:45 am]

BILLING CODE 3510-DS-M

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as denied in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.53a or 355.10 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than July 31, 1987, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in July, for the following periods:

Antidumping Duty Proceeding and Period

Salted Codfish from Canada, 07/01/86-06/30/87

Synthetic Methionine from Japan, 07/01/86-06/30/87

Certain In-shell Pistachios from Iran, 12/11/85-06/30/87

Fabric Expanded Neoprene Laminate from Japan 07/01/86-06/30/87

High Power Microwave Amplifiers and Components Thereof from Japan 07/01/86-06/30/87

Pig Iron from Canada 07/01/86-06/30/87

Countervailing Duty Proceeding and Period

Leather Wearing Apparel from Uruguay 01/01/86-12/31/86

Fasteners from India 01/01/86-12/31/86

Sugar from the European Communities 01/01/86-12/31/86

Seven copies of the request should be submitted to the Deputy Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by July 31, 1987.

If the Department does not receive by July 31, 1987 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit for (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: June 29, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-15367 Filed 7-6-87; 8:45 am]

BILLING CODE 3510-DS-M

The MCTL Implementation Technical Advisory Committee; Partially Closed Meeting

A meeting of the MCTL Implementation Technical Advisory Committee will be held July 23, 1987, 9:30 a.m., Herbert C. Hoover Building, Room B-841, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises and assists the Office of Technology and Policy Analysis in the implementation of the Militarily Critical Technologies List (MCTL) into the Export Administration Regulations and provide for continuing review to update the Regulations as needed.

Agenda: Open Session

1. Opening remarks by the Chairman
2. Introduction of Public Attendees
3. Introduction of Invited Guests
4. Presentation of Papers or Comments by the Public
5. Discussion of Recent and Pending Changes Regarding Export Control in Comparison to the MCTL Technical Advisory Committee Recommendations
6. Follow Up on the Technical Data Task Group Assignment—Definitions and Approach for Technical Data

Executive Session:

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel,

formally determined on December 30, 1986, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government In The Sunshine Act, Pub. L. 94–409, that the matters to be discussed in the Executive Session should be exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and are properly classified under Executive Order 12356.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Telephone: (202) 377–4217. For further information or copies of the minutes contact Ruth D. Fitts, 202–377–2583.

Dated: July 1, 1987.

Margaret A. Cornejo,

Director, Technical Support Staff, Office of Technology and Policy Anaylsis.

[FR Doc. 87–15339 Filed 7–6–87; 8:45 am]

BILLING CODE 3510–DT–M

National Oceanic and Atmospheric Administration

[P77 #29]

Marine Mammals; Application for Permit: Southwest Fisheries Center, National Marine Fisheries Service

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 29018.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals:

California sea lions (*Zalophus californianus*)—5000
Harbor seals (*Phoca vitulina*)—300

4. Type of Take: Harassment.

5. Location of Activity: San Nicolas Island, California.

6. Period of Activity: 1 year.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by intersted persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Rm. 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dated: June 30, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–15332 Filed 7–6–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Deduction in Import Charges for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufacturer in Taiwan

June 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on July 8, 1987. For further information contact Pamela Smith, International Trade Specialist (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–8791. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

A CITA directive dated December 21, 1984 (49 FR 50233) established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 338/339, 342, 347/348, 444, 604, 612, 636, 637, 639, 640, 641, 644, 659–H and 670–F, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1985 and extended through December 31, 1985. A further directive dated January 22, 1985 (50 FR 3585) established import restraint limits for Categories 605–T and 659–I, among others, produced or manufactured in Taiwan and exported during the same twelve-month period.

A CITA directive dated December 23, 1985 (50 FR 52988) established import restraint limits for certain cotton, wool and man-made fiber products, including Categories 338/339, 342, 347/348, 444, 604, 605–T, 612, 636, 637, 639, 640, 641, 644, 659–H, 659–I, and 670–F, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 1986 and extended through December 31, 1986.

During consultations held April 20–21, 1987 between the American Institute in Taiwan (AIT) and the Coordination Council for North American Affairs (CCNAA) under the terms of the bilateral agreement of November 18, 1982, as amended and extended, agreement was reached to deduct part of the 1985 overshipment charges made to the 1986 restraint limits established for Categories 338/338, 342, 347/348, 444, 604, 605–T, 612, 636, 637, 639, 640, 641, 644, 659–H, 659–I and 670–F. These deductions were made on the basis of a data reconciliation conducted by AIT and CCNAA.

Accordingly, in the letter published below, the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to deduct charges made to the 1986 restraint limits established for the foregoing categories as designated.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15174), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 20768) and in Statistical Headnote 5, Schedule 3 of the

TARIFF SCHEDULES OF THE UNITED STATES ANNOTATED (1987).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

June 30, 1987.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: To facilitate implementation of the agreement of November 18, 1982, as amended, concerning cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products from Taiwan, I request that, effective on July 8, 1987, you deduct the following amounts from the charges made to the 1986 restraint limits established in the directive of December 23, 1985 for the following categories. These goods were produced or manufactured in Taiwan and exported during the agreement year which began on January 1, 1985 and extended through December 31, 1985 and charged to the 1986 limits.

Category	Amount to be deducted
338	1,421 dozen.
342	1,660 dozen.
347	141 dozen.
348	5,956 dozen.
444	404 dozen.
604	12,975 pounds.
605-T [1]	39,460 pounds.
612	88,044 square yards.
636	4,160 dozen.
637	2,885 dozen.
639	110,815 dozen.
640	49,882 dozen.
641	4,700 dozen.
644	430 dozen.
659-H [2]	218,230 pounds.
659-I [3]	1,293,023 pounds.
670-F [4]	181,170 pounds.

[1] In Category 605, only TSUSA number 310.9500.
[2] In Category 659, only TSUSA numbers 703.0510, 703.0520, 703.0530, 703.0540, 703.0550, 703.0560, 703.1000, 703.1610, 703.1620, 703.1630, 703.1640 and 703.1650.
[3] In Category 659, only TSUSA numbers 384.2105, 384.2115, 384.2120, 384.2125, 384.2646, 384.2647, 384.2648, 384.2649, 384.2652, 384.8651, 384.8652, 384.8653, 384.8654, 384.9356, 384.9357, 384.9358, 384.9359 and 384.9365.
[4] In Category 670, only TSUSA numbers 706.3900 and 706.3425.

This letter will be published in the **Federal Register.**

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-15338 Filed 7-6-87; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade; Proposed Amendments Relating to the 90-Day U.S. Treasury Bill Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") has proposed major rule amendments for the 90-day U.S. Treasury bill futures contract. The numerous amendments being proposed include provisions which would allow the long, in addition to the short, to initiate the delivery process and which would decrease the number of delivery days.

In accordance with section 5a(12) of the Commodity Exchange Act ("Act") and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

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

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the CBT 90-day Treasury bill futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 (202) 254-7227.

SUPPLEMENTARY INFORMATION: The CBT has proposed rule amendments for the 90-day Treasury bill futures contract which include the following:[1]

(1) Allow the long, in addition to the short, to initiate the delivery process;

(2) Change the delivery day to any Thursday in the delivery month instead of any Thursday and the following business day in the delivery month;

(3) Change the notice day for deliveries initiated by short clearing members to the second business day preceding delivery day, rather than the business day preceding delivery day, and establish the same notice day for intentions to accept delivery which have been initiated by long clearing members;

(4) Change the last trading day to the second business day prior to the last Thursday of the contract month instead of the first business day prior to the last Thursday of the contract month;

(5) Adjust the invoice price, if there is a one-day delay in delivery because of a failure related to the Federal Reserve wire system, to reflect the shorter maturity instead of requiring that interest be accrued to the long by the short beginning on the day on which the Treasury bills were to be originally delivered;

(6) Calculate the settlement price on the second to the last day of trading prior to delivery instead of on the last day of trading prior to delivery;

(7) Change the name of the contract and specify throughout the contract rules that a 91-day Treasury bill will be delivered instead of a 90-day Treasury bill; and

(8) Remove daily maximum price fluctuation limits.

With respect to the CBT's proposal to allow the long, in addition to the short, to initiate the delivery process, the Exchange states that

> [a]llowing both long Clearing members and short Clearing members to initiate delivery will improve the pricing of the contract. By allowing more traders the option to deliver or accept delivery it is believed that more deliveries will be made on each delivery day, which will result in the futures price tracking each of the then current auctions during the delivery month rather than just the last auction of the month. Dealers with positions in the upcoming auction would now be able to hedge those positions.

Regarding the revision that would allow delivery on any Thursday of the delivery month instead of any Thursday and the following business day in the delivery month, the Exchange explained that

> [t]he change allows the long Clearing Member to know precisely the maturity of the T-bill that will be delivered, rather than giving the short the option to deliver a 91- or 90-day Treasury bill. The switch from a two day delivery process to a three day process and the fact that newly issued T-bills are transferred to the buyer's bank at the open of business on each Thursday should give short Clearing Members enough time to deliver 91-day bills.

The Commission is seeking comment on the CBT's proposed amendments.

[1] The CBT's 90-day Treasury bill futures contract is not currently listed for trading and is dormant under Commission Rule 5.2 (47 FR 29515 (July 7, 1982)).

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, by August 6, 1987.

Issued in Washington, DC, on June 30, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87-15300 Filed 7-6-87; 8:45 am]

BILLING CODE 6351-01-M

Chicago Mercantile Exchange; Proposed Amendments Relating to the Gold Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has proposed major rule amendments for the gold futures contract. The primary purpose of the amendments being proposed is to establish New York City and Wilmington, DE, rather than London, England, as the delivery points for the contract.

In accordance with section 5a(12) of the Commodity Exchange Act ("Act") and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

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

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the amendments to the CME gold futures contract.

FOR FURTHER INFORMATION CONTACT: Richard Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 (202) 254-7303.

SUPPLEMENTARY INFORMATION: The Exchange justified the proposal to establish New York City and Wilmington, DE as delivery points for the gold futures contract by noting that:

> . . . commercial users have indicated a preference for a New York delivery contract as opposed to our existing London delivery contract. Given statements to us by members of the gold trading community, the CME has every reason to believe that the New York delivery gold futures contract will be utilized by producers, processors, and investors in gold bullion for hedging and price basing on more than an occasional basis. The changes requested herein result in a gold futures contract similar to that currently approved by CFTC and trading at COMEX, with the exception that the Exchange has added Wilmington, Delaware as a delivery point.

In conjunction with the change in delivery points, the CME's proposed amendments would define deliverable gold as refined gold assaying not less than 995 parts per 1,000 fine. Deliverable gold must be fabricated in either one 100-ounce bar or three one-kilogram bars by an Exchange-approved refiner. A list of approved refiners, as well as lists of Exchange-approved depositories, weighmasters, assayers and carriers, have also been submitted for Commission approval.

The proposed amendments also include changes to the delivery procedure of the contract. The amended rules provide that delivery shall be by negotiable warehouse receipts issued by an approved depository and include other changes to the obligations of traders involved in futures deliveries.

The Commission is seeking comment on the CME's proposed amendments.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1984)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC, by August 6, 1987.

Issued in Washington, DC, on June 30, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87-15301 Filed 7-6-87; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on B-1B Defensive Avionics; Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on B-1B Defensive Avionics will meet in closed session on August 18-19 and September 17-18, 1987 at Wright Patterson AFB, Dayton, Ohio; and Offutt AFB, Omaha, Nebraska.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will evaluate the status of the Air Force B-1B Defensive Avionics Program.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II (1982)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly these meetings will be closed to the public.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

June 30, 1987.

[FR Doc. 87-15410 Filed 7-6-87; 8:45 am]

BILLING CODE 3810-01-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Proposed Modification of the Prompton Reservoir, Prompton, PA

AGENCY: Philadelphia District, U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent to prepare a draft environmental impact statement (DEIS).

SUMMARY: 1. The proposed action is the modification of the existing single

purpose flood control dam at Prompton, Pennsylvania to a multi-purpose reservoir, retaining its flood control capability and adding water supply storage and recreation facilities. The additional storage for water supply is planned to come from storage space behind the dam which is in excess of that authorized for flood control. This space is available because the existing dam was constructed higher than was actually needed. The proposed modification includes raising the permanent pool by 55 feet thereby increasing the existing 290 acre lake to about 720 acres. Alternative schemes for modification are being studied which include construction of a tower to control flows through the outlet works, widening of the spillway, modifications to the dam embankment, modification and relocation of roadways, provision of recreation facilities, and acquisition of necessary lands. Based on preliminary planning about 947 acres of land would be required. The modification was authorized as part of the Delaware River Basin Comprehensive Plan approved by the Flood Control Act of 1962 (Pub. L. 87–874 dtd 23 Oct 62).

2. Alternatives to be Considered Include:

A. No action.

B. Plans eliminated from further study Hydropower capability was found infeasible during preliminary studies.

C. Plans considered in detail: Structural sizing variations, Fishery and wildlife mitigation, Cultural preservation, Recreation facilities.

3. Several scoping meetings have been held with agency participation from the Pennsylvania Department of Environmental Resources, the Pennsylvania State Historic Preservation Office, the U.S. Fish and Wildlife Service, the Pennsylvania Fish Commission, and the Pennsylvania Game Commission. Coordination with local municipalities, interested groups and individuals generated additional comment through the Public Involvement Program.

Significant Issues and Concerns to be Addressed Include: Dam Safety, Cultural Resources Preservation, Level of Flood Protection, Recreation Facilities, Mitigation of Aquatic and Terrestrial Habitat Losses, Real Estate Requirements/Road Relocations, Aesthetics.

4. It is anticipated that scoping meetings will continue periodically.

5. The DEIS is scheduled to be released for public comment in Fiscal Year 1989.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. Roy E. Denmark, Jr., (215–597–4833 or 6838), Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, Philadelphia District, Custom House, 2nd & Chestnut Streets, Philadelphia, PA 19106.

Dated: June 29, 1987.

Roy E. Denmark, Jr.,

Chief, Environmental Resources Branch

[FR Doc. 87–15330 Filed 7–6–87; 8:45 am]

BILLING CODE 3710-GR-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Technology Services, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATE: Interested persons are invited to submit comments on or before August 6, 1987.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster, (202) 732–3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Information Technology Services, publishes this notice containing proposed information collection requests prior to submissions of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Agency form number (if any); (4) Frequency of collection; (5) The affected public; (6) Reporting burden; and/or (7) Recordkeeping burden; and (8) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: July 1, 1987.

Carlos U. Rice,

Director for Information Technology Services.

Office of Postsecondary Education

Type of Review: Revision
Title: Guarantee Agency Quarterly/Annual Report
Agency Form Number: ED 1130
Frequency: Quarterly/Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 295
Burden Hours: 737
Recordkeeping Burden:
Recordkeepers: 59
Burden Hours: 70

Abstract: This report is used by agencies that are participating in the guaranteed student loan program under agreement with the Department of Education. The information is used by the Department to determine if the agency is properly administering its loan programs, and to make payments to agencies as authorized by law.

Type of Review: Revision
Title: Application for Federal Student Aid
Agency Form Number: ED 255
Frequency: Annually
Affected Public: Individuals or households
Reporting Burden:
Responses: 6,733,000
Burden Hours: 9,762,850
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This application will collect information from students who are applying for Federal student aid. The Department uses the data collected to determine student eligibility for the distribution of Pell grants and other financial aid.

Office of Bilingual and Minority Languages Affairs

Type of Review: New
Title: Application for Assistance to Develop an Employability Demonstration Component
Agency Form Number: T85–5P

Frequency: Annually
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 20
Burden Hours: 40
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This form will be used by Family English Literacy grantees to apply for additional grants to develop employability demonstration programs. The Department uses this information to make grant awards.

Office of Special Education and Rehabilitative Services

Type of Review: Extension
Title: Performance Report for the Education of the Handicapped Act Part B, and State Operated Programs for Handicapped Children
Agency Form Number: ED 873
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 58
Burden Hours: 261
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: This performance report will collect information from State educational agencies that receive federal funding for special education services to handicapped children. The information collected is to be used by the Department to evaluate the State programs for their effectiveness.

[FR Doc. 87-15351 Filed 7-6-87; 8:45 am]
BILLING CODE 4000-01-M

[CFDA No. 84.189]

Notice Inviting Applications for New Awards Under the Drug Abuse Education and Prevention Audiovisual Materials Program for Fiscal Year 1987

Purpose: To develop and distribute audiovisual materials for use in drug abuse education and prevention programs in elementary and secondary schools, by providing assistance to State educational agencies, local educational agencies, institutions of higher education and other profit and nonprofit agencies, organizations, and institutions.

Deadline for Transmittal of Applications: September 4, 1987.

Applications Available: July 15, 1987.

Available Funds: $4,500,000.

Estimated Range of Awards: $200,000–$1,000,000.

Estimated Average Size of Awards: $450,000.

Estimated Number of Awards: 5–16.

Estimated Project Period: 9 to 18 months.

Applicable Regulations: (a) Regulations governing the Drug Abuse Education and Prevention Audiovisual Materials Program as proposed to be codified in 34 CFR Part 763. (Applications are being accepted based on the notice of proposed rulemaking for the Drug Abuse Education and Prevention Audiovisual Materials Program that is published in this issue of the **Federal Register.** If any substantive changes are made in the final regulations for this program, applicants will be given an opportunity to revise or resubmit their applications), and (b) the Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 78, and 79.

Absolute Priorities: In accordance with 34 CFR 75.105(c)(3), the Secretary has chosen as absolute priorities each of the three following educational levels: elementary (grades 1–6), junior high (7–9) and high school (10–12).

Invitational Priorities: In accordance with 34 CFR 75.105(c)(1), the Secretary encourages—

- Videotapes that use fresh and innovative approaches to present a clear message to the target audience;
- Videotapes that emphasize the immediate and/or long-range harm of drugs, showing, for example, how substance abuse can affect areas such as: health and safety, judgment, physical appearance, relationships with friends and parents, school success, college and job opportunities, and the risk of receiving criminal records;
- Videotapes that show students how to say no to drugs, how to confront peer pressure, make decisions for themsevles, and build self-esteem and confidence. These tapes should also show alternatives to taking drugs—healthy, positive ways to enjoy life;
- Videotapes that show the dangers of substance abuse to student athletes, for use not only in health classes but also by coaches or teachers in other school settings; and
- Videotapes that present information on the most hazardous drugs such as cocaine, "crack," PCP, and others.

The Secretary cautions applicants to avoid projects that—

(1) Make exaggerated use of scare tactics;

(2) Inadvertently become "training films" in how to use drugs by use of too much detail;

(3) Make excessive use of regional accents or scenes which could limit national use; and

(4) Are too long for use in a normal classroom period, and consequently leave the teacher no time to lead discussion afterward.

The invitational priorities listed above are intended to offer guidance to the applicants, but they are not requirements. Failure to address the invitational priorities in an applicant's proposal will not prejudice its review and evaluation.

Other Information: Awards will be made through cooperative agreements that give the Department a significant role in planning and monitoring the entire course of each project.

The government will provide the Department of Education publication, *"What Works: Schools Without Drugs,"* and the current Federal Communications Commission broadcast standards to all applicants.

For Applications or Information Contact: Louie E. Mathis, Office of Public Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4317 Switzer Building, Washington, DC 20202. Telephone: (202) 732–4637.

Program Authority: Pub. L. 99–591, 100 Stat. 3341–360.

Dated: June 30, 1987.

William J. Bennett,

Secretary of Education.

[FR Doc. 87-15352 Filed 7-6-87; 8:45 am]
BILLING CODE 4000-01-M

Notice Extending Deadline for Transmittal of Applications for a New Award Under the National Assessment of Educational Progress (NAEP) Program for Fiscal Year 1988

Deadline for Transmittal of Applications: July 21, 1987.

On May 19, 1987, the Assistant Secretary and Counselor to the Secretary published in the **Federal Register** at 52 FR 18732 an application notice for a new award under the NAEP Program for fiscal year 1988. Detailed information concerning this program is included in that notice.

The purpose of this notice is to extend the closing date for transmittal of applications from July 6, 1987 to July 21, 1987. Aside from this revised date, all other information provided in the application notice published on May 19 remains in effect.

Purpose of Extension of Due Date for Applications: The Department plans to ask for additional information from applicants before the new closing date. These questions will be designed to offer guidance to the applicants in strengthening their applications and help the Secretary better apply the evaluation criteria established under the

Education Department General Administrative Regulations (EDGAR).

For Information Contact: Eugene Owen, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 306–C, Capitol Place, Washington, DC 20208. Telephone: (202) 357–6746.

Program Authority: 20 U.S.C 1221e.

Dated: July 2, 1987.

Ronald Preston,

Acting Assistant Secretary, Educational Research and Improvement.

[FR Doc. 87–15457 Filed 7–6–87; 8:45 am]

BILLING CODE 4000–01–M

Office of Bilingual Education and Minority Languages Affairs

Field Readers; Reviewing of Applications Submitted Under Direct Grant Programs

AGENCY: Department of Education.

ACTION: Notice for Individuals Interested in Reviewing Applications Submitted Under Direct Grant Programs Administered by the Office of Bilingual Education and Minority Languages Affairs.

SUMMARY: The Director of the Office of Bilingual Education and Minority Languages Affairs (OBEMLA), Department of Education (ED), invites interested individuals to apply to serve as Field Readers for programs administered by OBEMLA. OBEMLA administers programs authorized by the Bilingual Education Act 20 U.S.C. 3221–3262 and 34 CFR Parts 500, 501, 525, 526, 537, and 574.

Each year the Secretary selects Field Readers to evaluate grant applications against criteria published in Program Regulations and, where applicable, application notices published in the Federal Register.

Expertise is desirable in areas including evaluation, curriculum and materials development, personnel and parent training, education administration, research, Bilingual Education, English as a second language, teaching English to speakers of other languages (TESOL), second language acquisition, adult education and special/vocational education. This list is not intended to be all-inclusive and individuals with other expertise in related fields are encouraged to apply. Individuals interested in serving as Field Readers for the fiscal year 1988–1989 funding cycle should mail or hand deliver their resumes to OBEMLA no later than September 30, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Rudy Munis, Division Director, Division of National Programs, Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 421, Reporters' Building), Washington, DC 20202. Telephone: (202) 245–2595.

Dated: July 1, 1987.

Carol Pendas Whitten,

Director, Office of Bilingual Education and Minority Languages Affairs.

Catalog of Federal Domestic Assistance Program No. 84.003, Bilingual Education:

PART A

I. Transitional Bilingual Education
II. Developmental Bilingual Education
III. Special Alternative Instructional Program
IV. Academic Excellence
V. Family English Literacy
VI. Special Populations Program
VII. Instructional Materials

PART B

I. Grants for State Programs
II. Evaluation Assistance Centers
II. Research
IV. National Clearinghouse for Bilingual Education

PART C

I. Training Programs
II. Training Development and Improvement Program
III. Short-Term Training Program
IV. Multifunctional Resource Centers
V. Fellowship

[FR Doc. 87–15355 Filed 7–6–87; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to the Electric Power Research Institute; Restriction

AGENCY: U.S. Department of Energy.

ACTION: Notice of Restricted Eligibility for Grant Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.7(b), it is restricting eligibility for an award under Grant Number DE–FG22–87PC79865 to Electric Power Research Institute (EPRI) in order to co-sponsor a comprehensive Coal-Processing Research and Development Program over a period of three years.

Scope: This grant award will address various aspects of using, producing, handling, and transporting low-rank and bituminous coals. Fundamental research on coal and methods of coal beneficiation will be performed.

The research to be conducted by various EPRI subcontractors will improve the understanding of coal beneficiation mechanisms and will contribute to the development of promising advanced coal cleaning processes that are part of DOE's Coal Preparation Program. The proposed Coal-Processing Research and Development Program will include projects in the areas of: (a) Biological processing of coal, (b) characterization of coal structure and coal chemistry, (c) selective oxidation of pyrites, (d) characterization of forms of sulfur and its properties in bituminous coals, (e) development of flotation reagents for pyritic sulfur removal, and (f) development of the Coal-Oil Agglomeration Process.

The research program is expected to play a significant role in the understanding and development of beneficiation processes for pyritic sulfur removal. Successful development of such processes will contribute significantly to the control of coal-based acidic precipitation. DOE's participation in the cooperative program is consistent with DOE's Coal Preparation Program goal of producing clean coal-based fuels and controlling coal-based acidic emissions. A Canadian consortium is also expected to participate in this program.

The DOE considers this a unique opportunity to pursue the goals of its Coal Preparation Program and has determined that award of this grant to the Electric Power Research Institute on a restricted eligibility basis is appropriate.

The term of this grant shall be from approximately August 3, 1987 to August 2, 1990 and the project cost is estimated at $550,000.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, P.O. Box 10940, Pittsburgh, PA 15236, ATTN: Keith Miles, 412–892–6221.

Issued on: July 1, 1987.

Louis J. Ruzzi,

Director, Acquisition and Assistance Division, Pittsburgh Energy Technology Center.

[FR Doc. 87–15394 Filed 7–6–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA DOCKET NO. 87–25–NG]

Application To Import Natural Gas From Canada; Continental Natural Gas, 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 May 8, 1987, of an application from Continental Natural Gas, Inc. (CNG), for blanket authorization to import up to 250 MMcf per day and a maximum of 185 Bcf of Canadian natural gas for a two-year period beginning on the date of the first delivery. CNG is a privately-owned Oklahoma corporation whose principal place of business is in Tulsa with business operations primarily in the states of Texas, Kansas, Oklahoma, and the upper midwestern region of the United States. CNG proposes to purchase natural gas from various Canadian suppliers for itself, or as an agent for others, on a short-term spot market basis for resale to pipelines, electric utilities, distribution companies, and commercial and industral end users in the United States. CNG states that it intends to use existing pipeline facilities for the transportation of the proposed imports. CNG 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. CNG has requested that the authorization be granted on an expedited basis.

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 inverventions 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 August 6, 1987.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Natural Gas Division, Economic Regulatory Adminisration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9782

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 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 burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have 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 of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., August 6, 1987.

The Administrator intends to develop a decisional record on the application through responses 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 demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type heaing 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, inlcuding the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of CNG's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 25, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Economic Regulatory Administration.

[FR Doc. 87–15392 Filed 7–6–87; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Advisory Board Education Panel; Open Meeting

Notice is hereby given of the following meeting:

Name: Education Panel of the Energy Research Advisory Board (ERAB)

Date & Time: August 4, 1987–4:00 p.m.–9:00 p.m.

Place: Holiday Inn, Maple Room, 625 El Camino Real, Palo Alto, CA 94301, (415) 328–2800

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586–5767

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The Education Panel is a subgroup of ERAB and reports to the parent Board. The purpose of the Panel is to review the Department's activities with the education community to ensure that DOE is playing its proper role vis-a-vis other federal agencies and the private sector in the support of scientific and technical education and training.

Tentative Agenda:

•Discussion of Panel's Charge and Administrative Matters,

•Briefings on the Department's Education Programs,

•Dinner
•Discussion of Proposed Staff Studies and Future Meeting Plans,
•Public Comment (10 minute rule).

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting: Available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 30, 1987.

Charles E. Cathey,

Deputy Director, Science and Technology Affairs, Office of Energy Research.

[FR Doc. 87–15391 Filed 7–6–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commmission

[Docket No. CS71–431 et al.]

Natural Gas; Applications for Small Producer Certificates; Spruce Development Corp. (S & G Oil Company, Inc.), et al.[1]

June 30, 1987.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Commission's regulations thereunder for a small producer certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make a protest with reference to said applications should on or before July 16, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS71–431	[1] 6–11–87	Spruce Development Corporation (S & G Oil Company, Inc., 8801 South Yale, Suite 220, Tulsa, Oklahoma 74137
CS87–73–000	5–27–87	Lynnwell, Inc., 620 S. Taylor Street #216, Amarillo, Texas 79101
CS87–74–000	5–27–87	Lester and Wanda Smith, P.O. Box 638, Syracuse, Kansas 67878
CS87–75–000	6–12–87	Robert G. Goelet, Diablotin Corporation, Sea Want Corporation, Guacharo Corporation and White Swan Oil Corporation, 6001 Savoy, Suite 600, Houston, Texas 77036
CS87–76–000	6–15–87	Gedco Oil & Gas Joint Venture, P.O. Box 1271, Monroe, Louisiana 71210
CS87–77–000	6–22–87	Ampolex (Texas), Inc., 1225 17th Street, Suite 3000, Denver, Colorado 80202
CI87–78–000	6–17–87	Torrid Energy Company, 200 Crescent Court, Suite 1310, Dallas, Texas 75201
CS87–79–000	6–17–87	Hondo Oil & Gas Company, P.O. Box 2208, Roswell, New Mexico 88202
CS87–80–000	6–22–87	One Oil Company, 1111 Fannin Street, Suite 1500, Houston, Texas 77002

[1] Letter dated June 8, 1987, advising that on June 12, 1986, S & G Oil Company, Inc., was liquidated by action of its board of directors, and its working interests were assigned to Spruce Development Corporation whose corporate structure is identical to that of S & G Oil Company, Inc. Applicant requests that the small producer certificate issued to S & G Oil Company, Inc., in Docket No. CS71–431 be redesignated under the name of Spruce Development Corporation.

[FR Doc. 87–15342 Filed 7–6–87; 8:45 am]

BILLING CODE 6717–01–M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket No. CP87-339-000]

Intent To Prepare an Environmental Assessment on the Orange and Rockland Replacement Project and Request for Comments on Environmental Issues; Columbia Gas Transmission Corp.

June 30, 1977.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) of the facilities proposed in the above-referenced docket. Columbia Gas Transmission Corporation (Columbia) is seeking a certificate of public convenience and necessity under sections 7(b) and 7(c) of the Natural Gas Act to construct and operate 5.9 miles of 24-inch-diameter pipeline in Rockland County, New York; to abandon in place and by sale 9.5 miles of 8- and 10-inch-diameter pipeline, also in Rockland County; and to increase its contract demand (CD) to Orange and Rockland Utilities, Inc. (ORU) by 1,200 dekatherms per day (Dth/d) of gas. Two new interconnections and metering facilities would be constructed, while three metering facilities would be abandoned by sale and one by removal. Columbia would use the new facilities to deliver about 48,600 Dth/d of gas to ORU. The new pipeline would be used to transport volumes of gas from Algonquin Gas Transmission Company (Algonquin) to ORU to help meet its summer fuel requirement. The new pipeline would also replace a segment of pipeline proposed to be abandoned through residential areas. A portion of the segment of abandoned pipeline and meter stations (constructed in 1949) would be sold to ORU and would continue to be used as a low-pressure distribution system. ORU has requested that this service commence on November 1, 1987.

The proposed pipeline would require a 75-foot-wide construction right-of-way, with 40 feet to be maintained as permanent right-of-way. The proposed pipeline would begin in the town of Ramapo at the intersection of Columbia's existing pipeline and Algonquin's pipelines and head northeast generally paralleling Algonquin's facilities for about 2 miles. (See map A-1.) The route would then turn east for about 4 miles to a new meter station site in the town of Clarkstown near Buena Vista Road. (See maps A-2 and A-3.) Columbia's proposed route skirts most of the developed residential areas in this vicinity. Approximately 55 acres would be disturbed during construction of the pipeline, with about 30 acres being retained as permanent right-of-way.

The first of the two new meters stations would be located at the western terminus of the new pipeline where Columbia and Algonquin's pipeline facilities intersect. This meter station would be located on a site already owned by ORU and would replace an existing emergency interconnection between Columbia and Algonquin. (See map A-1.)[1] The second meter station would be located at the eastern terminus of the project where the proposed pipeline would intersect ORU's existing facilities. A site 75 feet by 75 feet would be fenced in. This area would be located on the construction right-of-way. (See map A-3.)

The new facilities described above would replace 9.5 miles of 8- and 10-inch-diameter pipeline and four meter stations also located in the towns of Ramapo and Clarkstown. (See maps A-4 through A-7.) The first 4.7 miles of the pipeline from the Algonquin interconnection to the Eckerson Lane Meter Station, would be abandoned in place. The remaining 4.8 miles from Eckerson Lane Meter Station to the West Nyack Meter Station would be sold to ORU. Of the four meter stations, Columbia would sell three of them (Eckerson Lane, Spring Valley, and West Nyack Stations) to ORU. At the fourth meter station, Columbia would remove the existing emergency interconnection and metering facilities at the intersection with Algonquin's pipelines.

This project was originally proposed as part of Docket No. CP86-346-000. Columbia withdrew this portion of the project because the additional time required to resolve environmental concerns would have delayed the spring 1987 construction of the Orange County, New York replacement project. In its December 10, 1986, order, the FERC authorized Columbia to increase its CD by 8,800 Dth/d, which was 88 percent of its request in Docket No. CP86-346-000. Therefore, to allow firm delivery of the entire CD for this zone of 48,600 Dth/d, which includes the remaining 12 percent of the requested increase, Columbia again proposes to construct the new pipeline. The EA will address the concerns that were raised by individuals in their letters to the FERC in response to Docket No. CP86-346-000. The following issues have been identified:

Cultural resources
- —Effect on Harriman State Park, a property that may be eligible for inclusion on the National Register of Historic Places.
- —Effect on the Palisades Interstate Parkway, a property listed as a National Historic Landmark.

Aesthetics
- —Effect of the visual appearance of the new right-of-way.

Pipeline safety
- —Safety consideration.

Vegetation
- —Impact on wetlands, removal of trees, and wildlife.

Water resources
- —Impact on water quality, wetlands, and streams.

Land use
- —Impact on state and local parks.
- —Eminent domain.

Alternatives, route modifications, and specific mitigating measures will also be considered in the staff's analysis.

The EA will be based on the staff's independent analysis of the proposal and, together with the comments received, will comprise part of the record to be considered by the Commission in this proceeding. The EA will be sent to all parties in this proceeding, to those providing comments in response to this notice, to Federal and state agencies, local government offices, and to interested members of the public.

The EA may be offered as evidentiary material if an evidentiary hearing is held in this proceeding. In the event that an evidentiary hearing is held, anyone not previously a party to this proceeding and wishing to present evidence on environmental and other matters must first file with the Commission a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214).

Comments from Federal and state agencies, local govenment offices, and the public are requested to help identify significant issues or concerns related to the proposed action to determine the scope of the issues that need to be analyzed, and to identify and eliminate from detailed study the issues which are not significant. All comments on specific environmental issues should contain supporting documentation or rationale. Written comments should be submitted on or before July 29, 1987, reference Docket No. CP87-339-000, and be addressed to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of the comments should also be sent to the Project Manager identified below. Anyone who has previously filed comments in Docket No. CP86-346-000 need not refile the same comments; however, if these individuals have additional comments

[1] Copies of the maps are available from the Commission's Division of Public Reference.

the comments must be filed in Docket No. CP87–339–000.

Detailed maps showing the location of the proposed facilities and those proposed to be abandoned have been provided to those on the distribution list. Additional information is available from Mr. Mark Jensen, Project Manager, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, telephone (202) 357–8207.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–15343 Filed 7–6–87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1417–001]

Issuance of Annual License; The Central Nebraska Public Power and Irrigation District

June 30, 1987.

On June 28, 1984, The Central Nebraska Public Power and Irrigation District, licensee for the Kingsley Dam Project No. 1417, located on the North Platte River in Keith County, Nebraska, filed an application for a new license pursuant to the Federal Power Act and Commission regulations thereunder.

The license for Project No. 1417 was issued effective July 30, 1937, for a period ending July 29, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on licensee's application, it is appropriate and in the public interst to issue an annual license to The Central Nebraska Public Power and Irrigation District.

Take notice that an annual license is issued to The Central Nebraska Public Power and Irrigation District for the period July 30, 1987, to July 29, 1988, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Kingsley Dam Project No. 1417, subject to the terms and conditions of the original license as amended. Take further notice that if issuance of a new license does not take place on or before July 29, 1988, a new annual license will be issued each year thereafter, effective July 30 of each year, until such time as a new license is issued, without further notice being given by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–15344 Filed 7–6–87; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1835–013]

Issuance of Annual License; Nebraska Public Power District

June 30, 1987.

On June 28, 1984, Nebraska Public Power District, licensee for the Keystone Diversion Dam Project No. 1835, located on the North Platte River in Keith County, Nebraska, filed an application for a new license pursuant to the Federal Power Act and Commission regulations thereunder.

The license for Project No. 1835 was issued effective January 1, 1941, for a period ending June 30, 1987. In order to authorize the continued operation and maintenance of the project pending Commission action on licensee's application, it is appropriate and in the public interest to issue an annual license to Nebraska Public Power District.

Take notice that an annual license is issued to Nebraska Public Power District for the period July 1, 1987 to June 30, 1988, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Keystone Diversion Dam Project No. 1835, subject to the terms and conditions of the original license as amended. Take further notice that if issuance of a new license does not take place on or before June 30, 1988, a new annual license will be issued each year thereafter, effective July 1 of each year, until such time as a new license is issued, without further notice being given by the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–15345 Filed 7–6–87 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ST87–1145–000]

Petition for Rate Approval; Sabine-DeSota Pipeline Co., Inc.

June 30, 1987.

Take notice that the following transaction has been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, and sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA). [1]

Sabine-DeSota Pipeline Co., Inc. is an intrastate pipeline requesting Commission approval of a rate for transportation on behalf of Southern Natural Gas Company pursuant to § 284.123(b)(2) of the Commission's regulation.[2] The proposed rate is 8¢ per MMBtu, and the expiration of the 150-day period for staff action is July 24, 1987.

Any person desiring to be heard or to make any protest with reference to the transaction reflected in this notice should on or before July 7, 1987, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants party to a proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–15346 Filed 7–6–87; 8:45 am]

BILLING CODE 6717-01-M

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[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

[2] 18 CFR 284.123(b)(2) (1987).

Western Area Power Administration

Availability of the Supplement to the Draft Environmental Impact Statement for the California-Oregon Transmission Project, Los Banos-Gates Transmission Project, and Pacific Northwest Reinforcements Project

AGENCY: Department of Energy, Western Area Power Administration.

ACTION: Notice of availability of supplement to the draft environmental impact statement.

SUMMARY: Notice is hereby given that the Department of Energy (DOE), Western Area Power Administration (Western), has issued for review and comment a supplement to the draft environmental impact statement (DEIS) for the proposed California-Oregon Transmission Project, Los Banos-Gates Transmission Project, and Pacific Northwest Reinforcements Project (COTP) (DOE/EIS–0128). The supplement to the DEIS was prepared in accordance with the National Environmental Policy Act of 1969 (NEPA); Council on Environmental Quality Guidelines, 40 CFR Parts 1500 through 1508; and DOE guidelines for compliance with NEPA, 45 FR 20694, as

amended. The supplement was jointly prepared with the Transmission Agency of Northern California (TANC), who is issuing the document as a supplement to its draft environmental impact report to fulfill the requirements of the California Environmental Quality Act. The document will be used by the investor-owned utilities in California, along with other supporting information, as part of their applications for certification by the California Public Utilities Commission.

DATES: Written comments on the supplement to the DEIS are due no later than August 17, 1987. Comments should be sent to: Environmental Coordinator, California-Oregon Transmission Project, P.O. Box 660970, Sacramento, CA 95866, (916) 924–3995.

PUBLIC HEARING LOCATIONS: The public and agencies will be provided the opportunity to comment on the content of the supplement to the DEIS at public hearings. The hearings will be presided over by hearing officers, and a court reporter will record the testimony. Hearings have been scheduled at the following locations:

Tuesday, August 4, 1987, 7:30 p.m., Veterans Hall, Main Street at Highway 299, Burney, California

Wednesday, August 5, 1987, 7:00 p.m., Newell Elementary School, Multipurpose Room, Highway 139, Newell, California

Thursday, August 6, 1987, 7:00 p.m., Tracy Community Center, 300 East 10th Street, Tracy, California

FOR FURTHER INFORMATION CONTACT: For additional information on the supplement to the DEIS, call: Ms. Nancy Weintraub, Environmental Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, Sacramento, CA 95825, (916) 978–4460.

SUPPLEMENTARY INFORMATION: A DEIS was prepared and distributed for public review and comment on November 28, 1986. During the public comment period that ended on March 2, 1987, 12 hearings were held throughout California and in southern Oregon. As a result of the information received at the hearings and from written comments, several areas along the proposed alignment of the transmission line received further study, and the environmental impacts associated with those changes are analyzed in the supplement to the DEIS. Western is issuing the supplement in order to obtain public review of the proposed routing options.

California-Oregon Transmission Project: Western, TANC, Pacific Gas and Electric Company (PGandE), San Diego Gas and Electric Company, Southern California Edison Company, California Department of Water Resources, six southern California cities, and six additional public entities propose to build an approximately 340-mile-long, 500-kilovolt (kV) alternating current (AC) transmission line from southern Oregon to the Tesla Substation in central California. The COTP proposed action would include a new substation near Malin, Oregon; 140 miles of new 500-kV transmission line from the substation to a new substation near Redding, California; approximately 170 miles of 500-kV transmission line that would consist of reconstructing Western's existing double-circuit 230-kV transmission line from the new Redding area substation (Olinda) to the Sacramento River and approximately 20 miles of new 500-kV line from the Sacramento River to the existing Tracy Substation; a new series compensation station (Maxwell) near Maxwell, California; expansion of the Tracy Substation; and approximately 6 miles of new 500-kV transmission line between the Tracy Substation and the existing Tesla Substation. Alternative locations for the transmission line and supporting facilities, the no-action alternative, and systems alternatives were analyzed in the DEIS that was distributed on November 28, 1986. New routing options to the preferred route are considered in approximately 10 locations for a total of approximately 75 miles and analyzed in the supplement. In addition, a new site for the southern Oregon substation near Malin is presented.

Los Banos-Gates Transmission Project: PGandE proposes to build a 500-kV transmission line in the foothills along the western side of the San Joaquin Valley between the existing Los Banos and Gates Substations. The Los Banos-Gates Transmission Project includes approximately 84 miles of new 500-kV transmission line; realignment of the existing Los Banos-Midway No. 2 500-kV transmission line into Gates Substation; modification of the Los Banos and Gates Substations to accommodate new equipment and line connections; installation of new electrical equipment at several existing substations; and reconductoring of portions of the Gates-Arco-Midway 230-kV Transmission Line. Alternative routes for the transmission line, the no-action alternative, and other project alternatives were analyzed in the DEIS that was issued on November 28, 1986. There are no proposed changes analyzed in the supplement.

Pacific Northwest Reinforcement Project: The Bonneville Power Administration (BPA), Pacific Power and Light Company (PP&L), and Portland General Electric Company propose to build new and modify existing transmission lines and supporting facilities in southern Washington and Oregon. Approximately 8 miles of new 500-kV transmission lines are proposed. Modification may be made to 13 or more existing substations. One new substation (Marcola) may be constructed between the existing Marion Substation and Alvey Substation. Impacts of the proposed actions were analyzed in the DEIS. In addition, BPA has an option to acquire a 50-percent interest in the incremental capacity of PP&L's Eugene-Medford 500-kV transmission line. The Eugene-Medford Project has already been sited, permitted, and scheduled for construction, and is justified to serve PP&L loads in southern Oregon and northern California. If BPA exercises its option, the Eugene-Medford Project would be used to support the Intertie system as a part of the Pacific Northwest Reinforcement Project. The environmental effects of the Eugene-Medford line are presented in a final environmental impact statement prepared by the Department of the Interior, Bureau of Land Management (FES83–23, May 1983).

Purpose and Need: The purpose of the proposed action is to expand the bidirectional capability of the Pacific Northwest-Pacific Southwest Intertie transmission system, to help serve California's need for economical power, to sell Pacific Northwest's surplus power, and to maintain and increase the reliability of the existing transmission system. The COTP will add approximately 1,600 megawatts (MW) of additional transfer capability between the Pacific Northwest and California. The three projects would add to and strengthen the existing high-voltage transmission links between California and the Pacific Northwest. They would provide for greater access to Northwest power surpluses, facilitate more efficient use of regional power resources, provide greater resource diversity, and enhance system reliability.

Availability of Review Copies of the Supplement To the DEIS

Copies of the supplement to the DEIS have been distributed to interested Federal, State, and local agencies in California and Oregon; and to libraries, local planning offices, chambers of commerce, and civic institutions in potentially affected areas. Copies of the supplement are available for public review at many of these locations. For the address of the nearest location at which a copy of the supplement can be reviewed, call either of the telephone

numbers given above. Copies of the supplement are also available for public review at the following locations:

Western Area Power Administration, Sacramento Area Office, 1825 Bell Street, Sacramento, CA 95825

Western Area Power Administration, 1627 Cole Boulevard, Building 18, Room 304, Gold, CO 80401

A limited number of copies are available on request for individuals or organizations who are potentially affected by the proposed action. Requests for copies should be sent to: Environmental Coordinator, California-Oregon Transmission Project, P.O. Box 660970, Sacramento, CA 95866.

The supplement to the DEIS should be retained. The final EIS will consist of the DEIS and supplement to the DEIS, a record of public comments, the responses to the comments, and any required changes or corrections. The final EIS is scheduled for release in November 1987.

Issued at Golden, Colorado, June 25, 1987.

William H. Clagett,

Administrator.

[FR Doc. 87-15393 Filed 7-6-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[A-5-FRL-3227-8]

Actions Taken Under the PSD Regulations; Wisconsin

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that USEPA, Region V, has issued two permits under the Federal Prevention of Significant Deterioration (PSD) regulations, codified at 40 CFR 52.21 (as amended on August 7, 1980), to the following two companies: (1) Consolidated Papers, Inc.—permit issued on March 12, 1987; and (2) Weyerhaeuser Company—permit issued on March 23, 1987.

ADDRESSES: Copies of the permits and background information are available for inspection at the following addresses. (It is recommended that you telephone Maggie Greene, at (312) 886-6029, before visiting the Region V Office.)

U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604

Wisconsin Department of Natural Resources, Bureau of Air Management (AIR/3), 101 South Webster Street, Madison, Wisconsin 53707

FOR FURTHER INFORMATION CONTACT: Maggie Greene, (312) 886-6029.

SUPPLEMENTARY INFORMATION: USEPA, Region V, has issued a permit under the Federal PSD regulations to each of two companies: Consolidated Papers, Inc., and Weyerhaeuser Company.[1]

Consolidated Papers, Inc.

The PSD permit issued to Consolidated Papers, Inc., grants approval for expansion of an existing lime kiln from 180 to 300 tons of reburned lime per day and construction of the following: (1) A new 65 meter (m) stack for the kiln; (2) a new black-liquor-solids (BLS) recovery furnace of 1.4 million pounds of BLS per day capacity; (3) a new 91.2 m stack for the new recovery furnace; (4) a new smelt dissolving tank with a capacity of 27,600 pounds per hour of smelt; (5) a new 63.4 m stack for the smelt dissolving tank; and (6) ducting for exhausting the existing No. 1 Recovery Boiler to the new 91.2 m stack serving the new recovery furnace at its Kraft pulp mill in Wisconsin Rapids, Wood County, Wisconsin. The proposed expansion and new construction qualify as a "major modification" of an existing major stationary source under the PSD regulations. The pollutants reviewed include total suspended particulates (TSP), sulphur dioxide (SO_2), nitrogen oxide (NO_x), carbon monoxide (CO), and particulate matter (PM). The permit was issued by USEPA on March 12, 1987.

Weyerhaeuser Company

The PSD permit issued to Weyerhaeuser Company grants approval for expansion of the company's particleboard facility located at Marshfield, Wood County, Wisconsin, by adding a new production line for the manufacture of low density particleboard called "door core". The proposed project qualifies as a "major modification" of an existing stationary source under the PSD regulations. The pollutants reviewed include PM, NO_x, CO, and volatile organic compounds (VOC). The permit was issued by USEPA on March 23, 1987.

Under section 307(b)(1) of the Clean Air Act (the Act), judicial review of any of the above actions is available only by the filing of a petition for review in the appropriate U.S. Circuit Court of Appeals within 60 days of today's notice. Under section 307(b)(2) of the Act, any requirements associated with the above actions may not be challenged later in civil or criminal proceedings that may be brought to enforce the permit requirements.

For the above actions, the appropriate court is the U.S. Court of Appeals for the Seventh Circuit. A petition for review must be filed with that court on or before September 8, 1987.

Dated: June 24, 1987.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 87-15383 Filed 7-6-87; 8:45 am]

BILLING CODE 6560-50-M

[1] Prior to their submission to USEPA, both applications were reviewed by the Wisconsin Department of Natural Resources (WDNR) and were subject to public comment and the opportunity for hearing. This is consistent with USEPA's January 29, 1981 (46 FR 9580), partial delegation to WDNR to implement the PSD program. See 40 CFR 52.21(u).

[OAR-FRL-3227-6]

Gasoline Marketing for Public Inspection; Availability of Documents

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Additional Documents on the Issue of Gasoline Marketing for Public Inspection.

SUMMARY: This notice announces the availability for public inspection of additional documents on the gas marketing issue. These documents will be available for review at the following address:

Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Room 2904, Washington, DC 20460

Individuals wishing to review these documents should call (202) 382-5926 in advance.

SUPPLEMENTARY INFORMATION: On February 11, 1987, (52 FR 4381) EPA announced that it was placing a number of documents on the gas marketing issue in EPA's Public Information Reference Unit (PIRU) for inspection by the public. At that time, EPA noted that it was likely that additional documents would be placed in this docket. EPA is now supplementing the materials in this docket with several hundred additional documents. These documents relate to the control of volatile organic compounds from vehicle refueling, and include extensive correspondence between the EPA and Congress, generally available information on Stage II and onboard vapor recovery systems, and internal EPA memoranda relating to this issue which were produced between January and August 1986. The material already in this docket and the material

being added are indexed. All of this material may be viewed in EPA's PIRU. The PIRU is located in the EPA library in Room 2904 of the Mall at EPA's Headquarters office 401 M Street, SW., Washington, DC.

Copies of the material contained in the docket will not be mailed to requestors. A copy machine is available in the PIRU, and the public may copy materials at a reasonable fee. Additional materials will be added to this docket over the next several weeks. Additional materials on this issue are also available in the Central Docket located in Room 4 of the South Conference Center at EPA's Headquarters office 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Horwitz or Angeline Holowka, 401 M Street, SW., Washington, DC (202) 475–8979.

Dated: June 30, 1987.

Don R. Clay,

Deputy Assistant Administrator for Air and Radiation.

[FR Doc. 87–15384 Filed 7–6–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3227–7]

Science Advisory Board; Environmental Engineering Committee; Open Meeting

Under Pub. L. 92–463, notice is hereby given that the Environmental Engineering Committee of the Science Advisory Board will hold a two-day meeting on July 23–24, 1987 at the St. James Hotel, 950 24th Street, NW., Washington, DC. The meeting will begin at 9:00 a.m. on July 23, and adjourn no later than 4:00 p.m. on July 24.

One major purpose of the meeting is to begin a review of a risk assessment methodology being developed by the Agency's Office of Solid Waste to evaluate mining waste sites. The Committee received an introductory briefing on this topic at its March meeting. This meeting will include more detailed briefings on the methodology and results. (Briefing documents will not be available until the meeting, however.) Those interested in technical information on the mining waste risk assessment methodology should contact Mr. Pat Cummins of the Office of Solid Waste (202/382–2791).

Another major purpose of the meeting is to discuss the findings of three Subcommittees that are reviewing (1) ORD's Land Disposal Research Program, (2) ORD's Waste Minimization Strategy, and (3) the Underground Storage Tank Release Simulation Model.

In addition, the Committee will receive a background briefing on ash generated by municipal incinerators. This is merely an information briefing; this topic is not the subject of SAB review at this time. For further technical information, contact Ms. Gerry Dorian of the Office of Solid Waste at 202/382–4688.

Public comment will be accepted at the meeting. Written comments will be accepted in any form, and there will be an opportunity for oral statements. For parties interested in these issues, please note that SAB reviews are not a forum for providing general comments on Agency programs. For example, comments on mining waste should be restricted to technical issues on the risk assessment methodology.

Anyone wishing to make oral or written comments must contact Mr. Eric Males, Executive Secretary, (202/382–2552) prior to close of business on July 20, 1987 in order to be placed on the agenda. Any member of the public wishing to attend should contact Mrs. Brenda Browne, Staff Secretary, at 202/382–2552.

Dated: June 29, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–15385 Filed 7–6–87; 8:45 am]

BILLING CODE 6560–50–M

[FRL–3229–6]

Science Advisory Board; Hazard Ranking System Review Subcommittee; Open Meeting—July 16–17, 1987

Under Pub. L. 92–463, notice is hereby given that a meeting of the Science Advisory Board's Hazard Ranking System Review Subcommittee will be held on July 16–17, 1987 at the Holiday Inn/Governor's House, Rhode Island Avenue, at 17th Street, NW, Washington, DC, Cabinet Conference Room. The meeting will begin at 8:30 a.m. Thursday and adjourn no later than 5:00 p.m. Friday.

The major purpose of the meeting is to hear the report of the Toxicity Factor Work Group which met June 29–30. The Office of Emergency and Remedial Response will given a substantive briefing on the air target distance issue. Other topics related to the Hazard Ranking System will be presented briefly. Copies of documents provided to the Subcommittee are available at the Superfund Docket. The Superfund Docket is located at EPA Headquarters, Waterside Mall Sub-basement, 401 M. Street, SW., Washington, DC 20460. The Docket is open by appointment only from 9:00 a.m. to 4:00 p.m. Monday through Friday excluding holidays. To obtain copies of documents or to make an appointment, contact Tina Maragousis at (202) 382–3046.

The meeting is open to the public; however, seating is very limited. Any member of the public wishing to attend, obtain further information, or submit written comments to the Subcommittee should notify Mrs. Kathleen Conway, Executive Secretary, or Mrs. Dorothy Clark, Staff Secretary, (A101–F) Science Advisory Board, by the close of business on Tuesday, July 14, 1987. The telephone number is (202) 382–2532.

Dated: July 1, 1987.

Terry F. Yosie,

Director, Science Advisory Board.

[FR Doc. 87–15465 Filed 7–6–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL MARITIME COMMISSION

[Docket No. 87–15]

Order of Investigation; Compliance With Agreement No. T–3363 Between City of Los Angeles and Matson Terminals, Inc.

This proceeding is instituted pursuant to sections 11 and 13 of the Shipping Act of 1984, 46 U.S.C. app. 1710 & 1712, and section 22 of the Shipping Act, 1916, 46 U.S.C. app. 821.

The City of Los Angeles ("City") is a municipal corporation of the State of California and, operating through its Board of Harbor Commissioners, publishes the Port of Los Angeles ("Port") Tariff No. 3, naming rates, charges, rules and regulations at Los Angeles Harbor.

Matson Terminals, Inc. ("Matson") is a California corporation headquartered in San Francisco, California. Pursuant to the terms of Agreement No. T–3363 ("Agreement"), approved by this Commission on January 21, 1977, as later amended,[1] the City granted Matson the use of certain premises at the Port for use as a container terminal. These premises were designated in the Agreement as parcels Nos. 1, 1A, 2, 3, 4, 5, 6 and 7, particularly described on the Port's Drawing No. 2–2114, entitled "Agreement Map-Berths 206 to 209, Matson Terminals, Inc."

Under the terms of the agreement, Matson was to collect certain Port tariff

[1] Two amendments to the Agreement were approved by the Commission. The first amendment was approved on February 27, 1981, and the second amendment was approved on January 29, 1982. Hereafter, reference to the Agreement includes any applicable amended provisions.

charges from customers at the container terminal. It appears that during the period beginning February 1, 1982 and continuing through May 15, 1987, Matson, with the knowledge of the City, did not collect the Port's tariff charges from its foreign and domestic offshore common carrier customers at the container terminal.

Accordingly, it appears that the City and Matson may not have operated in accordance with the terms of the Agreement, thus violating section 10(a)(3) of the Shipping Act of 1984, 46 U.S.C. app. 1709(a)(3) and section 15 of the Shipping Act, 1916, 46 U.S.C. app. 814.

Now therefore, it is ordered, That pursuant to sections 10, 11, and 13 of the Shipping Act of 1984, and sections 15 and 22 of the Shipping Act, 1916,[2] an investigation into the practices of the City of Los Angeles and Matson Terminals, Inc. is hereby instituted to determine:

(1) Whether the City and Matson knowingly and wilfully violated section 10(a)(3) of the Shipping Act of 1984 by the failure to collect applicable Port tariff charges from common carrier customers using the container terminal granted by the City to Matson pursuant to Agreement No. T-3363;

(2) Whether the City and Matson violated section 15 of the shipping Act, 1916; and

(3) Whether, in the event the City and Matson are found to have violated the above-cited provisions, civil penalties should be assessed and, if so, the amount of such penalties;

It is further ordered, That in the event that City or Matson is found to be continuing to violate any of the above cited provisions of the Shipping Act of 1984 of the Shipping Act, 1916, an appropriate order shall be entered;

It is further ordered, That a public hearing be held in this proceeding and that the matter be assigned for hearing before an Administrative Law Judge, of the Commission's Office of Administrative Law Judges, at a date and place to be hereafter determined by the Administrative Law Judge, in compliance with Rule 61 of the Commission's rules of practice and procedure, 46 CFR 502.61;

It is further ordered, That the City of Los Angeles and Matson Terminals, Inc. are designated Respondents in this proceeding;

It is further ordered, That the Commission's Bureau of Hearing Counsel is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties designated herein;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's rules of practice and procedure, 46 CFR 502.72;

It is further ordered, That all future notices, orders, and decisions issued in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's rules of practice and procedure, 46 CFR 502.118, and shall be served on parties of record;

It is further ordered, That in accordance with Rule 61 of the Commission's rules of practice and procedure, the initial decision of the presiding officer in this proceeding shall be issued by March 30, 1988, and the final decision of the Commission shall be issued by July 29, 1988.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 87-15304 Filed 7-6-87; 8:45 am]

BILLING CODE 6730-01-M

[2] Prior to June 18, 1984, the effective date of the Shipping Act of 1984, sections 15 and 22 of the 1916 Act were respectively codified at 46 U.S.C. 814 and 821, and applied to both foreign and interstate commerce. When the Shipping Act of 1984 became effective, those sections were amended and later codified at 46 U.S.C. app. 814 and 821. As amended, they apply to interstate commerce only.

FEDERAL MEDIATION AND CONCILIATION SERVICE

Agency Form Under Review by the Office of Management and Budget

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Notice of Form F-7 submitted for review to the Office of Management and Budget.

The Federal Mediation and Conciliation Service (FMCS) has submitted to the Office of the Management and Budget (OMB) a request for review of FMCS Form F-7, Notice To Mediation Agencies. The request seeks OMB approval to extend the expiration date of Form F-7, from August 31, 1987 to August 31, 1990. The request was submitted pursuant to the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Information pertaining to the request is as follows:

Agency: Federal Mediation and Conciliation Service.

Title: Notice To Mediation Agencies.

Form Number: Agency-Form F-7; OMB-No. 3-076-0004.

Type of Request: Extension of expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 100,000 respondents per year; 50,000 reporting hours per year.

Needs and Uses: Notice information supplied to FMCS is required pursuant to 29 U.S.C. 158 (d)(3). The notice information is used by FMCS to alert its staff of mediators to the presence of impending strike or lockout situations involving parties to collective bargaining.

Affected Public: Private sector employers and labor unions.

Frequency: Once per collective bargaining dispute.

Respondents Obligation: Required pursuant to 29 U.S.C. 158 (d)(3).

OMB Desk Officer: James Mason (202) 395-6880.

Copies of the request for OMB review may be obtained from Ted M. Chaskelson, Attorney-Advisor, Federal Mediation and Conciliation Service, 2100 K Street, NW., Room 712, Washington, DC 20427 (202) 653-5305.

Written comments pertaining to the request should be sent to James Mason, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: July 1, 1987.

Kay McMurray,

Director.

[FR Doc. 87-15310 Filed 7-6-87; 8:45 am]

BILLING CODE 6372-01-M

FEDERAL RESERVE SYSTEM

Applications to Engage de Novo in Permissible Nonbanking Activities; Bank of Boston Corp. et al.; Correction

This notice corrects a previous **Federal Register** notice (FR Doc. 87-13482) published at page 22528 of the issue for Friday, June 12, 1987.

Under the Federal Reserve Bank of Boston, the entry for Bank of Boston Corporation is revised to read as follows:

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corporation,* Boston, Massachusetts; to engage *de novo* through its subsidiary, BancBoston Leasing Services, Inc., Boston, Massachusetts, in the leasing of real property and serving as a broker, agent or advisor in the leasing of such property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Comments on this application must be received by July 21, 1987.

Board of Governors of the Federal Reserve System, June 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-15293 Filed 7-6-87; 8:45 am]

BILLING CODE 6210-01-M

Formations of Acquisitions by, and Mergers of Bank Holding Companies; Crews Banking Corp., et al.

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 July 27, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Crews Banking Corporation,* Wauchula, Florida; to acquire 80 percent of the voting shares of Charlotte State Bank, Port Charlotte, Florida, a *de novo* bank. Comments on this application must be received by July 23, 1987.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Altenburg Bancorp, Inc.,* Altenburg, Missouri; to become a bank holding company by acquiring at least 95 percent of the voting shares of Bank of Altenburg, Altenburg, Missouri.

2. *First Highland Corp.,* Highland, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Highland, Highland, Illinois.

3. *Magna Group, Inc.,* Belleville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Firstplace Financial Corporation, Lincoln, Illinois, and thereby indirectly acquire First National Bank in Lincoln, Lincoln, Illinois.

Board of Governors of the Federal Reserve System, June 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-15294 Filed 7-6-87; 8:45 am]

BILLING CODE 6210-01-M

Application; First Union Bancorporation, Inc., et al.

The notificant listed below has applied under the Change in Bank Cortrol Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 23, 1987.

A. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Union Bancorporation, Inc. ESOP,* Streator, Illinois; to acquire 21.17 percent of the voting shares of First Union Bancorporation, Inc., Streator, Illinois.

Board of Governors of the Federal Reserve System, July 1, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-15349 Filed 7-6-87; 8: 45 am]

BILLING CODE 6201-01-M

Application; FFB Corp., et al.

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 July 29, 1987.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *FFB Corporation,* Wheeling, West Virginia; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank and Trust Co., Wheeling, West Virginia.

2. *Wesbanco, Inc.,* Wheeling, West Virginia; to acquire 100 percent of the voting shares of Bank of Sissonville, Sissonville, West Virginia.

3. *Wesbanco, Inc.,* Wheeling, West Virginia; to acquire 100 percent of the voting shares of The First National Bank and Trust Company, Wheeling, West Virginia.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *Key Centurion Bancshares, Inc.,* Charleston, West Virginia; to acquire 100 percent of the voting shares of The Central National Bank of Buckhannon, Buckhannon, West Virginia.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Bank South Corporation,* Atlanta, Georgia; to merge with First Bank Financial Corp., Conyers, Georgia, and

thereby indirectly acquire First Bank of Conyers, Conyers, Georgia.

2. *Bank South Corporation*, Atlanta, Georgia; to merge with Heritage Bancshares, Inc., Atlanta, Georgia, and thereby indirectly acquire Heritage Bank, Atlanta, Georgia.

D. Federal Reserve Bank of Chicago (David S. Epstein, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Monticello Corporation*, Monticello, Wisconsin; to become a bank holding company by acquiring 80 percent of the voting shares of Bank of Monticello, Monticello, Wisconsin. Comments on this application must be received by July 27, 1987.

E. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Commercial Security Bancshares, Inc.*, Springfield, Missouri; to become a bank holding company by acquiring at least 80 percent of the voting shares of Southern Missouri Bank, Mansfield, Missouri, and The Security Bank of Mountain Grove, Mountain Grove, Missouri.

Board of Governors of the Federal Reserve System, July 1, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-15350 Filed 7-6-87; 8:45 am]

BILLING CODE 6210-01-M

Application To Engage de Novo in Permissible Nonbanking Activities; Habersham Bancorp

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 27, 1987.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *Habersham Bancorp*, Cornelia, Georgia; to engage *de novo* through its subsidiary, The Advantage Group, Inc., Cornelia, Georgia, (1) in making, acquiring or servicing loans or other extensions of credit for its own account and for the account of others pursuant to § 225.25(b)(1); (2) in providing to others data processing and data transmission services, and transmission facilities pursuant to § 225.25(b)(7); and (3) in providing management consulting advice to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted within a 150 mile radius of Cornelia, Georgia.

Board of Governors of the Federal Reserve System, June 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-1529 Filed 7-6-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Shares of Banks or Bank Holding Companies; Change in Bank Control Notice; Wilfred E. and Evelyn L. Holce

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 21, 1987.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Wilfred E. and Evelyn L. Holce*, Vernonia, Oregon; to acquire 29.6 percent of the voting shares of Farmers State Bank, Forest Grove, Oregon.

Board of Governors of the Federal Reserve System, June 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-15296 Filed 7-6-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

NIOSH/University Occupational Safety Workshop; Meeting

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control (CDC) and will be open to the public for observation and participation, limited only by the space available:

Date: August 4–5, 1987.

Time: 8:30 a.m. to 5 p.m., August 4, 1987; 8:30 a.m. to 12 noon, August 5, 1987.

Place: Sheraton Lakeview Resort and Conference Center, Route 6, Box 88A, Morgantown, West Virginia 26505.

Purpose: To assemble personnel from NIOSH, NIOSH Educational Resource Centers, and NIOSH Training Project Grant Programs to discuss Institute objectives in occupational safety research and training. Viewpoints and suggestions from industry, organized labor, academia, other government agencies, and the public are invited.

Additional information may be obtained from: Tim Pizatella, Division of Safety Research, NIOSH, CDC, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505. Telephones: FTS: 923–4808; Commercial: 304/291–4808.

Dated: June 29, 1987.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 87-15303 Filed 7-6-87; 8:45 am]

BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 79P-0055 et al.]

Approved Variances for Laser Light Shows; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that variances from the performance standard for laser products have been approved by FDA's Center for Devices and Radiological Health (CDRH) for 13 organizations that manufacture and produce laser light shows, light show projectors, or both. The projectors provide a laser light display to produce a variety of special lighting effects. The principal use of these products is to provide entertainment to general audiences.

DATES: The effective dates and termination dates of the variance are listed in the table below.

ADDRESS: The applications and all correspondence on the applications have been placed on display in the Docket Management Branch (HFT-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sally Friedman, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), FDA has granted each of the 13 organizations listed in the table below a variance from the requirements of § 1040.11(c) (21 CFR 1040.11(c)) of the performance standard for laser products.

Each variance permits the listed manufacturer to introduce into commerce a demonstration laser product assembled and produced by the manufacturer, which is its particular variety of laser light show, laser light show projector, or both. Each laser product involves levels of accessible laser radiation in excess of Class II levels but not exceeding those required to perform the intended function of the product.

CDRH has determined that suitable means of radiation safety and protection are provided by constraints on the physical and optical design and by warnings in the user manual and on the products. Therefore, on the effective dates specified in the table below, FDA approved the requested variances by a letter to each manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer of the product, each product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number, and the effective date of the variance as specified in the table below.

Docket No.	Organization granted the variance	Demonstration laser product	Effective date/ Termination date
T9P-0055 (extension)	Audio-Visual Imagineering, Incorporated, 7953 Twist Lane, Springfield, Virginia 22153.	Audio-Visual Imagineering AVI Laser Projection System Model Series S or B and shows produced, assembled, and operated by Audio-Visual Imagineering which incorporate these laser projection systems..	Apr. 8, 1987 to May 19, 1989.
80P-0350 (renewal)	AGENCE PUBLICITAIRE Le P.G. de Granby, Incorporated, 89, rue Alexandra, Granby (Quebec), Canada J2GP4.	Super Laser Light Show assembled and produced by Agence Publicitaire Le P.G. de Granby, Incorporated which contains a Class IV argon-ion laser and a Science Faction Corporation Model Series SPC-2000 scanning system.	May 19, 1987 to July 18, 1988.
81P-0389 (renewal)	Laser Affiliates/Cherry Optical Company 2047 Blucher Valley Road, Sebastopol, California 95472.	Nancy Gorglione dba Laser Affiliates/Cherry Optical Company Laser Light Shows incorporating Class II, III, and/or IV helium/neon, argon, helium cadmium, and/or krypton laser projectors.	May 21, 1987 to Dec. 8, 1988.
82P-0051 (renewal)	Bifrost Technical Effects, aka LASRFX, 6733 Sale Avenue, Canoga Park, California 91307.	Bifrost Technical Effects (aka LASERFX]) laser light shows incorporating the Class IV Bifrost Lasergraph No. 2 Laser Projector.	April 29, 1987 to March 3, 1989.
83V-0170 (renewal)	John Young Planetarium Orlando Science Center, 810 East Rollins Street, Orlando, Florida 32803.	Orlando Science Center, John Young Planetarium, laser light shows incorporating the Class IV argon OSC Projection System Number One.	May 27, 1987 to Dec. 13, 1989.
85V-0189 (renewal)	Stage Sound Incorporated 4708 E. Van Buren Street Phoenix, Arizona 85008.	Laser light shows and projection systems assembled and produced by Stage Sound, Incorporated incorporating laser Media's Stingray projector or Laser Systems Development Corporation's X-Y scanners..	Apr. 20, 1987 to June 24, 1989.
85V-0463 (amendment)	Blackstone Audio-Visual 2217 West Braker Lane, Austin, Texas 78758.	Laser light shows produced and assembled by Blackstone Audio Visual incorporating Class IIIb or IV helium-neon, argon, krypton, or mixed gas lasers and a Laser Systems (England) Maestro S-800 B laser projector.	May 20, 1987 to Apr. 30, 1988.
86V-0050 (extention)	Tau Beta Pi Association, California Epsilon Chapter 4800 Boelter Hall, UCLA Campus, Los Angeles, California 90024.	Tau Beta Pi Association, California Epsilon Chapter, Laserama light show incorporating the argon and helium-neon Class IIIb Laserama laser projector.	Apr. 3, 1987 to May 7, 1988.
86V-0378	Werner Communications, LaserTech Division, 754 Edgewood, Wood Dale, Illinois 60191.	Werner Communications laser light shows assembled and produced by the firm with LaserMedia model LM and LMS projector systems and Class IV argon or krypton lasers..	Apr. 3, 1987 to Apr. 3, 1989.
87V-0030	Richland College, 12800 Abrams Road, Dallas, Texas 75243.	Richland College laser light show incorporting the Laser Graphics laser light show projector with a Class IV krypton ion laser.	Apr. 23, 1987 to Apr. 23, 1989.
87V-0050	Lights and Sounds Unlimited, Incorporated, 708 Holston Avenue, Elizabethton, Tennessee 37643.	Lights and Sounds Unlimited, Incorporated laser light shows which incorporated the LaserMedia, Incorporated LMS59 laser projection system.	Apr. 3, 1987 to Apr. 3, 1989.
87V-0093	Rick's Place, 52 West King Street, Lancaster, Pennsylvania.	Rick's Place laser light shows incorporting a Science Faction LaserChaser 2 projector with a Class IIIb Ion Laser Technology 5490A argon laser.	May 20, 1987 to May 20, 1989.
87V-0172	Tommy Bartlett, Incorporated 560 Wisconsin Dells Parkway, Wisconsin Dells, Wisconsin 53965.	Tommy Bartlett, Incorporated laser light show incorporating the Class IV LaserMedia LMS laser projection system with Class IV argon and krypton ion lasers and Class III helium-neon lasers..	May 20, 1987 to May 20, 1989.

In accordance with § 1010.4, the applications and all correspondence on the applications have been placed on public display under the designated docket numbers in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: June 29, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87-15289 Filed 7-6-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85V-0530]

Approved Variance for Laser Product; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a variance from the performance standard for laser products has been approved by FDA's Center for Devices and Radiological Health (CDRH) for the Trimedyne Surgical Laserprobe™ that employs a sapphire-tipped probe manufactured by Trimedyne. The function of the Trimedyne Surgical Laserprobe™ is to remove fatty plaque that accumulates in the blood vessels or to clear a channel through them.

DATES: The variance became effective May 20, 1987, and terminates May 20, 1992.

ADDRESS: Except for information regarded by law or regulations as confidential, the application and all correspondence on the application have been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Sally Friedman, Center for Devices and Radiological Health (HFZ-84), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: Under § 1010.4 (21 CFR 1010.4) of the regulations governing establishment of performance standards under section 358 of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f), CDRH has granted Trimedyne, 1815 East Carnegie Ave., Santa Ana, CA 92705, a variance from the provision of § 1040.11(a)(1) of the performance standard for laser products as it applies to the Trimedyne Surgical Laserprobe™ that employs a sapphire-tipped probe.

The specific requirement of the standard for which a variance has been granted pertains to the provision of § 1040.11(a)(1) that otherwise would require the Trimedyne Surgical Laserprobe™ to provide a means for the measurement of the level of that laser radiation emitted from the sapphire-tipped proble when intended for relative positioning of the human body (visualization and alignment of probe in blood vessels). All other provisions of the performance standard remain applicable to the product.

CDRH has determined that (1) the requirement of § 1040.11(a)(1) is not appropriate for the product; and (2) suitable means of radiation safety and protection will be provided by constraints on the product design. Therefore, on May 20, 1987, CDRH approved the requested variance by a letter to the manufacturer from the Deputy Director of CDRH.

So that each product may show evidence of the variance approved for the manufacturer, the product shall bear on the certification label required by § 1010.2(a) (21 CFR 1010.2(a)) a variance number, which is the FDA docket number appearing in the heading of this notice, and the effective date of the variance.

Except for information regarded as confidential under 42 U.S.C. 263i(e) or 21 CFR 1010.4(c)(4), the application and all correspondence on the application have been placed on public display under the designated docket number in the Dockets Management Branch (address above) and may be seen in that office between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.86).

Dated: June 29, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87-15290 Filed 7-6-87; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

Office of Assistant Secretary for Health; Privacy Act of 1974; System of Records; Extension of Comment Period

AGENCY: Public Health Service, DHHD.

ACTION: Notification of altered Privacy Act system of records: Extension of comment period.

SUMMARY: The Public Health Service (PHS) is extending the comment period on the proposal to alter Privacy Act system of records: 09-25-0151, "Administration: ALERT Records Concerning Investigation for Possible Misconduct in Science or Subject to Sanctions for Such Misconduct, HHS/PHS/NIH," as published in the **Federal Register** on Thursday, May 28, 1987 (Vol. 52, No. 102. pp. 19929-19930).

The National Institutes of Health (NIH) is publishing the proposed ALERT system notice in the NIH Guide for Grants and Contracts because of the interest demonstrated by the scientific community in the current system of records. This publication will afford the readers of the Guide an opportunity to comment since they may not have ready access to the **Federal Register.**

The comment period has been extended from 30 to 90 days. The extension provides an adequate comment period to all interested parties.

DATES: The comment period is extended to August 26, 1987.

ADDRESS: Comments should be addressed to the NIH Privacy Act Coordinator at the address listed below. Comments received will be available for inspection from 9 a.m. to 3 p.m., Monday through Friday, in Room 3B03, Building 31, at that address.

FOR FURTHER INFORMATION CONTACT: Barbara Bullman, J.D, NIH Privacy Act Coordinator, Building 31, Room 3B03D, 9000 Rockville Pike, Bethesda, MD. 20892 Telephone (301) 496-2832 (This is not a toll free number.)

Dated: June 29, 1987.

Wilford J. Forbush,

Deputy Assistant Secretay for Health Operations and Director, Office of Management.

[FR Doc. 87-15288 Filed 7-6-87; 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-87-1669; FR-2324]

Housing Development Grant Program; Amended List of Designated Eligible Areas

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

ACTION: Notice.

SUMMARY: This Notice amends the recently published list of Designated Eligible Areas to add those jurisdictions that were successful in their appeal of HUD's determination of their ineligibility.

FOR FURTHER INFORMATION CONTACT: Jessica Franklin, Director, Housing Development Grant Division, Room 6110, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-6142. (This is not a toll-free number.).

SUPPLEMENTARY INFORMATION: The Department published a Notice in the Federal Register of April 1, 1987 (52 FR 10442) listing those political jurisdictions that the Secretary had determined met the minimum standards for designated eligible areas under the Housing Development Grant (HoDAG) Program. (For a full discussion of the qualifying standards and criteria under the HoDAG program, readers should consult the Federal Register Notice cited above.)

The referenced Notice also advised that those jurisdictions that were not redesignated as eligible areas in the published "Designated Eligible Area List" could appeal their disqualification. The Notice further advised that HUD would redesignate an appealing jurisdiction as an eligible area if, after a review of the information submitted by the jurisdiction, HUD determined that it met the "new threshold" requirements.

Thirty jurisdictions appealed their elimination from the original list of Designated Eligible Areas. Twenty-three of these jurisdictions were successful in their appeal and their names are now added to the list. HUD denied five of the appeals because the appellants could not show that they met the overall rental vacancy and vacancy duration test. The other two jurisdictions were found ineligible to appeal since they were not on the 1986 List of Designated Eligible Areas.

How to Read the Amended Designated Eligible Area List

All eligible areas may be found by identifying, first, the state, then the country in which the desired area is located, and finally the community (city, town, village, etc.). There are no eligible countries on this list.

Dated: June 25, 1987.

Thomas T. Demery,

Assistant Secretary for Housing, Federal Housing Commissioner.

Amendment to the "List of Designated Eligible Areas" published in the Federal Register of April 1, 1987.

State of Connecticut

New London County

New London

State of Delaware

New Castle County

Wilmington

State of Florida

Palm Beach County

Riviera Beach

State of Kentucky

Scott County

Georgetown

State of Louisiana

Allen Parish

Kinder

Vernon Parish

Leesville

State of Massachusetts

Essex County

Lawrence
Lynn

Hampden County

Holyoke

Suffolk County

Boston

State of Michigan

Kent County

Grand Rapids

Saginaw County

Saginaw

State of Mississippi

Hinds County

Jackson

State of New Jersey

Atlantic County

Atlantic City

Camden County

Camden

Hudson County

Jersey City

Union County

Plainfield

State of Ohio

Lucas County

Toledo

State of Pennsylvania

Burks County

Reading

Dauphin County

Harrisburg

State of Rhode Island

Providence County

Providence
Woonsocket

Commonwealth of Puerto Rico

Ponce Municipio

[FR Doc. 87-15333 Filed 7-6-87; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[DEIS 87-19]

Availability of Draft Environmental Impact Statement; LaConner, WA

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of a draft environmental impact statement (DEIS) for the proposed Swinomish Marian at LaConner, Washington.

DATE: Comments will be accepted until September 8, 1987.

ADDRESS: Comments should be sent to: Area Director, Bureau of Indian Affairs, (Attention: Robert Taylor) 1425 Irving Street, NE., P.O. Box 3785, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Robert Taylor, Bureau of Indian Affairs, P.O. Box 3785, Portland, Oregon, 97208, telephone (503) 321-2206 (FTS) 8-429-2208.

SUPPLEMENTARY INFORMATION: The Swinomish Indian Tribal Community is proposing the development of an 800-slip marina and associated facilities. The 132-acre project site is located on the west shore of the Swinomish Channel north of State Route 20 near LaConner, Washington. The projects waterborne development includes 2290 linear feet of rubble mound breakwater, 1600 linear feet of channel revetment, 3100 linear feet of riprap along the slopes of the marina basin, 114,640 square feet of floating docks for 450 slips with capacity for an additional 350 slips at a later date, a fuel dock, a 4-lane boat launch, and a boat repair basin. A float plane facility is also being considered at this time. Onshore marina-related development includes harbormaster office, space for Coast Guard offices, chandlery, retail shops, restaurants, motels, condominiums and associated parking.

A limited number of individual copies of the draft EIS may be obtained by contacting Mr. Taylor.

Copies of the draft EIS are also available for review at the office of the Area Director, address as listed previously and at the office of the Puget Sound Agency, Bureau of Indian Affairs, 3006 Colby Avenue, Federal Building, Everett, Washington 98201 and the planning office, Swinomish Indian Tribal Community, 950 Morridge Way, LaConner, Washington 98257.

Dated: June 30, 1987.

Ross O. Swimmer,

Assistant Secretary, Indian Affairs.

[FR Doc. 87-15308 Filed 7-6-87; 8:45 am]

BILLING CODE 4310-02-M

Ordinance Amending Law Relating to Liquor Licensing; Navajo Nation, Arizona

June 24, 1987.

This notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 USC 1161. I certify that Resolution Number CD-7186 amending section 412 of Title 17 of the Navajo Tribal Code was duly adopted by the Navajo Tribal Council on December 22, 1986. The ordinance provides for the authorization and permission of the transportation, sale and consumption of alcoholic beverages within the Antelope Point Development Area of the Navajo Indian Reservation and the area of the Navajo Indian Reservation known as Glen Canyon National Recreation Area. This area is Indian country and is under the jurisdiction of the Navajo Nation. The latter area does not include, however, the adjacent public lands under the Department of the Interior which are also known as the Glen Canyon National Recreation Area. The Ordinance reads as follows:

Ross O. Swimmer,

Assistant Secretary—Indian Affairs.

Resolution of the Navajo Tribal Council Amending Title 17 of the Navajo Tribal Code, Section 412 Thereby Authorizing and Permitting the Transportation, Sale and Consumption of Alcoholic Beverages Within the Antelope Point Development Area of the Navajo Indian Reservation and the Glen Canyon National Recreation Area

Whereas:

1. The Navajo Tribal Council is the governing body of the Navajo Nation; and

2. By Resolution ACJY-125-86, the Advisory Committee of the Navajo Tribal Council adopted and approved the Navajo Nation Overall Economic Development Plan, categorizing the Antelope Point Resolt/Marina in the first Priority Group of the Navajo Nation's Economic Development Projects; and

3. By Resolution ACMA-34-86, the Advisory Committee and the Economic and Community Development Committee of the Navajo Tribal Council approved the Antelope Point Development Concept Plan/Environmental Assessment which noted the need for legislation and authorization to permit the sales of alcoholic beverages within the Navajo Reservation and Glen Canyon National Recreation Area; and

4. By Resolution ACS-152-86, the Advisory Committee and the Economic and Community Development Committee of the Navajo Tribal Council, *inter alia:* (1) Approved an Agreement and a Master Lease with SEVA Resorts, Inc. and SEVA Development Corporation for the development of the Antelope Point Resort/Marina Project with a proviso that the Navajo Nation shall seek to enact legislation approving the sale and consumption of alcoholic beverages at the development area; and (2) recommend legislation to permit the sale and consumption of alcoholic beverages within the lands withdrawn for the Antelope Point Marina Resort; and

5. The LeChee Chapter, by Resolution appended hereto as Exhibit "A", has recommended the approval of legislation allowing the sale and consumption of alcoholic beverages for the resort/marina complex; and

6. All preparatory work on the Antelope Point Resort/Marina Project, including financial analysis of the Project demonstrate that the enactment of legislation to permit the sale of alcoholic beverages is required to ensure the viability and success of the proposed resort/marina complex; and

7. Upon due deliberation and consideration of all factors involved in the issue of the authorization of liquor including the past policy of prohibiting liquor, the problem of alcohol abuse by individuals, the policy of encouraging economic and community development and the objective of enhancing the sovereignty and self-government of the Navajo Nation, the Navajo Tribal Council has determined that authorizing and permitting alcoholic beverages within the Antelope Point Development Area, both on the Navajo Indian Reservation and the Glen Canyon National Recreation Area, is appropriate and in the best interests of the Navajo Nation; and

8. It is the intent of the Navajo Tribal Council that Title 7, Navajo Tribal Code, Section 207, *Action Against Provider of Beverages,* shall not be affected by this authorizing legislation and 7 N.T.C. § 207, shall be applicable to the furnishing and consumption of liquor or intoxicating beverages within the Antelope Point Development Area.

Now Therefore Be It Resolved That:

1. The Navajo Tribal Council hereby amends Title 17 of the Navajo Tribal Code, section 412, in the following manner:

(c) It shall not be unlawful for any person, Indian, or non-Indian, to sell, deliver, transport or consume intoxicating liquor in that part of the Navajo Indian Reservation situated within the Southeast Quarter of Section 8, the Southwest Quarter of Section 9, West Half of the unsurveyed Section 15, Section 16, the Northeast Quarter of Section 17, the North Half of Section 21, and the Northwest Quarter of the unsurveyed Section 22 and that part of the Glen Canyon National Recreation Area situated within the Southeast One-Quarter of Section 8, the Southeast One-Quarter of Section 9, the east One-Half of Section 17, and Section 16, all in Township 41 North, Range 9 East, Gila and Salt River Meridians, Coconino County, State of Arizona, commonly known as the Antelope Point Development Area, provided the transportation, sale and consumption of alcoholic beverages is otherwise in conformity with applicable state regulatory liquor laws and any laws, rules or regulations subsequently adopted by the Navajo Nation.

2. The Navajo Tribal Council further authorizes and delegates to the Advisory Committee of the Navajo Tribal Council, the authority to approve such rules and regulations as are necessary and appropriate to ensure the proper transportation, sale and consumption of alcoholic beverages within the Antelope Point Development Area upon the recommendation of the Economic and Community Development Committee of the Navajo Tribal Council.

3. The Navajo Tribal Council hereby stipulates that at the end of five (5) years, from the date of this enactment, this legislation shall be subject to review and reauthorization by the Navajo Tribal Council.

4. Nothing herein shall be deemed in any way a waiver of the sovereign immunity of the Navajo Nation against lawsuits without its consent.

Certification

I hereby certify that the foregoing resolution was duly considered by the Navajo Tribal Council at a duly called meeting at Window Rock, Navajo Nation (Arizona), at which a quorum was present and that same was passed by a vote of 40 in favor, 29 opposed and

4 abstained, this 22nd day of December 1986.

Pete Zah,

Chairman, Navajo Tribal Council.

[FR Doc. 87-15321 Filed 7-6-87; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[AK-965-4213-15; F-14861-B]

Alaska Native Claims Selection; Golovin Native Corp.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Golovin Native Corporation for approximately 1 acre. The lands involved are in the vicinity of Golovin, Alaska, within Sec. 16, T. 12 S., R. 21 W., Kateel River Meridian.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Nome Nugget. Copies of the decision may be obtained by contacting the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, anchorage, Alaska 99513 ((907) 271-5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until August 6, 1987 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management, Division of Conveyance Management (960), address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Gary K. Seitz,

Chief, Branch of Northwest Adjudication.

[FR Doc. 87-15326 Filed 7-6-87; 8:45 am]

BILLING CODE 4310-JA-M

[OR 910-GP7-219; OR 40882]

Realty Action; Exchange of Public Lands in Josphine County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public lands in Josephine County, Oregon.

SUMMARY: This Notice is to advise the public that the Grants Pass and Butte Falls Resource Areas of the Bureau of Land Management (BLM) and the Nature Conservancy are proposing a land exchange.

The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716:

Willamette Meridian

T. 38 S., R. 7 W.,
Sec. 20, NW¼ SE¼
T. 38 S., R. 7 W.,
Sec. 21 NW¼ SW¼;
T. 38 S., R. 8 W.,
Sec. 26, SE¼ SW¼.

The area described comprises approximately 120(±) acres in Josephine County, Oregon.

In exchange for these lands, the Federal Government will acquire the following described private lands from the Nature Conservancy:

Willamette Meridian

T. 35 S., R. 1 E.
Sec. 15, SE¼.

The above described area comprises approximately 160.31 (±) acres in Jackson County, Oregon.

The purpose of the land exchange (identified by serial number or 40882) is to facilitate resource management opportunities by the Butte Falls Resource Area, Medford District. The private land being offered has very important values for wildlife in protection of critical deer winter range. The 160.31 acre parcel will be made part of a proposed natural research area. The public interest will be highly served by making this exchange.

The value of the lands to be exchanged is approximately equal, and upon completion of the final appraisal of the lands, cash equalization payments will be made if the values are within twenty-five percent (25%).

The exchange will be subject to:

1. Reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All other valid existing rights, including, but not limited to, any right-of-way, easement of lease of record.

Publication of this notice in the **Federal Register** will segregate the public lands described above, to the extent that they will not be subject to appropriation under the public land laws, including the mining laws. As provided by the regulations of 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be accepted, shall not be considered as filed and shall be returned to the applicant.

Detailed information concerning the exchange, is available for review at the Medford District Office, 3040 Biddle Road, Medford, Oregon 97504.

For a period of 45 days from the date of publication of this notice in the **Federal Register** nterested parties may submit comments to the Medford District Manager at the above address.

Objections will be reviewed by the State District who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date of issue: June 19, 1987.

David A. Jones,

District Manager.

[FR Doc. 87-15321 Filed 7-6-87; 8:45 am]

BILLING CODE 4310-33-M

Bureau of Reclamation

Environmental Impact Statement; Central Valley Project, CA; Withdrawal

AGENCY: Bureau of Reclamation, Interior.

ACTION: Withdrawal of notice of intent to prepare a separate environmental impact statement for the Pleasant Valley Water District Water Contracting Proposal, Central Valley Project, California.

SUMMARY: The Bureau of Reclamation (Reclamation), Department of the Interior, on December 17, 1985 (50 FR 51464), published a Notice of Intent to prepare a joint Environmental Impact Statement/Environmental Impact Report (EIS-EIR) which would have addressed the impacts of delivering water, and the construction and operation of, the Pleasant Valley Water Distribution System. Reclamation now will include the analysis of the Pleasant Valley Water District Water Contracting Proposal in the Delta Export Water Contracting EIS which is being prepared for marketing Central Valley Project water south of the Sacramento-San Joaquin Delta.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Solbert, Environmental Specialist, Mid-Pacific Region (MP-750), 2800 Cottage Way, Sacramento, California 95825-1898, telephone (916) 978-5131.

Dated: June 30, 1987.

C. Dale Duvall,

Commissioner.

[FR Doc. 87-15337 Filed 7-6-87; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Development Operations Coordination Document; Conoco, Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed development operations coordination document (DOCD).

SUMMARY: Notice is hereby given that Conoco Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 1471, Block 177, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from onshore bases located at Cameron and Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on June 24, 1987. Comments must be received within 15 days of the date of this Notice or 15 days after the Coastal Management section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979 (44 FR 53685). Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: June 26, 1987.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 87-15325 Filed 7-6-87; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

National Registry of Natural Landmarks

AGENCY: National Park Service, Interior.

ACTION: Public notice and request for comment.

The areas listed below appear to qualify for designation as National Natural Landmarks, in accordance with the provisions of 36 CFR Part 62. Pursuant to § 62.4(d)(1) of 36 CFR Part 62, written comments concerning the potential designation of these areas as National Natural Landmarks by the Secretary of the Interior may be forwarded to the Director, National Park Service (413), U.S. Department of the Interior, 18th and C Streets, NW., Washington, DC 20240. Written comments should be received no later than 60 days from the date of this notice.

FOR FURTHER INFORMATION CONTRACT: Charles M. McKinney III, Natural Landmarks Branch, Interagency Resources Division, (202) 343-9525.

Dated: June 30, 1987.

William Penn Mott, Jr.,

Director.

ALABAMA

Jefferson County

Red Mountain Expressway Cut—This 23-acre site, located along the road cut where U.S. Highway 280 traverses Red Mountain in Birmingham, exhibits an unusual combination of stratigraphic and structural features that record the geological development of this part of the Southern Appalachian fold belt during Paleozoic time. In one location, rocks representing a 150 million-year geological record are exposed along a distance of only about 650 feet, because the strata are tilted. Structural features clearly displayed include unconformities and normal faults. Sedimentary strata represent a range of depositional environments, from intertidal beach and mud flat to offshore, open marine conditions. In addition, the rocks exposed contain a rare Silurian trilobite species. Excellent public interpretation of this site is provided by the Red Mountain Museum.

IDAHO

Fremont County

St. Anthony Sand Dunes—This 20,500-acre site possesses a combination of geological and biological attributes which are of national significance. Geologically, St. Anthony Sand Dunes best illustrates the sand dune belts that have formed on an adjacent to the eastern Snake River Plain. A number of dune types are represented, including transverse and longitudinal dunes. Some are active, but most are stabilized. The alignment of the dune belt reflects the prevailing wind direction on the Snake River Plain. The vegetation illustrates all stages of dune succession in a dry climate, ranging from drifting sand to areas long stabilized by a shrub/grass community. One shrub steppe community type characteristic of the Columbia Plateau, the antelope bitterbrush-sand dune community, is best illustrated at this site. In addition, two rare plant species are found in the dunes. The fauna include large wintering populations of four large herbivores, namely antelope, elk, moose and mule deer, a diversity of species rarely encountered. A beetle found in the dunes occurs in only one other place in the world.

Gooding County

Box Canyon—This 250-acre site is an abandoned Snake River canyon formed by cataract retreat when a lava dam of Sand Springs basalt caused a temporary diversion of the river onto adjacent basaltic uplands in the vicinity of the canyon. It thus is an exellent example of a dry cataract, which also was eroded deeply enough to expose a major spring system, the eleventh largest in the United States. The width of the winding corridor of the canyon ranges from 1,500 feet at the upper end to 3,000 feet at the mouth along a distance of approximately 1.25 miles; sheer basalt cliffs rise from 75 to 200 feet above the canyon floor. In addition, the topographic isolation of the canyon and the constancy and high water quality of discharge from the canyon's spring system have maintained a stable, self-contained box canyon ecosystem of national significance, including riparian saline-alkaline, upland, talus, and aquatic communities.

Malad Canyon—This 1,497-acre site contains an excellent example of an underfit canyon, formed during the Pleistocene by cataract retreat resulting from an ancestral

river much larger than the Big Wood River now occupying the canyon. Formation of the canyon not only revealed in its walls the sequence of basaltic lava flows composing the surrounding portion of the Snake River Plain, but also exposed the Malad Springs, dramatic evidence for the tremendous volume of water transmitted through the lava flows, as one of the largest spring systems in the United States and in the world. After primary erosion of the canyon, great blocks of basalt were undercut and slumped into the canyon where soft lakebed deposits beneath them were eroded away. Portions of the site also contain superior examples of communities composing the box canyon ecosystem.

ILLINOIS

Cook county

Gensburg-Markham Prairie Nature Preserve—Located in the town of Markham about 20 miles south of the Loop is a 190-acre site representing the largest and highest quality prairie in Illinois and in large parts of adjacent states. As a mesic prairie intergrading between sand prairie and typical tall-grass prairie on loamy soil, it is a remnant of a distinct and formerly widespread biotic community type of the Central Lowlands Natural Region. Mesic prairie has been nearly eliminated along the south edge of Lake Michigan where most remnants occur. In the Chicago Lake Plain of Illinois, for example, only about one-hundredth of one percent remain of the original prairie. Much of it occurs within a nature preserve, located close to a very large metropolitan area, surrounded by suburban development. The site is also an excellent example of undeveloped lakebed and beach ridge topography.

IOWA

Winnesheik County

Cold Water Cave—Located in the glaciated portion of the upper Midwest, where caves are rare and cave formations (speleothems) are generally minor, Cold Water Cave is exceptional as an extensive cave system that is well decorated with speleothems. It contains numerous vertical shafts and an unusually large, active, meandering underground stream that courses along most of the approximately 7.3 miles of cave passageways. Because the cave is locked and not accessible to the general public, it remains in unimpaired natural condition. Having formed probably within the last 200,000 years in a limestone formation of Ordovician age, the cave system is also relatively young in geologic terms, and appears to be enlarging more rapidly than most caves in the United States. The cave atmosphere is also unusual for its typically low oxygen content and extremely high carbon dioxide content.

KENTUCKY

Russell County

Creelsboro Natural Bridge—This 8.2-acre site, located 14 miles southwest of Jamestown, is the longest natural bridge, or natural tunnel, in the Highland Rim Section of the Interior Low Plateaus Natural Region. Whereas most of the natural bridges and arches of Kentucky are formed in sandstone or conglomerate, Creelsboro Natural Bridge is composed of limestone of Ordovician age. The occasional diversion of Jim Creek through the tunnel into the adjacent Cumberland River during high water is an outstanding illustration of subterranean stream diversion, a process by which the bridge formed and which continues today. In addition, the occasional reverse flow of the Cumberland River flood waters back through the tunnel into the Jim Creek valley is highly unusual. The bridge spans 75 feet over a tunnel 100 feet long, with a height of 15 feet on the upstream side and about 40 feet on the downstream side.

MAINE

Oxford County

Mahoosuc Notch—Located between Mahoosuc Mountain on the northwest and Fulling Mill Mountain on the southeast in the Mahoosuc Range of westernmost Maine, Mahoosuc Notch is an excellent example of a mountain notch and boulder field in the New England-Adirondacks Natural Region. Huge granite boulders line the narrow 4,000 foot long floor of the steep-walled mountain pass, along which the Appalachian Trail traverses. Because of the notch's northeast-southwest orientation, winter snow and ice last well into the summer there, creating a unique microclimate. The site of approximately 90 acres encompassing the notch also contains virgin, old growth boreal forest dominated by black spruce and balsam fir.

MASSACHUSETTS

Berkshire County

Mt. Greylock Old Growth Spruce—This 21.3-acre site contains three separate stands (9.4, 5.7, and 6.2-acres) of undisturbed old growth red spruce on the northwest slopes of Mt. Greylock, the highest mountain in Massachusetts. These stands have been undisturbed for at least 150–180 years, and may be virgin. No other old growth red spruce stands are known in Southern New England, while only a few comparable or better sites occur in Northern New England.

NEBRASKA

Lincoln County

Dissected Loess Plains—Located 17 miles south-southwest of Brady, loess (windblown silt) deposits at this site are among the thickest (200+ feet) in the Great Plains Natural Region and in North America. Eroded canyons and deep valleys that occur here reveal the geological history of the Loess Plains better than any other place in the Great Plains. It has been well studied by geologists and described in the scientific literature, and also contains good examples of native vegetation. This 26,880-acre site is located near the Nebraska Sand Hills, the origin of much of the loess found in the Loess Plains. The 10,420-acre Loess Hills National Natural Landmark, in Monona and Harrison Counties, Iowa, complements this site as an exceptional illustration of constructional topography, in contrast to the erosional topography found here.

OREGON

Wallowa County

Findley Buttes—This 3,536-acre site, located 20 miles northeast of Enterprise, represents the last large, essentially undisturbed grassland in the Columbia Plateau Natural Region. It contains high quality examples of many of the plateau grassland communities, including bunchgrass prairie, as well as adjacent shrubland and woodland communities. Three volcanic cinder cones dominate the landscape. Nearby Davis Canyon National Natural Landmark, in Okanogan County, is the largest and least disturbed example in the region of antelope bitterbrush/Idaho fescue shrub steepe, another distinct vegetation type characteristic of the Columbia Plateau.

VIRGINIA

Orange County

Montpelier Forest—This 200-acre site is located within Montpelier, the estate of President James Madison, approximately five miles southwest of Orange on both sides of State Route 20. This site represents the best example of old growth Eastern decidious forest in the Virginia/Maryland portion of the Piedmont Natural Region in terms of age and lack of human disturbance. The forest is composed of mainly oak, hickory, and poplar, many of which are believed to be between 200 and 300 years old. The site is high in natural diversity and possesses an extraordinarily high value to science and education.

WISCONSIN

Dane County

Cave of the Mounds—Located approximately 2 miles east of Blue Mounds State Park and directly below Brigham Farms, this cave provides an exceptional illustration of two principal modes of limestone cave formations (speleogenesis): the solution of cave passageways by "vadose" water flowing above and also by "phreatic" groundwater flowing below the water table. The original portion of the cave was formed by phreatic flow along two intersecting joints, and later was enlarged by vadose flow along an underlying fracture. Because these different processes thus occurred in separate joint systems, the cave also illustrates the importance of fracture patterns in controlling speleogenesis. In addition, Cave of the Mounds is richly decorated with cave formations (speleothems) of most known varieties, including stalagmites measuring 18 feet in height, and exhibits many colorful displays of mineral deposits, including pure calcite. The cave is formed in a 300-foot thick formation of Ordovician dolomite, and is located within the unglaciated area of Wisconsin 15 miles west of the Wisconsinan terminal moraine. It is managed for educational and commercial purposes and is used

extensively as a living laboratory by local secondary schools, regional speleological societies, and various universities and museums from throughout the Nation.

[FR Doc. 87-15298 Filed 7-6-87; 8:45 am]
BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31055]

Exemption; CSX Transportation, Inc.; Trackage Rights Exemption; Baltimore and Ohio Chicago Terminal Railroad Company

The Baltimore and Ohio Chicago Terminal Railroad Company has agreed to grant local trackage rights to CSX Transportation, Inc., over a line of railroad between Dolton, IL, and Tod Avenue, IN, in the greater Chicago, IL, area, a distance of approximately 7 miles. The trackage rights became effective June 22, 1987.

This notice is filed under 49 CFR 1180.2(d) (3) and (7). 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 stay the transaction.

As a condition to use of this exemption any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: June 30, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-15335 Filed 7-6-87; 45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. General Contractors Association of Hawaii; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)-(h), that a proposed Final Judgment and Competitive Impact Statement ("CIS") have been filed with the United States District Court for the District of Hawaii in *United States* v. *General Contractors Association of Hawaii*. The Complaint in this case alleges that the General Contractors Association of Hawaii unreasonably restrained competition by adopting and adhering to certain rules governing the submission of bids by specialty contractors to general contractors on a substantial number of construction projects in Hawaii.

The proposed Final Judgment requires the defendant to cancel all formal and informal rules that restrain negotiations between general contractors and specialty contractors or that restrain general contractors from receiving sub-bids from, or awarding subcontracts to, specialty contractors.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses to them, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Field Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (telephone: 415/556-6300).

Joseph H. Widmar,

Director of Operations Antitrust Division.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102 (415) 556-6300. Attorneys for the United States.

Robert S. Katz, Torkildson, Katz, Jossem, Fonseca & Moore, Amfac Bldg., 15th Floor, 700 Bishop Street, Honolulu, Hawaii 96813 (808) 521-1051. Attorneys for General Contractors Association of Hawaii.

United States District Court for the District of Hawaii

United States of America, Plaintiff, v. General Contractors Association of Hawaii, Defendant; Antitrust.

Filed: June 16, 1987.

[Civil No. 870462ACK]

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. section 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do an any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff:

Charles F. Rule,

Acting Assistant Attorney General.

Roger B. Andewelt,

Judy Whalley,

Gary R. Spratling,

Attorneys, Department of Justice.

Daniel A. Bent,

United States Attorney, District of Hawaii.

For the Defendants:

Robert S. Katz,

Counsel for General Contractors Association.

Robert J. Staal,

Phillip H. Warren,

Howard J. Parker,

Attorneys, Antitrust Division Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102. Telephone: (415) 556-6300.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556-6300. Attorneys for the United States.

United States District Court for the District of Hawaii

United States of America, Plaintiff, v. General Contractors Association of Hawaii, Defendant; Antitrust.

Filed: June 16, 1987.

[Civil No. 874062ACK]

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on June 16, 1987, and plaintiff and defendant, by their respective attorneys, having consented to entry of this Final Judgment without trial or adjudication of any issue of fact of law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby ordered, adjudged, and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted

against the defendent under section 1 of the Sherman Act (15 U.S.C. 1).

II

Definitions

As used in this Final Judgment:

A. "Awarding authority" means any government or private entity that contracts for the performance of construction projects;

B. "General contractor" means any person who contracts with awarding authorities for the performance of construction projects;

C. "Specialty contractor," also known as a subcontractor, means any person who supplies specialty contracting services (e.g., plumbing, electrical, masonry) to general contractors for construction projects;

D. "Material supplier" means any person who supplies materials to general or specialty contractors for use on construction projects;

E. "Person" means any individual, partnership, firm, association, corporation, or other business or legal entity;

F. "Prime bid" means an offer to an awarding authority by a general contractor for the purpose of obtaining a contract for a construction project;

G. "Sub-bid" means an offer to a general contractor by a specialty contractor to supply specialty contracting services for a construction project, or by a material supplier to supply materials for a construction project;

H. "Confirmation bid" means written confirmation of a sub-bid, which confirmation is filed by a specialty contractor or material supplier with a bid depository; and

I. "Bid depository" means a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, or that receives confirmation bids filed by specialty contractors and material suppliers.

III

This Final Judgment applies to the defendant General Contractors Association of Hawaii ("GCA") and to each of its subsidiaries, successors, and assigns, and to each of its officers, directors, agents, managers and other employees, and to all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

Defendant is enjoined and restrained from directly or indirectly continuing, maintaining, initiating, adopting, ratifying, entering into, carrying out, furthering, disseminating, publishing, or enforcing any bidding procedure, plan, program, course of action, statement of principal or policy, resolution, rule, by-law, standard, or collective statement that has the purpose or effect of:

A. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time sub-bids on construction projects;

B. Suppressing, restraining, or discouraging general contractors from receiving sub-bids from, or awarding subcontracts to, specialty contractors or material suppliers; or

C. Stating that negotiation of sub-bids is contrary to any policy of GCA.

A. Defendant is ordered and directed to cancel and rescind within sixty (60) days of the date of entry of this Final Judgment, and is prohibited from directly or indirectly reinstating, every plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement that is inconsistent with this Federal Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for all specialty subcontractors or material supplies must be filed with the GCA bid depository;

2. General contractors may award a specialty or material supply subcontract only to bidders who have formally filed bids with the GCA bid depository in compliance with its rules and procedures;

3. Filed bids may not be altered or changed after the deadline for their filing;

4. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

5. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository.

6. Prior to the prime bid opening, general contractors may not divulge any information to a specialty contractor or material supplier regarding any sub-bid received; and

7. If a construction project is altered in scope, the general contractor must continue to deal with the low filed bidders or parties he used in covering the affected item(s) of work.

B. Defendant is ordered and directed to include in any GCA rules concerning bidding for contracts on construction projects a statement that no GCA rule or policy prohibits negotiation of sub-bids, or requires that subcontractors be awarded only on sub-bids filed in accordance with GCA rules.

VI

Nothing in Sections IV and V of this Final Judgment shall prohibit defendant from:

A. Complying with any requirement of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids; or

B. Maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the facility by any contractor is voluntary.

VII

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment to each of its officers, directors, agents, and managers within thirty (30) days after the date of the entry of this Final Judgment;

B. Furnish a copy of this Final Judgment to any successors to its officers, directors, agents, and managers within thirty (30) days after each successor becomes associated with the defendant;

C. Obtain from each of its officers, directors, agents, and managers, and their successors, who have been provided a copy of this Final Judgment, a signed receipt therefor, which receipt shall be retained in the defendant's files;

D. Attach to each copy of this Final Judgment furnished to its officers, directors, agents, and managers, and their successors, a statement in the form set forth in Appendix A attached hereto, with the following sentences added to the last paragraph of the letter: "Sections IV and V of the Final Judgment apply to you. If you violate these provisions, you may subject GCA to a fine, and you may also subject yourself to a fine and imprisonment."; and

E. Hold, within seventy-five (75) days after the date of entry of this Final Judgment, a meeting of its officers, directors, agents, and managers, at which meeting such persons shall be instructed concerning the defendant's and their obligations under this Final Judgment. Similar meetings shall be held at least once a year during the term of this Final Judgment; provided, however, that no meeting must be held during any calendar year in which defendant has had no bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement concerning any aspect of bidding for contractors on construction projects.

VIII

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment together with a letter on the letterhead of GCA, in the form set forth in Appendix A attached hereto, to each of its members within thirty (30) days after the date of entry of this Final Judgment.

B. Furnish a copy of this Final Judgment together with a letter on the letterhead of GCA, in the form set forth in Appendix A attached hereto, to each new member within thirty (30) days after the member joins GCA; and

C. Publish in the *GCA Weekly Bid Bulletin*, or in the event GCA ceases publication of its *Weekly Bid Bulletin* in a comparable construction trade publication, the notice attached hereto as Appendix B.

IX

Defendant is ordered and directed to:

A. Establish and implement a plan for monitoring compliance by its officers, directors, agents, and managers and other employees with the terms of the Final Judgment;

B. File with this Court and serve upon the plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with this Final Judgment; and

C. File with this Court and serve upon the plaintiff annually on each anniversary date during the term of this Final Judgment an affidavit setting forth all steps it has taken during the preceding year to discharge its obligations under this Final Judgment.

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

1. Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, agents, and managers and other employees of the defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such non-privileged written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendant to plantiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

XI

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII

This Final Judgment will expire ten (10) years from its date of entry.

XIII

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

United States V. General Contractors Association of Hawaii, Civil No. _____, Final Judgment.

Appendix A

Re: United States v. General Contractors Association of Hawaii (Civil No. _____),

Dear Sir or Madam:

The General Contractors Association of Hawaii ("GCA") has recently entered into a Final Judgment with the United States Department of Justice to settle a civil antitrust case filed against the Association. That case, *United States v. General Contractors Association of Hawaii* (Civil No. _____), concerned the GCA's bidding procedure that governed a substantial number of contracts on construction projects in the State of Hawaii. Our Association has been cooperating with the Department of Justice regarding this matter, and we have voluntarily agreed to the revisions of our bid depository rules outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____ of the District of Hawaii, GCA has agreed to eliminate all bid procedures and practices that in any manner may:

1. Restrict or discourage general contractors and specialty contractors or material suppliers from negotiating sub-bids; or

2. Restrict or discourage general contractors from accepting sub-bids from, or awarding subcontracts to, specialty contractors or material suppliers.

Specifically, GCA has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for all specialty subcontracts or material supplies must be filed with the GCA bid depository;

2. General contractors may award a specialty or material supply subcontract only to bidders who have formally filed bids with the GCA bid depository in compliance with its rules and procedures;

3. Filed bids may not be altered or changed after the deadline for their filing;

4. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

5. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository;

6. Prior to the prime bid opening, general contractors may not divulge any information to a specialty contractor or material supplier regarding any sub-bid received; and

7. If a construction project is altered in scope, the general contractor must continue to deal with the low filed bidders or parties he used in covering the affected item(s) of work.

The Hawaii Island Contractors Association, Maui Contractors Association, Gypsum Drywall Contractors of Hawaii, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the GCA rules being eliminated.

A copy of the entire Final Judgment is enclosed with this letter and will in the future be available upon request. I urge you to read it carefully.

Sincerely yours,

Appendix B

The General Contractors Association of Hawaii ("GCA") has recently entered into a Final Judgment with the United States Department of Justice to settle an antitrust case filed against the Association. That case, *United States v. General Contractors Association of Hawaii* (Civil No. _____), concerned the GCA's bidding procedure that governed a substantial number of contracts on construction projects in the State of Hawaii. GCA has been cooperating with the Department of Justice regarding this matter, and has voluntarily agreed to the revisions of its bidding procedure outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

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2. Restrict or discourage general contractors from accepting sub-bids from, or awarding subcontractors to, specialty contractors or material suppliers.

Specifically, GCA has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for all specialty subcontracts or material supplies must be filed with the GCA bid depository;

2. General contractors may award a specialty or material supply subcontract only to bidders who have formally filed bids with the GCA bid depository in compliance with its rules and procedures;

3. Filed bids may not be altered or changed after the deadline for their filing;

4. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

5. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository;

6. Prior to the prime bid opening, general contractors may not divulge any information to a specialty contractor or material supplier regarding any sub-bid received; and

7. If a construction project is altered in scope, the general contractor must continue to deal with the low filed bidders or parties he used in covering the affected item(s) of work.

The Hawaii Island Contractors Association, Maui Contractors Association, Gypsum Drywall Contractors of Hawaii, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the GCA rules being eliminated.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, *Antitrust Division U.S. Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102 Telephone: 415/556–6300, Attorneys for the United States.*

U.S. District Court for the District of Hawaii

United States of America, Plaintiff, v. *General Contractors Association of Hawaii*, Defendant.

Filed: June 16, 1987.

[Civil No. 870462ack]

Competitive Impact Statement

As required by section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), the United States files this Competitive Impact Statement on the proposed Final Judgment submitted for the Court's approval in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On June 16, 1987, the United States filed nine related civil antitrust complaints under section 1 of the Sherman Act, 15 U.S.C. 1, against nine construction trade associations in Hawaii. Each complaint alleges that a trade association conspired with its members to restrain competition by adopting and enforcing certain rules that restrict bidding on construction projects in Hawaii. The United States and each of the nine defendants have agreed to Final Judgments in settlement of the cases. The Complaints and proposed Final Judgments in the nine cases are similar.

Defendant General Contractors Association of Hawaii ("GCA") is a Hawaii corporation with its principal place of business in Honolulu, Hawaii. GCA was the first construction trade association in Hawaii to adopt bidding rules, and the other eight defendant associations modeled their rules on GCA's rules.

Plaintiff and defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless plaintiff withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to interpret, modify, enforce, and punish violations of the Final Judgment.

II. Description of the Practices Giving Rise to The Alleged Violation of the Antitrust Laws

A. The Bid Depository System in Hawaii

A bid depository is a system for the collection and dissemination of bids or sub-bids for the performance of construction services. A bid depository collects and compiles bids submitted by a date certain and then disseminates them to bidding authorities or general contractors seeking the bids or sub-bids, respectively. By facilitating the bidding process, bid depositories can improve the efficiency of the contracting process and thereby promote rather than harm competition. The complaint in this case

alleges, however, that the defendant adopted a number of rules governing the operation of its bid depository that restrained competition for subcontracts on construction projects governed by the GCA bidding procedure, by prohibiting and precluding negotiation of sub-bids once they were submitted to the bid depository.

On most major construction projects in Hawaii, including most government projects, the governmental and private entities that contract for construction services (known as "awarding authorities") do so by soliciting and accepting bids from general contractors. In preparing their respective bids, general contractors usually solicit and accept bids from the various specialty contractors (e.g., plumbing, electrical, masonry contractors) and material suppliers whose work will be needed on the project. A bid to a general contractor by a specialty contractor or material supplier to provide services or materials for a construction project is know in the trade as a "sub-bid."

Since 1949, GCA has maintained and enforced rules that regulate bidding by specialty contractors to general contractors on a substantial number of construction projects in Oahu, Hawaii. The rules, known collectively as the "GCA bidding procedure," govern the operation of GCA's bid depositories. Two other general contractor associations in Hawaii operate bid depositored: the Hawaii Island Contractors' Association (since 1972) for construction projects on the Island of Hawaii, and the Maui Contractors Association (since 1977) for construction projects on the Island of Maui.

Six specialty contractor associations operate bid depositories in conjunction with the three general contractor associations in Hawaii, These associations are: Gypsum Drywall Contractors of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, Sheet Metal Contractors Association, and Mason Contractors Association of Hawaii. All of these bid depositories have rules similar to the GCA bidding procedure.

Under its rules GCA determines which construction projects will be subject to its bid depository rules. If GCA chooses a particular project, then pursuant to the rules of the other associations, that project is also subject to the depository rules of those other associations. Under the controlling GCA rules, the bid depository rules apply to all construction projects that are listed in the *GCA Weekly Bid Bulletin.* GCA selects the projects to be included in the *Bulletin* on its own and without the authorization or direction of the affected awarding authorities. In fact, GCA selects almost exclusively government construction projects for inclusion in the *GCA Weekly Bid Bulletin* and seldom includes any private projects. All significant construction projects in Hawaii that are awarded by federal, state, or local governmental entities are listed in the *GCA Weekly Bid Bulletin.*

All significant general contractors operating on the Island of Oahu are members of GCA and abide by the bidding procedure for projects on Oahu that are listed in the *GCA Weekly Bid Bulletin.* The bidding rules are only suspended by GCA if non-Hawaiian general contractors who may be unwilling to abide by the procedures appear on the bidders list for a project. On construction projects to which the GCA bidding procedure applies, in almost all instances the only bids received by awarding authorities from general contractors are bids developed in accordance with that procedure.

Similarly, the membership of each of the six defendant specialty contractor associations includes all significant specialty contractors in each of the trades in Hawaii, and all association members abide by the rules and procedures of their association's bid depository. Thus, even if a general contractor were not a member of GCA and did not want to go through the bid depository procedures, it generally would be forced to agree to the procedures because, if it did not, the Hawaiian specialty contractors would be precluded by their rules from dealing with that general contractor. Hence, the general contractor would not be able to obtain an adequate number of sub-bids from qualified specialty contractors. Indeed, on construction projects to which the associations' bidding procedures apply, in almost all instances the only bids received by awarding authorities from general contractors are bids based on sub-bids submitted in accordance with those procedures. (In a small number of projects, non-Hawaiian general contractors bring in mainland subcontractors to work on Hawaiian projects.)

The three general contractor and six specialty contractor associations are interrelated. Many specialty contractors are members of both their specialty trade association and a general contractor association. The general contractor associations have virtually identical bid procedures, and they cooperate with one another by transmitting or receiving bids from members of one depository for construction projects on an island under the jurisdiction of another. The six specialty contractor associations have bidding procedures modeled after the General Contractors Association's rules. The general and specialty contractor associations often cooperate in enforcing their bidding procedures.

B. The GCA Bidding Procedure

The Complaint filed against GCA alleges that GCA's bidding procedure provides, among other things, that:

1. Confirmation bids for all specialty subcontracts or material supplies must be filed with the GCA bid depository;

2. General contractors may award a specialty or material supply subcontract only to bidders who have formally filed bids with the GCA bid depository in compliance with its rules and procedures;

3. Filed bids may not be altered or changed after the deadline for their filing;

4. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

5. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository;

6. Prior to the prime bid opening, general contractors may not divulge any information to a specialty contractor or material supplier regarding any sub-bid received; and

7. If a construction project is altered in scope, the general contractor must continue to deal with the low filed bidders or parties he used in covering the affected item(s) of work.

The Complaint also alleges that beginning at least as early as 1949 and continuing to the present, the defendant engaged in a conspiracy consisting of an agreement, the substantial terms of which were to:

1. Assure that a substantial number of construction projects in the State of Hawaii would be governed by the GCA bidding procedure and other rules and procedures established by bid depositories operated by other associations of contractors in the State of Hawaii;

2. Restrain and prohibit the negotiation of sub-bids on construction projects governed by the GCA bidding procedure by, among other things, inhibiting the seeking of lower prices by general contractors or the offering of

lower prices by specialty contractors or material suppliers; and

3. Restrain and prohibit the receipt of sub-bids from, or the award of subcontracts to, specialty contractors or material suppliers that do not comply with the GCA bidding procedure on construction projects governed by the GCA bidding procedure.

In addition, the Complaint alleges that the conspiracy had the following effects:

1. Competition among specialty contractors and material suppliers in the sale of specialty contracting services and materials to general contractors on construction projects governed by the GCA bidding procedure has been unreasonably restrained, suppressed, and eliminated; and

2. Competition among general contractors in negotiating and obtaining sub-bids for specialty contracting services and materials for construction projects governed by the GCA bidding procedure has been unreasonably restrained, suppressed, and eliminated.

The regulation of negotiations between general contractors and subcontractors is not anticompetitive in all situations. Here, however, as explained above, the general contractor associations and the specialty contractor associations each possess market power for construction projects in Hawaii. In addition, the decision to limit negotiations between general contractors and specialty contractors was not the decision of the awarding authority, but rather was the decision of the general contractors acting in concert and the decision of the specialty contractors acting in concert. In this context we concluded that the association rules were anticompetitive because they unreasonably deprived the awarding authority of free and open competition in negotiations between general contractors and specialty contractors and material suppliers, for the performance of subcontracts on construction projects subject to the bidding procedures.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment enjoins GCA from continuing or renewing the anticompetitive conduct alleged in the Complaint. Specifically, section IV prohibits GCA from maintaining, directly or indirectly, any written or unwritten rule that has the purpose or effect of:

1. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating sub-bids on construction projects;

2. Suppressing, restraining, or discouraging general contractors from receiving sub-bids from, or awarding subcontracts to, specialty contractors or material suppliers that have not complied with the GCA bidding procedure on a construction project; or

3. Stating that negotiation of sub-bids or any failure to comply with the GCA bidding procedure is contrary to any policy of GCA.

Section V orders GCA to eliminate within 60 days all written and unwritten rules that are inconsistent with the Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for all specialty subcontracts or material supplies must be filed with the GCA bid depository;

2. General contractors may award a specialty or material supply subcontract only to bidders who have formally filed bids with the GCA bid depository in compliance with its rules and procedures;

3. Filed bids may not be altered or changed after the deadline for their filing;

4. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

5. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository;

6. Prior to the prime bid opening, general contractors may not divulge any information to a specialty contrator or material supplier regarding any sub-bid received; and

7. If a construction project is altered in scope, the general contractor must continue to deal with the low filed bidders or parties he used in covering the affected item(s) of work.

Section V.B orders GCA to include in any GCA rules on bidding for contracts on construction projects a statement that no GCA policy prohibits negotiation of sub-bids, or requires that subcontracts be awarded only on sub-bids filed in accordance with GCA rules.

Section VI.A provides, however, that defendant is not enjoined from complying with any requirement of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime buds. This provision ensures that the proposed Final Judgment does not in any way limit awarding authorities' ability to establish bidding requirements for contractors. If the awarding authority decided that a regulated bidding system which prevented post-filing negotations between contractors and subcontractors was appropriate, it could insist on it, and the contactors and subcontractors could comply without violating the decree.

Section VI.B further states that defendant is not enjoined from maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contrctors, so long as use of the services it provides is voluntary. This provision ensures that the proposed Final Judgment does not prohibit GCA from opeating a bid despoitory so long as the services provided are voluntary and do not prohibit negotiations between general and specialty contractors.

Sections VII and VIII ensure that full notice of the requirements of the Final Judgment is given to all of GCA's officers, directors, managers, and members.

Section IX requires GCA to establish and implement a plan for monitoring compliance with the terms of the proposed final Judgment. GCA is also required to file with the Court and the United States within ninety (90) days after date of entry of the Final Judgment, an affidavit explaining the steps it has taken to comply with the Final Judgment. GCA is required to file similar affidavits each year the Final Judgment is in effect.

Section XII makes the Final Judgment effective for ten (10) years from the date of its entry.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 145 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Final Judgment will neither impair or assist the bringing of any private antitrust damage action. Under section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defedants.

V. Procedures Available for Modification of the Proposed Final Judgment

The APPA provides that any person wishing to comment on the proposed Final Judgment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. Any person who

believes that the proposed Final Judgment should be modified, may submit written comments within the statutory 60-day period to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, United States Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102 (Telephone: 415/556–6300). These comments and the Department's response to them will be filed with the Court and published in the Federal Register. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. Further, section XI provides that the Court retains jurisdiction over this action and that the parties may apply to the Court for such orders as may be necesary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgement considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Final Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the Complaint.

The effect of the proposed Final Judgment should be to eliminate entirely the alleged restraints on competition that are set forth in the Complaint. In particular, under the proposed Final Judgment, general contractors and specialty contractors and material suppliers can no longer agree to limit negotiations on the terms of sub-bids with each other. General contractors will be able freely to consider bids from any and all capable specialty contractors and material suppliers. Price competition among general contractors and among specialty contractors and material suppliers will be facilitated, to the benefit of awarding authorities and, indirectly, to the benefit of federal and state taxpayers. The proposed Final Judgment adequately redresses all aspects of the government's Complaint in this case.

VII. Determinative Materials and Documents

The United States considered no materials or documents to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed pursuant to the APPA, 15 U.S.C. 16(b).

Respectfully submitted.

Robert J. Staal,

Phillip H. Warren,

Howard J. Parker,

Attorneys, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: 415/556–6300.

[FR Doc. 87–15103 Filed 7–6–87; 8:45 am]

BILLING CODE 4410–01–M

United States v. Gypsum Drywall Contractors of Hawaii; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement ("CIS") have filed with the United States District Court for the District of Hawaii in *United States* v. *Gypsum Drywall Contractors of Hawaii.* The Complaint in this case alleges that the Gypsum Drywall Contractors of Hawaii unreasonably restrained competition by adopting and adhering to certain rules governing the submission of bids by specialty contractors to general contractors on a substantial number of construction projects in Hawaii.

The proposed Final Judgment requires the defendant to cancel all formal and informal rules that restrain negotiations between gypsum drywall contractors and general contractors or that restrain gypsum drywall contractors from offering bids to, or accepting subcontracts from, a general contractor on any project. It also requires elimination of rules that provide for notification of any gypsum drywall contractor of where its bid stands in relation to other bids prior to the time bids are due to general contractors.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses to them, will be published in the Federal Register and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Field Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (telephone: 415/556–6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, *Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556–6300, Attorneys for the United States.*

Robert F. Miller, Miller & Ichinose, *Suite 800–H.K. Building, 820 Mililani, Honolulu, Hawaii 96813, (808) 533–6111, Attorneys for Gypsum Drywall Contractors of Hawaii.*

United States District Court for the District of Hawaii

United States of America, Plaintiff, v. *Gypsum Drywall Contractors of Hawaii,* Defendant; *Antitrust.*

Filed: June 16, 1987.

[Civil No. 870463ACK]

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalities Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by servicing notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff:

CHARLES F. RULE

Acting Assistant Attorney General

ROGER B. ANDEWELT,

JUDY WHALLEY,

GARY R. SPRATLING,

Attorneys, Department of Justice.

DANIEL A. BENT,

United States Attorney,

District of Hawaii.

ROBERT J. STALL,

PHILLIP H. WARREN,

HOWARD J. PARKER,

Attorneys, Antitrust Division,

Department of Justice

450 Golden Gate Avenue,

Box 36046, 16th Floor,

San Francisco, California 94102,

Telephone: (415) 556–6300.

For the Defendants:

ROBERT F. MILLER,

Counsel for Gypsum Drywall Contractors Association.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, *Antitrust Division,*

U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556-6300, Attorneys for the United States.

United States District Court for the District of Hawaii

United States of America, Plaintiff, v. *Gypsum Drywall Contractors of Hawaii*, Defendant; *Antitrust.*

Filed: June 16, 1987.

[Civil No. 87-463-ACK]

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on June 16, 1987, and plaintiff and defendant, by their respective attorneys, having consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby ordered, adjudged, and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II

Definitions

As used in this Final Judgment:

A. "Awarding authority" means any governmental or private entity that contracts for the performance of construction projects;

B. "General contractor" means any person who contracts with awarding authorities for the performance of construction projects;

C. "Speciality contractor," also known as a subcontractor, means any person who supplies specialty contracting services (e.g., plumbing, electrical, masonry) to general contractors for construction projects;

D. "Material supplier" means any person who supplies materials to general or specialty contractors for use on construction projects;

E. "Person" means any individual, partnership, firm, association, corporation, or other business or legal entity;

F. "Prime bid" means an offer to an awarding authority by a general contractor for the purpose of obtaining a contract for a construction project;

G. "Sub-bid" means an offer to a general contractor by a specialty contractor to supply specialty contracting services for a construction project, or by a material supplier to supply materials for a construction project;

H. "Confirmation bid" means written confirmation of a sub-bid, which confirmation is filed by a specialty contractor or material supplier with a bid depository; and

I. "Bid depository" means a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, or that receives confirmation bids filed by specialty contractors and material suppliers.

III

This Final Judgment applies to the defendant Gypsum Drywall Contractors of Hawaii ("GDCH") and to each of its subsidiaries, successors, and assigns, and to each of its officers, directors, agents, managers and other employees, and to all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant is enjoined and restrained from directly or indirectly continuing, maintaining, initiating, adopting, ratifying, entering into, carrying out, furthering, disseminating, publishing, or enforcing any bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement that has the purpose or effect of:

A. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time gypsum drywall/acoustical sub-buds on construction projects;

B. Suppressing, restraining, or discouraging gypsum drywall/acoustical contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project;

C. Stating that negotiation of sub-bids is contrary to any policy of GDCH; or

D. Providing for review of gypsum drywall/acoustical contractor and material supplier bids prior to the time bids are due to general contractors, or notification of any bidder of where its bid stands in relation to other bids.

V

A. Defendant is ordered and directed to cancel and rescind within sixty (60) days of the date of entry of this Final Judgment, and is prohibited from directly or indirectly reinstating, every plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statment is inconsistent with this Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for gypsum drywall/acoustical subcontracts or material supplies must be filed with the GDCH bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponent of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

B. Defendant is ordered and directed to include in any GDCH rules concerning bidding for contracts on construction projects a statement that no GDCH rule or policy prohibits negotiation of sub-bids, or requires that subcontracts be accepted only on sub-bids filed in accordance with GDCH rules.

Nothing in sections IV and V of this Final Judgment shall prohibit defendant from:

A. Complying with any requirements of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids; or

B. Maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the facility by any contractor is voluntary.

VII

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment to each of its officers, directors, agents, and managers within thirty (30) days after the date of the entry of this Final Judgment;

B. Furnish a copy of this Final Judgment to any successors to its

officers, directors, agents, and managers within thirty (30) days after each successor becomes associated with the defendant;

C. Obtain from each of its officers, directors, agents, and managers, and their successors, who have been furnished a copy of this Final Judgment, a signed receipt therefor, which receipt shall be retained in the defendant's files;

D. Attach to each copy of this Final Judgment furnished to its officers, directors, agents, and managers, and their successors, a statement, in the form set forth in Appendix A attached hereto, with the following sentence added to the letter: "Sections IV and V of the Final Judgment apply to you. If you violate these provisions, you may subject GDCH to a fine, and you may also subject yourself to a fine and imprisonment."; and

E. Hold, within seventy-five (75) days after the date of entry of this Final Judgment, a meeting of its officers, directors, agents, and managers at which meeting such persons shall be instructed concerning the defendant's and their obligations under this Final Judgment. Similar meetings shall be held at least once a year during the term of this Final Judgment; provided, however, that no meeting must be held during any calendar year in which defendant has had no bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement concerning any aspect of bidding for contracts on construction projects.

VIII

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment together with a letter on the letterhead of GDCH, in the form set forth in Appendix A attached hereto, to each of its members within thirty (30) days after the date of entry of this Final Judgment;

B. Furnish a copy of this Final Judgment together with a letter on the letterhead of GDCH, in the form set forth in Appendix A attached hereto, to each new member within thirty (30) days after the member joins GDCH; and

C. Publish in the *GCA Weekly Bid Bulletin*, or in the event GCA ceases publication of its *Weekly Bid Bulletin* in a comparable construction trade publication, the notice attached hereto as Appendix B.

IX

Defendant is ordered and directed to:

A. Establish and implement a plan for monitoring compliance by its officers, directors, agents, and managers and other employees with the terms of the Final Judgment;

B. File with this Court and serve upon the plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with this Final Judgment; and

C. File with this Court and serve upon the plaintiff annually on each anniversary date during the term of this Final Judgment an affidavit setting forth all steps it has taken during the preceding year to discharge its obligations under this Final Judgment.

X

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

1. Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, agents, and managers and other employees of the defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

XI

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII

This Final Judgment shall expire ten (10) years from its date of entry.

XIII

Entry of this Final Judgment is in the public interest.

—

Dated: United States District Judge

United States v. Gypsum Drywall Contractors of Hawaii, Civil No. _____, Final Judgment.

Appendix A

Re: United States v. Gypsum Drywall Contractors of Hawaii (Civil No. _____)

Dear Sir or Madam:

The Gypsum Drywall Contractors of Hawaii ("GDCH") has recently entered into a Final Judgment with the United States Department of Justice to settle a civil antitrust case filed against the Association. That case, *United States v. Gypsum Drywall Contractors of Hawaii* (Civil NO. _____), concerned GDCH's bidding procedure that

governed a substantial number of gypsum drywall/acoustical subcontracts on construction projects in the State of Hawaii. Our Association has been cooperating with the Department of Justice regarding this matter, and we have voluntarily agreed to the revisions of our bid depository rules outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____ of the District of Hawaii, GDCH has agreed to eliminate all bid procedures of practices that in any manner may:

1. Restrict or discourage gypsum drywall/acoustical specialty contractors or material suppliers and general contractors from negotiating sub-bids; or

2. Restrict or discourage gypsum drywall/acoustical contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project.

Specifically, GDCH has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for gypsum drywall/acoustical subcontracts or material supplies must be filed with the GDCH bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

The General Contractors Association of Hawaii, Hawaii Island Contractors Association, Maui Contractors Association, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the GDCH rules being eliminated.,

A copy of the entire Final Judgment is enclosed with this letter and will in the future be available upon request. I urge you to read it carefully.

Sincerely yours,

Appendix B

The Gypsum Drywall Contractors of Hawaii ("GDCH") has recently entered into a Final Judgment with the United States Department of Justice to settle an antitrust case filed against the Association. That case, *United States v. Gypsum Drywall Contractors of Hawaii* (Civil No. _____), concerned the GDCH's bidding procedure that governed a substantial number of gypsum drywall/acoustical subcontracts on construction projects in the State of Hawaii. GDCH has been cooperating with the Department of Justice regarding this matter, and has voluntarily agreed to the revisions of its bidding procedure outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____ of the District of Hawaii, GDCH has agreed to eliminate all bid procedures or practices that in any manner may:

1. Restrict or discourage gypsum drywall/acoustical specialty contractors or material suppliers and general contractors from negotiating sub-bids; or

2. Restrict or discourage gypsum drywall/acoustical contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor or any project.

Specifically, GDCH has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for gypsum drywall/acoustical subcontracts or material supplies must be filed with the GDCH bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

The General Contractors Association of Hawaii, Hawaii Island Contractors Association, Maui Contractors Association, Pacific Electrical Contractors of Hawaii, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the GDCH rules being eliminated.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, *Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102, Telephone: 415/556/6300, Attorneys for the United States.*

United States District Court for the District of Hawaii

United States of America, Plaintiff, v. Gypsum Drywall Contractors of Hawaii, Defendant.

Filed: June 16, 1987.

[Civil No. 870463ACK]

Competitive Impact Statement

As required by Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)-(h), the United States files this Competitive Impact Statement on the proposed Final Judgment submitted for the Court's approval in this civil antitrust proceeding.

I. *Nature and Purpose of the Proceeding*

On June 16, 1987, the United States filed nine related civil antitrust complaints under section 1 of the Sherman Act, 15 U.S.C. 1, against nine construction trade associations in Hawaii. Each complaint alleges that a trade association conspired with its members to restrain competition by adopting and enforcing certain rules that restrict bidding on construction projects in Hawaii. The United States and each of the nine defendants have agreed to Final Judgment in settlement of the cases. The Complaints and proposed Final Judgment in the nine cases are similar.

Defendant Gypsum Drywall Contractors of Hawaii ("GDCH") is a Hawaii corporation with its principal place of business in Honolulu, Hawaii. GDCH modeled its bidding rules on those of General Contractors Association ("GCA"), the first construction trade association in Hawaii to adopt bidding rules.

Plaintiff and defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless plaintiff withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to

interpret, modify, enforce, and punish violations of the Final Judgment.

II. *Description of the Practices Giving Rise to the Alleged Violation of the Antitrust Laws*

A. The Bid Depository System in Hawaii

The bid depository is a system for the collection and dissemination of bids or sub-bids for the performance of construction services. A bid despository collects and compiles bids submitted by a date certain and then disseminates them to bidding authorities or general contractors seeking the bids or sub-bids, respectively. By facilitating the bidding process, bid depositors can improve the efficiency of the contracting process and thereby promote rather than harm competition. The complaint in this case alleges, however, that the defendant adopted a number of rules governing the operation of its bid depository that restrained competition for subcontracts on construction projects governed by the GDCH bidding procedures, by prohibiting and precluding negotiation of sub-bids once they were submitted to the bid depository.

On most major construction projects in Hawaii, including most government projects, the governmental and private entities that contract for construction services (known as "awarding authorities") do so by soliciting and accepting bids from general contractors. In preparing their respective bids, general contractors usually solicit and accept bids from the various specialty contractors (e.g., plumbing, electrical, masonry contractors) and material suppliers whose work will be needed on the project. A bid to a general contractor by a specialty contractor or material supplier to provide services or materials for a construction project is known in the trade as a "sub-bid."

Since 1949, GCA has maintained and enforced rules that regulate bidding by specialty contractors to general contractors on a substantial number of construction projects in Oahu, Hawaii. The rules, known collectively as the "GCA bidding procedure," govern the operation of GCA's bid depository. Two other general contractor associations in the State of Hawaii operate bid depositories: the Hawaii Island Contractors' Association (since 1972) and the Maui Contractors Association (since 1977).

Six specialty contractor associations operate bid depositories in conjunction with the three general contractor associations in Hawaii. These associations are defendant GDCH, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association. All of these bid depositories have rules similar to the GCA bidding procedure.

Under its rule GCA determines which construction projects will be subject to its bid depository rules. If GCA chooses a particular project, then pursuant to the rules of the other associations, that project is also subject to the depository rules of those other associations. Under the controlling GDCH rules, the GDCH bid depository rules apply to all construction projects that are listed in the *GCA Weekly Bid Bulletin.* GCA selects the projects to be included in the *Bulletin* on its own and without the authorization or direction of the affected awarding authorities. In fact, GCA selects almost exclusively government construction projects for inclusion in the *GCA Weekly Bid Bulletin* and seldom includes any private projects. All significant construction projects in Hawaii that are awarded by federal, state, or local governmental entities are listed in the *GCA Weekly Bid Bulletin.*

All significant general contractors operating on the island of Oahu are members of GCA and abide by the bidding procedure for projects on Oahu that are listed in the *GCA Weekly Bid Bulletin.* The bidding rules are only suspended by GCA if non-Hawaiian general contractors who may be unwilling to abide by the procedures appear on the bidders list for a project. On construction projects to which the GCA bidding procedure applies, in almost all instances the only bids received by awarding authorities from general contractors are bids developed in accordance with that procedure.

Similarly, the membership of each of the six defendant specialty contractor associations includes all significant specialty contractors in each of the trades in Hawaii, and all association members abide by the rules and procedures of their association's bid depository. Thus, even if a general contractor were not a member of GCA and did not want to go through the bid depository procedures, it generally would be forced to agree to the procedures because, if it did not, the Hawaiian specialty contractors would be precluded by their rules from dealing with that general contractor. Hence, the general contractor would not be able to obtain an adequate number of sub-bids from qualified specialty contractors. Indeed, on construction projects to which the associations' bidding procedures apply, in almost all instances the only bids received by awarding authorities from general contractors are bids based on sub-bids submitted in accordance with those procedures. (In a small number of projects, non-Hawaiian general contractors bring in mainland subcontractors to work on Hawaiian projects.)

The three general contractor and six specialty contractor associations are interrelated. Many specialty contractors are members of both their specialty trade association and a general contractor association. The general contractor associations have virtually identical bid procedures, and they cooperate with one another by transmitting or receiving bids from members of one depository for construction projects on an island under the jurisdiction of another. The six specialty contractor associations have bidding procedures modeled after the GCA's rules. The general and specialty contractor associations often cooperate in enforcing their bidding procedures.

In addition, five of the six defendant specialty contractor associations have a rule not found in the general contractor association bidding procedures. This rule rquires that any bidder whose bid is "considerably" lower than other bids shall be contacted by the bidder's association and requested to review its bid. (Of these five rules, only the Mason Contractors Association's rule specifies that a bidder shall be contacted if its bid is a certain percentage (10%) below most other bids.) After notification, the bidder is permitted to stand by the bid or withdraw it, but not change it. The rule also provides for tabulation and dissemination among specialty contractors of sub-bid prices after general contractors have opened bids.

B. The GDCA Bidding Procedure

The Complaint filed against GDCH alleges that GDCH's bidding procedure provides, among other things, that:

1. Confirmation bids for gypsum drywall/acoustical subcontracts or material supplies must be filed with the GDCH bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally

resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the others, such low bidders are so notified and requested to review their bids.

The Complaint also alleges that beginning at least as early as 1975 and continuing to the present, the defendant engaged in a conspiracy consisting of an agreement, the substantial terms of which were to:

1. Assure that a substantial number of construction projects in the State of Hawaii would be governed by the GDCH bidding procedure and other rules and procedures established by bid depositories operated by other associations of contractors in the State of Hawaii;

2. Restrain and prohibit the negotiation of sub-bids on gypsum drywall/acoustical subcontracts governed by the GDCH bidding procedure by, among other things, inhibiting the seeking of lower prices by general contractors or the offering of lower prices by gypsum drywall/acoustical contractors or material suppliers;

3. Restrain and prohibit the offering of sub-bids, or the acceptance of subcontracts, by gypsum drywall/acoustical contractors or material suppliers that do not comply with the GDCH bidding procedures; and

4. Review gypsum drywall/acoustical contractor and material supplier bids prior to the time bids are due to general contractors and advise any bidders whose sub-bids are considerably lower than the others of that fact.

In addition, the Complaint alleges that the conspiracy had the following effects:

1. Competition among gypsum drywall/acoustical contractors and material suppliers in the sale of gypsum drywall/acoustical contracting services and materials to general contractors on construction projects governed by the GDCH bidding procedure has been unreasonably restrained, suppressed, and eliminated; and

2. Competition among general contractors in negotiating sub-bids for gypsum drywall/acoustical contracting services and materials for construction projects governed by the GDCH bidding procedure has been unreasonably restrained, suppressed, and eliminated.

The regulation of negotiations between general contractors and subcontractors is not anticompetitive in all situations. Here, however, as explained above, the general contractor associations and the specialty contractor associations each possess market power for construction projects in Hawaii. In addition, the decision to limit negotiations between general contractors and specialty contractors was not the decision of the awarding authority, but rather was the decision of the general contractors acting in concert and the decision of the specialty contractors acting in concert. In this context we concluded that the association rules were anticompetitive because they unreasonably deprived the awarding authority of free and open competition in negotiations between general contractors and specialty contractors and material suppliers, for the performance of subcontracts on construction projects subject to the bidding procedures.

The specialty contractor associations' rule requiring notification of bidders whose sub-bids are considerably lower than other bids are anticompetitive and result in increased prices for specialty contract work. The rules permit a bidder who has submitted an accurate bid to withdraw the bid simply because it is "too low." When the low bidder withdraws a bid after being notified as required by the association rules, the second lowest bidder wins the job with an increased profit margin.

The only purported justification for these rules is that notifying low bidders that they are significantly lower prevents the award of a bid to a specialty contractor who made a mistake in calculating its bid, and who, in performing the job at the mistaken bid price, may go bankrupt, leaving the general contractor and the project owner with an unfinished job. This justification fails on two points. First, it appears that specialty contractors have regularly withdrawn bids that contain no mistake (other than being too low). Second, the justification advanced is a concern of the general contractors that, to the extent it exists, can and should be addressed by the general contractors who have a strong incentive to ensure that a specialty contractor is able to complete its job. General contractors routinely screen low bids for errors. Thus it is unnecessary for competitors to screen each other's bids to address this concern.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment enjoins GDCH from continuing or renewing the anticompetitive conduct alleged in the Complaint. Specifically, section IV prohibits GDCH from maintaining, directly or indirectly, any written or unwritten rule that has the purpose or effect of:

1. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time gypsum drywall/acoustical sub-bids on construction projects;

2. Suppressing, restraining, or discouraging gypsum drywall/acoustical contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project;

3. Stating that negotiation of sub-bids is contrary to any policy of GDCH; or

4. Providing for review of gypsum drywall/acoustical contractor and material supplier bids prior to the time bids are due to general contractors, or notification of any bidder of where its bid stands in relation to other bids.

Section V orders GDCH to eliminate within 60 days all written and unwritten rules that are inconsistent with the Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for gypsum drywall/acoustical subcontracts or material supplies must be filed with the GDCH bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are considerably lower than the other bids, such low bidders are so notified.

Section V.B orders GDCH to include in any GDCH rules on bidding for contracts on construction projects a statement that no GDCH policy prohibits negotiation of sub-bids, or requires that subcontracts be awarded only on sub-bids filed in accordance with GDCH rules.

Section VI.A provides, however, that defendant is not enjoined from complying with any requirement of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids. This provision ensures that the proposed Final Judgment does not in any way limit awarding authorities' ability to establish bidding requirements for contractors. If the awarding authority decided that a regulated bidding system which prevented post-filing negotiations between contractors and subcontractors

was appropriate, it could insist on it, and the contractors and subcontractors could comply without violating the decree.

Section VI.B further states that defendant is not enjoined from maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the services it provides is voluntary. This provision ensures that the proposed Final Judgment does not prohibit GDCH from operating a bid depository so long as the services provided are voluntary and do not prohibit negotiations between general and specialty contractors.

Sections VII and VIII ensure that full notice of the requirements of the Final Judgment is given to all of GDCH's officers, directors, managers, and members.

Section IX requires GDCH to establish and implement a plan for monitoring compliance with the terms of the proposed Final Judgment. GDCH is also required to file with the Court and the United States within ninety (90) days after date of entry of the Final Judgment, an affidavit explaining the steps it has taken to comply with the Final Judgment. GDCH is required to file similar affidavits each year the Final Judgment is in effect.

Section XII makes the Final Judgment effective for ten (10) years from the date of its entry.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. *Procedures Available for Modification of the Proposed Final Judgment*

The APPA provides that any person wishing to comment on the proposed Final Judgment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the Federal Register. Any person who believes that the proposed Final Judgment should be modified, may submit written comments within the statutory 60-day period to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, United States Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102 (Telephone: 415/556–6300). These comments and the Department's response to them will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. Further, Section XI provides that the Court retains jurisdiction over this action and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. *Alternatives to the Proposed Final Judgment*

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Final Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the Complaint.

The effect of the proposed Final Judgment should be to eliminate entirely the alleged restraints on competition that are set forth in the Complaint. In particular, under the proposed Final Judgment, general contractors and specialty contractors and material suppliers can no longer agree to limit negotiations on the terms of sub-bids with each other. General contractors will be able freely to consider bids from any and all capable specialty contractors and material suppliers. Moreover, specialty contractors will be prohibited from notifying bidders whose bids are considerably lower than the next lower bids. In sum, price competition among general contractors and among specialty contractors and material suppliers will be facilitated, to the benefit of awarding authorities and, indirectly, to the benefit of federal and state taxpayers. The proposed Final Judgment adequately redresses all aspects of the government's Complaint in this case.

The Division also considered including in the proposed Final Judgment an injunction against the specialty contractor associations' practice of tabulating and dissemination the prices contained in bids submitted to their depositories. Such exchanges of price information can be procompetitive in that, by providing firms with information about competitors, they ultimately can help firms identify ways in which to lower their costs. But in some circumstances where a market is otherwise prone to collusion, such exchanges of price information can be used to police pricing agreements and can have an anticompetitive effect. The Division chose not to impose an injunction against such information exchange in this case because it cannot be predicted that an exchange of information, on balance, would be anticompetitive in this market after entry of the proposed Final Judgment with its injunctions against anticompetitive practices by the depositories. The Division concluded that such an injunction is not now necessary to restore full and vigorous competition to the affected markets.

VII. *Determinative Materials and Documents*

The United States considered no materials or documents to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed pursuant to the APPA, 15 U.S.C. 16(b).

Respectfully submitted,

Robert J. Staal,
Phillip H. Warren,
Howard J. Parker,
Attorneys, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: 415/556–6300.

[FR Doc. 87–15104 Filed 7–6–87; 8:45 am]
BILLING CODE 4410–01–M

United States v. Hawaii Island Contractors Association; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement ("CIS") have been filed with the United States District Court for the District of Hawaii in *United States* v. *Hawaii Island Contractors Association*. The Complaint in this case alleges that the Hawaii Island Contractors Association unreasonably restrained competition by adopting and adhering to certain rules governing the submission of bids by specialty contractors to general contractors on a substantial number of construction projects in Hawaii.

The proposed Final Judgment requires the defendant to cancel all formal and informal rules that restrain negotiations

between general contractors and specialty contractors or that restrain general contractors from receiving sub-bids from, or awarding subcontracts to, specialty contractors.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses to them, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Field Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (telephone: 415/556–6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, *Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556–6300, Attorneys for the United States.*

Robert S. Katz, *Torkildson, Katz, Jossem, Fonseca & Moore, Amfac Bldg., 15th Floor, 700 Bishop Street, Honolulu, Hawaii 96813, (808) 521–1051, Attorneys for Hawaii Island Contractors' Association.*

United States District Court for the District of Hawaii

United States of America, Plaintiff, v. Hawaii Island Contractors' Association, Defendant; Antitrust.

Filed: June 16, 1987.

[Civil No. 870464SCK]

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff.

Charles F. Rule,

Acting Assistant Attorney General.

Roger B. Andewalt,

Judy Whalley,

Gary R. Spratling,

Attorneys Department of Justice.

Daniel A. Bent,

United States Attorney, District of Hawaii.

Robert J. Staal,

Phillip H. Warren,

Howard J. Parker,

Attorneys, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: (415) 556–6300.

For the Defendants.

Robert S. Katz,

Alan M. Okamoto, Counsel for Hawaii Island Contractors' Association.

Robert J.Stall, Phillip H. Warren, Howard J. Parker, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556–6300, Attorneys for the United States.

United States District Court for the District of Hawaii

United States of America, Plaintiff, v. Hawaii Island Contractors' Association, Defendant, Antitrust.

Filed: June 16, 1987.

[Civil No. 870464SCK]

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on June 16, 1987, and plaintiff and defendant, by their respective attorneys, having consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

Ordered, adjudged, and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under section 1 of the Sherman Act (15 U.S.C. 1).

II

Definitions

As used in this Final Judgment:

A. "Awarding authority" means any governmental or private entity that contracts for the performance of construction projects;

B. "General contractor" means any person who contracts with awarding authorities for the performance of construction projects;

C. "Specialty contractor," also known as a subcontractor, means any person who supplies specialty contracting services (e.g., plumbing, electrical, masonry) to general contractors for construction projects;

D. "Material supplier" means any person who supplies materials to general or specialty contractors for use on construction projects;

E. "Person" means any individual, partnership, firm, association, corporation, or other business or legal entity;

F. "Prime bid" means an offer to an awarding authority by a general contractor for the purpose of obtaining a contract for a construction project;

G. "Sub-bid" means an offer to a general contractor by a specialty contractor to supply specialty contracting services for a construction project, or by a material supplier to supply materials for a construction project;

H. "Confirmation bid" means written confirmation of a sub-bid, which confirmation is filed by a specialty contractor or material supplier with a bid depository; and

I. "Bid depository" means a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, or that received confirmation bids filed by specialty contractors and material suppliers.

III

This Final Judgment applies to the defendant Hawaii Island Contractors' Association ("HICA") and to each of its subsidiaries, successors, and assigns, and to each of its officers, directors, agents, managers and other employees, and to all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendent is enjoined and restrained from directly or indirectly continuing, maintaining, initiating, adopting, ratifying, entering into, carrying out, furthering, disseminating, publishing, or enforcing any bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-

law, standard, or collective statement that has the purpose or effect of:

A. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time sub-bids on construction projects;

B. Suppressing, restraining, or discouraging general contractors from receiving sub-bids from, or awarding subcontracts to, specialty contractors or material suppliers; or

C. Stating that negotiation of sub-bids is contrary to any policy of HICA.

V

A. Defendant is ordered and directed to cancel and rescind within sixty (60) days of the date of entry of this Final Judgment, and is prohibited from directly or indirectly reinstating, every plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement that is inconsistent with this Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for all specialty subcontracts or material supplies must be filed with the HICA bid depository;

2. General contractors may award a specialty or material supply subcontract only to bidders who have formally filed bids with the HICA bid depository in compliance with its rules and procedures;

3. Filed bids may not be altered or changed after the deadline for their filing;

4. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

5. Filed bids shall be considered active if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

6. Prior to the prime bid opening, general contractors may not divulge any information to a specialty contractor or material supplier regarding any sub-bid received.

B. Defendant is ordered and directed to include in any HICA rules concerning bidding for contracts on construction projects a statement that no HICA rule or policy prohibits negotiation of sub-bids, or requires that subcontracts be awarded only on sub-bids filed in accordance with HICA rules.

VI

Nothing in sections IV and V of this Final Judgment shall prohibit defendant from:

A. Complying with any requirement of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids; or

B. Maintaining a facility that gathers sub-bids from specialty contrctors and material suppliers and forwards them to general contractors, so long as use of the facility by any contractor is voluntary.

VII

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment to each of its officers, directors, agents, and managers within thirty (30) days after the date of the entry of this Final Judgment;

B. Furnish a copy of this Final Judgment to any successors to its officers, directors, agents, and managers within thirty (30) days after each successor becomes associated with the defendant;

C. Obtain from each of its officers, directors, agents, and managers, and their successors, who have been provided a copy of this Final Judgment, a signed receipt therefor, which receipt shall be retained in the defendant's files;

D. Attach to each copy of this Final Judgment furnished to its officers, directors, agents, and managers, and their successsors, a statement in the form set forth in Appendix A attached hereto, with the following sentence added to the last paragraph of the letter: "Sections IV and V of the Final Judgment apply to you. If you violate these provisions, you may subject HICA to a fine, and you may also subject yourself to a fine and imprisonment."; and

E. Hold, within seventy-five (75) days after the date of entry of this Final Judgment, a meeting of its officers, directors, agents, and managers, at which meeting such persons shall be instructed concerning the defendant's and their obligations under this Final Judgment. Similar meetings shall be held at least once a year during the term of this Final Judgment; provided, however, that no meeting must be held during any calendar year in which defendant has had no bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement concerning any aspect of bidding for contracts on construction projects.

VIII

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment together with a letter on the letterhead of HICA, in the form set forth in Appendix A attached hereto, to each of its members within thirty(30) days after the date of entry of this Final Judgment;

B. Furnish a copy of this Final Judgment together with a letter on the letterhead of HICA, in the form set forth in Appendix A attached hereto, to each new member within thirty (30) days after the member joins HICA; and

C. Publish in the *GCA Weekly Bid Bulletin*, or in the event GCA ceases publication of its *Weekly Bid Bulletin* in a comparable construction trade publication, the notice attached hereto as Appendix B.

IX

Defendant is ordered and directed to:

A. Establish and implement a plan for monitoring compliance by its officers, directors, and managers and other employees with the terms of the Final Judgment;

B. File with this Court and serve upon the plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with this Final Judgment; and

C. File with this Court and serve upon the plaintiff annually on each anniversary date during the term of this Final Judgment an affidavit setting forth all steps it has taken during the preceding year to discharge its obligations under this Final Judgment.

X

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, he permitted,:

1. Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, agents, and managers and other employees of the defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the

Antitrust Division made to the defendant's principal office, the defendant shall submit such non-privileged written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

XI

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII

This Final Judgment will expire ten (10) years from its date of entry.

XIII

Entry of this Final Judgment is in the public interest.

United States District Judge.

United States v. Hawaii Island Contractors' Association Civil No. _____, Final Judgment.

Appendix A

Re: United States v. Hawaii Island Contractors' Association (Civil No. _____)

Dear Sir or Madam:

The Hawaii Island Contractors' Association ("HICA") has recently entered into a Final Judgment with the United States Department of Justice to settle a civil antitrust case filed against the Association. That case, *United States v. Hawaii Island Contractors Association* (Civil No. _____), concerned the HICA's bidding procedure that governed a substantial number of contracts on construction projects in the State of Hawaii. Our Association has been cooperating with the Department of Justice regarding this matter, and we have voluntarily agreed to the revisions of our bid depository rules outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____ of the District of Hawaii, HICA has agreed to eliminate all bid procedures and practices that in any manner may:

1. Restrict or discourage general contractors and specialty contractors or material suppliers from negotiating sub-bids; or

2. Restrict or discourage general contractors from accepting sub-bids from, or awarding subcontracts to, specialty contractors or material suppliers.

Specifically, HICA has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for all specialty subcontracts or material supplies must be filed with the HICA bid depository;

2. General contractors may award a specialty or material supply subcontract only to bidders who have formally filed bids with the HICA bid depository in compliance with its rules and procedures;

3. Filed bids may not be altered or changed after the deadline for their filing;

4. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

5. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

6. Prior to the prime bid opening, general contractors may not divulge any information to a specialty contractor or material supplier regarding any sub-bid received.

The Hawaii Island Contractors' Association, Maui Contractors Association, Gypsum Drywall Contractors of Hawaii, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechnical Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the HICA rules being eliminated.

A copy of the entire Final Judgment is enclosed with this letter and will in the future be available upon request. I urge you to read it carefully.

Sincerely yours,

Appendix B

The Hawaii Island Contractors' Association ("HICA") has recently entered into a Final Judgment with the United States Department of Justice to settle an antitrust case filed against the Association. That case, *United States v. Hawaii Island Contractors Association* (Civil No. _____), concerned the HICA's bidding procedure that governed a substantial number of contracts on construction projects in the State of Hawaii. HICA has been cooperating with the Department of Justice regarding this matter, and has voluntarily agreed to the revisions of its bidding procedure outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____ of the District of Hawaii, HICA has agreed to eliminate all bid procedures and practices that in any manner may:

1. Restrict or discourage general contractors and specialty contractors or material suppliers from negotiating sub-bids; or

2. Restrict or discourage general contractors from accepting sub-bids from, or awarding subcontracts to, specialty contractors or material suppliers.

Specifically, HICA has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for all specialty subcontracts or material supplies must be filed with the HICA bid depository;

2. General contractors may award a specialty or material supply subcontract only to bidders who have formally filed bids with the HICA bid depository in compliance with its rules and procedures;

3. Filed bids may not be altered or changed after the deadline for their filing;

4. A specialty contractor or material supplier who withdraws a filed bid may

not rebid or negotiate a subcontract with the general contractor;

5. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

6. Prior to the prime bid opening, general contractors may not divulge any information to a specialty contractor or material supplier regarding any sub-bid received.

The General Contractors Association of Hawaii, Maui Contractors Association, Gypsum Drywall Contractors of Hawaii, Mason Contractors Association of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the HICA rules being eliminated.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, *Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102, Telephone: 415/556–6300, Attorneys for the United States.*

U.S. District Court for the District of Hawaii

United States of America, Plaintiff, v. *Hawaii Island Contractors' Association*, Defendant

Filed: June 16, 1987.

[Civil No. 870464 ACK]

Competitive Impact Statement

As required by section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), the United States files this Competitive Impact Statement on the proposed Final Judgment submitted for the Court's approval in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On June 16, 1987, the United States filed nine related civil antitrust complaints under section 1 of the Sherman Act, 15 U.S.C. 1, against nine construction trade associations in Hawaii. Each complaint alleges that a trade association conspired with its members to restrain competition by adopting and enforcing certain rules that restrict bidding on construction projects in Hawaii. The United States and each of the nine defendants have agreed to Final Judgments in settlement of the cases. The Complaints and proposed Final Judgment in the nine cases are similar.

Defendant Hawaii Island Contractors' Association ("HICA") is a Hawaii corporation with its principal place of business in Hilo, Hawaii. HICA modeled its rules on the rules on the General Contractors Association ("GCA"), the first construction trade association in Hawaii to adopt bidding rules.

Plaintiff and defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless plaintiff withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to interpret, modify, enforce, and punish violations of the Final Judgment.

II. Description of the Practices Giving Rise to the Alleged Violation of the Antitrust Laws

A. The Bid Depository System in Hawaii

A bid despository is a system for the collection and dissemination of bids or sub-bids for the performance of construction services. A bid depository collects and compiles bids submitted by a date certain and then disseminates them to bidding authorities or general contractors seeking the bids or sub-bids, respectively. By facilitating the bidding process, bid depositories can improve the efficiency of the contracting process and thereby promote rather than harm competition. The complaint in this case alleges, however, that the defendant adopted a number of rules governing the operation of its bid depository that restrained competition for subcontractors on construction projects governed by the HICA bidding procedure, by prohibiting and precluding negotiation of sub-bids once they were submitted to the bid depository.

On most major construction projects in Hawaii, including most government projects, the governmental and private entities that contract for construction services (known as "awarding authorities") do so by soliciting and accepting bids from general contractors. In preparing their respective bids, general contractors usually solicit and accept bids from the various specialty contractors (e.g., plumbing, electrical, masonry contactors) and material suppliers whose work will be needed on the project. A bid to a general contractor by a specialty contractor or material supplier to provide services or materials for a construction project is known in the trade as a "sub-bid."

Since 1949, GCA has maintained and enforced rules that regulate bidding by specialty contractors to general contractors on a substantial number of construction projects in Oahu, Hawaii. The rules, known collectively as the 'GCA bidding procedure," govern the operation of GCA's bid depository. Two other general contractor associations in the State of Hawaii operate bid depositories: the Hawaii Island Contractors' Association (since 1977) and the Maui Contractors Association (since 1977).

Six specialty contractor associations operate bid depositories in conjuction with the three general contractor associations in Hawaii. These associations are: Gypsum Drywall Contractors of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, Sheet Metal Contractors Association, and Mason Contractors Association of Hawaii. All of these bid depositories have rules similar to the HICA bidding procedure.

Under its rules GCA determines which construction projects will be subject to its bid depository rules. If GCA chooses a particular project, then pursuant to the rules of the other associations, that project is also subject to the depository rules of those other associations. Under the controlling GCA rules, the bid depository rules apply to all construction projects that are listed in the *GCA Weekly Bid Bulletin*. GCA selects the projects to be included in the *Bulletin* on its own and without the authorization or direction of the affected awarding authorities. In fact, GCA selects almost exclusively government construction projects for inclusion in the *GCA Weekly Bid Bulletin* and seldom includes any private projects. All significant construction projects in Hawaii that are awarded by federal, state, or local governmental entities are listed in the *GCA Weekly Bid Bulletin*.

All significant general contractors operating on the island of Hawaii are members of HICA and abide by the bidding procedure for projects on the island of Hawaii that are listed in the *GCA Weekly Bid Bulletin*. The bidding rules are only suspended by HICA if non-Hawaiian general contractors who may be unwilling to abide by the procedure appear on the bidders list for a project. On construction projects to which the HICA bidding procedurs applies, in almost all instances the only bids received by awarding authorities from general contractors are bids developed in accordance with that procedure.

Similarly, the membership of each of the six defendant specialty contractor associations includes all significant specialty contractors in each of the trades in Hawaii, and all association members abide by the rules and procedures of their association's bid depository. Thus, even if a general contractor were not a member of HICA and did not want to go through the bid depository procedures, it generally would be forced to agree to the procedures because, if it did not, the Hawaiian specialty contractors would be precluded by their rules from dealing with that general contractor. Hence, the general contractor would not be able to obtain an adequate number of sub-bids from qualified specialty contractors. Indeed, on construction projects to which the associations' bidding procedures apply, in almost all instances the only bids received by awarding authorities from general contractors are bids based on sub-bids submitted in accordance with those procedures. (In a small number of projects, non-Hawaiian general contractors bring in mainland subcontractors to work on Hawaiian projects.)

The three general contractor and six specialty contractor associations are interrelated. Many specialty contractors are members of both their specialty trade association and a general contrator association. The general contractor associations have virtually identical bid procedures, and they cooperate with one another by transmitting or receiving bids from members of one depository for construction projects on an island under the jurisdiction of another. The six specialty contractor associations have bidding procedures modeled after the GCA's rules. The general and specialty contractor associations often cooperate in enforcing their bidding procedures.

B. The HICA Bidding Procedure

The Complaint filed against HICA alleges that HICA's bidding procedure provides, among other things, that:

1. Confirmation bids for all specialty subcontracts or material supplies must be filed with the HICA bid depository;

2. General contractors may award a specialty or material supply subcontract only to bidders who have formally filed bids with the HICA bid depository in compliance with its rules and procedures;

3. Filed bids may not be altered or changed after the deadline for their filing;

4. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

5. Filed bids shall be considered active if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

6. Prior to the prime bid opening, general contractors may not divulge any information to a specialty contractor or material supplier regarding any sub-bid received.

The Complaint also alleges that beginning at least as early as 1972 and continuing to the present, the defendant engaged in a conspiracy consisting of an agreement, the substantial terms of which were to:

1. Assure that a substantial number of construction projects in the State of Hawaii would be governed by the HICA bidding procedure and other rules and procedures established by bid depositories operated by other associations of contractors in the State of Hawaii;

2. Restrain and prohibit the negotiation of sub-bids on construction projects governed by the HICA bidding procedure by, among other things, inhibiting the seeking of lower prices by general contractors or the offering of lower prices by specialty contractors or material suppliers; and

3. Restrain and prohibit the receipt of sub-bids from, or the award of subcontracts to, specialty contractors or material suppliers that do not comply with the HICA bidding procedure on construction projects governed by the HICA bidding procedure.

In addition, the Complaint alleges that the conspiracy had the following effects:

1. Competition among specialty contractors and material suppliers in the sale of specialty contracting services and materials to general contractors on construction projects governed by the HICA bidding procedure has been unreasonably restrained, suppressed, and eliminated; and

2. Competition among general contractors in negotiating sub-bids for specialty contracting services and materials for construction projects governed by the HICA bidding procedure has been unreasonably restrained, suppressed, and eliminated.

The regulation of negotiations between general contractors and subcontractors is not anticompetitive in all situations. Here, however, as explained above, the general contractor associations and the specialty contractor associations each possess market power for construction projects in Hawaii. In addition, the decision to limit negotiations between general contractors and specialty contractors was not the decision of the awarding authority, but rather was the decision of the general contractors acting in concert and the decision of the specialty contractors acting in concert. In this context we concluded that the association rules were anticompetitive because they unreasonable deprived the awarding authority of free and open competition in negotiations between general contractors and specialty contractors and material suppliers, for the performance of subcontracts on construction projects subject to the bidding procedures.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment enjoins HICA from continuing or renewing the anticompetive conduct alleged in the Complaint. Specifically, Section IV prohibits HICA from maintaining, directly or indirectly, any written or unwritten rule that has the purpose or effect of:

1. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time sub-bids on construction projects;

2. Suppressing, restraining, or discouraging general contractors from receiving sub-bids from, or awarding subcontracts to, specialty contractors or material suppliers; or

3. Stating that negotiation of sub-bids is contrary to any policy of HICA.

Section V orders HICA to eliminate within 60 days all written and unwritten rules that are inconsistent with the Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for all specialty subcontracts or material supplies must be filed with the HICA bid depository;

2. General contractors may award a specialty or material supply subcontract only to bidders who have formally filed bids with the HICA bid depository in compliance with its rules and procedures;

3. Filed bids may not be altered or changed after the deadline for their filing;

4. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

5. Filed bids shall be considered active if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

6. Prior to the prime bid opening, general contractors may not divulge any information to a specialty contractor or material suppliers regarding any sub-bid received.

Section V.B orders HICA to include any HICA rules on bidding for contracts on construction projects a statement that no HICA policy prohibits negotiation of sub-bids, or requires that subcontactors be awarded only on sub-bids filed in accordance with HICA rules.

Section VI.A provides, however, that defendant is not enjoined from complying with any requirement of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids. This provision ensures that the proposed Final Judgment does not in any way limit awarding authorities' ability to establish bidding requirements for contractors. If the awarding authority decided that a regulated bidding system which prevented post-filing negotiations between contractors and subcontractors was appropriate, if could insist on it, and the contractors and subcontractors could comply without violating the decree.

Section VI.B further states that defendant is not enjoined from maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the services it provides is voluntary. This provision ensures that the proposed Final Judgment does not prohibit HICA from operating a bid depository so long as the services provided are voluntary and do not prohibit negotiations between general and specialty contractors.

Sections VII and VIII ensure that full notice of the requirements of the Final Judgment is given to all of HICA's officers, directors, managers, and members.

Section IX requires HICA to establish and implement a plan for monitoring compliance with the terms of the proposed Final Judgment. HICA is also required to file with the Court and the United States within ninety (90) days after date of entry of the Final Judgment, an affidavit explaining the steps it has taken to comply with the Final Judgment. HICA is required to file similar affidavits each year the Final Judgment is in effect.

Section XII makes the Final Judgment effective for ten (10) years from the date of its entry.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The APPA provides that any person wishing to comment on the proposed Final Judgment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. Any person who believes that the proposed Final Judgment should be modified, may submit written comments within the statutory 60-day period to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, United States Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102 (Telephone: 415/556–6300). These comments and the Department's response to them will be filed with the Court and published in the **Federal Register**. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. Further, section XI provides that the Court retains jurisdiction over this action and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Final Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the Complaint.

The effect of the proposed Final Judgment should be to eliminate entirely the alleged restraints on competition that are set forth in the Complaint. In particular, under the proposed Final Judgment, general contractors and specialty contractors and material suppliers can no longer agree to limit negotiations on the terms of sub-bids with each other. General contractors will be able freely to consider bids from any and all capable specialty contractors and material suppliers. Price competition among general contractors and among specialty contractors and material suppliers will be facilitated, to the benefit of awarding authorities and, indirectly, to the benefit of federal and state taxpayers. The proposed Final Judgment adequately redresses all aspects of the government's Complaint in this case.

VII. Determinative Materials and Documents

The United States considered no materials or documents to be determinative in formulating this proposed Final Judgment. Accordingly, none are being filed pursuant to the APPA, 15 U.S.C. 16(b).

Respectfully submitted,

Robert J. Staal,
Phillip H. Warren,
Howard J. Parker,
Attorneys, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: 415/556–6300.

[FR Doc. 87–15105 Filed 7–6–87; 8:45 am]
BILLING CODE 4410–01–M

United States v. Mason Contractors Association; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment and Competitive Impact Statement ("CIS") have been filed with the United States District Court for the District of Hawaii in *United States v. Mason Contractors Association*. The Complaint in this case alleges that the Mason Contractors Association unreasonably restrained competition by adopting and adhering to certain rules governing the submission of bids by specialty contractors to general contractors on a substantial number of construction projects in Hawaii.

The proposed Final Judgment requires the defendant to cancel all formal and informal rules that restrain negotiations between masonry contractors and general contractors or that restrain masonry contractors from offering bids to, or accepting subcontracts from, a general contractor on any project. It also

requires elimination of rules that provide for notification of any masonry contractor of where its bid stands in relation to other bids prior to the time bids are due to general contractors.

Public comment is invited within the statutory 60-day comment period. Such comments, and responses to them, will be published in the **Federal Register** and filed with the Court. Comments should be directed to Gary R. Spratling, Chief, San Francisco Field Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, San Francisco, California 94102 (telephone: 415/556–6300).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, Antitrust Division, *U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, (415) 556–6300, Attorneys for the United States.*

Robert F. Miller, *Miller & Ichinose, Law Offices, Suite 800—H.K. Bldg., 820 Mililani, Honolulu, Hawaii 96813, (808) 533–6111, Attorneys for Mason Contractors Association of Hawaii.*

U.S. District Court for the District of Hawaii

United States of America, Plaintiff, v. *Mason Contractors Association of Hawaii,* Defendant; Antitrust.

Filed: June 16, 1987.
[Civil No. 870465ACK]

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. The parties consent that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

Dated:

For the Plaintiff.

Charles F. Rule,

Acting Assistant Attorney General.

Roger B. Andewelt,

Judy Whalley,

Gary R. Spratling,

Attorneys, 94102, Department of Justice.

Daniel A. Bent,

United States Attorney, District of Hawaii.

Robert J. Staal,

Phillip H. Warren,

Howard J. Parker,

Attorneys, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California, Telephone: (415) 556–6300.

For the Defendants.

Robert F. Miller,

Counsel for Mason Contractors Association.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, *Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California, 94102, (415) 556–6300, Attorneys for the United States.*

U.S. District Court for the District of Hawaii

United States of America, Plaintiff, v. *Mason Contractors Association of Hawaii,* Defendant; Antitrust.

Filed: June 16, 1987.
[Civil No. 870465ACK]

Final Judgment

Plaintiff, United States of America, having filed its Complaint herein on June 16, 1987, and plaintiff and defendant, by their respective attorneys, having consented to entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against, or any admission by, any party with respect to any issue of fact or law herein;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties, it is hereby

ordered, adjudged, and decreed as follows:

I

This Court has jurisdiction of the subject matter of this action and of the parties hereto. The Complaint states a claim upon which relief may be granted against the defendant under Section 1 of the Sherman Act (15 U.S.C. 1).

II

Definitions

As used in this Final Judgment:

A. "Awarding authority" means any governmental or private entity that contracts for the performance of construction projects;

B. "General contractor" means any person who contracts with awarding authorities for the performance of construction projects;

C. "Specialty contractor," also known as a subcontractor, means any person who supplies specialty contracting services (e.g., plumbing, electrical, masonry) to general contractors for construction projects;

D. "Material supplier" means any person who supplies materials to general or specialty contractors for use on construction projects;

E. "Person" means any individual, partnership, firm, association, corporation, or other business or legal entity;

F. "Prime bid" means an offer to an awarding authority by a general contractor for the purpose of obtaining a contract for a construction project;

G. "Sub-bid" means an offer to a general contractor by a specialty contractor to suppy specialty contracting services for a construction project, or by a material supplier to supply materials for a construction project;

H. "Confirmation bid" means written confirmation of a sub-bid, which confirmation is filed by a specialty contractor or material supplier with a bid depository; and

I. "Bid depository" means a facility that gathers sub-bids from speciality contractors and material suppliers and forwards them to general contractors, or that receives confirmation bids filed by specialty contractors and material suppliers.

III

This Final Judgment applies to the defendant Mason Contractors Association of Hawaii ("MCAH") and to each of its subsidiaries, successors, and assigns, and to each of its officers, directors, agents, managers and other employees, and to all other persons in active concert or participation with them who receive actual notice of this Final Judgment by personal service or otherwise.

IV

Defendant is enjoined and restrained from directly or indirectly continuing, maintaining, initiating, adopting, ratifying, entering into, carrying out, furthering, disseminating, publishing, or enforcing any bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement that has the purpose or effect of:

A. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time masonry sub-bids on construction projects;

B. Suppressing, restraining, or discouraging masonry contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project;

C. Stating that negotiation of sub-bids is contrary to any policy of MCAH; or

D. Providing for review of masonary contractor and material supplier bids prior to the time bids are due to general contractors, or notification of any bidder of where its bid stands in relation to other bids.

V

A. Defendant is ordered and directed to cancel and rescind within sixty (60) days of the date of entry of this Final Judgment, and is prohibited from directly or indirectly reinstating, every plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement that is inconsistent with this Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for masonry subcontracts or material suppliers must be filed with the MCAH bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are in excess of 10 percent below most other bids, such low bidders are so notified.

B. Defendant is ordered and directed to include in any MCAH rules concerning bidding for contracts on construction projects a statement that no MCAH rule or policy prohibits negotiation of sub-bids, or requires that subcontract be accepted only on sub-bids filed in accordance with MCAH rules.

VI

Nothing in sections IV and V of this Final Judgment shall prohibit defendant from:

A. Complying with any requirements of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids; or

B. Maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the facility by any contractor is voluntary.

VII

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment to each of its officers, directors, agents, and managers within thirty (30) days after the date of the entry of this Final Judgment;

B. Furnish a copy of this Final Judgment to any successors to its officers, directors, agents, and managers within thirty (30) days after each successor becomes associated with the defendant;

C. Obtain from each of its officers, directors, agents, and managers, and their successors, who have been furnished a copy of this Final Judgment, a signed receipt therefor, which receipt shall be retained in the defendant's files;

D. Attach to each copy of this Final Judgment furnished to its officers, directors, agents, and managers, and their successors, a statement, in the form set forth in Appendix A attached hereto, with the following sentence added to the letter: "Sections IV and V of the Final Judgment apply to you. If you violate these provisions, you may subject MCAH to a fine, and you may also subject yourself to a fine and imprisonment."; and

E. Hold, within seventy-five (75) days after the date of entry of this Final Judgment, a meeting of its officers, directors, agents, and managers, at which meeting such persons shall be instructed concerning the defendant's and their obligations under this Final Judgment. Similar meetings shall be held at least once a year during the term of this Final Judgment; provided, however, that no meeting must be held during any calendar year in which defendant has had no bidding procedure, plan, program, course of action, statement of principle or policy, resolution, rule, by-law, standard, or collective statement concerning any aspect of bidding for contracts or construction projects.

VIII

Defendant is ordered and directed to:

A. Furnish a copy of this Final Judgment together with a letter on the letterhead of MCAH, in the form set forth in Appendix A attached hereto, to each of its members within thirty (30) days after the date of entry of this Final Judgment;

B. Furnish a copy of this Final Judgment together with a letter on the letterhead of MCAH, in the form set forth in Appendix A attached hereto, to each new member within thirty (30) days after the member joins MCAH; and

C. Publish in the *GCA Weekly Bid Bulletin*, or in the event GCA ceases publication of its *Weekly Bid Bulletin* in a comparable construction trade publication, the notice attached hereto as Appendix B.

IX

Defendant is ordered and directed to:

A. Establish and implement a plan for monitoring compliance by its officers, directors, agents, and managers and other employees with the terms of the Final Judgment;

B. File with this Court and serve upon the plaintiff, within ninety (90) days after the date of entry of this Final Judgment, an affidavit as to the fact and manner of its compliance with this Final Judgment; and

C. File with this Court and serve upon the plaintiff annually on each anniversary date during the term of this Final Judgment an affidavit setting forth all steps it has taken during the preceding year to discharge its obligations under this Final Judgment.

X

For the purpose of determining or securing compliance with this Final Judgment, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

1. Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, who may have counsel present, relating to any matters contained in this Final Judgment; and

2. Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, directors, agents, and managers and other employees of the defendant, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the

Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section X shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and said defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party.

XI

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violation hereof.

XII

This Final Judgment shall expire ten (10) years from its date of entry.

XIII

Entry of this Final Judgment is in the public interest.

United States District Judge.
United States v. Mason Contractors Association of Hawaii, Civil No. _____, Final Judgment.

Appendix A

Re: United States v. Mason Contractors Association of Hawaii (Civil No. _____)

Dear Sir or Madam:

The Mason Contractors Association of Hawaii ("MCAH") has recently entered into a Final Judgment with the United States Department of Justice to settle a civil antitrust case filed against the Association. That case, United States v. Mason Contractors Association of Hawaii (Civil No. _____), concerned MCAH's bidding procedure that governed a substantial number of masonry subcontracts on construction projects in the State of Hawaii. Our Association has been cooperating with the Department of Justice regarding this matter, and we have voluntarily agreed to the revisions of our bid depository rules outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____ of the District of Hawaii, MCAH has agreed to eliminate all bid procedures or practices that in any manner may:

1. Restrict or discourage specialty contractors or material suppliers and general contractors from negotiating sub-bids; or

2. Restrict or discourage masonry contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project.

Specifically, MCAH has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for masonry subcontracts or material supplies must be filed with the MCAH bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are in excess of 10 percent below most other bids, such low bidders are so notified.

The General Contractors Association of Hawaii, Hawaii Island Contractors Association, Maui Contractors Association, Gypsum Drywall Contractors of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the MCAH rules being eliminated.

A copy of the entire Final Judgment is enclosed with this letter and will in the future be available upon request. I urge you to read it carefully.

Sincerely yours:

Appendix B

The Mason Contractors Association of Hawaii ("MCAH") has recently entered into a Final Judgment with the United States Department of Justice to settle an antitrust case filed against the Association. That case, *United States v. Mason Contractors Association of Hawaii* (Civil No. _____), concerned the MCAH's bidding procedure that governed a substantial number of masonry subcontracts on construction projects in the State of Hawaii. MCAH has been cooperating with the Department of Justice regarding this matter, and has voluntarily agreed to the revisions of its bidding procedure outlined below. This Final Judgment does not constitute a finding or admission of wrongdoing.

Under the terms of the Final Judgment signed by Judge _____ of the District of Hawaii, MCAH has agreed to eliminate all bid procedures or practices that in any manner may:

1. Restrict or discourage specialty contractors or material suppliers and general contractors from negotiating sub-bids; or

2. Restrict or discourage masonry contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project.

Specifically, MCAH has agreed to delete from its bidding procedure rules which provide that:

1. Confirmation bids for masonry subcontracts or material supplies must be filed with the MCAH bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are in excess of 10 percent below most other bids, such low bidders are so notified.

The General Contractors Association of Hawaii, Hawaii Island Contractors Association, Maui Contractors Association, Gypsum Drywall Contractors of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association have also recently settled civil antitrust cases and have agreed to eliminate provisions in their bidding procedures similar to the MCAH rules being eliminated.

Robert J. Staal, Phillip H. Warren, Howard J. Parker, *Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102, Telephone: 415/556-6300, Attorneys for the United States.*

United States District Court for the District of Hawaii

United States of America, Plaintiff, v. Mason Contractors Association of Hawaii, Defendant.

Filed: June 16, 1987.

[Civil No. 870465ACK]

Competitive Impact Statement

As required by section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), the United States files this Competitive Impact Statement on the proposed Final Judgment submitted for the Court's approval in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

On June 16, 1987, the United States filed nine related civil antitrust complaints under section 1 of the Sherman Act, 15 U.S.C. 1, against nine construction trade associations in Hawaii. Each complaint alleges that a trade association conspired with its members to restrain competition by adopting and enforcing certain rules that restrict bidding on construction projects in Hawaii. The United States and each of the nine defendants have agreed to Final Judgments in settlement of the cases. The Complaints and proposed Final Judgments in the nine cases are similar.

Defendant Mason Contractors Association of Hawaii ("MCAH") is a Hawaii corporation with its principal place of business in Honolulu, Hawaii. MCAH modeled its bidding rules on those of General Contractors Association ("GCA"), the first construction trade association in Hawaii to adopt bidding rules.

Plaintiff and defendant have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless plaintiff withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to interpret, modify, enforce, and punish violations of the Final Judgment.

II. Description of the Practices Giving Rise to the Alleged Violation of the Antitrust Laws

A. The Bid Depository System in Hawaii

A bid depository is a system for the collection and dissemination of bids or sub-bids for the performance of construction services. A bid depository collects and compiles bids submitted by a date certain and then disseminates them to bidding authorities or general contractors seeking the bids or sub-bids, respectively. By facilitating the bidding process, bid depositories can improve the efficiency of the contracting process and thereby promote rather than harm competition. The complaint in this cases alleges, however, that the defendant adopted a number of rules governing the operation of its bid depository that restrained competition for subcontracts on construction projects governed by the MCAH bidding procedures, by prohibiting and precluding negotiation of sub-bids once they were submitted to the bid depository.

On most major construction projects in Hawaii, including most governmepnt projects, the governmental and private entities that contract for construction services (known as "awarding authorities") do so by soliciting and accepting bids from general contractors. In preparing their respective bids, general contractors usually solicit and accept bids from the various specialty contractors (e.g., plumbing, electrical, masonry contractors) and material suppliers whose work will be needed on the project. A bid to a general contractor by a specialty contractor or material supplier to provide services or materials for a construction project is known in the trade as a "sub-bid."

Since 1949, GCA has maintained and enforced rules that regulate bidding by speciality contractors to general contractors on a substantial number of construction projects in Oahu, Hawaii. The rules, known collectively as the "GCA bidding procedure," govern the operation of GCA's bid depository. Two other general contractor associations in the State of Hawaii operate bid depositories: the Hawaii Island Contractors' Association (since 1972) and the Maui Contractors Association (since 1977).

Six specialty contractor associations operate bid depositories in conjunction with the three general contractor associations in Hawaii. These associations are defendant MCAH, Gypsum Drywall Contractors of Hawaii, Pacific Electrical Contractors Association, Painting & Decorating Contractors Association of Hawaii, Plumbing & Mechanical Contractors Association of Hawaii, and Sheet Metal Contractors Association. All of these bid depositories have rules similar to the GCA bidding procedure.

Under its rules GCA determines which construction projects will be subject to its bid depository rules. If GCA chooses a particular project, then pursuant to the rules of the other associations, that project is also subject to the depository rules of those other associations. Under the controlling MCAH rules, the MCAH bid depository rules apply to all construction projects that are listed in the *GCA Weekly Bid Bulletin*. GCA selects the projects to be included in the *Bulletin* on its own and without the authorization or direction of the affected awarding authorities. In fact, GCA selects almost exclusively government construction projects for inclusion in the *GCA Weekly Bid Bulletin* and seldom includes any private projects. All significant construction projects in Hawaii that are awarded by federal, state, or local governmental entities are listed in the *GCA Weekly Bid Bulletin*.

All significant general contractors operating on the island of Oahu are members of GCA and abide by the bidding procedure for projects on Oahu that are listed in the *GCA Weekly Bid Bulletin*. The bidding rules are only suspended by GCA if non-Hawaiian general contractors who may be unwilling to abide by the procedures appear on the bidders list for a project. On construction projects to which the GCA bidding procedure applies, in almost all instances the only bids received by awarding authorities from general contractors are bids developed in accordance with that procedure.

Similary, the membership of each of the six defendant specialty contractor associations includes all significant specialty contractors in each of the trades in Hawaii, and all association members abide by the rules and procedures of their association's bid depository. Thus, even if a general contractor were not a member of GCA and did not want to go through the bid depository procedures, it generally

would be forced to agree to the procedures because, if it did not, the Hawaiian specialty contractors would be precluded by their rules from dealing with that general contractor. Hence, the general contractor would not be able to obtain an adequate number of sub-bids from qualified specialty contractors. Indeed, on construction projects to which the associations' bidding procedures apply, in almost all instances the only bids received by awarding authorities from general contractors are bids based on sub-bids submitted in accordance with those procedures. (In a small number of projects, non-Hawaiian general contractors bring in mainland subcontractors to work on Hawaiian projects.)

The three general contractor and six specialty contractor associations are interrelated. Many specialty contractors are members of both their specialty trade association and a general contractor association. The general contractor associations have virtually identical bid procedures, and they cooperate with one another by transmitting or receiving bids from members of one depository for construction projects on an island under the jurisdiction of another. The six specialty contractor associations have bidding procedures modeled after the GCA's rules. The general and specialty contractor associations often cooperate in enforcing their bidding procedures.

In addition, five of the six defendant specialty contractor associations have a rule not found in the general contractor association bidding procedures. This rule requires that any bidder whose bid is "considerably" lower than other bids shall be contacted by the bidder's association and requested to review its bid. (Of these five rules, only the MCAH rule specifies that a bidder shall be contacted if its bid is a certain percentage (10%) below most other bids.) After notification, the bidder is permitted to stand by the bid or withdraw it, but not change it. The rule also provides for tabulation and dissemination among specialty contractors of sub-bid prices after general contractors have opened bids.

B. The MCAH Bidding Procedure

The Complaint filed against MCAH alleges that MCAH's bidding procedure provides, among other things, that:

1. Confirmation bids for masonry subcontracts or material supplies must be filed with the MCAH bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are in excess of 10 percent below most other bids, such low bidders are so notified.

The Complaint also alleges that beginning at least as early as 1980 and continuing to the present, the defendant engaged in a conspiracy consisting of an agreement, the substantial terms of which were to:

1. Assure that a substantial number of construction projects in the State of Hawaii would be governed by the MCAH bidding procedure and other rules and procedures established by bid depositories operated by other associations of contractors in the State of Hawaii;

2. Restrain and prohibit the negotiation of sub-bids on masonry subcontracts governed by the MCAH bidding procedure by, among other things, inhibiting the seeking of lower prices by general contractors or the offering of lower prices by masonry contractors or material suppliers;

3. Restrain and prohibit the offering of sub-bids, or the acceptance of subcontracts, by masonry contractors or material suppliers that do not comply with the MCAH bidding procedures; and

4. Review masonry contractor and material supplier bids prior to the time bids are due to general contractors and advise any bidders whose sub-bids are in excess of 10 percent below most other bids of that fact.

In addition, the Complaint alleges that the conspiracy had the following effects:

1. Competition among masonry contractors and material suppliers in the sale of masonry contracting services and materials to general contractors on construction projects governed by the MCAH bidding procedure has been unreasonably restrained, suppressed, and eliminated; and

2. Competition among general contractors in negotiating sub-bids for masonry contracting services and materials for construction projects governed by the MCAH bidding procedure has been unreasonably restrained, suppressed, and eliminated.

The regulation of negotiations between general contractors and subcontractors is not anticompetitive in all situations. Here, however, as explained above, the general contractor associations and the specialty contractor associations each possess market power for construction projects in Hawaii. In addition, the decision to limit negotiations between general contractors and specialty contractors was not the decision of the awarding authority, but rather was the decision of the general contractors acting in concert and the decision of the specialty contractors acting in concert. In this context we concluded that the association rules were anticompetitive because they unreasonably deprived the awarding authority of free and open competition in negotiations between general contractors and specialty contractors and material suppliers, for the performance of subcontracts on construction projects subject to the bidding procedures.

The specialty contractor associations' rules requiring notification of bidders whose sub-bids are considerably lower than other bids are anticompetitive and result in increased prices for specialty contract work. The rules permit a bidder who has submitted an accurate bid to withdraw the bid simply because it is "too low." When the low bidder withdraws a bid after being notified as required by the association rules, the second lowest bidder wins the job with an increased profit margin.

The only purported justification for these rules is that notifying low bidders that they are significantly lower prevents the award of a bid to a specialty contractor who made a mistake in calculating its bid, and who, in performing the job at the mistaken bid price, may go bankrupt, leaving the general contractor and the project owner with an unfinished job. This justification fails on two points. First, it appears that specialty contractors have regularly withdrawn bids that contain no mistake (other than being too low). Second, the justification advanced is a concern of the general contractors that, to the extent it exists, can and should be addressed by the general contractors who have a strong incentive to ensure that a specialty contractor is able to complete its job. General contractors routinely screen low bids for errors. Thus it is unnecessary for competitors to screen each other's bids to address this concern.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment enjoins MCAH from continuing or renewing the anticompetitive conduct alleged in the Complaint. Specifically, Section IV prohibits MCAH from maintaining, directly or indirectly, any written or unwritten rule that has the purpose or effect of:

1. Suppressing, restraining, or discouraging general contractors and specialty contractors or material suppliers from negotiating at any time masonry sub-bids on construction projects;

2. Suppressing, restraining, or discouraging masonry contractors or material suppliers from offering sub-bids to, or accepting subcontracts from, a general contractor on any project;

3. Stating that negotiation of sub-bids is contrary to any policy of MCAH; or

4. Providing for review of masonry contractor and material supplier bids prior to the time bids are due to general contractors, or notification of any bidder of where its bid stands in relation to other bids.

Section V orders MCAH to eliminate within 60 days all written and unwritten rules that are inconsistent with the Final Judgment, including provisions in its bidding procedure which provide that:

1. Confirmation bids for masonry subcontracts or material supplies must be filed with the MCAH bid depository as well as with the relevant general contractor association bid depository;

2. Filed bids may not be altered or changed after the deadline for their filing;

3. A specialty contractor or material supplier who withdraws a filed bid may not rebid or negotiate a subcontract with the general contractor;

4. Filed bids shall be frozen if there is a postponement of less than 15 days in the time for the submission of prime bids, and, if there is a longer postponement, must be formally resubmitted through the bid depository; and

5. If any filed bids are in excess of 10 percent below most other bids, such low bidders are so notified.

Section V.B orders MCAH to include in any MCAH rules on bidding for contracts on construction projects a statement that no MCAH policy prohibits negotiation of sub-bids, or requires that subcontracts be awarded only on sub-bids filed in accordance with MCAH rules.

Section VI.A provides, however, that defendant is not enjoined from complying with any requirement of an awarding authority regarding the procedures general contractors must follow in obtaining sub-bids for the preparation of prime bids. This provision ensures that the proposed Final Judgment does not in any way limit awarding authorities' ability to establish bidding requirements for contractors. If the awarding authority decided that a regulated bidding system which prevented post-filing negotiations between contractors and subcontractors was appropriate, it could insist on it, and the contractors and subcontractors could comply without violating the decree.

Section VI.B further states that defendant is not enjoined from maintaining a facility that gathers sub-bids from specialty contractors and material suppliers and forwards them to general contractors, so long as use of the services it provides is voluntary. This provision ensures that the proposed Final Judgment does not prohibit MCAH from operating a bid depository so long as the services provided are voluntary and do not prohibit negotiations between general and specialty contractors.

Sections VII and VIII ensure that full notice of the requirements of the Final Judgment is given to all of MCAH's officers, directors, managers, and members.

Section IX requires MCAH to establish and implement a plan for monitoring compliance with the terms of the proposed Final Judgment. MCAH is also required to file with the Court and the United States within ninety (90) days after date of entry of the Final Judgment, an affidavit explaining the steps it has taken to comply with the Final Judgment. MCAH is required to file similar affidavits each year the Final Judgment is in effect.

Section XII makes the Final Judgment effective for ten (10) years from the date of its entry.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorney fees. Entry of the Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The APPA provides that any person wishing to comment on the proposed Final Judgment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register.** Any person who believes that the proposed Final Judgment should be modified, may submit written comments within the statutory 60-day period to Gary R. Spratling, Chief, San Francisco Office, Antitrust Division, United States Department of Justice, 450 Golden Gate Avenue, 16th Floor, Box 36046, San Francisco, California 94102 (Telephone: 415/556–6300). These comments and the Department's response to them will be filed with the Court and published in the **Federal Register.** All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to its entry. Further, section XI provides that the Court retains jurisdiction over this action and that the parties may apply to the Court for such orders as may be necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

The alternative to the proposed Final Judgment considered by the Antitrust Division was a full trial on the merits and on relief. The Division considers the proposed Final Judgment to be of sufficient scope and effectiveness to make a trial unnecessary, since it provides appropriate relief against the violations alleged in the Complaint.

The effect of the proposed Final Judgment should be to eliminate entirely the alleged restraints on competition that are set forth in the Complaint. In particular, under the proposed Final Judgment, general contractors and specialty contractors and material suppliers can no longer agree to limit negotiations on the terms of sub-bids with each other. General contractors will be able freely to consider bids from any and all capable specialty contractors and material suppliers. Moreover, specialty contractors will be prohibited from notifying bidders whose bids are considerably lower (or more than 10% lower) than the next lower bids. In sum, price competition among general contractors and among specialty contractors and materials suppliers will be facilitated, to the benefit of awarding

authorities and, indirectly, to the benefit of federal and state taxpayers. The proposed Final Judgment adequately redresses all aspects of the government's Complaint in this case.

The Division also considered including in the proposed Final Judgment an injunction against the specialty contractor associations' practice of tabulating and disseminating the prices contained in bids submitted to their depositories. Such exchanges of price information can be procompetitive in that, by providing firms with information about competitors, they ultimately can help firms identify ways in which to lower their costs. But in some circumstances where a market is otherwise prone to collusion, such exchanges of price information can be used to police pricing agreements and can have an anticompetitive effect. The Division chose not to impose an injunction against such information exchange in this case because it cannot be predicted that an exchange of information, on balance, would be anticompetitive in this market after entry of the proposed Final Judgment with its injunctions against anticompetitive practices by the depositories. The Division concluded that such an injunction is not now necessary to restore full and vigorous competition to the affected markets.

VII. Determinative Materials and Documents

The United States considered no materials or documents to be determinative in formulating this proposed Final Judgment.

Accordingly, none are being filed pursuant to the APPA, 15 U.S.C. 16(b).

Respectfully submitted,

Robert J. Staal,

Phillip H. Warren,

Howard J. Parker,

Attorneys, Antitrust Division, U.S. Department of Justice, 450 Golden Gate Avenue, Box 36046, 16th Floor, San Francisco, California 94102, Telephone: 415/556-6300.

[FR Doc. 87-15106 Filed 7-6-87; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before August 6, 1987.

ADDRESS: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/786-0233 and Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503, 202/395-6880.

FOR FURTHER INFORMATION CONTACT: Mrs. Ingrid Foreman, National Endowment for the Humanities, Administrative Service Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/786-0233, from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension.

Title: Division of State Programs; Guidelines for Biennial Proposals.

Form Number: 3136-0080.

Frequency of Collection: Biennially.

Respondents: State humanities councils applying for funding.

Use: Application for benefits by state humanities councils to be regranted to non-profit groups and organizations in their states to make focused, coherent humanities education possible in places and by methods that are appropriate to adults. Information will be used by reviewers, panelists and the Endowment's chairman to determine eligibility for funding.

Estimated Number of Respondents: 26-28.

Estimated Hours for Respondents to Provide Inforamtion: 120 hours per respondent or 3,120-3,360 total hours for all respondents.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 87-1533 Filed 7-6-87; 8:45 am]

BILLING CODE 7536-01-M

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted on or before August 6, 1987.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0233 and Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202) 395-7316.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0233, from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category Extension

Title: Process of Application, Evaluation, Award, and Report for NEH Faculty Graduate Study Program for Historically Black Colleges and Universities.

Form Number: 3136-0108.

Frequency of Collection: Collection occurs once yearly, according to individual program application deadline.

Respondents: College and university faculty.

Use: Application, evaluation, and award process for participants in the Faculty Graduate Study program

Estimated Number of Respondents: 260.
Estimated House for Respondents to Provide Information: 392.

Susan Metts,
Assistant Chairman for Administration.

[FR Doc. 87-15361 Filed 7-6-87; 8:45 am]
BILLING CODE 7536-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC)

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on July 16 and 17, 1987 in Room 5104, New Executive Office Building, Washington, DC. The meeting will begin at 6:00 p.m. on July 16, recess and reconvene at 8:00 a.m. on July 17, 1987. Following is the proposed agenda for the meeting:

(1) Briefing of the council, by the Assistant Directors of OSTP, on the current activities of OSTP.

(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.

(3) Discussion of composition of panels to conduct studies.

The July 16 session and a portion of the July 17 session will be closed to the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552b.(c) (1), (2), and (9)(B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Accordingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552b.(c)(6).

Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Barbara J. Diering, at (202) 456-7740, prior to 3:00 p.m. on July 15, 1987. Mrs. Diering is also available to provide specific information regarding time, place and agenda for the open session.

Jonathan F. Thompson,
Executive Assistant, Office of Science and Technology Policy.
May 30, 1987.

[FR Doc. 87-15353 Filed 7-1-87; 3:38 pm]
BILLING CODE 3170-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-24650; File No. SR-NYSE-87-15]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Monthly Expirations for Stock Options

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on June 3, 1987, the New York Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend for one year its pilot program allowing monthly expirations for stock options. Accordingly, the new termination date for the pilot program in Rule 703, Supplementary Material .20(b) is May 21, 1988.

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 Statutory Basis for, the Proposed Rule Change

(a) *Purpose*—In March, 1987, the Commission approved a four-month extension of the Exchange's pilot program allowing monthly expirations in stock options retroactive from January 16, 1987. (*See* Rel. No. 34-24193 (March 9, 1987); File No. SR-NYSE-87-1.) The proposed rule change extends the pilot program for an additional year. The other options exchanges have proposed, or are expected to propose, one-year extensions of their pilot programs that add February and March cycle series to their programs. Retention of the program on a pilot basis will afford an opportunity to study the experience with the additional cycles before permanent approval is sought.

(b) *Statutory Basis*—The statutory basis of the proposed rule change is section 6(b) of the Securities Exchange Act of 1934 (the "Act") in general, and in particular, paragraph (5) of section 6(b), which requires that the rules of a national securities exchange remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change imposes no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was approved by the Options Market Performance Subcommittee, comprised of members and representatives of member organizations of the Exchange. Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange requests accelerated effectiveness of the proposed rule change pursuant to section 19(b)(2) of the Act. The Commission has recently approved a similar rule proposal by the American Stock Exchange, Inc. (*See* Rel. No. 34-24452 (May 14, 1987); File No. SR-AMEX-87-7.) The Exchange anticipates that similar proposals will be filed with the Commission by the other options exchanges. Accelerated approval of the Exchange's proposal will reduce investor confusion by providing for uniformity among exchange rules.

IV. Conclusion

The Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange. More specifically, the Commission believes

that extending and expanding the existing pilot program, which is tailored to meet investors' preferences for stock options with near-term expiration cycles, should attract additional order flow, thereby improving liquidity in these options contracts. In addition, the Commission has not received any negative comments on the pilot's operation. Therefore, the Commission believes the proposed rule change is consistent with Section 6(b)(5) of the Act, which provides in pertinent part, that the rules of the Exchange be designed to promote just and equitable principles of trade and to protect the investing public.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof because the proposed rule change is substantively identical to a proposal filed previously by the American Stock Exchange and approved by the Commission.[1] That proposal also received no negative comments. Accordingly, the proposed rule change is hereby approved.

V. 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 at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 28, 1987. For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

[1] *See* Securities Exchange Act Release No. 24452 (May 14, 1987).

Dated: June 26, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15405 Filed 7-6-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24663; File No. SR-PSE-87-17]

Self-Regulatory Organizations; Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to the Implementation of a Six-Month Pilot Program To Allow a Specific PSE Member Firm to Utilize the SCOREX System to Route to the Relevant PSE Specialists Market Maker Limit Orders in Four Specific Securities

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 May 15, 1987, the Pacific Stock Exchange Incorporated ("PSE" 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. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the current parameters of the PSE SCOREX System, non-agency orders are not eligible for either the routing or automatic execution functions of SCOREX. The intention of this proposed pilot program is to allow a specific PSE member to use only the routing functions of SCOREX for the purpose of sending market maker limit orders in four specific PSE listed securities. These securities are ones that are included within the stocks that make up the Financial News Composite Index ("FNC"). If implemented, this pilot will allow this market maker to route its orders over SCOREX in these securities to the relevant specialists who will then have 15 seconds to execute them. If not so executed they will be cancelled.

The purpose of utilizing a six month pilot is to study the possible general application of such systems for such non-agency orders. At the conclusion of the pilot, the results will be studied and a determination will be made as to whether this pilot should be made available to the general membership and submitted to the Commission for permanent application to the SCOREX System.

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 Section (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

A market maker firm on the PSE Options Floor, specializing in Financial News Composite Index ("FNC") option trading, has expressed interest in using the PSE SCOREX System for the purpose of effecting equity transactions to hedge or offset its trading positions. This PSE member firm has approached four PSE specialists who are willing to test the viability of using the SCOREX System to route market maker limit orders priced at or in between the best bid or offer in four (GE, IBM, MMM, XON) of the 30 securities that comprise the Financial News Composite Index.

Under the system being proposed, limit orders sent by the PSE member firm will be executable only while being displayed during the 15 second "time down", in which they are displayed on the specialist's Quotron terminal. A limit order not executed during 15 second time down will be considered cancelled.

At the April 1st Equity Floor Trading Committee ("Committee") meeting, the Committee approved a six month pilot program between the member firm and the four specialists for the routing of these market maker limit orders via the SCOREX System to the relevant PSE specialists in the aforementioned securities. It was under these parameters that the PSE Board of Governors approved the implementation of this pilot program. It is the intention of the Exchange to utilize the information obtained during the existence of this pilot to determine to what extent, if any, it may be applicable to the general trading situation.

Since the specific rules governing SCOREX do not permit such principal trades (PSE Rule III, Section 12(b)), the Exchange is seeking to implement this system on a pilot basis only and therefore will not be adjusting the scope of SCOREX rules as they now stand.

These proposed rule amendments are consistent with section 6 of the Securities Exchange Act of 1934, in general, and section 6(5)(5), in particular, in that they will help to promote just and equitable principles of trade, facilitate transactions in securities and help to perfect the mechanism of a free and open market and a national market system.

(B) Self-Regulatory Organization's Statement on the Burden on Competition

The proposed rule change imposes no burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments on the proposed rule change were neither requested nor received.

III. Date of Effectiveness of the Proposed Rule Change and Time Period 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 Commissoin may designate up to 90 days 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 the 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 provision of 5 U.S.C. 552, will be available for inspections and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 28, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 30, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15406 Filed 7-6-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-17054]

Application and Opportunity for Hearing; Citicorp

June 30, 1987.

Notice is hereby given that Citicorp (the "Applicant") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding that the trusteeship of United States Trust Company of New York (the "Trust Company") under four existing indentures, and two Pooling and Servicing Agreements, each dated as of April 1, 1987, under each of which certificates evidencing interests in a pool of mortgage loans have been issued, are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Trust Company from acting as trustee under any of such indentures or the Agreements. Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest, it shall within ninety days after ascertaining that it has such a conflicting interest, either eliminate the conflicting interest or resign as trustee. Subsection (1) of section 310(b) provides, with certain exceptions, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture under which securities of the same obligor upon the indenture securities are outstanding.

The Applicant alleges that:

(1) The Trust Company currently is acting as trustee under four indentures under which Applicant is the obligor. The indenture dated February 15, 1972 involved the issuance of floating rate notes due 1989; the indenture dated March 15, 1977 involved the issuance of various series of unsecured and unsubordinated notes: The indenture dated August 25, 1977 involved the issuance of rising-rate notes, Series A: and the indenture dated April 21, 1980 involved the issuance of various series of unsecured and unsubordinated Notes. Said indentures were filed as, respectively, Exhibits 4(a), 2(b), 2(b), and 2(a) to Applicant's respective Registration Statement Nos. 2-42915, 2-58355, 2-59396 and 2-64862 filed under the Securities Act of 1933 (the "1933 Act"), and have been qualified under the Act. The four indentures are hereinafter called the "Indentures" and the securities issued pursuant to the Indentures are hereinafter called the "Notes."

(2) The Applicant is not in default in any respect under the Indentures or under any other existing indenture.

(3) On April 24, 1987, the Trust Company entered into a Pooling and Servicing Agreement dated as of April 1, 1987 (the "1987-1 Agreement") with Citicorp Mortgage Securities, Inc. ("CSMI"), Packager and Servicer, and Citicorp Homeowners, Inc., under which there were issued on April 24, 1987 Mortgage Pass-Through CitiCertificates, Series 1987-1 9.00% Pass-Through Rate (the "Series 1987-1 Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1987-1 Mortgage Pool") originated by Citibank, N.A. and having adjusted principal balances aggregating $129,168,187.70 at the close of business on April 1, 1987, which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1987-1 Certificates. On April 24, 1987, Applicant, the parent of CMSI, entered into a guaranty of even date (the "1987-1 Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1987-1 Certificates, to be liable for 7.00% of the initial aggregate principal balance of the 1987-1 Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1987-1 Guaranty. The 1987-1 Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1987-1 Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1987-1 Certificates were registered under the 1933 Act (registration statement on Forms S-11 and S-3, File No. 33-12788) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through CitiCertificates pursuant to Rule 415 under the 1933 Act. The Series 1987-1 Certificates were offered by a Prospectus Supplement dated April 8,

1987, supplemental to a Prospectus dated March 31, 1987. The 1987–1 Agreement has not been qualified under the Act.

(4) On April 24, 1987 the Trust Company entered into a Pooling and Servicing Agreement dated as of April 1, 1987 (the "1987–2 Agreement") with CMSI, Packager and Servicer, and Citicorp Homeowners, Inc., under which there were issued on April 24, 1987 Mortgage Pass-Through CitiCertificates, Series 1987–2 8.50% Pass-Through Rate (the "Series 1987–2 Certificates"), which evidence fractional undivided interests in a pool of conventional one-to-four-family mortgage loans (the "1987–2 Mortgage Pool") originated by Citibank, N.A. and having adjusted principal balances aggregating $77,843,141.82 at the close of business on April 1, 1987 which mortgage loans were assigned to the Trust Company as Trustee simultaneously with the issuance of the Series 1987–2 Certificates. On April 24, 1987, Applicant, the parent of CMSI, entered into a guaranty of even date (the "1987–2 Guaranty") pursuant to which Applicant agreed, for the benefit of the holders of the Series 1987–2 Certificates, to be liable for 7.25% of the initial aggregate principal balance of the 1987–2 Mortgage Pool and for lesser amounts in later years pursuant to the provisions of the 1987–2 Guaranty. The 1987–2 Guaranty states that Applicant's obligations thereunder rank *pari passu* with all unsecured and unsubordinated indebtedness of Applicant, and accordingly, if enforced against Applicant, the 1987–2 Guaranty would rank on a parity with the obligations evidenced by the Notes. The Series 1987–2 Certificates were registered under the 1933 Act (Registration Statement on Forms S–11 and S–3, File No. 33–12788) as part of a delayed or continuous offering of $2,000,000,000 aggregate amount of Mortgage Pass-Through CitiCertificates pursuant to Rule 415 under the Act. The Series 1987–2 Certificates were offered by a Prospectus Supplement dated April 21, 1987, supplemental to a Prospectus dated March 31, 1987. The 1987–2 Agreement has not been qualified under the Act.

The 1987–1 Agreement and the 1987–2 Agreement are hereinafter called the 1987 Agreements and the 1987–1 Guaranty and the 1987–2 Guaranty are hereinafter called the 1987 Guarantees.

(5) The obligations of Applicant under the Indentures and the 1987 Guarantees are wholly unsecured, are unsubordinated and rank *pari passu*. Any differences that exist between the provisions of the Indentures and the 1987 Guarantees are unlikely to cause any conflict of interest in the trusteeships of the Trust Company under the Indentures and 1987 Agreements.

(6) The Applicant has waived notice of hearing, hearing, and any and all rights to specify procedures under Rule 8(b) of the Commission's Rules of Practice in connection with this matter.

For a more detailed statement of the matter of fact and law asserted, all persons are referred to said application, File No. 22–17054, which is a public document on file in the office of Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC.

Notice is further given that any interested person may, not later than July 22, 1987, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of law or fact raised by said application that he desires to controvert, or he may request that he be notified if the Commission should order a hearing thereon.

Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, DC 20549.

At any time after said date, the Commission may issue an order granting the application upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

FR Doc. 87–15407 Filed 7–6–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–15832; 812–6592]

Application for Exemption; Com Fed Funding Corporation II

Date: June 29, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Com Fed Funding Corporation II ("Applicant").

Relevant 1940 Act Sections: Exemption requested under section 6(c).

Summary of Application: Applicant seeks an order exempting it from all of the provisions of the 1940 Act to permit it to issue and sell mortgage-backed securities and equity interests.

Filing Date: The application was filed on January 9, 1987 and amended on June 25, 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 July 24, 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 lawyers, 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. Com Fed Funding Corporation II, 1100 North Market Street, Wilmington, Delaware 19801.

FOR FURTHER INFORMATION CONTACT: Denis R. Molleur, Staff Attorney (202) 272–2363 or Curtis Hilliard, Special Counsel (202) 272–3026 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application; the complete Application is available for a fee from either the Commission's Public Reference Branch in person, or the Commission's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Statements and Representations

1. Applicant is a Delaware limited purpose corporation created on June 24, 1985. It is a direct wholly-owned subsidiary of Community Federal Savings and Loan Association, a federally chartered savings and loan association with its home office in St. Louis County, Missouri.

2. Applicant does not intend to engage in any activities other than (i) issuing and selling bonds under one or more indentures, (ii) acquiring, owning, holding and pledging mortgage loans and mortgage certificates in connection therewith, (iii) investing cash balances on an interim basis in certain short-term investments and (iv) engaging in any activities incidental to and necessary for such purposes.

3. The Applicant currently proposes to sell bonds (the "Bonds") in series ("Series") secured primarily by

Mortgage Certificates.[1] Each Series of Bonds will consist of one or more classes ("Classes"), one or more of which may be Classes of current-pay Bonds or compound interest Bonds. Each Series of Bonds will be issued pursuant to an indenture (the "Indenture") between the Applicant and an independent trustee (the "Trustee"), as supplemented by one or more supplemental indentures. The Indenture for each Series of Bonds will be qualified under the Trust Indenture Act of 1939, as amended.

4. The Mortgage Certificates securing each Series of Bonds, together with cash available to be withdrawn from any debt service funds, reserve funds, or other funds, will have scheduled cash flow sufficient, when taken together with reinvestment rates acceptable to each rating agency rating the Bonds, to make timely payments of principal of and interest on the Bonds in accordance with their terms.

5. The Applicant may sell some or all of its residual interest ("Equity Interest"). Currently, however, there is no such intent to sell some or all of the Equity Interest. If such sales are made, they will be effected in transactions not constituting a public offering under section 4(2) of the Securities Act.

6. If the Equity Interests are sold, it is anticipated that there will not be a conflict of interest between the holders of the Bonds (the "Bondholders") and holders of the Equity Interests since (a) the collateral will not be speculative in nature because it will consist primarily of Mortgage Certificates, (b) the Bonds will be issued only if an independent nationally recognized statistical rating agency has rated such Bonds in one of the two highest rating categories; and (c) the relevant Indenture is expected to subject the collateral, all income distributions thereon and all proceeds from a conversion, voluntary or involuntary, of any such collateral to a first priority perfected security interest in the name of the Trustee on behalf of the Bondholders. Further, neither the holders of the Equity Interests nor the Trustee will be able to impair the security afforded by the Mortgage Certificates because, without the consent of each affected Bondholder, neither the holders of the Equity Interests nor the Trustee will be able to: (i) Change the stated maturity on any Bond; (ii) reduce the principal or rate of interest on any Bond; (iii) change the priority of repayment on any Class of any Series; (iv) impair or adversely affect the Mortgage Certificates; or (v) permit the creation of a lien ranking prior to or on parity with lien of the related Indenture with respect to the Mortgage Certificates or otherwise deprive the Bondholders of the security afforded by the lien of the related Indenture.

7. It is expected that the sale of Equity Interests will not alter the payment of cash flow under any Indenture, including the amounts to be deposited in the Collection Account or any Reserve Fund. The excess cash flow from the collateral which is available to holders of the Equity Interests always will be less than the cash flow from the collateral that is used to make principal and interest payments to Bondholders. Further, except for the possible limited right to substitute Mortgage Certificates, it will not be possible for holders of the Equity Interests to alter the collateral, and, in no event will such right of substitution result in a diminution in the value or quality of the collateral. Although substitution may result in a different prepayment experience, the Bondholders' interests will not be impaired because: (i) The prepayment experience of any collateral will be determined by market conditions beyond the control of the holders of the Equity Interests, which market conditions are likely to affect similar mortgage certificates in similar fashion; and (ii) the interests of the holders of the Equity Interests generally are not likely to be substantially different from those of Bondholders with respect to prepayment experience.

8. The Applicant may elect to treat a pool of Mortgage Certificates collateralizing a Series of Bonds as a real estate mortgage investment conduit (a "REMIC") under the Internal Revenue Code of 1986. A REMIC election will have no effect on the expenses to be incurred by Applicant. Administrative fees and expenses will be paid or provided for in a manner satisfactory to the agency rating the Series and subject to the Condition relating to REMICs listed below.

9. The Indenture authorizes the Trustee to invest the funds of the Collection Account and the Reserve Funds in certain eligible investments, including but not limited to, obligations of the United States or certain agencies thereof, federal funds certificates of deposit, commercial paper carrying the highest rating of the agencies rating the Bonds, time deposits, bankers' acceptances issued by eligible commercial banks and certain repurchase agreements of United States government securities with eligible commercial banks. Following each payment date and under certain circumstances, certain amounts in the Collection Account and the Reserve Funds will be remitted to the Applicant.

Conditions to Order

Applicant represents that the requested order will be expressly conditioned upon the following:

A. Conditions relating to the Bond Collateral

(1) Each series of Bonds will be registered under the Securities Act of 1933 ("Securities Act"), unless offered in a transaction exempt form registration pursuant to section 4(2) of the Securities Act.

(2) The Bonds will be "mortgage related securities" within the meaning of section 3(a)(41) of the Securities Exchange Act of 1934, as amended. However, the mortgage collateral underlying the Bonds will be limited to Mortgage Certificates.

(3) If new mortgage collateral is substituted, the substitute collateral must: (a) Be of equal or better quality than the collaterial replaced: (b) have similar payment terms and cash flow as the collateral replaced; (c) be insured or guaranteed to the same extent as the collateral replaced; and (d) meet the conditions set forth in paragraphs (2) and (4) hereof. In addition, new Mortgage Certificates will not be substituted for more than 40% of the aggregate face amount of the Mortgage Certificates initially pledged. In no event will any new Mortgage Certificates be substituted for any substitute Mortgage Certificates.

(4) All Mortgage Certificates, funds, accounts or other collateral securing a series of Bonds ("Bond Collateral") will be held by the Trustee or on behalf of the Trustee by an independent custodian (the "Custodian"). The Custodian may not be affiliate (as the term "affiliate" is defined in Securities Act Rule 405, 17 CFR 230.405) of

[1] Each series of Bonds will be secured separately by any combination of the following collateral: Mortgage-backed certificates guaranteed by the Government National Mortgage Association (the "GNMA Certificates"), Mortgage Participation Certificates issued by the Federal Home Loan Mortgage Corporation (the "FHLMC Certificates") Guaranteed Mortgage Pass-Through Securities issued by the Federal National Mortgage Association (the "FNMA Certificates") (collectively, the "Mortgage Certificates"). The Mortgage Certificates pledged to secure a series of Bonds may represent the entire beneficial interest in the related mortgage pools or may represent only a partial beneficial interest in such pool. Each series of Bonds will also be secured by distributions on the Mortgage Certificates (the "Collection Account") and, if required, cash, a letter of credit or a combination thereof (the "Reserve Fund"). Applicant states that the collateral securing each series of Bonds will serve as collateral only for that series of Bonds.

Applicant. The Trustee will have a first priority perfected security of lien interest in and to all Collateral.

(5) Each Series of Bonds will be rated in the highest bond rating categoris by at least one nationally recognized statistical rating organization that is not affiliated with the Applicant. The Bonds will not be considered "redeemable securities" within the meaning of section 2(a)(32) of the Securities Act.

(6) No less often than annually, an independent public accountant will audit the books and records of Applicant and in addition will report on whether the anticipated payments of principal and interest on the Mortgage Certificates continue to be adequate to pay the principal and interest on the Bonds in accordance with their terms. Upon completion, copies of the auditor's report(s) will be provided to the Trustee.

B. Condition Relating to REMICs

(1) The election by the Applicant to treat a pool of Mortgage Certificates as a REMIC will have no effect on the level of expenses that would be incurred by Applicant. If Applicant elects to be treated as a REMIC, it will provide for the payment of administrative fees and expenses as set forth in the application. The Applicant will ensure that the anticipated level of fees and expenses will be adequately provided for regardless of the method selected.

C. Conditions Relating to Variable-Rate Bonds

(1) Each class of adjustable interest rate Bonds will have a set maximum interest rate.

(2) At the time of the deposit of the collateral, as well as during the life of the Bonds, the scheduled payments or principal and interest to be received on all Mortgage Certificates pledged to secure the Bonds, plus reinvestment income thereon, and funds, if any (as described in the Application), will be sufficient to make all payments of principal and interest on the Bonds then outstanding, assuming the maximum interest rate on each class of adjustable interest rate Bonds. Such collateral will be paid down as the mortgages underlying the Mortgage Certificates are repaid, but will not be released from the lien of the Indenture prior to the payment of the Bonds.

D. Conditions Relating to the Sale of Equity Interests

(1) Any Equity Interest in the Applicant will be offered and sold only to (i) institutions or (ii) non-institutions which are "accredited investors" as defined in Rule 501(a) under the Securities Act. Institutional investors will have such knowledge and experience in financial and business matters as to be capable to evaluate the risks of purchasing Equity Interests and understand the volatility of interest rate fluctuations as they affect the value of mortgages, mortgage-related securities and residual interests therein. Non-institutional accredited investors will be limited to no more than 15, will purchase at least $200,000 of such Equity Interest and will have a net worth at the time of purchase that exceeds $1,000,000 (exclusive of their primary residence). Further, non-institutional accredited investors will have such knowledge and experience in financial and business matters, specifically in the field of mortgage-related securities, as to be able to evaluate the risk of purchasing an Equity Interest in the Applicant and will have direct, personal and significant experience in making investments in mortgage-related securities and because of such knowledge and experience, understand the volatility of interest rate fluctuations as they affect the value of mortgage/related securities and residual interests therein. Such purchasers will be limited to mortgage lenders, thrift institutions, commercial and investment banks, savings and loan associations, pension funds, employee benefit plans, insurance companies, mutual funds, real estate investment trusts or other institutional or non-institutional investors as described above which customarily engage in the purchase of mortgages and mortgage-related securities.

(2) Each sale of an Equity Interest will qualify as a transaction not involving any public offering within the meaning of section 4(2) of the Securities Act.

(3) Each sale of an Equity Interest will prohibit the transfer of such Equity Interest if there would be more than 100 beneficial owners of the Equity Interest in the Applicant at any time.

(4) Each sale of an Equity Interest will require each purchaser thereof to represent that it is purchasing for investment and not for distribution and that it will hold such Equity Interest in its own name and not as nominee for undisclosed investors.

(5) Each sale of an Equity Interest will provide that (i) on owner of such Equity Interest may be affiliated with the Trustee for the Applicant and (ii) no holders of controlling (as that term is defined in Rule 405) Equity Interest in the Applicant may be affiliated with either the custodian of the Bond Collateral or the agency rating the Bonds of the relevant Series.

(6) If the same of the Equity Interests results in the transfer of control (as the term "control" is defined in Rule 405) of the Applicant, the relief afforded by any Commission order granted on the Application would not apply to subsequent Bond offerings by that Applicant.

For the Commission, by the Division of the Investment Management, pursuant to delegated authority.

Shirley E. Hollis

Assistant Secretary.

[FR Doc. 87-15317 Filed 7-6-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-15835; 812-6730]

Application; Compagnie Financiere de Paribas

Dated: June 30, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Investment Company Act").

Applicant: Compagnie Financiere de Paribas (the "Applicant").

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from all provisions of the 1940 Act.

Summary of Application: The Applicant seeks an order amending an existing order to permit it to issue and sell any type of its equity securities in the United States, either directly or in the form of American Depository Shares, evidenced by American Depository Receipts. The prior order (Investment Company Act Release No. 12948, January 6, 1983) permits Applicant to issue and sell its commercial paper and debt securities in the United States.

Filing Date: The application was filed on May 20, 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 bythe SEC by 5:30 p.m. on July 23, 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 lawyers, 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. Applicant: c/o Edward F. Greene, Esq.,

Clearly, Gottlieb, Steen & Hamilton, 1752 N Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Denis R. Molleur, Staff Attorney (202) 272–2363 or Curtis R. Hilliard, Special Counsel (202) 272–3026 (Division of Investment Mangement, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the Application; the complete Application is available for a fee from either the Commission's Public Reference Branch in person, or the Commission's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. The Applicant is the holding company of the Paribas group (the "Paribas Group"), a leading French banking organization which at the end of 1986 ranked by total assets among the 40 largest banking and financial organizations in the world. The main business of the Applicant's principal operating subsidiaries, Banque Paribas, Credit du Nord and Compagnie Bancaire, like that of major United States banks, is the receipt of deposits and the making of loans. In addition, the Applicant, principally through these subsidiaries, engages in other banking and bank-related activities, including foreign exchange transactions, foreign currency lending, trade finance, Euromarket activities and securities operations. At December 31, 1986, the Applicant has consoldiated total assets of $93 billion. Consolidated customer deposits and consolidated customer loans amounted to $25.2 billion and $46.4 billion, respectively. Estimated consolidated net worth (excluding good will) at December 31, 1986 was $6.1 billion ($3.2 billion excluding minority interests), and consolidated net income for 1986 was $501 million ($260 million excluding minority interests).[1]

2. In addition to Banque Paribas, Credit du Nord and Compagnie Bancaire, the Paribas Group includes a number of financial and other companies, within and outside of France. The shares of the Applicant are listed on the Paris Stock Exchange.

3. The Applicant is subject to extensive government regulation as a banking organization in France under a structure that is generally comparable to regulation applicable to banks in the United States and most European countries. Rules and regulations government the operation of French banks and other credit institutions range from licensing requirements and restrictions on the scope of non-banking activities to detailed balance sheet ratios and regular reporting and reserve requirements. The principal ratios to which French banks and other credit institutions are subject include an equity ratio (requiring a minimum ratio of 60% between equity and related items, and long-term assets), a risk coverage ratio (requiring a minimum ratio of 5% between capital and certain risk-bearing assets) and a liquidity ratio (requiring liquid assets equal to at least 60% of French franc demand and short-term liabilities).

4. The Applicant has a substantial banking presence in the United States through the New York branches of Banque Paribas and Credit du Nord and the offices and agencies of Banque Paribas in other States. The New York branches of Banque Paribas and Credit du Nord are principally engaged in wholesale commercial lending, and (including their Cayman Islands branches) had assets of $4.35 billion and more than $1 billion, respectively, on December 31, 1986. Both branches operate under licenses from the Superintendent of Banks of the State of New York and are subject to State supervision and regulation substantially equivalent to those applicable to banks organized under the New York Banking Law. The other U.S. offices and agencies of Banque Paribas are subject to extensive regulation under State laws comparable to the regulatory requirements of the State of New York. In addition, the Applicant is subject to federal reporting requirements under the Banking Holding Company Act of 1956, and the U.S. branches, offices and agencies of Banque Paribas and Credit du Nord are subject to reporting and examination requirements under the International Banking Act of 1978, which are similar to those imposed on domestic banks that are members of the Federal Reserve System.

5. The Applicant wishes to be able to have access to the United States equity capital markets through private placements or public offerings, either directly or in the form of American Depository Shares represented by American Depository Receipts. Should the Applicant make a public offering of its equity securities in the United States, such offering would be registered under the Securities Act of 1933 ("Securities Act"). In connection with any such offering, the Applicant would file a registration statement with the SEC and would not sell such securities until the registration statement had been declared effective by the SEC. In addition, the Applicant would become subject to and would comply with the reporting requirements applicable to foreign issuers under the Securities Exchange Act of 1934. Although the Applicant would offer its equity securities to the general public, it has been advised by its investments bankers that the market for such securities would be largely institutional. In connection with the offering, the Applicant would comply with the prospectus disclosure and delivery requirements of the Securities Act. The disclosure contained in the prospectus would be at least as comprehensive as that customarily made by foreign issuers making registered public offerings of equity securities in the United States. The prospectus would also contain the Applicant's most recently published financial statements (in English) audited by a firm of independent public accountants of recognized international standing and would disclose any material differences between the accounting principles applied in the preparation of such financial statements and United States generally accepted accounting principles applicable to United States banks.

6. The Applicant would ensure that any placement of its equity securities in the United States under circumstances not requiring registration under the Securities Act would meet the prevailing standards for an exemption from registration under the Securities Act. The Applicant would not effect any such placement without obtaining an opinion of U.S. counsel that the placement would be exempt from the registration requirements of the Securities Act. Any private placement would contain disclosure at least as comprehensive as that customarily made by foreign issuers making private placements in the United States.

7. The Applicant undertakes to submit expressly to the jurisdiction of the federal and New York State courts sitting in the City of New York for the purpose of any suit, action or proceeding arising out of any offering conducted in reliance upon any order granted pursuant to its application or in connection with the equity securities distributed thereby. The Applicant further undertakes that in connection with any such offering it would appoint an agent in the City of New York to accept service process. Such submission to jurisdiction and appointment of an agent for service of process would be

[1] (Amounts stated in U.S. dollars ($) have been converted from French francs (FF) at the rate of exchange of $1 = 6.455 FF, the medium of the buy and sell rates for the U.S. dollar on the Paris Stock Exchange on December 31, 1986. On May 14, 1987 the rate of exchange was $1 = 5.981 FF.)

irrevocable for so long as any of the Applicant's equity securities issued in reliance upon any order granted pursuant to its application remained outstanding in the United States. Such submission to jurisdiction and appointment of agent for service of process would not affect the right of any holder of such equity securities to bring suit in any court having jurisdiction over the Applicant by virtue of the offer and sale of the securities or otherwise. The agent for service of process would not be a trustee for the holders of securities or have any responsibilities or duties to act for such holders.

8. The Applicant has a substantial banking presence in the United States through the New York branches of Banque Paribas and Credit de Nord, and Banque Paribas' offices and agencies in other States. The Applicant represents that it has no present intention to curtail its banking operations in the United States so as to cease to be regulated as a bank in the United States. If, however, such operations are curtailed in the future with the result that the Applicant is no longer regulated as a bank in the United States, the Applicant agrees that it will continue to comply with the undertakings concerning the Applicant's submission to jurisdiction and appointment of an agent for service of process, as set forth in paragraph 7, until such time as there shall be no holders in the United States of the Applicant's equity securities issued in reliance upon any order made pursuant to the application. The Applicant would issue equity securities in the United States only so long as the Applicant is supervised and examined by French government authorities having the power of supervision over banks in France and, in respect of its U.S. banking operations, by State or federal authorities in the United States having the power of supervision over banks in the United States. The Applicant represents that it has no present intention to curtail its banking operations in France so as to cease to be subject to banking regulation in France.

9. The requested order is necessary or appropriate in the public interest. By providing the Applicant with the opportunity to have greater access to the U.S. capital markets, approval of the application would advance the policies underlying the international Banking Act of 1978, which include placing the Untied States banks and foreign banks on a basis of competitive equality in their U.S. transactions. Approval would also make a major foreign issuer's equity securities available to the general investing public, as well as to institutional and sophisticated investors, subject to the protections of the U.S. securities laws. The requested order is consistent with the protection of investors. The Applicant is subject to a comprehensive scheme of regulation both in France and in the United States. Imposition of a second scheme of regulation would impose superfluous inhibitions and expense without contributing to the protection of investors. The requested order is consistent with the purposes of the Investment Company Act because regulation of commercial banks was not within the intent of the Act.

Applicant's Condition

The Applicant consents to any SEC order being expressly conditioned upon its compliance with the undertakings, representations and agreements summarized above and more fully set forth in its application.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-15408 Filed 7-6-87; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1089]

Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on August 4, 1987 at Fort Monmouth, New Jersey. The meeting will begin at (9:00 a.m in Gibbs Hall.

Study Group 6 deals with matters relating to the propagation of radio waves in and through the ionosphere. The purpose of the meeting will be to continue the plan of work for the Study Group during the 1986-1990 period.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available. Requests for further information should be directed to Mr. Richard Shrum, State Department, Washington, DC 20520; telephone (202) 647-2592.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

June 26, 1987.

[FR Doc. 87-15323 Filed 7-6-87; 8:45 am]

BILLING CODE 4710-07-M

[Public Notice CM-8/1088]

Shipping Coordinating Committee, Subcommittee on Safety of Lift at Sea, Working Group on the Carriage of Dangerous Goods, Meeting

The Working Group on the Carriage of Dangerous Goods of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting on July 28, 1987 at 9:30 A.M. in Room 2415 at Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593.

The purpose of this meeting is to discuss—

—The Report of the Secretariat outlining the details of the 39th Session;
—United States positions on matters considered at the 39th Session of the IMO Subcommittee on the Carriage of Dangerous Goods held April 6-10, 1987 in London, England;
—Inclusion of additional shipping requirements in the IMDG Code for marine pollutants;
—Medical and emegency response for accidents involving hazardous materials;
—Revision of the International Maritime Dangerous Goods (IMDG) Code requirements for the shipment of Class 4 flammable solids;
—Possible U.S. submissions to the 40th Session of Subcommittee on the Carriage of Dangerous Goods to be held February 22-26, 1988; and
—IMO activities of a continuing nature.

Members of the public may attend up to the seating of the room. For further information contact Lieutenant Commander Phillip C. Olenik, U.S. Coast Guard Headquarters (G-MTH-1), 2100 2nd Street SW., Washington, DC 20593. Telephone: (202) 267-1577.

Dated: June 25, 1987.

Richard C. Scissors,

Chairman Shipping Coordinating Committee.

[FR Doc. 87-15322 Filed 7-6-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Advisory Committee for Regulatory Negotiation Concerning Nondiscrimination on the Basis of Handicap in Air Travel; Meetings

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Notice; schedule of advisory committee meetings.

SUMMARY: The Department of Transportation gives notice, as required by the Federal Advisory Committee Act (Pub. L. 92–463), of the times and locations of meetings of its Advisory Committee on Regulatory Negotiation (concerning nondiscrimination on the basis of handicap in air travel).

DATES: Meetings of the Advisory Committee are scheduled on the following dates and at the following locations:

Thursday, July 9, 1987—Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington DC, Room 201.

Wednesday, July 22; Thursday, July 23; and Monday, August 10, 1987—Paralyzed Veterans of America, 801 18th Street, NW., Washington DC, 10th floor conference room.

Tuesday, August 11 and Thursday, August 20, 1987—U.S. Department of Transportation, 400 7th Street, SW. Washington DC, Room 3200.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, 400 7th Street, SW, Room 10424, Washington DC, 20590. 202–366–9306 (voice); 202–755–7687 (TDD).

SUPPLEMENTARY INFORMATION: The listed meetings of the advisory committee are for the purpose of negotiating the contents of a proposed regulation that would be issued by the Department of Transportation to implement the Air Carrier Access Act of 1986, which prohibits discrimination on the basis of handicap in air travel. The meetings are open to the public. The meetings will begin at 9:30 a.m. and conclude at approximately 4:00 p.m.

The committee has tentatively scheduled discussions of the following subjects on the dates covered by this notice: July 9, contractors and security; July 22–23 and August 10–11, physical accessibility; and August 20, reimbursement and special charges. These subjects of discussion may change; individuals who wish to attend a session on a particular subject should contact Mr. Ashby for current information.

The Department requests that individuals planning to attend any of the meetings who will need the services of a sign language interpreter so inform the Department at least two days in advance of the meeting date. Interested persons may contact Mr. Ashby for this purpose.

Issued this 2nd day of July, 1987, at Washington DC.

Rosalind A. Knapp,

Deputy General Counsel.

[FR Doc. 87–15486 Filed 7–6–87; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD3 87–15]

Vessel Certificates and Exemptions Under the International Regulations for Preventing Collisions at Sea (72 COLREGS) and the Inland Navigational Rules Act of 1980

AGENCY: Coast Guard, DOT.

ACTION: Notice of Granting of Certificates of Alternative Compliance to Vessels.

SUMMARY: This notice lists commercial vessels granted Certificates of Alternative Compliance by the Commander, Third Coast Guard District since 14 April 1987. This notice lists vessels which, due to their special construction or purpose, can not comply fully with certain provisions of the International Navigation Rules for Preventing Collisions at Sea (72 COLREGS) or the Inland Navigational Rules Act of 1980 without interfering with the vessel's special functions. The intent of this notice is to advise the mariner of those vessels that have been granted Certificates of Alternative Compliance.

FOR FURTHER INFORMATION CONTACT: Lieutenant Robert F. Corbin, USCG, Commander, Third Coast Guard District (mpv), Building 301, Governors Island, NY 10004–5098. Telephone (212) 825–1783.

SUPPLEMENTARY INFORMATION: Under the provisions of subsection 1605(c) of Title 33 United States Code, the Coast Guard publishes, in the **Federal Register**, a listing of vessels granted Certficates of Aternative Compliance. Certificates of Alternative Compliance are based on a determination that a vessel can not comply fully with either the International or Inland Rules for light(s), shape(s), and/or sound signal provisions without interference with the vessel's special functions. The alternative that has been allowed results in the closest possible compliance with the existing rules. The Third Coast Guard District has on record a total of 20 vessels to which it has granted a Certificate of Alternative Compliance since 14 April 1987. These vessels are incapable of complying with the light provisions of either the 72 COLREGS or the Inland Navigational Rules Act of 1980.

The following list of commercial vessels are not in compliance with the 72 COLREGS and have been issued a Certificate of Alternative Compliance. The following vessels carry the sidelights forward of a single masthead light:

Vessel	Official No.	Sidelights carried at designated horizontal distance (in feet) aft from the bow of the vessel
MOBIL 1	533403	18.0 FT
MOBIL 2	551908	22.0 FT
MOBIL 8	281119	12.0 FT
MOBIL 9	268843	11.0 FT
NEWARK SUN	503588	30.6 FT
NEW ENGLAND SUN	503273	30.6 FT
EXXON MAINE	647819	31.5 FT
EXXON BAY STATE	527691	32.0 FT
MORANIA NO. 8	273540	24.5 FT
TEXACO HOUMA II	528526	30.0 FT
TEXACO CAPELLA	544747	31.0 FT
TEXACO AVJET	620541	34.0 FT
TEXACO FIRE CHIEF	510832	32.0 FT
TEXACO FUEL CHIEF	550277	38.0 FT
TEXACO DIESEL CHIEF	545834	38.0 FT

The following vessel carries its sidelights forward of a single masthead light:

Vessel	Official No.	Sidelights carried at designated horizontal distance (in feet) forward of the single masthead light
PATRIOT	636105	2.0 FT

The following list of commercial vessels are not in compliance with the Inland Navigational Rules Act of 1980 and have been issed a Certificate of Alternative Compliance. The following vessels carry the sidelights foward of the single masthead light:

Vessel	Official No.	Sidelights carried at designated horizontal distance (in feet) aft from the bow of the vessel
FIREBALL	634661	12.0 FT
TRAVELER	583473	12.0 FT
FIRE ISLAND MISS	573136	12.0 FT
CAPTAIN PATTERSON	539334	12.0 FT

Dated: June 16, 1987.

George D. Passmore,

Rear Admiral, U.S. Coast Guard, Commander, Third Coast Guard District.

[FR Doc. 87–15399 Filed 7–6–87; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

National Airspace Review Enhancement Program; Capacity Subcommittee Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the Capacity Subcommittee of the National Airspace Review Enhancement Advisory Committee. The agenda for this meeting is as follows:

Opening Remarks
Review of Priority Capacity Issues
Selection of Study Areas
Appointment of Work Groups
Summary

DATE: July 29 and 30, 1987, to convene at 9:00 a.m. and adjourn at 4:00 p.m. both days.

ADDRESS: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave. SW., Room 1010, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Department of Transportation, Federal Aviation Administration, National Airspace Review Enhancement Program, 400 7th St., SW., Room 5103, ATO–20, Washington, DC 20590, (202) 366–1300. Attendance is open to the interested public, but limited to the space available. To ensure consideration, persons desiring to make statements at the meeting should submit them in writing to the Program Manager, National Airspace Review Enhancement Program, at the above address by July 15, 1987. Time permitting and subject to the approval of the chairman, these individuals may make oral presentations of their previously submitted statements.

Issued in Washington, DC on June 24, 1987.

Mike Sherwin,

Associate Administrator for Administration.

[FR Doc. 87–15142 Filed 7–6–87; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

[FRA Waiver Petition Docket Number RSOR–86–2]

Petition for Relief from the Requirements of Blue Signal Protection of Workmen; Grand Trunk Western Railroad

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Grand Trunk Western Railroad (GT) has petitioned the Federal Railroad Administration (FRA) for permanent relief from the requirements of 49 CFR 218.29(c)(1) at the Mazda facility located at Flat Rock, Michigan. This facility is a rail support yard for the loading and transportation of both automobiles built by Mazda Motor Corporation and containers of auto parts destined to Mazda. Section 218.29(c) provides that ". . . . when workmen are on, under, or between rolling equipment on any track, other than a main track:

(1) A derail capable of restricting access to that portion of the track on which such equipment is located, will fulfill the requirements of a manually operated switch when positioned no less than 150 feet from the end of such equipment; and

(2) Each derail must be located in a derailing position with an effective locking device and a blue signal must be displayed at each derail."

Due to the construction constraints that limit the distance between equipment and derail to 115 feet, the 150-foot requirement cannot be achieved. The GTW believes, however, that despite the installation of the derail at the lesser distance, there are compensating features in the terminus nature of the facility and tracks, the fence and gate installation, the 5 mph speed limit, and special operating procedures that together provide an uncompromised work environment.

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning these proceedings should identify the appropriate Docket Number (Docket Number RSOR–86–2) and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before August 21, 1987 will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on June 26, 1987.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87–15328 Filed 7–6–87; 8:45 am]

BILLING CODE 4910–06–M

Petitions for Exemption or Waiver of Compliance; Winnipesaukee Railroad Corp. et al

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for an exemption from or waiver of compliance with certain requirements of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RST–84–21) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before August 21, 1987 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceeding are available for examination during regular business hours (9 a.m.–5 p.m.) in Room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

Winnipesaukee Railroad Corporation

Waiver Petition Docket Number RSGM–87–1

The Winnipesaukee Railroad Corporation seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive operates between Concord, New Hampshire, and Lincoln, New Hampshire, a distance of approximately 75 miles. The locomotive operated formerly with the Goodwin Railroad under an FRA glazing waiver.

Arkansas and Missouri Railroad

Waiver Petition Docket Number RSGM–87–2

The Arkansas and Missouri Railroad seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive operates between Monett, Missouri, and Fort Smith, Arkansas a distance of approximately 149 miles. The petitioner states that the locomotive is used only as a backup unit in local service when other units are not available. Before being assigned to the Arkansas and Missouri Railroad, the locomotive was operated on the Maryland and Delaware Railroad under an FRA glazing waiver. The petitioner indicates that there have been no reported incidents of vandalism or injury due to broken glass.

West Tennessee Railroad Corporation

Waiver Petition Docket Number RSGM–87–4

The West Tennessee Railroad Corporation (WTNN) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for two locomotives. The locomotives operate between Jackson, Tennessee, and Kenton, Tennessee, a distance of approximately 48 miles. The WTNN states that the locomotives operate largely in rural territory, and they have never experienced vandalism associated with persons throwing objects at the cab glass or objects falling against the glazing.

The Teenken Railroad Company, Inc.

Waiver Petition Docket Number RSGM–87–5

The Tennken Railroad Company, Inc. (TKEN) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for one locomotive. The locomotive operates between Dyersburg, Tennessee and Hickman, Tennessee, a distance of approximately 52 miles. The TKEN indicates that the area of operation is mostly rural and includes small townships. The petitioner states that they have never experienced vandalism involving objects being thrown against the locomotive glazing of the operating cab.

Rader Corporation

Waiver Petition Docket Number RSGM–87–8

The Rader Corporation seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for 12 passenger coaches. The coaches will operate in seasonal service on the Alaska Railroad between Whittier, Alaska, and Anchorage, Alaska, a distance of approximately 62 miles. The petitioner states that there have been no incidents affecting rail car safety on this Whittier to Anchorage route.

Montana Western Railway Company

Waiver Petition Docket Number RSGM–87–9

The Montana Western Railway Company (MWRR) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives and one caboose. The equipment operates between Butte, Montana, and Garrison, Montana, a distance of approximately 51 miles. The MWRR indicates that the area of operation is a thinly populated agricultural valley. The carrier started operations September 15, 1986, and states that they have not experienced any incident of being shot at or having projectiles thrown at their trains.

Georgia Eastern Railroad Company

Waiver Petition Docket Number RSGM–87–10

The Georgia Eastern Railroad Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for four locomotives. The locomotives operate between Washington, Georgia and Barnett, Georgia, a distance of approximately 17 miles. The petitioner states that there have been no reported acts of vandalism against the railroad or any known problems in the area where the locomotives operate. The carrier feels that the cost of installing certified glazing would be an unnecessary financial burden on their budget.

Dixie River Railroad Company

Waiver Petition Docket Number RSGM–87–11

The Dixie River Railroad Company seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for 10 locomotives. The petitioner is a new railroad with operations starting around May 1, 1987. The locomotives will operate between McGhee, Arkansas, and Vidalia, Louisiana, and between Huttig, Arkansas, and Sterlington, Louisiana, a total distance of approximately 200 miles. The areas through which the locomotives will pass are very sparsely populated and the carrier feels that the likelihood of acts of vandalism, such as rock throwing, is remote. The petitioner states that to replace otherwise sound glazing in these locomotives with certified glazing would place a serious and unnecessary economic burden on the railroad.

Indiana Hi-Rail Corporation

Waiver Petition Docket Number RSGM–87–12

The Indiana Hi-Rail Corporation (IHRC) seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards (49 CFR Part 223) for five locomotives. These locomotives operate on the Wabash Division from Browns, Illinois, to Henderson, Kentucky, via Evansville, Indiana, a distance of approximately 50 miles. The petitioner states that the area of operation is mostly rural. Carrier records indicate they have not experienced any problems with vandalism that would warrant the use of certified glazing. One of the locomotives, IHRC 952, has operated on another division of the railroad since 1985 under an existing glazing waiver.

Issued in Washington, DC on June 26, 1987.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 87–15329 Filed 7–6–87; 8:45 am]

BILLING CODE 4910–06–M

Maritime Administration

[Docket S–809]

Application for an Amendment of a Waiver Granted Pursuant to Section 804 of the Merchant Marine Act; Chestnut Shipping Co. and Margate Shipping Co.

On June 12, 1987, the Martime Administrator with respect to requests of March 31, and May 5, 1987, from Chestnut Shipping Company (Chestnut) and Margate Shipping Company (Margete) (Docket S–809), waived the provisions of section 804(a) of the Merchant Marine Act, 1936, as amended (Act), under special circumstances and good cause shown for a period of four years to permit the related company Timbo Shipping Ltd., a Liberian corporation, to own and operate the tanker CHESAPEAKE under the Liberian-flag under charter to Amerada Hess Corporation for operation from the Middle East and/or the Mediterranean and/or Europe to the U.S. east coast.

Chestnut and margate request that this waiver be amended to permit the CHESAPEAKE to operate in worldwide

trade. All other provisions of the waiver remain the same.

Any person, firm, or corporation having any interest in such application within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7300, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be receivd no later than 5:00 P.M. on July 15, 1987. This notice is published as a matter of descretion. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 Operating-Differential Subsidies).

Dated: July 6, 1987.

By Order of the Maritime Administrator

James E. Saari,

Secretary.

[FR Doc. 87-15549 Filed 7-6-87; 11:34 am]

BILLING CODE 4810-81-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Public Information Collection Requirements Submitted to OMB for Review

June 30, 1987.

The Department of the 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.

Internal Revenue Service

OMB Number: New
Form Number: 8606
Type of Review: New Collection
Title: Nondeductible IRA Contributions, IRA Basis, and Nontaxable IRA Distributions
Description: Internal Revenue Code Section 408(o) allows taxpayers to elect to make nondeductible contributions to individual retirement plans. This section also requires taxpayers to report to the Service certain information regarding nondeductible contributions.
Respondents: Individuals or households
Estimated Burden: 1,531,816 hours

OMB Number: 1545-0074
Form Number: 1040 and related Schedules A, B, C, D, E, F, R & SE
Type of Review: Revision
Title: U.S. Individual Income Tax Return
Description: This form is used by individuals to report their income tax and compute their correct tax liability. The data is used to verify that the items reported on the form are correct and are also for general statistics use.
Respondents: Individuals or households
Estimated Burden: 307,974,682 hours

OMB Number: 1545-0129
Form Number: 1120-POL
Type of Review: Revision
Title: U.S. Income Tax Return for Certain Political Organizations
Description: Form 1120-POL is used by certain political organizations to report the tax imposed by section 527. The form is used to designate principal campaign committees that are subject to a lower rate of tax under section 5279(h). IRS uses this information to determine whether the tax is being properly reported.
Respondents: Non-profit institutions, Businesses
Estimated Burden: 12,885 hours

Clearance Officer: Garrick Shear (202) 566-6150, Internal Revenue Service, 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.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87-15311 Filed 7-6-87; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

June 30, 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.

Internal Revenue Service

OMB Number: New
Form Number: 8621
Type of Review: New Collection
Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund
Description: Form 8621 is used by shareholders of foreign investment companies. Shareholders of passive investment companies use Form 8621 to report distributions from the fund, and a deferred tax amount when an excess distribution is made. Shareholders of qualified electing funds are taxed on current income from the fund. The IRS uses Form 8621 to verify that shareholders have included the correct amount of income from these entities.
Respondents: Individuals or households, Businesses
Estimated Burden: 4,840 hours

OMB Number: 1545-0085
Form Number: 1040A
Type of Review: Revision
Title: U.S. Individual Income Tax Return
Description: This form is used by individuals to report their income subject to income tax and to compute their correct tax liability. The data is used to verify that the income reported on the form is correct. The data is also used for statistical purposes.
Respondents: Individuals or households
Estimated Burden: 21,475,422 hours

Clearance Officer: Garrick Shear (202) 566-6150, Internal Revenue Service, 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.

Comptroller of the Currency

OMB Number: 1557-0099
Form Number: FFIEC 030
Type of Review: Extension
Title: Foreign Branch Report of Condition
Description: This report is the only report collected from all foreign branches of U.S. commercial banks. It provides information on the structure and geographic distribution of foreign branch assets and liabilities. The information is used to analyze foreign operations of U.S. banks and to plan examinations. Aggregate data is available to the public.
Respondents: Businesses
Estimated Burden: 1,540 hours

OMB Number: 1557-0102
Form Number: 7610-01 and 7610-02
Type of Review: Extension
Title: Notice of International Activity and Report of International Activity

Description: The OCC needs to monitor, evaluate, and examine certain foreign activities of national banks. These forms are an information collection tool. The information is used to update our data base which enables us to monitor the overseas activities. It also triggers an evaluation of the activity for prudential and legal purposes. Affects national banks with overseas operations.
Respondents: Businesses
Estimated Burden: 180 hours

Clearance Officer: Eric Thompson (202) 447–1632, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Robert Fishman (202) 395–7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Alcohol, Tobacco and Firearms

OMB Number: 1512–0082
Form Number: ATF F 5120.24 (1582–A)
Type of Review: Extension
Title: Drawback on Wine Exported
Description: When properties export wines that have been produced, packaged, manufactured or bottled in the U.S., they file a claim for a drawback, or refund for the taxes that have already been paid on the wine. This form notifies ATF that the wine was in fact exported and helps to protect the revenue and prevent fraudulent claims.
Respondents: Individuals or households, Businesses
Estimated Burden: 2,025 hours

OMB Number: 1512–0144
Form Number: ATF F 5100.12 (2736)
Type of Review: Extension
Title: Specific Transportation Bond—Distilled Spirits or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse—Class Six
Description: ATF F 5100.12(2736) is a specific bond which protects the tax liability on distilled spirits and wine while in transit from one type of bonded facility to another. The bond describes the customs bonded warehouse, the surety company, amount of bond and coverage, and the specific shipment of spirits or wine to be covered.
Respondents: Businesses
Estimated Burden: 1,000 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.

Dale A. Morgan,
Departmental Reports Management Officer.
[FR Doc. 87–15312 Filed 7–6–87; 8:45 am]
BILLING CODE 4810–25–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 129
Tuesday, July 7, 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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Correction of Sunshine Act Notice.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on June 26, 1987 (52 FR 24088) of the forthcoming regular meeting of the Farm Credit Administration Board (Board) originally scheduled to be held on July 7, 1987 being rescheduled for July 1, 1987. This notice is to revise the agenda for Wednesday, July 1, 1987.

DATE AND TIME: The meeting is scheduled to be held at the offices of the Farm Credit Administration in McLean, Virginia, on July 1, 1987, from 10:00 a.m. until such time as the Board may conclude its business.

FOR FURTHER INFORMATION CONTACT: William A. Sanders, Jr., Secretary of the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4010.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of the meeting will be closed to the public. The agenda for Wednesday, July 1, is revised to read as follows:

1. Approval of Minutes
2. Summary Prior Approval Items
3. Regulations

Proposed:

Part 620—Shareholder Disclosure
Part 621—Accounting and Reporting Requirements

4. Policy of FCA with Respect to Approval of System Institutions' Salary Ranges and Compensation of Chief Executive Officers
5. Status of Sacramento Stock Reduction Program

*6. Consideration of Technical Changes to FCA Statutory Authority

**7. Review of Financial Condition of Farm Credit System Institutions and Consideration of Certifying to Treasury that the System is in Need of Financial Assistance

**8. Examination, Supervision, and Enforcement Matters

Dated: June 30, 1987.

William A. Sanders, Jr.,

Secretary, Farm Credit Administration.

*Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(9).

**Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c) (4), (8) and (9).

[FR Doc. 87-15442 Filed 7-2-87; 11:43 am]

BILLING CODE 6705-01-M

FEDERAL ENERGY REGULATORY COMMISSION

June 30, 1987.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-4109), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: July 1, 1987, 10:00 a.m.

PLACE: 825 North Capitol Street, NE., Washington, DC 20426, Room 9306.

STATUS: Closed.

MATTERS TO BE CONSIDERED: *Associated Gas Distributors, et al. v. FERC, et al.*, Civ. Act. Nos. 85-1811, *et al.*, (D.C. Cir. June 23, 1987).

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary, Telephone (202) 357-8400.

The following Commissioners voted that agency business requires the holding of a closed meeting on less than the seven days' notice required under the Government in the Sunshine Act:

Chairman Hesse
Commissioner Sousa
Commissioner Stalon
Commissioner Trabandt
Commissioner Naeve

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15427 Filed 7-2-87; 10:51 am]

BILLING CODE 6717-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

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 the following meetings during the week of July 6, 1987:

A closed meeting will be held on Tuesday, July 7, 1987, at 2:30 p.m. Open meetings will be held on Wednesday, July 8, 1987, at 2:00 p.m. and Thursday, July 9, 1987, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9) (A) and (10) and 17 CFR 200.402(a) (4), (8), (9) (i) and (10), permit consideration of the scheduled matters at a closed meeting.

Acting Chairman Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 7, 1987, at 2:30 p.m., will be:

Litigation matter.

Settlement of administrative proceedings of an enforcement nature.

Institution of an administrative proceedings of an enforcement nature.

Institution of injunctive action.

Formal order of investigation.

Opinion.

The subject matter of the open meeting scheduled for Wednesday, July 8, 1987, at 2:00 p.m., will be:

Discussion with invited representatives of the savings and loan industry and other interested parties. Issues to be addressed include, but will not be limited to, accounting issues, corporate governance and proxy solicitation rules, signature guarantees, and proliferation of financial instruments. For further information, please contact Kerry F. Hemond at (202) 272-2428.

The subject matter of the open meeting scheduled for Thursday, July 9, 1987, at 10:00 a.m., will be:

1. Consideration of an application filed by College Retirement Equities Fund (CREF) and Teachers Insurance and Annuity Association of America for an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting them from certain sections of the Act and rules thereunder and pursuant to section 17(d) of the Act and Rule 17d-1 thereunder permitting certain transactions in order to permit CREF to, among other things, restrict redemptions and limit the voting rights of its participants. For further information, please contact Clifford E. Kirsch at (202) 272-3032.

2. Consideration of whether to authorize the Division of Corporation Finance and the Office of the General Counsel to draft revisions to the Trust Indenture Act for proposal to the Congress. If enacted by the Congress, the proposed revisions would conform the Act to contemporary financing techniques, promulgate new conflicts-of-interest standards for indenture trustees, permit certain foreign persons to act as indenture trustees and effect miscellaneous technical changes in the Act. For further information, please contact Michael Hyatte at (202) 272–2573.

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: Kevin Fogarty at (202) 272–3195.

July 1, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–15448 Filed 7–2–87; 12:03 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 52, No. 128
Tuesday, July 7, 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

Office of Human Development Services

Child Abuse and Neglect Prevention Activities

Correction

In notice document 87-14581 beginning on page 24222 in the issue of Monday, June 29, 1987, make the following correction:

On page 24224, in the third column, Joseph Mottola's title should have read "Acting Commissioner, Administration for Children, Youth and Families".

BILLING CODE 1505-01-D

federal register

Tuesday
July 7, 1987

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Species; Final Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review Completed for Species Classified as Endangered or Threatened Before 1976 and in 1979 and 1980

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 5-year review completion.

SUMMARY: The Service reports the completion of its review of species listed as endangered or threatened before 1976 and in 1979 and 1980. No proposed change in the status of these species is contemplated in the near future.

DATE: The Service will continue to accept data on any listed species at any time.

ADDRESS: Comments or data may be submitted to the Director (OES), U.S. Fish and Wildlife Service, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin E. Moriarty, Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–2771 or FTS 235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973 (16 U.S.C. 1531, *et seq.*), as amended, requires the Service to conduct a review of all listed species at least once every 5 years. The purpose of this action is to ensure that the List accurately reflects the most current status of the species. In order to aid in discharging this responsibility, the Service requested in the **Federal Register** of July 22, 1985 (50 FR 29901), comments and appropriate data that might document the need to delist or reclassify any of the species of endangered or threatened wildlife and plants listed before 1976 and in 1979 and 1980. The Service requested all comments be submitted by November 19, 1985, in order to be considered in this review. The Service actively sought comments from recovery teams, applicable State conservation agencies, individuals known to be concerned with particular species, and other groups and individuals who might provide information on the current status of those species in this review. In addition, the Service searched its own files and requested data from Service biologists who might also help in this review.

The Service has reviewed all the pertinent material available on each species and finds that there are no substantial data to suggest a change in status for any of the 39 plants and 423 animal species. All such data support the present status for those species. However, it is possible that at some point before the next 5-year review for these species data may become available that would suggest the Service propose the reclassification or delisting of one or more species.

A complete list of all 462 species considered in this review is available from the Office of Endangered Species (see **ADDRESS** above) or by referring to 50 FR 29901–29909.

Author

The primary author of this notice is Jay M. Sheppard, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1975).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.;* Pub L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

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

Dated: June 19, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–15180 Filed 7–6–87; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Species Listed in 1976, 1977, 1981, and 1982

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: The Service announces the review of all species listed in 1976, 1977, 1981 or 1982 under the Endangered Species Act (Act) of 1973, as amended. The Act requires such review at least once every 5 years. The purpose of the review is to insure that the Lists of Endangered and Threatened Wildlife and Plants accurately reflect the most current status of each species. The Service requests comments and any scientific or commercial data on these species. If, as a result of this review, the present classification is not consistent with the current evidence, the Service may propose changes to the list accordingly.

DATE: In order to be considered in this review, comments must be received no later than November 4, 1987. The Service will continue to accept data on any listed species at any time.

ADDRESSES: Each species in the table below has a U.S. Fish and Wildlife Service office (USFWS) identified for receipt of comments:

1. Regional Director, Region 1 (ARD/FA) USFWS, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232.

2. Regional Director, Region 2 (ARD/AFF) USFWS, P.O. Box 1360, 421 Gold Avenue, SW., Room 107, Albuquerque, New Mexico 87103.

3. Regional Director, Region 3 (ARD/AFF) USFWS, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111.

4. Regional Director, Region 4 (ARD/FA) USFWS, Richard B. Russell Federal Building, 75 Spring Street, SW., Atlanta, Georgia 30303.

5. Regional Director, Region 5 (ARD/FA) USFWS, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

6. Regional Director, Region 6 (ARD/FA) USFWS, 134 Union Boulevard, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

7. Regional Director, Region 7 (ARD/FA) USFWS, 1011 East Tudor Street, Anchorage, Alaska 95501.

8. Assistant Director—Fish and Wildlife Enhancement, Room 3024, USFWS, Department of the Interior, Washington, DC 20240.

Comments and materials sent in response to this notice of review will be available for public inspection at the appropriate office (see ADDRESSES above and the table of species below) by appointment during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Marvin E. Moriarty, Chief, Office of Endangered Species, 500 Broyhill, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Lists of Endangered and Threatened Wildlife and Plants are found in 50 CFR 17.11 (wildlife) and 17.12 (plants). The most recent publication of such lists was in the Code of Federal Regulations of October 1, 1986. The procedural rules for listing, reclassifying, or removing species from the lists are codified at 50 CFR Part 424. The Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), as amended, and 50 CFR 424.21 require the Service to conduct a review of each listed species at least once every 5 years. Species that are to be considered under the present review are species listed during 1976, 1977, 1981, or 1982 and are listed in the table below. Some 213 animal (including populations with separate classifications) and 13 plant species are under this review. Species subsequently affected by rules reclassifying all or significant parts of their populations are not included in this notice.

Definitions

The following definitions are provided to assist those persons who contemplate submitting information regarding the status of the species given in the table below:

1. "Critical Habitat" means (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

2. "Endangered" means any species which is in danger of extinction throughout all or a significant portion of its range.

3. "Species" includes any species or subspecies of fish or wildlife or plant, and any distinct population segment of any species or subspecies of a vertebrate, which is capable of interbreeding when mature.

4. "Threatened" means any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

A species is determined to be endangered or threatened because of any of the following factors (§ 424.11(c)):

(a) The present or threatened destruction, modification, or curtailment of its habitat or range;

(b) Overutilization for commercial, recreational, scientific, or educational purposes;

(c) Disease or predation;

(d) The inadequacy of existing regulatory mechanisms; or

(e) Other natural or manmade factors affecting its continued existence.

The factors considered when removing a species from the lists are also those in the paragraph above. The data to support such removal must be the best scientific and commercial data available to the Service to substantiate that the species is neither endangered nor threatened for one or more of the following reasons:

1. *Extinction.* Unless all individuals of the listed species has been previously identified and located and were later found to be extripated from their previous range, a sufficient period of time must be allowed before delisting to clearly ensure that the species is in fact extinct.

2. *Recovery of the species.* The principal goal of the Service is to return listed species to a point at which protection under the Act is no longer required. A species may be delisted on the basis of recovery only if the best scientific and commercial data available indicate that it is no longer endangered or threatened.

3. *Original data for classification in error.* Subsequent investigations may show that the best scientific or commercial data available when the species was listed, or the interpretation of such data, were in error.

Effects of the Review

If substantial evidence is available to the Service or is presented by any party for one or more species in the table below, the Service may propose new rules that could do any of the following:

(a) Reclassify a species from endangered to threatened, (b) reclassify a species from threatened to endangered, or (c) remove a species from the Lists of Endangered and Threatened Wildlife and Plants. Distinct geographic populations of vertebrate species, as well as subspecies of all listed species, may be proposed for either separate reclassification or for removal from the lists. If no substantial data are available or presented to suggest a status change for a particular species, then the next formal status review for that species will be announced no later than 5 years hence. However, the Service continuously reviews the status of listed species, and reclassifications and delistings are initiated whenever data shows they are appropriate.

Public Comments Solicited

The Service requests comments concerning the status of any of the species in the table below. Comments from any foreign government or agency, the public, other governmental agencies, the scientific community, industry, or any other interested party are hereby solicited. The original proposed and final rules (see "When Listed" citation following table below) for each species may be used to determine what data formed the basis for the original classification. The Service primarily seeks any new or additional information that reflects the necessity of a change in status. If significant data are available warranting a change in a species' classification under the Act, the Service may propose a rule to modify the present status of the species.

Comments and data are requested regarding past and present numbers and distribution of the involved species, subspecies, or distinct vertebrate populations; the particular threatening factors affecting the species; and, if appropriate, the features and importance of any critical habitat. This information should preferably be supported by documentation, such as maps, a list of bibliographic references, reprints or pertinent publications, or copies of written reports or letters from authorities.

Author

The primary author of this notice is Jay M. Sheppard, Office of Endangered Species, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240 (703/235–1975).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*; Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

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

Dated: June 19, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

LIST OF WILDLIFE SPECIES UNDER REVIEW

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Office receiving comment
Common name	Scientific name					
MAMMALS						
Anoa, mountain	*Bubalus quarlesi* (=*B. anoa quarlesi*).	Indonesia	Entire	E	15	8
Antelope, giant sable	*Hippotragus niger variani*	Angola	do	E	15	8
Argali	*Ovis ammon hodgsoni*	China (Tibet, Himalayas)	do	E	15	8
Armadillo, giant	*Priodontes maximus* (=*giganteus*)	Venezuela and Guyana to Argentina.	do	E	15	8
Babirusa	*Babyrousa babyrussa*	Indonesia	do	E	15	8
Baboon, gelada	*Theropithecus gelada*	Ethiopia	do	T	16	8
Bat, gray	*Myotis grisescens*	Central and Southern U.S.A.	do	E	13	3
Bear, brown	*Ursus arctos pruinosus*	China (Tibet)	do	E	15	8

LIST OF WILDLIFE SPECIES UNDER REVIEW—Continued

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Office receiving comment
Common name	Scientific name					
Bear, brown	*Ursus arctos arctos*	Palearctic	Italy	E	15	8
Beaver	*Castor fiber birulai*	Mongolia	Entire	E	15	8
Bobcat	*Felis rufus escuinapae*	Central Mexico	do	E	15	8
Bontebok (antelope)	*Damaliscus dorcas dorcas*	South Africa	do	E	15	8
Camel, Bactrian	*Camelus bactrianus (ferus)*	Mongolia, China	do	E	15	8
Cat, Andean	*Felis jacobita*	Chile, Peru, Boliva, Argentina	do	E	15	8
Cat, black-footed	*Felis nigripes*	Southern Africa	do	E	15	8
Cat, flat-headed	*Felis planiceps*	Malaysia, Indonesia	do	E	15	8
Cat, leopard	*Felis bengalensis bengalensis*	India, Southeast Asia	do	E	15	8
Cat, marbled	*Felis marmorata*	Nepal, Southeast Asia, Indonesia	do	E	15	8
Cat, Temminck's (=golden cat)	*Felis temmincki*	Nepal, China, Southeast Asia, Indonesia (Sumatra).	do	E	15	8
Chamois, Apennine	*Rupicapra rupicapra ornata*	Italy	do	E	15	8
Chimpanzee	*Pan troglodytes*	West and Central Africa	do	T	16	8
Chimpanzee, pygmy	*Pan paniscus*	Zaire	do	T	16	8
Chinchilla	*Chinchilla brevicaudata boliviana*	Bolivia	do	E	15	8
Deer, hog	*Axis (=Cervus) porcinus annamiticus.*	Thailand, Indochina	do	E	15	8
Deer, musk	*Moschus* spp. (all species)	Central and East Asia	Afghanistan, Bhutan, Burma, China, (Tibet, Yunnan), India, Nepal, Pakistan, Sikkim.	E	15	8
Deer, pampas	*Ozotoceros bezoarticus*	Brazil, Argentina, Uruguay, Bolivia, Paraguay.	Entire	E	15	8
Deer, Philippine	*Axis (=Cervus) porcinus calamianensis.*	Philippines (Calamian Islands)	do	E	15	8
Drill	*Papio leucophaeus*	Equatorial West Africa	do	E	16	8
Elephant, Asian	*Elephas maximus*	South-central and Southeast Asia	do	E	15	8
Gibbons	*Hylobates* spp. (including *Nomascus*).	China, India Southeast Asia	do	E	3,15	8
Goat, wild (-Chiltan markhor)	*Capra segagrus (falconer chiltanensis).*	Southwestern Asia	Chiltan Range of west-central Pakistan.	E	15	8
Goral	*Nemorhaedus goral*	East Asia	Entire	E	15	8
Hare, Hispid	*Caprolagus hispidus*	India, Nepal, Bhutan	do	E	15	8
Horse, Przewalski's	*Equus przewalskii*	Mongolia, China	do	E	15	8
Huemul, North Andean	*Hippocamelus antisensis*	Ecuador, Peru, Chile, Bolivia, Argentina.	do	E	15	8
Huemul, South Andean	*Hippocamelus bisulcus*	Chile, Argentina	do	E	15	8
Jaguarundi	*Felis yagouaroundi cacomitli*	U.S.A. (TX), Mexico	do	E	15	2
Jaguarundi	*Felis yagouaroundi fossata*	Mexico, Nicaragua	do	E	15	8
Jaguarundi	*Felis yagouaroundi panamensis*	Nicaragua, Costa Rica, Panama	do	E	15	8
Jaguarundi	*Felis yagouaroundi tolteca*	U.S.A. (AZ), Mexico	do	E	15	2
Langur, capped	*Presbytis pileata*	India, Burma, Bangladesh	do	E	15	8
Langur, entellus	*Presbytis entellus*	China (Tibet), India, Pakistan, Kashmir, Sri Lanka, Sikkim, Bangladesh.	do	E	15	8
Langur, Francois'	*Presbytis francoisi*	China (Kwangsi) Indochina	do	E	16	8
Langur, golden	*Presbytis geei*	India (Assam), Bhutan	do	E	15	8
Langur, long-tailed	*Presbytis potenziani*	Indonesia	do	T	16	8
Langur, purple-faced	*Presbytis senex*	Sri Lanka (Ceylon)	do	T	16	8
Langur, Tonkin snub-nosed	*Presbytis (Rhinopithecus) avunculus.*	Vietnam	do	T	16	8
Lemurs	*Lemuridae* (incl. *Cheirogaleidae, Lepilemuridae*); all members of genera *Lemur, Phaner, Hapalemur, Lepilemur, Microcebus, Allocebus, Cheirogaleus, Varecia.*	Malagasy Republic (Madagascar)	do	E	3,15	8
Leopard	*Panthera pardus*	Africa, Asia	Wherever found, except where listed as Threatened as set forth below.	E	3, 5, 114	8
Do	do	do	In Africa, in the wild, south of, and including, the following countries: Gabon, Congo, Zaire, Uganda, Kenya.	T	3, 5, 114	8
Leopard, clouded	*Neofelis nebulosa*	Southeast and south-central Asia, Taiwan.	Entire	E	3, 15	8
Linsang, spotted	*Prionodon pardicolor*	Nepal, Assam, Vietnam, Cambodia, Laos, Burma.	do	E	15	8
Loris, lesser slow	*Nycticebus pygmaeus*	Indochina	do	T	16	8
Macaque, Formosan rock	*Macaca cyclopis*	Taiwan	do	T	16	8
Macaque, Japanese	*Macaca fuscata*	Japan, (Shikoku, Kyushu and Honshu Islands.	do	T	16	8
Macaque, stump-tailed	*Macaca arctoides*	India (Assam) to southern China	do	T	16	8
Macaque, Toque	*Macaca sinica*	Sri Lanka (Ceylon)	do	T	16	8
Mandrill	*Papio sphinx*	Equatorial West Africa	do	E	16	8
Mangabey, white-collared	*Cercocebus torquatus*	Senegal to Ghana; Nigeria to Gabon.	do	E	16	8
Markhor, Kabal	*Capra falconeri megaceros*	Afghanistan, Pakistan	do	E	15	8
Markhor, straight-horned	*Capra falconeri jerdoni*	do	do	E	15	8
Marmoset, cotton-top	*Saguinus oedipus*	Costa Rica to Colombia	do	E	16	8
Monkey, black colobus	*Colobus satanas*	Equatorial Guinea, People's Republic of Congo, Cameroon, Gabon.	do	E	16	8
Monkey, black howler	*Alouatta pigra*	Mexico, Guatemala, Belize	do	T	16	8
Monkey, Diana	*Cercopithecus diana*	Coastal West Africa	do	E	16	8
Moneky, howler	*Alouatta palliata (=villosa)*	Mexico to South America	do	E	15	8
Moneky, L'hoest's	*Cercopithecus lhoesti*	Upper Eastern Congo Basin, Cameroon.	do	E	16	8
Monkey, proboscis	*Nasalis larvatus*	Borneo	do	E	15	8
Monkey, red-bellied	*Cercopithecus erythrogaster*	Western Nigeria	do	E	16	8
Monkey, red-eared nose-spotted	*Cercopithecus erythrotis*	Nigeria, Cameroon, Fernando Po	do	E	16	8

LIST OF WILDLIFE SPECIES UNDER REVIEW—Continued

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Office receiving comment
Common name	Scientific name					
Monkey, Tana River red colobus	*Colobus rufomitratus (=badius) rufomitratus.*	Kenya	do	E	3, 16	8
Monkey, yellow-tailed woolly	*Lagothrix flavicauda*	Andes of northern Peru	do	E	16	8
Mouse, Australian native	*Zyzomys (=Notomys) pedunculatus.*	Australia	do	E	15	8
Mouse, Australian native	*Notomys aquilo*	do	do	E	15	8
Ocelot	*Felis pardalis*	U.S.A. (AZ, TX) to C. and South America.	do	E	15, 119	2
Otter, long-tailed	*Lutra longicuadis* (incl. *platensis*)	South America	do	E	3, 15	8
Otter, marine	*Lutra felina*	Peru south to Straits of Magellan	do	E	15	8
Otter, southern river	*Lutra provocax*	Chile, Argentina	do	E	15	8
Otter, southern sea	*Enhydra lutris nereis*	West coast U.S.A. (WA, OR, CA) south to Mexico (Baja California)	do	T	21	1
Pangolin (=scaly anteater)	*Manis temminckl*	Africa	do	E	15	8
Pudu (deer)	*Pudu pudu*	Southern South America	do	E	15	8
Puma, Costa Rican	*Felis concolor costaricensis*	Nicaragua, Panama, Costa Rica	do	E	15	8
Saiga, Mongolian (Antelope)	Saiga tatarica mongolica	Mongolia	do	E	15	8
Serow	*Capricornis sumatraensis*	East Asia, Sumatra	do	E	15	8
Shapo	*Ovis vignei vignei*	Kashmir	do	E	15	8
Siamang (gibbon)	*Symphalangus syndactylus*	Malaysia, Indonesia	do	E	15	8
Tamarin, pied	*Saguinus bicolor*	Brazil	do	E	16	8
Tamarin, white-footed	*Saguinus leucopus*	Colombia	do	T	16	8
Tapir, Asian	*Tapirus indicus*	Burma, Laos, Cambodia, Vietnam, Malaysia, Indonesia, Thailand.	do	E	15	8
Tarsier, Philippine	*Tarsius syrichta*	Philippines	do	T	16	8
Urial	*Ovis musimon (=orientalis) ophion.*	Cyprus	do	E	15	8
BIRDS						
Blackbird, yellow-shouldered	*Agelaius xanthomus*	U.S.A. (PR)	do	E	17	4
Booby, Abbott's	*Sula abbotti*	Indian Ocean: Christmas Island	do	E	15	8
Bristlebird, western rufous	*Dasyornis broadbenti littoralis*	Australia	do	E	15	8
Cotinga, banded	*Cotinga maculata*	Brazil	do	E	15	8
Cotinga, white-winged	*Xipholena atropurpurea*	do	do	E	15	8
Crane, black-necked	Grus nigricollis	China (Tibet)	do	E	15	8
Crane, Cuba sandhill	*Grus monacha*	West Indies: Cuba	do	E	15	8
Crane, white-naped	*Grus vipio*	Mongolia	do	E	15	8
Curassow, razor-billed	*Mitu (=Crax) mitu-mitu*	Brazil (Eastern)	do	E	15	8
Duck, pink-headed	*Rhodonessa caryophyllacea*	India	do	E	15	8
Eagle, Greenland white-tailed	*Haliaeetus albicilla groenlandicus*	Greenland and Adjacent Atlantic Islands.	do	E	15	8
Eagle, harpy	*Harpia harpyja*	Mexico south to Argentina	do	E	15	8
Falcon, Eurasia peregrine	*Falco peregrinus peregrinus*	Europe, Eurasia south to Africa and Mideast.	do	E	15	8
Frigatebird, Andrew's	*Fregata andrewsi*	East Indian Ocean	do	E	15	8
Greenshank, Nordmann's	*Tringa guttifer*	U.S.S.R., Japan south to Malaya, Borneo.	do	E	15	8
Gull, relict	*Larus relictus*	India, China	do	E	15	8
Hermit hook-billed (hummingbird	*Glaucis (=Ramphodon) dohrnii*	Brazil	do	E	15	8
Hornbill, helmeted	*Rhinoplax vigil*	Thailand, Malaysia	do	E	15	8
Macaw, glaucous	*Anodorhynchus glaucus*	Paraguay, Uruguay, Brazil	do	E	15	8
Macaw, indigo	*Anodorhynchus leari*	Barzil	do	E	15	8
Macaw, little blue	*Cyanopsitta spixii*	do	do	E	15	8
Mallard, Mariana	Anas oustaleti	West Pacific Ocean: U.S.A. (Guam, Mariana Islands).	do	E	3	1
Owl, giant scops	*Otus gurneyi*	Philippines: Marinduque and Mindanao Island.	do	E	15	8
Parakeet, Forbes'	*Cyanoramphus auriceps forbesi*	New Zealand	do	E	3, 15	8
Parrot, Bahaman or Cuban	*Amazona leucocephala*	West Indies: Cuba, Bahamas, Caymans.	do	E	3, 15	8
Parrot, red-capped	*Pionopsitta pileata*	Brazil	do	E	15	8
Parrot, red-spectacled	*Amazona pretrei pretrei*	Brazil, Argentina	do	E	15	8
Parrot, vinaceous-breasted	*Amazona vinacea*	Brazil	do	E	15	8
Pheasant, Elliot's	*Syrmaticus elliotl*	China	do	E	15	8
Pigeon, Mindoro zone-tailed	*Ducula mindorensis*	Philippines	do	E	15	8
Piping-guan, black-fronted	*Pipile jacutinga*	Argentina	do	E	15	8
Pitta, Koch's	Pitta kochi	Philippines	do	E	15	8
Quail, Merriam's Montezuma	*Cyrtonyx montezumae merriami*	Mexico (Vera Cruz)	do	E	15	8
Quetzel, resplendent	*Pharomachrus mocinno*	Mexico to Panama	do	E	15	8
Rail, Lord Howe wood	*Tricholimnas sylvestris*	Australia (Lord Howe Island)	do	E	15	8
Shrike, San Clemente loggerhead	*Lanius ludovicianus mearnsi*	U.S.A. (CA)	do	E	26	8
Siskin, red	*Carduelis (=Spinus) cucullata*	South America	do	E	15	8
Sparrow, San Clemente sage	*Amphispiza belli clementeae*	U.S.A. (CA)	do	T	26	8
Teal, Campbell Island flightless	*Anas aucklandica nesiotis*	New Zealand (Campbell Island)	do	E	15	8
Tinamou, solitary	*Tinamus solitarius*	Brazil, Paraguay, Argentina	do	E	15	8
White-eye, Norfolk Island	*Zosterops albogularis*	Indian Ocean: Norfolk Island	do	E	15	8
REPTILES						
Alligator, Chinese	*Alligator sinensis*	China	do	E	15	8
Anole, Culebra Island giant	*Anolis roosevelti*	U.S.A., (PR: Culebra Island)	do	E	25	4
Caiman, Apaporis River	*Caiman crocodilus apaporiensis*	Colombia	do	E	15	8
Caiman, black	*Melanosuchus niger*	Amazon basin	do	E	15	8
Caiman, broad-snouted	*Caiman latirostris*	Brazil, Argentina, Paraguay, Uruguay.	do	E	15	8
Crocodile, African dwarf	*Osteolaemus tetraspis tetraspis*	West Africa	do	E	15	8
Crocodile, Ceylon mugger	*Crocodylus palustris kimbula*	Sri Lanka	do	E	15	8
Crocodile, Congo dwarf	*Osteolaemus tetraspis osborni*	Congo River drainage	do	E	15	8
Crocodile, mugger	*Crocodylus palustris palustris*	India, Pakistan, Iran, Bangladesh	do	E	15	8
Crocodile, Philippine	*Crocodylus novaeguineae mindorensis.*	Philippine Islands	do	E	15	8

LIST OF WILDLIFE SPECIES UNDER REVIEW—Continued

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Office receiving comment
Common name	Scientific name					
Crocodile, Siamese	*Crocodylus siamensis*	Southeast Asia, Malay Peninsula	do	E	15	8
Gavial (-gharial)	*Gavialis gangeticus*	Pakistan, Burma, Bangladesh, India, Nepal.	do	E	3,15	8
Gecko, Monito	*Sphaerodactylus micropithecus*	U.S.A. (PR)	do	E	125	4
Lizard, Island night	*Xantusia (-Klauberina) riversiana*	U.S.A. (CA)	do	T	26	1
Lizard, St. Croix ground	*Ameiva polops*	U.S.A. (VI)	do	E	24	4
Monitor, Bengal	*Varanus bengalensis*	Iran, Iraq, India, Sri Lanka, Malaysia, Afghanistan, Burma, Vietnam, Thailand.	do	E	15	8
Monitor, desert	*Varanus griseus*	North Africa to Near East, Caspian Sea through U.S.S.R. to Pakistan, Northwest India.	do	E	15	8
Monitor, Komodo Island	*Varanus komodoensis*	Indonesia (Komodo, Rintja, Padar, and western Flores Island).	do	E	15	8
Monitor, yellow	*Varanus flavescens*	West Pakistan through India to Bangladesh.	do	E	15	9
Python, Indian	*Python molurus molurus*	Sri Lanka and India	do	E	15	8
Snake, Atlantic salt marsh	*Nerodia fasciata taeniata*	U.S.A. (FL)	do	T	30	4
Tomistoma	*Tomistoma schlegelii*	Malaysia, Indonesia	do	E	15	8
Tortoise, angulated	*Geochelone yniphora*	Malagasy Republic (-Madagascar)	do	E	15	8
Turtle, black softshell	*Trionyx nigricans*	Bangladesh	do	E	15	8
Turtle, Burmese peacock	*Morenia ocellata*	Burma	do	E	15	8
Turtle, Cuatro Cienegas softshell	*Trionyx ater*	Mexico	do	E	15	8
Turtle, geometric	*Psammobates geometricus*, (=*Geochelone geometrica*).	South Africa	do	E	15	8
Turtle, Indian sawback	*Kachuga tecta tecta*	India	do	E	15	8
Turtle, Indian softshell	*Trionyx gangeticus*	Pakistan, India	do	E	15	8
Turtle, Peacock softshell	*Trionyx hurum*	India, Bangladesh	do	E	15	8
Turtle, spotted pond	*Geoclemys (=Damonia) hamiltonii*	North India, Pakistan	do	E	15	8
Turtle, three-keeled Asian	*Melanochelys (=Geoemyda, Nicoria) tricarinata.*	Central India to Bangladesh and Burma.	do	E	15	8
AMPHIBIANS						
Coqui, golden	*Eleutherodactylus jasperi*	U.S.A. (PR)	do	T	29	4
Frog, Panamanian golden	*Atelopus varius zeteki*	Panama	do	E	15	8
Salamander, Chinese giant	*Andrias davidianus davidianus*	Western China	do	E	15	8
Salamander, Japanese giant	*Andrias davidianus japonicus*	Japan	do	E	15	8
Salamander, Red Hills	*Phaeognathus hubrichti*	U.S.A. (AL)	do	E	19	4
Toad, African viviparous	*Nectophrynoides* spp.	Tanzania, Guinea, Ivory Coast, Cameroon, Liberia, Ethiopia.	do	E	15	8
Toad, Cameroon	*Bufo superciliaris*	Equatorial Africa	do	E	15	8
Toad, Monte Verde	*Bufo periglenes*	Costa Rica	do	E	15	8
FISHES						
Bonytongue, Asian	*Scleropages formosus*	Thailand, Indonesia, Malaysia	do	E	15	8
Cavefish, Alabama	*Speoplatyrhinus poulsoni*	U.S.A. (AL)	do	T	28	4
Chub, Borax Lake	*Gila boraxobius*	U.S.A. (OR)	do	E	124	1
Chub, slender	*Hybopsis cahni*	U.S.A. (TN, VA)	do	T	28	4
Chub, spotfin	*Hybopsis monacha*	U.S.A. (AL, GA, NC, TN, VA)	do	T	28	4
Darter, slackwater	*Etheostoma boschungi*	U.S.A. (AL, TN)	do	T	28	4
Madtom, yellowfin	*Noturus flavipinnis*	U.S.A. (GA, TN, VA)	do	T	28	4
Ternolek, Ikan (minnow)	*Probarbus jullieni*	Thailand, Cambodia, Vietnam, Malaysia, Laos.	do	E	15	8
SNAILS						
Snail, Oahu tree	*Achatinella* spp. (all species)	U.S.A. (HI)	NA	E	108, 112	1
CLAMS						
Pearly mussel, Alabama lamp	*Lampsilis virescens*	U.S.A. (AL, TN)	NA	E	15	4
Pearly mussel, Appalachian monkeyface.	*Quadrula sparsa*	U.S.A. (TN, VA)	NA	E	15	4
Pearly mussel, birdwing	*Conradila caelata*	do	NA	E	15	4
Pearly mussel, Cumberland bean	*Villosa (=Micromya) trabalis*	U.S.A. (KY, TN)	NA	E	15	4
Pearly mussel, Cumberland monkeyface.	*Quadrula intermedia*	U.S.A. (AL, TN, VA)	NA	E	15	4
Pearly mussel, Curtis'	*Epioblasma (=Dysnomia) florentina curtisi.*	U.S.A. (MO)	NA	E	15	3
Pearly mussel, dromedary	*Dromus dromas*	U.S.A. (TN, VA)	NA	E	15	4
Pearly mussel, green-blossom	*Epioblasma (=Dysnomia) torulosa gubernaculum.*	do	NA	E	15	4
Pearly mussel, Higgins' eye	*Lampsilis higginsi*	U.S.A. (IL, IA, MN, MO, NE, WI)	NA	E	15	3
Pearly mussel, Nicklin's	*Megalonaias nicklineana*	Mexico	NA	E	15	8
Pearly mussel, orange-footed	*Plethobasus cooperianus*	U.S.A. (AL, IN, IA, KY, OH, PA, TN).	NA	E	15	3
Pearly mussel, pale liliput	*Toxolasma (=Carunculina) cylindrellus.*	U.S.A. (AL, TN)	NA	E	15	4
Pearly mussel, pink mucket	*Lampsilis orbiculata*	U.S.A. (AL, IL, IN, KY, MO, OH, PA, TN, WV).	NA	E	15	4
Pearly mussel, Tampico	*Cyrtonaias tampicoensis*	Mexico	NA	E	15	8
Pearly mussel, turgid-blossom	*Epioblasma (=Dysnomia) turgidula.*	U.S.A. (AL, TN)	NA	E	15	4
Pearly mussel, white cat's paw	*Epioblasma (=Dysnomia) sulcata delicata.*	U.S.A. (IN, MI, OH)	NA	E	15	3
Pearly mussel, white wartyback	*Plethobasus cicatricosus*	U.S.A. (AL, IN, TN)	NA	E	15	4
Pearly mussel, yellow-blossom	*Epioblasma (=Dysnomia) florentina florentina.*	U.S.A. (AL, TN)	NA	E	15	4
Pigtoe, fine-rayed	*Fusconaia cuneolus*	U.S.A. (AL, TN, VA)	NA	E	15	4
Pigtoe, rough	*Pleurobema plenum*	U.S.A. (IN, KY, TN, VA)	NA	E	15	4
Pigtoe, shiny	*Fusconaia edgariana*	U.S.A. (AL, TN, VA)	NA	E	15	4
Pocketbook, fat	*Potamilus (=Proptera) capax*	U.S.A. (AR, IN, MO, OH)	NA	E	15	4
Riffle shell, tan	*Epioblasma walkeri*	U.S.A. (KY, TN, VA)	NA	E	27	4

LIST OF WILDLIFE SPECIES UNDER REVIEW—Continued

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Office receiving comment
Common name	Scientific name					
CRUSTACEANS						
Amphipod, Hay's Spring	*Stygobromus hayi*	U.S.A. (DC)	NA	E	115	5
Isopod, Madison Cave	*Antrolana lira*	U.S.A. (VA)	NA	E	123	5
INSECTS						
Butterfly, El Segundo blue	*Euphilotes* (=Shijirniaeoides) battoides allyni.	U.S.A. (CA)	NA	E	14	1
Butterfly, Lange's metalmark	*Apodemia mormo langei*	do	NA	E	14	1
Butterfly, lotis blue	Lycaeides argyrognomon lotis	do	NA	E	14	1
Butterfly, mission blue	*Icaricia icarioides missionensis*	do	NA	E	14	1
Butterfly, San Bruno elfin	*Callophrys mossii bayensis*	do	NA	E	14	1
Butterfly, Smith's blue	Euphilotes (=Shijimiaeoides) enoptes smithi.	do	NA	E	14	1

List of Plant Species Under Review

Species		Historic range	Status	When listed	Office receiving comment
Scientific name	Common name				
Asteraceae—Aster family: *Stephanomeria malheurensis.*	Malheur wire-lettuce	U.S.A. (OR)	E	126	1
Euphorbiaceae—Spurge family: *Euphorbia skottsbergii* var. *kalaeloana.*	Ewa Plains 'akoko	U.S.A. (HI)	E	120	1
Fabaceae—Pea family: *Lotus dendroideus* ssp. *traskiae* (=*L. scoparius* ssp. *t.*).	San Clemente Island broom	U.S.A. (CA)	E	26	1
Hydrophyllaceae—Waterleaf family: *Phacelia formosula.*	North Park phacelia	U.S.A. (CO)	E	121	6
Lamiaceae—Mint family:					
Hedeoma apiculatum	McKittrick pennyroyal	U.S.A. (TX, NM)	T	118	2
Hedeoma todsenii	Todsen's pennyroyal	U.S.A. (NM)	E	110, 112	2
Malvaceae—Mallow family:					
Callirhoe scabriuscula	Texas poppy-mallow	U.S.A. (TX)	E	109, 112	2
Malacothamnus clementinus	San Clemente Island bush-mallow	U.S.A. (CA)	E	26	1
Orchidaceae—Orchid family:					
Isotria medeoloides	Small whorled pogonia	U.S.A. (CT, IL, MA, MD, ME, MI, MO, NC, NH, NJ, NY, PA, RI, SC, VA, VT) Canada (Ont.).	E	122	5
Spiranthes parksii	Navasota ladies'-tresses	U.S.A. (TX)	E	116	2
Polygonaceae—Buckwheat family: *Eriogonum gypsophilum.*	Gypsum wild-buckwheat	U.S.A. (NM)	T	110, 112	2
Ranunculaceae—Buttercup family: *Delphinium kinkiense.*	San Clemente Island larkspur	U.S.A. (CA)	E	26	1
Scrophulariaceae—Snapdragon family: *Castilleja grisea.*	San Clemente Island Indian paintbrush	U.S.A. (CA)	E	26	1

13—41 FR 17740; April 28, 1976.
14—41 FR 22044; June 1, 1976.
15—41 FR 24064; June 14, 1976.
16—41 FR 45993; October 19, 1976.
17—41 FR 51021; November 19, 1976.
18—41 FR 51612; November 23, 1976.
19—41 FR 53034; December 3, 1976.
21—42 FR 2968; January 14, 1977.
23—42 FR 28137; June 2, 1977.
24—42 FR 28545; June 3, 1977.
25—42 FR 37373; July 21, 1977.
26—42 FR 40685; August 11, 1977.
27—42 FR 42353; August 23, 1977.
28—42 FR 45528; September 9, 1977.
29—42 FR 58756; November 11, 1977.
30—42 FR 60745; November 29, 1977.
108—46 FR 3178; January 13, 1981.
109—46 FR 3184; January 13, 1981.
110—46 FR 5730; January 19, 1981.
111—46 FR 11665; February 10, 1981.
112—46 FR 40025; August 6, 1981.
113—46 FR 4664; August 10, 1981.
114—47 FR 4204; January 28, 1982.
115—47 FR 5425; February 5, 1982.
116—47 FR 19539; May 6, 1982.
117—47 FR 19995; May 10, 1982.
118—47 FR 30440; July 13, 1982.
119—47 FR 31670; July 21, 1982.
120—47 FR 36846; August 24, 1982.
121—47 FR 38540; September 1, 1982.
122—47 FR 38927; September 10, 1982.
123—47 FR 43701; October 4, 1982.
124—47 FR 43962; October 5, 1982.
125—47 FR 46093; October 15, 1982.
126—47 FR 50885; November 10, 1982.

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Tuesday
July 7, 1987

Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260, and 284
Natural Gas Data Collection System; Notice of Proposed Rulemaking

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 157, 260 and 284

[Docket No. RM 87-17-000]

Natural Gas Data Collection System

June 25, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) proposes to amend its regulations to establish the Natural Gas Data Collection System through the adoption of FERC Form No. 591. FERC Form No. 591 requires natural gas pipelines to submit various data, rate filings and certificate applications to the Commission on 9-track magnetic tape. In addition, FERC Form No. 591 revises the data presently submitted by natural gas pipelines to reflect the Commission's current regulatory responsibilities. This revision results in the filing of much of the same data at the same time as presently, eliminates data presently filed and requires the submission of data in more detail or more frequently than presently filed.

DATE: An original and 14 copies of the written comments on this proposed rule must be filed with the Commission by September 8, 1987.

ADDRESS: All filings should refer to Docket No. RM87-17-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

For legal matters: Robert C. Fallon, Federal Energy Regulatory Commission, Office of the General Counsel, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8540

For technical matters: John E. Moriarty, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation, 825 North Capitol Street, NE. Washington, DC 20426, (202) 357-8824

SUPPLEMENTARY INFORMATION:

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to establish a Natural Gas Pipeline Data Collection System (NGPDCS) through the filing of FERC Form No. 591.[1] FERC Form No. 591 would require interstate natural gas pipelines to submit on 9-track magnetic tape information currently collected through numerous forms, rate filings, and certificate applications under Parts 154 and 157 of the Commission's regulations and related data requests. One copy of information on FERC Form No. 591 would also be submitted on paper. Under FERC Form No. 591, information would be submitted either one-time with updates as changes occur, monthly or annually.

By proposing FERC Form No. 591, the Commission seeks to standardize, consolidate and update the information the Commission requires from interstate natural gas pipelines, simplify the format in which the data is submitted and computerize the receipt, processing, and analysis of information that the Commission will use to regulate the natural gas pipeline industry.

II. Background

The Commission regulates the natural gas pipeline industry under the authority in the Natural Gas Act [2] and the Natural Gas Policy Act of 1978.[3] In order to regulate this industry, the Commission requires interstate pipelines to submit various forms and reports either monthly, semi-annually or annually.[4] In addition, natural gas pipelines periodically file a variety of information [5] when seeking changes in a tariff rate under Part 154 of the Commission's regulations and certification authority to engage in the sale and transportation of natural gas in interstate commerce under Part 157 of the Commission's regulations. Currently, the Commission does not require that these forms, reports, requests or applications be submitted on magnetic tape.

In particular, the Commission collects information concerning various aspects of the natural gas pipeline industry from eight forms and one format.

FERC Form No. 2, Annual Report of Major Natural Gas Companies, is filed annually. Under this form specific data are collected on depreciation, amortization and depletion; the balance sheet, income statement and retained earnings; materials and supplies; salary and wage distribution; construction work in progress; operating revenues; and operation and maintenance expenses.

FERC Form No. 2-A, Annual Report of Nonmajor Natural Gas Companies is filed annually. Under this form, designed for smaller natural gas pipelines, an abbreviated version of data collected in Form No. 2 is filed.

FERC Form No. 8, Underground Gas Storage Report, is filed monthly. Under this form, specific data are collected on storage operations including the name, co-owner and location of underground storage reservoirs; natural gas storage injections and withdrawals; and storage balances and capacities.

FERC Form No. 11, Natural Gas Pipeline Monthly Statement, is filed monthly. Under this form, data are collected on end of month sales of natural gas to customers; income; operation and maintenance expenses; rates; gas supplies and production by type.

FERC Form No. 14, Annual Report for Importers and Exporters of Natural Gas, is filed annually. Under this form, monthly data are collected on the natural gas imports and exports including the transporter of the gas; U.S. point of entry; foreign buyer or seller; docket number; and volume and dollar amount of natural gas imports and exports.

FERC Form No. 15, Interstate Pipeline's Annual Report of Gas Supply, is filed annually. Under this form, data are collected on gas supply including production during the report year; purchases; remaining reserves owned or under contract and projected deliveries.

FERC Form No. 16, Report of Gas Supply and Requirements, is filed semi-annually. Under this form, data are collected on actual and projected gas

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[1] The proposed format for FERC Form No. 591 will not be printed in the **Federal Register** or the Code of Federal Regulations. This format includes the instructions for filing FERC Form No. 591, the data items to be submitted on each schedule and whether these data items are presently filed with the Commission. This format can be obtained from the Public Reference Section at the Commission, 825 North Capitol Street, NE., Washington, DC 20426.

[2] 15 U.S.C. 717-717w (1982). Specifically, section 10(a) of the Natural Gas Act, 15 U.S.C. 717i (1982), grants authority to the Commission to specify by rule or regulation the annual or periodic reports that natural gas companies must file with the Commission.

[3] 15 U.S.C. 3301-3432 (1982). Specifically, section 501 of the Natural Gas Policy Act (NGPA), 15 U.S.C. 3411 (1982), states that the Commission will administer the NGPA unless the Act expressly provides otherwise. Section 501 adds that in administering the Act, the Commission has the authority to prescribe, issue, amend and rescind such rules and orders as it may find necessary or appropriate to carry out its functions under the Act.

[4] 18 CFR Part 260 (1986) governs the submission of these forms and reports. Part 284 of the Commission's regulations require the filing of various reports by interstate natural gas pipelines transporting gas.

[5] For example, see Statements A through P described in § 154.63 of the Commission's regulations.

deliveries; gas requirements and net deficiency by customers; actual and projected gas supply requirements and net deficiency or surplus; actual and projected sources of gas supplies adjusted for losses; anticipated new gas supply sources; actual gas storage operations; gas storage service sold; contract volumes by pipeline, producing areas and other purchases for system supply.

FERC Form No. 549–ST, Form of Self-Implementing Transportation Reports. Under this form, data are collected on interstate or intrastate natural gas pipelines, Hinshaw companies, or local distribution companies undertaking transportation transactions under 18 CFR Part 284, Subpart B, C or G.

Format No. FERC–567, System Flow Diagram, is filed annually. Under this format, physical engineering data and data on operating conditions on a natural gas pipeline's transmission system over a 12-month period are collected.

III. Discussion

A. Natural Gas Data Collection System

The Commission is proposing that natural gas pipelines submit various data, as well as rate filings under § 154.63 and certificate applications under Part 157 of the Commission's regulations, on 9-track magnetic tape. The Commission is requiring that this tape be accompanied by one paper printout of the information submitted on the magnetic tape.

The Commission believes that this procedure would reduce the burden on natural gas pipelines by requiring them to file fewer paper copies of rate filings and certificate applications. At the same time, the Commission staff would be able to analyze the data submitted in rate filings and certificate applications, as well as other data submitted, more quickly and efficiently. Furthermore, the Commission would be able to identify more quickly, and react to, trends in the natural gas industry.

The data currently submitted with rate change requests and certificate applications only provides the Commission with the information it needs to review a particular rate filing or certificate application. The data submitted on various forms does not provide the Commission with general current information on the natural gas industry. This is because the difference in the reporting requirements, *e.g.*, formats and time submitted, makes it difficult to compare information from one form to another. In addition, each of the various forms were designed to collect information for a specific purpose from a specific company. This adds to the difficulty of comparing information from different forms from one company to another. FERC Form No. 591 can provide the Commission with a data base of consistent and current information. This data base is necessary to develop the comprehensive reports and studies of the industry needed to develop and monitor current and future policies affecting the natural gas industry.

Moreover, some of the data presently submitted to the Commission is not current, is duplicative or is simply no longer useful to the Commission. Often the Commission staff must request in rate filings and certificate applications more current information. This not only delays Commission action, but is usually burdensome on the industry. FERC Form No. 591 can provide the Commission with current information that is directly related to the Commission's current regulatory responsibilities. FERC Form No. 591 will also provide the Commission with current data, previously unavailable, on pipeline capacity and a central location on the contracts of the natural gas pipeline industry.

The Commission also notes that its information needs have recently changed due to recent changes in the natural gas industry. For example, certain natural gas prices were deregulated under section 121 of the NGPA, the Commission issued Order No. 436, which established new natural gas transportation programs, and Order No. 451, which set a new ceiling price of old gas. The changes in gas prices and the increase in transportation require the Commission to monitor its new programs to ensure that there is not undue discrimination among similarly-situated shippers. Additionally, the Commission is interested in monitoring transactions between a pipeline and its affiliate. The Commission believes that collecting information in a computerized format would benefit the Commission's decisionmaking affecting the changing natural gas industry. FERC Form No. 591 will allow the Commission to analyze the new issues which are arising in this changing industry because FERC Form No. 591 will provide current data on the operation of the natural pipeline industy. Finally, the Commission believes that FERC Form No. 591 will allow the public better access to Commission information since information can be made available to the public on magnetic tape and, as discussed, the Commission staff can analyze the information submitted at a faster rate.

1. Overview

The data submitted on FERC Form No. 591 will give the Commission an automated data system to better meet the Commission's regulatory responsibilities. The Commission developed FERC Form No. 591 by analyzing the present data submitted by the natural gas pipeline industry in light of current and anticipated regulatory needs. As a result, the Commission proposes that, in general, all major and nonmajor interstate natural gas pipelines and storage companies under the jurisdiction of the Commission submit various schedules and records either one-time with updates as changes occur, monthly, annually or nonperiodically. These schedules include:

One-Time With Updates
- (1) General System Information—Schedule G1
- (2) Physical Engineering—Schedule E1
- (3) Tariff—Schedule F1
- (4) Contract—Schedule F2

Monthly
- (5) General Monthly Information—Schedule G2
- (6) PGA Gas Purchases—Schedule P1
- (7) PGA Totals—Schedule T1
- (8) Receipt and Delivery Point—Schedule F3
- (9) System Operations—Schedule E2
- (10) Pipeline Cost—Schedule C1
- (11) Pipeline Cost Totals—Schedule C2
- (12) Pipeline Revenue—Schedule R1

Annually
- (13) General Annual Information—Schedule G3
- (14) Gas Supply—Schedule S1
- (15) Coincidental 3-Day Peak—Schedule F4

Nonperiodic
- (16) General Nonperiodic Information—Schedule G4
- (17) Nonperiodic Filings—Schedule N1

The requirements for filing specific schedules and the relationship between the data items proposed on each schedule and data items presently collected will be generally discussed in each schedule and in more detail in the instructions for filing FERC Form No. 591 available from the Commission. In many ways, the burden on the industry will not increase from FERC Form No. 591 since much of the data required by these schedules consists of the same data presently submitted in the same time frame as currently required. The Commission estimates that FERC Form No. 591 may result in as much as a 30 percent reduction in burden through the elimination of selected data items from other forms, such as projected

information on gas supplies; reduced costs to submit items on magnetic tape; and reduced burden in certificate applications and rate filings. However, in some instances an increase in burden on interstate pipelines would result from the implementation of FERC Form No. 591, since many data items on the schedules request more detail or require submissions more frequently than current regulations. The Commission believes that the benefit of collecting the information on magnetic tape and the reduction of current burden outweighs any new burden imposed on the pipelines.

2. Schedules and Records To Be Filed Initially and Updated Monthly if Changes Occur

The Commission is proposing that the following schedules and records must be filed initially within 120 days after the issuance of the final rule. The data submitted would be data in effect on the date that is 45 days prior to this date.

A. Schedule G1: General System Information
B. Schedule E1: Physical Engineering
C. Schedule F1: Tariff
D. Schedule F2: Contract

These schedules and records reflect general information concerning a natural gas pipeline's rates, tariffs, contracts, transportation requests, pipeline systems, etc. The Commission is requiring that these schedules and records be updated within 45 days after the end of the month where changes occur in the data items initially submitted or subsequently updated, with one exception. Schedule F1: Tariff contains the effective rates and tariff provisions of the natural gas pipeline. Because these items are important to the daily operation of the pipelines and to the pipeline's customers, the Commission is requiring that changes in Schedule F1 must be filed on the date that the rate or tariff changes become effective pursuant to a Commission order.

a. *Schedule G1: General System Information.* Schedule G1 consists of basic information concerning Schedule E1: Physical Engineering, Schedule F1: Tariff and Schedule F2: Contract. This information includes the name of the company filing the schedule, the month and year the report is filed and the type of report. Schedule G1 must be submitted with the original submission and any updates of each of these schedules.

The information on Schedule G1 is presently included as part of the annual submission of Format No. FERC 567: System Flow Diagram prescribed in 18 CFR 260.8 (1986), and Exhibit G, G–I or G–II submitted with a certificate application under § 156.5 or 157.14 of the Commission's regulations and in contracts filed under section 7(c) of the Natural Gas Act.

The Commission is proposing to collect these data elements in order to conduct an analysis of a pipeline's capacity through the use of an engineering model. This model will be discussed further in Schedule E1: Physical Engineering.

b. *Schedule E1: Physical Engineering* consists of eight separate records.

(1) Receipt/Delivery Point
(2) Junction or Change in Diameter
(3) Pipe Segment
(4) Compressor
(5) Regulator or Valve
(6) Design Storage Field
(7) Jurisdictional Process Plant
(8) LNG Plant

Each of these records would be filed initially and updated whenever changes occur in the pipeline's system, *e.g.*, physical pipe parameters, assumptions concerning the pipeline system, or other operational modifications. The initial filing would be data concerning a pipeline's system in effect 45 days prior to the date of the initial submission. The Commission is proposing that Schedule E1 be filed by all major and nonmajor natural gas pipelines and storage companies under the jurisdiction of the Commission.

The purpose of Schedule E1 and each of the separate records is to collect sufficient information so that the Commission can calculate a pipeline's system steady-state [6] capacity through the use of an engineering model. This ability to calculate a pipeline's capacity is needed for two reasons: First, Order No. 436 [7] requires a natural gas pipeline, which volunteers for the program, to transport gas for various end-users unless the transmission company demonstrates that it does not have sufficient capacity. The Commission must be able to calculate a pipeline's capacity in order to adequately respond to any questions which may arise from end-users concerning a pipeline's flowing capacity. Second, in order to review a pipeline's request for new pipeline construction, the Commission must be able to calculate a pipeline's existing capacity on summer and winter design days, winter peak day and the maximum capability of the transmission system to determine whether pipeline expansion is necessary.

In January of 1987, to increase its capability to more accurately calculate a pipeline's capacity, the Commission acquired a simulation package from Stoner and Associates (Stoner Package). The Stoner Package will allow the Commission to calculate the capacity of all compressor stations, regulator stations, processing plants, storage fields and all types of piping arrangements including the capability to tailor the flow regime being simulated to the expected flow conditions. This quantification of data is necessary considering that staff will be required to make independent capacity judgments under Order No. 436, and certificate and rate change applications.

The Commission believes that the information submitted in Format No. FERC 567: Annual Flow Diagram at § 260.8 or Exhibit G, G–I or G–II submitted in § 157.14 or 156.5 is not sufficient by themselves to serve as a basis for sound engineering analysis of pipeline capacity.[8] The Annual System Flow Diagram, which presents data on the physical configuration and average daily operation of a pipeline system, does not show design day capacity operation. Exhibits G, G–I, and G–II rarely cover the complete pipeline system but instead focus only on those portions affected in the certificate application. Complete system design diagrams filed as Exhibits G, G–I, and G–II, which form the basis for

[6] Collection of engineering data regarding the steady-state design basis of a pipeline system should not be construed as an endorsement of steady-state design as the appropriate design basis for regulated pipeline systems. Unsteady-state or transient operating conditions may, in certain situations, be a more appropriate basis for pipeline system design. Data for unsteady state analysis, where necessary, will be collected on a case specific basis.

[7] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 50 FR 42408 (Oct. 18, 1985) (Order No. 436), *reh'g granted*, 50 FR 52217 (Dec. 23, 1985) (Order No. 436–A), *reh'g granted*, 51 FR 6398 (Feb. 24, 1986) (Order No. 436–B), *reh'g denied*, 51 FR 11,566 (Apr. 4, 1986) (Order No. 436–C), *reh'g denied*, 51 FR 11569 (Apr. 4, 1986) (Order No. 436–D), *appeal pending*, Associated Gas Distrbutors v. FERC No. 85–1811 (D.C. Cir. filed Dec. 12, 1985).

[8] Format No. FERC 567: Annual System Flow Diagram is submitted annually by major natural gas pipelines having a flowing system capacity of 100,000 Mcfd or greater.

Exhibit G—Flow diagram showing the daily design steady-state capacity and reflecting operation with and without the proposed facilities added.

Exhibit G–I—Flow diagram reflecting the maximum steady-state capability of the transmission facilities after the proposed facilities are installed.

Exhibit G–II—Engineering data report (all engineering assumptions and pipe specifications).

certificated design, are, in many cases, as much as 20 years old. Finally, some data necessary for capacity analysis is not presently collected, such as pipe roughness, elevations and certain compressor design factors.

Therefore, to utilize the Stoner Package, Schedule E1 incorporates all of the data items presently submitted annually in Format No. FERC 567: Annual System Flow Diagram and periodically in Exhibit G, Exhibit G–I and Exhibit G–II.

Currently, all major transmission companies file the annual flow diagram and Exhibits G, G–I and G–II with the Commission either on an annual or periodic basis. The nonmajor transmission companies are currently exempt from filing this data but under FERC Form No. 591 will now be required to file the appropriate engineering information. The Commission believes that this is necessary because current nonmajor pipeline companies can participate in Order No. 436 transportation transactions and, as such, must meet the requirements of the major transmission companies participating under Order No. 436. In addition, the Commission must be able to response to capacity requests concerning nonmajor natural gas pipelines and must be able to make judgments concerning the pipeline system taken as a whole.

In Schedule E1 the Commission also proposes a number of data items in more detail than presently submitted in either Format No. FERC 567 or the exhibits listed above. The Commission is proposing to require the submission of these data items because each of these items is needed to compute pipeline capacity. In addition, each of these items are frequently requested by staff presently in cases where pipeline capacity is at issue.

After the implementation of FERC Form No. 591, the Commission is proposing to eliminate Format No. FERC 567 and Exhibits G and G–II. This in because the data is these items has been incorporated into Schedule E1. The Commission is proposing to continue to require the filing of Exhibit G–I in a modified format. This format will focus on maximum design capacity, incorporate some of the items submitted in Exhibit G and also include:

(1) A description of the pipeline and fittings to be installed, specifying the diameter, wall thickness, yield point, ultimate tensile strength, method of fabrication and methods of testing proposed;

(2) Assumptions, bases, and formulae used in the development and preparation of Exhibit G–I and accompanying data; and

(3) The maximum allowable operating pressure of each proposed facility for which a certification is requested and a certification that the applicant will design, install, inspect, etc., the project in accordance with Federal safety standards.

c. *Schedule F1: Tariff.* The purpose of Schedule F1 is to collect, in a computerized format, the information contained in a natural gas pipelines' effective tariff on file with the Commission. Schedule F1 must be filed by all jurisdictional pipeline and storage companies which must have effective tariffs on file with the Commission.

This schedule consists of five record formats:

1. Rates
2. Rate Schedule Provisions
3. Rate Schedule Text
4. Tariff Provisions
5. Tariff Text

This schedule and the five record formats collect information on the various tariffs [9] and rate schedules [10] under which the natural gas company operates. The Commission is proposing to require that a company file this schedule at the same time all other initial schedules are filed under § 260.20. This filing would consist of all tariff and rate schedules in effect 45 days prior to the date of the initial submission. The Commission is proposing this one-time filing so that at initiation of FERC Form No. 591, the Commission has received on magnetic tape the most current and accurate rate information. Thereafter, this schedule would be updated whenever changes in tariffs and rate schedules become effective. Such changes in tariffs are made effective by the Commission for a variety of reasons including purchase gas adjustment filings in § 154.38(d)(4) of the Commission's regulations and filings in compliance with a Commission order requiring an adjustment to the tariff. Proposed changes in tariffs would be filed on Schedule N1 and Schedule G4 of FERC Form No. 591.

Presently, the Commission maintains a current collection of tariffs and rate schedules. The tariffs are in the form described in §§ 154.31 through 154.41 of the Commission's regulations. It consists of all rate schedules submitted and approved by the Commission on or after December 1, 1948, and the most recent changes proposed by natural gas companies and made effective by the Commission. The Commission proposes to replace this collection of tariffs with Schedule F1.

Schedule F1 consists of the same data as presently contained in this listing with the following exception. Schedule F1 does not include the map described in § 154.37 of the Commission's regulations. The map is excluded because it can be obtained from other portions of FERC Form No. 591, specifically Schedule E1: Physical Engineering.

(d). *Schedule F2: Contract Report.* This schedule consists of five (5) separate records:

(1) Contract Summary
(2) Transportation Request
(3) Contract Text
(4) Transportation Request Narrative
(5) Transportation Request Footnotes

The Commission is proposing Schedule F2 to collect information on contracts for natural gas sales, purchases, transportation, storage, gathering and exchange services provided and received by interstate natural gas pipelines and requests for transportation service to natural gas pipelines both with or without a marketing affiliate.[11] The Commission is proposing that Schedule F2 be filed by all major and nonmajor interstate natural gas pipelines and storage companies under the jurisdiction of the Commission.

The Commission has several objectives in proposing to collect the information on this schedule. First, the Commission intends to replace the current paper copies of contract and tariff information. Second, the Commission hopes to develop and maintain a current data base on contract activities. Third, the Commission is interested in improving staff processing of certificate and rate change applications by electronic access to current supporting contract and operating data. Fourth, the Commission hopes to improve the means by which the Commission and potential shippers could monitor transportation activity by natural gas pipelines, both with or without marketing affiliates, with respect to Order No. 436 open-access programs, utilization of capacity, and first-come/first served service. The data

[9] Section 154.14 defines a tariff as a compilation in book form of all the effective rate schedules of a particular natural gas company and a copy of each form of service agreement.

[10] Section 154.11 defines a rate schedule as a statement of a rate or charge for a particular classification of transportation or sale of natural gas subject to the jurisdiction of the Commission, and all terms, conditions, classifications, practices, rules and regulations affecting such rate or charge. This term also includes any contract for which special permission has been obtained in accordance with § 154.52.

[11] Gas purchase contracts with a domestic first seller of natural gas need not be reported in Schedule F2.

collected in Schedule F2 will enable the Commission to determine whether any discriminatory practices with respect to transportation services are occurring in the natural gas industry. Finally, the Commission hopes to utilize this data with data collected in other portions of FERC Form No. 591, such as receipt and delivery information in Schedule F3 and engineering data in Schedule E1.

To achieve these objectives, on Record (1), the Commission is proposing to collect certain information concerning each contract, such as the contract identification number assigned by the pipeline, whether the service is provided or received, and other general information such as the service type, rate schedule, volumes, contracting parties, contract and service dates, receipt and delivery points, etc. For transportation contracts under Order No. 436, the pipeline must report the request identification number associated with the initial request for such transportation.

Presently, the Commission collects contract information from a variety of sources. These include: Certificate applications under section 7 of the Natural Gas Act; tariff information under § 154.22 of the Commission's regulations; reports on transportation by interstate pipelines of natural gas on behalf of intrastate pipelines or local distribution companies required under § 284.106; or from the FERC Form No. 2, reported in Revenue from Transportation of Gas of Others,[12] Transportation and Compression of Gas by Others,[13] and Exchange Gas Transactions.[14]

One of the data items proposed to be collected on Record (1) is not routinely collected by the Commission. This item involves whether the pipeline is receiving take-or-pay relief from the supplier. The Commission is proposing to collect information on take-or-pay relief in order to monitor whether persons providing take-or-pay relief to gas suppliers are being given preferential treatment in transportation services.

In Record (2), Transportation Request Record, the Commission is proposing that all interstate pipelines, whether or not the pipeline has a marketing affiliate, report its receipt of requests for transportation service under Part 157 and Part 284 of the Commission's regulations. Presently, § 284.13 of the Commission's regulations requires a natural gas pipeline transporting natural gas under Subpart B, G, or H of Part 284 to maintain a log of such requests. This log must include: (1) The date of the request, (2) the name of the person requesting transportation and (3) the volumes of gas to be transported. Present regulations also require that this log be maintained at the natural gas pipeline's principal place of business during regular business hours.

The information contained in record (2) includes a portion of the information required to be filed by interstate pipelines with marketing affiliates in FERC Format No. 592: Format of Compliance Plan for Transportation Services and Affiliate Transactions.[15] The remainder of FERC Format No. 592 is incorporated into Record (4) of Schedule F2. Only natural gas pipelines with marketing affiliates would be required to file Record (4). To the extent that a natural gas pipeline, with a marketing affiliate has filed Schedule F2 Records (2) and (4), such information need not be filed on FERC Format No. 592. However, in conformance with the provisions of the NOPR on marketing affiliates, these two records would be required to be filed 15 days, rather than 45 days, after the close of the month.

The Commission is requiring more detailed information on requests for transportation service in Record (2) for the same reason that the Commission requires the present log, *i.e.*, to monitor transportation activities by interstate pipelines. The Commission is requiring additional detail because the present log does not provide the Commission with information such as how quickly that service is being provided, the current status of the request, the points of receipt and delivery, position in the service queue, and shipper affiliation. The Commission believes that similar information is presently maintained by interstate pipelines both in the conduct of normal business activity and in compliance with § 284.13.

The Commission believes that such information is needed to monitor whether transportation is being provided on a nondiscriminatory basis. The issue of nondiscriminatory access to pipeline services is relevant to both a natural gas pipeline with or without a marketing affiliate. The Commission adopted the information collection provisions in the NOPR on marketing affiliates to determine if a natural gas pipeline was providing undue discrimination or preference to their marketing affiliates on access to pipeline services. The Commission believes that much of the same information from the NOPR on marketing affiliates can be used to determine if natural gas pipelines are providing nondiscriminatory access to pipeline services to persons other than marketing affiliates. For this reason, Record (2) contains the same information as FERC Format No. 592. However, the Commission is not requiring interstate pipelines without marketing affiliates to file certain information which the Commission believes is only relevant to interstate pipelines with marketing affiliates.

On Record (3), the Contract Text Record, the Commission is proposing that the natural gas pipeline report the contract identification number and reproduce the text of each contract filed pursuant to the Commission's regulations. These contracts become part of the pipeline's tariff or its service agreements. The Commission is proposing to reproduce these contracts in order to create an electronic data base of contract information, similar to that proposed for rate and tariff information in Schedule F1: Tariff.

The Commission is proposing that natural gas pipelines provide an initial report for all contracts covered under Schedule F2 Records (1) and (3) that are in effect 45 days prior to the date of initial submission. Subsequent updates are required only when a data item on the reported record changes, but updates should not be reported more frequently than monthly. For transportation requests, collected in Record (2), the Commission is proposing to collect an initial filing consisting of all such requests received between October 9, 1985 and 45 days prior to the date of submission, which are either receiving or awaiting service. Thereafter, like contract activities, the Commission is proposing updates as needed but not more frequently than monthly. For Record (4), the Commission is requiring an initial filing of the data with updates, like the other records in Schedule F2, only when changes occur but not more frequently than monthly. The Commission is proposing an initial filing of all the records in Schedule F2 for the same reason it proposed an initial filing of tariff and rate information in Schedule F1, *i.e.*, so that at the initiation of FERC Form No. 591, the Commission has, on magnetic tape, current and accurate information from interstate pipelines on contracts and transportation requests.

After the implementation of FERC Form No. 591, the Commission will review the reports in § 284.106 to determine whether the contract information in Schedule F2 can

[12] *See* page 312 of FERC Form No. 2.
[13] *See* page 332 of FERC Form No. 2.
[14] *See* page 328 of FERC Form No. 2.

[15] *See* Notice of Proposed Rulemaking Related to Marketing Affiliates of Interstate Pipelines, Docket No. RM87-5-000.

substitute for the various reports filed under that section. In addition, the Commission proposes to require interstate pipelines, not subject to the provisions of the NOPR on marketing affiliates, to maintain Record (2), rather than the present log in § 284.13, at its principal place of business.

3. Schedules Filed Monthly

The Commission is proposing that the initial filing of the following schedules be data for the third full calendar month after the schedules to be filed initially, with updates as changes occur, are submitted. The initial and proposed monthly submissions of these schedules, except for Schedule P1 and Schedule T1, are to be filed 45 days after the close of the applicable month. Schedule P1 and Schedule T1 are to be filed 60 days after the close of the month.

a. Schedule G2: General Monthly Information
b. Schedule P1: PGA Gas Purchases
c. Schedule T1: PGA Totals
d. Schedule C1: Pipeline Cost
e. Schedule C2: Pipeline Cost Totals
f. Schedule R1: Pipeline Revenue
g. Schedule E2: System Operations
h. Schedule F3: Receipt and Delivery Point

The Commission is proposing to collect on a monthly basis data that is presently filed monthly (such as monthly storage information from Schedule E2: System Operations), annually on Form No. 2, or periodically in a rate filing under 18 CFR 154.63. The Commission is proposing to collect information on a monthly basis because it believes that monthly information is essential in order to develop a current data base.

The Commission considered, but is not proposing to require that the company compile monthly information and submit monthly information on an annual basis. The Commission intends that the information in the FERC Form No. 591 be used to monitor the pipelines' transportation and sales activities. The Commission plans to conduct ongoing analyses of pipeline capacity, review rate structures, current gas in storage and purchased gas adjustment filings. If the company were to submit monthly data filed annually, the Commission would be unable to perform these analyses and then react to the results, because the data would be stale.

The Commission believes that collecting the monthly information would not unduly burden the industry. Although it recognizes that requiring monthly filings of information will increase the burden on the natural gas industry, it believes the burden is necessary in order to meet its regulatory responsibility. Additionally, the Commission notes that most natural gas pipelines currently collect information for future filings on a monthly basis. Also the Commission does not believe that requiring the company to file monthly, rather than annually, constitutes a twelve-fold increase in burden. Since the company already maintains this information on a monthly basis, the additional burden would only involve submitting the information to the Commission every month as opposed to once a year. The Commission believes that once the initial program and system have been implemented to comply with FERC Form No. 591, the burden of submitting monthly information will be minimal. Therefore, the Commission believes that any increase in burden is outweighed by the benefit to the Commission, the public and every segment of the natural gas industry from the filing of timely and useful information.

a. *Schedule G2: General Monthly Information.* Schedule G2 provides basic information on the remaining schedules to be filed monthly, such as the name of the company filing the schedule and the month and year the schedule is being filed. Schedule G2 is similar to Schedules G1, G3 and G4, which provide basic information on the schedules to be filed initially and updated as needed, the schedules to be filed annually, and the schedules to be filed non-periodically. The Commission is proposing to collect the information on Schedule G2 and the remaining general information schedules in order to properly process the magnetic tapes submitted. Schedule G2 must be submitted whenever the schedules filed monthly are submitted.

b. *Schedule P1: PGA Gas Purchases.* Schedule P1 is a monthly report which collects information on the total actual gas purchased and prices paid on a monthly basis. Schedule P1 must be filed by natural gas pipelines who purchase natural gas which qualifies as a "first sale" of natural gas as that term is defined in section 2 of the Natural Gas Policy Act.[16]

The Commission is in the process of revising its purchased gas adjustment (PGA) regulations in Revisions to Purchased Gas Adjustment Regulations—Docket No. RM86-14-000. As part of those proposed regulations, the Commission is proposing to require the submission of the present FERC Form No. 542: Standard Form for Purchased Gas Adjustment Filings Submitted by Natural Gas Pipelines, on various schedules and on 9-track magnetic tape. The Commission is also proposing to require that Record (2) of Schedule A1 be submitted monthly. This conforms to the proposed revised PGA regulations, specifically the "affiliated entities" test described in proposed § 154.307. Schedule P1 will contain the same information proposed to be submitted on Schedule A1 Record (2): Monthly Actual Gas Purchases Record. Thus to the extent that Schedule P1 is filed, Schedule A1 Record (2) need not be. For companies which discontinue the filing of Schedule A1 Record (2), the data filed on Schedule P1 will be used for purposes of the "affiliated entities" test.

Schedule P1 contains the same information as presently collected in paper form on FERC Form No. 542 with the following exceptions.

1. Natural gas companies would be required to report whether the gas purchased was committed by April 20, 1977 or by November 8, 1978 or after. This is a new data item not previously required on FERC Form No. 542. The Commission is proposing to collect this information to determine whether the purchase price paid was appropriate under the classification and pricing structure established for natural gas in the Natural Gas Policy Act of 1978.

2. The Commission is proposing to ask whether or not the prices paid for purchased gas were the result of the negotiation provisions specified in § 270.201 of the Commission's regulations. These negotiations are between a purchaser and a producer and generally involve increasing the cost of old gas and lowering the cost of high-cost non-market responsive gas. These negotiations provisions were promulgated by Order No. 451.[17] These

[16] Subsection (21) of section 2 of the Natural Gas Policy Act states:

FIRST SALE.—

(A) GENERAL RULE.—The term "first sale" means any sale of any volume of natural gas—

(i) to any interstate pipeline or intrastate pipeline;

(ii) to any local distribution company;

(iii) to any person for use by such person;

(iv) which precedes any sale described in clauses (i), (ii), or (iii); and

(v) which precedes or follows any sale described in clauses (i), (ii), (iii) or (iv) and is defined by the Commission as a first sale in order to prevent circumvention of any maximum lawful price established under this Act.

(B) CERTAIN SALES NOT INCLUDED.—Clauses (i), (ii), (iii), or (iv) of subparagraph (A) shall not include the sale of any volume or natural gas by any interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof, unless such sale is attributable to volumes of natural gas produced by such interstate pipeline, intrastate pipeline, or local distribution company, or any affiliate thereof.

[17] Order No. 451, Ceiling Prices: Old Gas Pricing Structure, Docket No. RM86-3-000, 51 FR 22168.

Continued

provisions were not incorporated in the original version of FERC Form No. 542 which preceded Order No. 451. The Commission is proposing to request this information in order the monitor the impact of these Order No. 451 negotiations on prices.

3. The Commission is proposing to ask whether or not the gas was purchased on the spot market. The Commission currently allows purchases from spot suppliers to be estimated in the PGA only if the pipeline supports the gas cost projections with information. This information is in addition to that required on the present FERC Form No. 542.[18] The Commission is interested in identifying actual purchases from spot suppliers, for the same reasons as it is proposing to collect information on Order No. 451 negotiations, *i.e.*, to see the impact of such purchases on the pipeline's overall gas costs and to assess the company's purchasing practices. This data item was not previously requested because such purchases are relatively new to the gas industry.

4. The category "old rate" in the present FERC Form NO. 542 is to be broken down into (6) six categories:

1. Base Actual Rates
2. Actual Tax
3. Actual Order 94 Costs
4. Actual Out of Period Costs
5. Actual Gathering Costs
6. Actual Other Costs

The Commission is proposing this change because the Commission is proposing that its future emphasis in reviewing purchased gas costs will be on actual purchases rather than projected purchases by a pipeline. Because of this, the section on projected purchases has been narrowed.

5. The Commission is proposing to add a volume adjustment. This volume adjustment would separate actual volumes in a given month from adjustments to purchases in previous months reported in the current month.

c. *Schedule T1: PGA Totals.* On Record (1) PGA Contract, the Commission is proposing to collect monthly information on the quantity of gas purchased and prices paid, reported on Schedule P1, on an individual contract basis. On Record (2) Producer, the Commission is proposing to collect monthly information on the quantity of gas purchased and prices paid, reported on Schedule P1, for each producer from whom gas was purchased. These two records are being proposed for two reasons. First, to check whether the monthly information on PGA costs in Schedule P1 has been properly reported. Second, to tie the information on purchased gas contracts and producers with other portions of the FERC Form No. 591 such as the information on receipt and delivery points in Schedule F3 and the contract information in Schedule F2.

d. *Schedule C1: Pipeline Cost.* Schedule C1 consists of the following eight (8) individual records collecting information monthly on the following activities:

Record	Information
1. Gas Plant Investment.	Monthly balances of gas plant investment.
2. Other Rate Base Items.	Monthly balances of accumulated depreciation, working capital and deferred income taxes.
3. Operaton and Maintenance Expenses.	Monthly expenses of operation and maintenance accounts listed from Accounts 750 through 932, and Account 426.1 of the Uniform System of Accounts.
4. Income Tax Adjustments.	Monthly balances of adjustments to the total taxable portion of return and credits to the income taxes of the cost-of-service.
5. Other Taxes	Monthly balances of the taxes paid other than income taxes.
6. Miscellaneous Accounts.	Monthly balances of selected accounts including Other Property and Investment, Deferred Credits, Proprietary Capital, Long-Term Debt, etc.
7. Gross Payroll	Monthly total payroll and the distribution of salaries and wages to construction, operating expenses, etc.
8. Tax Reconciliation.	Updated reconciliation of net tax plant.

The Commission is proposing that Schedule C1 be filed by all major and nonmajor natural gas pipelines whose rates and charges are under the jurisdiction of the Commission. The purpose of this schedule and each of the record formats is to collect monthly the various information which are part of a rate filing of both major and nonmajor natural gas pipelines. For Records (1) through (5) and Record (7), the Commission is requiring that all account activity be identified by cost centers.[19] On this schedule the Commission is not requiring the submission of any data not presently collected. However, the Commission is requiring the data elements to be filed monthly rather than periodically in a rate filing.

Each of the data items on this schedule are collected either (1) annually on FERC Form No. 2 filed pursuant to 18 CFR 260.1 (1986) or (2) periodically in a rate filing pursuant to § 154.63 or § 154.38.[20] The Commission does not believe that the information in FERC Form No. 2 provides sufficient detail or is arranged in the proper form to substitute for the ongoing data base of rate information, to be used for rate analysis, proposed in Schedule C1. In addition, FERC Form No. 2 information is not submitted on magnetic tape.

The information in Schedule C1 is also collected periodically, on the following statements and schedules, filed pursuant to 18 CFR 154.63.

(a) Statement A—Overall cost of service and Schedule N9;

(b) Statement B—Overall rate base and return and Schedule N4;

(c) Statement C—Cost of Plant, Schedule C1 and Schedule N1;

(d) Statement D—Accumulated provisions for depreciation, depletion, amortization and abandonment and Schedule N2;

(e) Statement E—Working capital, Schedule E1 and Schedule N3;

(f) Statement H(1)—Operation and maintenance expenses and Schedules

FERC Stat. & Regs. at ¶30,701, reh'g granted in part, denied in part, and rule clarified by Order No. 451–A, 51 FR 46762 (Dec. 24, 1986), FERC Stats. & Regs. ¶30,720.

[18] *See* Mississippi River Transmission Corp., 35 FERC ¶61,152 at 61,365 (1986).

This information consists of the following:

(1) That the projected rate is the contractural rate in effect as of the effective date of the PGA filings;

(2) The terms 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 pipeline's 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.

[19] A cost center is the locality or name which identifies any activity performed by the pipeline for which costs can be directly identified in the pipeline's accounting system.

[20] The gross payroll is currently collected in total and its distribution is shown in total. Under the proposed data collection, the Commission is requiring natural gas pipelines to reflect the components of the gross payroll such as base pay and overtime and the distribution to construction, operation and maintenance.

H(1), H(1)–1(a)—Labor Costs, H(1)–1(b)—Materials and Other Charges (Excluding Purchased Gas Costs), Schedule H(1)–1(c)—Expenses and Associated Volumes Applicable to Accounts Nos. 810, 811 and 812, Schedules H(1)–3, H(1)–3a, H(1)–3b, H(1)–3c, H(1)–3d, H(1)–3e, H(1)–3f, H(1)–3g and Schedule N5;

(g) Statement H(2)—Depreciation, depletion, amortization and negative salvage expenses, Schedule H(2)–1, and Schedule N6.

(h) Statement H(3)—Income Taxes, Schedules H(3)–6, H(3)–7 and Schedule N7.

(i) Statement H(4)—Other taxes and Schedule N8.

(j) Statement L—Balance sheet.

(k) Statement M—Income statement.

In addition, the Commission presently submits detailed data requests in every rate case where the natural gas pipeline has included test period adjustments for these statements.

The Commission is proposing to require the submission of the data elements on Schedule C1 on a monthly basis in order to develop a sufficient data base to estimate a pipeline's cost-of-service at any particular time. The Commission is proposing this data base for a number of reasons. First, the Commission intends that this information would enable it to more closely monitor pipeline costs and evaluate the impact of changing costs on the natural gas market. Second, a reliable data base of cost and revenue information would enable the Commission to more easily evaluate rate change proposals. Third, such a data base would facilitate the Commission's evaluation of initial rates in certificate applications involving new construction, especially in applications for Optional Expedited Certificates under Order No. 436. If the certificate evaluation process were enhanced, the Commission can make better decisions on certificate applications and take action more quickly. Fourth, the Commission believes this ongoing data base will enable it to develop consistent policies on various ratemaking issues such as rate of return and representative volumes for rate design purposes. Finally, this data base will reduce the amount of data required to be filed with the Commission to request a change of rates under § 154.63 or to restate their base tariff rates under § 154.38. A natural gas pipeline company submitting Schedule C1 and later requesting a rate change, will be required to reference base period [21] information filed on Schedule C1. To that extent, the natural gas pipeline would only need to provide ajustments for the test period. Furthermore, natural gas pipelines supply detailed monthly information in response to staff's data requests. Much of this information can be provided through FERC Form No. 591 and thus natural gas pipelines would only need to provide support documentation for its adjustments. The Commission believes that this less burdensome rate filing requirement would enable pipelines to reflect changes in rates more easily, and thus make rates more market-responsive.

Nonmajor natural gas pipelines do not presently include detailed cost-of-service information annually on FERC Form No. 2–A or in a rate filing. However, the Commission is not proposing to exclude these companies from filing Schedule C1. The Commission is proposing Schedule C1 to generate a more current data base on the elements of a natural gas pipeline's cost-of-service. There are approximately 85 nonmajor natural gas companies subject to the Commission's jurisdiction. To exclude all of these companies from Schedule C1 would seriously jeopordize this data base. However, the Commission here, as elsewhere in the proposed FERC Form No. 591, will consider a request for waiver from filing this schedule by nonmajor natural gas companies.

e. *Schedule C2: Pipeline Cost Totals.* Schedule C2 is a monthly schedule consisting of four record formats. Each record format is a summary of the following four schedules submitted on Schedule C1: Pipeline Costs.

(1) Schedule C2 Record (1): Plant. This record is a summary of Schedule C1 Record (1): Gas Plant Investment.

(2) Schedule C2 Record (2): Operation and Maintenance. This record is a summary of Schedule C1 Record (3): Operation and Maintenance Expense.

(3) Schedule C2 Record (3): Tax. This record is a summary of Schedule C1 Record (5): Other Taxes.

(4) Schedule C2 Record (4): Balance Sheet, Income, Retained Earnings and Operating Revenue. This record is a summary of Schedule C1 Record (6): Miscellaneous Accounts.

The Commission is proposing to collect these four records for data processing purposes. The Commission intends to use these records to determine whether the information submitted in Schedule C1 has been properly reported. For this reason, the Commission is proposing that natural gas pipelines who file Schedule C1 will be required to file Schedule C2.

f. *Schedule R1: Pipeline Revenue.* The Commission is proposing that Schedule R1 be filed by all major and nonmajor interstate natural gas pipelines whose rates and charges are under the jurisdiction of the Commission. The data elements on this schedule propose to collect information monthly on the revenue items generated from activities other than the sale, storage and transportation of gas. These items are credited to a natural gas company's gross cost-of-service. The credit results in a calculation of net cost-of-service in a rate case. These revenue items have been assigned an account number under the Commission's Uniform System of Accounts. Each record collects information related to the following revenues included within each account number.

Record	Name of record	Account record relates to	Data collected
(1)	Process Plant	Account 490; Account 491	Information on the plant where products are extracted from gas.
(2)	Products Extracted	Account 490; Account 491	Revenues generated from the sales of products extracted from natural gas at a processing plant owned by the natural gas company and at processing plants owned by others.
(3)	Incidental Sales	Account 492	Revenues generated from gasoline and oil sales.

[21] Section 154.63(e) defines the base period as twelve consecutive months of most recently available actual expenditures. The last day of the twelve months must not occur more than four months prior to the date of filing of the proposed changes in rates and charges.

Record	Name of record	Account record relates to	Data collected
(4)	Rents	Account 493; Account 494	Rents received for the use by others of land, buildings, and other property devoted to gas operations by the utility and credits for rental charges made against other departments of the utility.
(5)	Liquids and Liquefiables	Account 495	That portion of Account 495—Other Gas Revenues generated from the transportation of liquid and liquefiable hydrocarbons.
(6)	Other Gas Revenues	Account 495	Other revenues derived from gas operations and not discussed in Record 5.

The Commission is proposing to collect the data items on this schedule to use in conjunction with Schedule C1: Pipeline Cost. Schedule C1 collects information on a natural gas pipeline's cost-of-service. The revenue items to be credited to that pipeline's cost-of-service are necessary to complete the Commission's development of an automated data base on current cost-of-service information.

Each of the data items on this schedule, with six exceptions, are collected presently either annually on FERC Form No. 2—Annual Report of Natural Gas Companies; [22] periodically on Statement G or staff requests in a rate case; [23] or are required to be maintained, but not filed, by the natural gas company pursuant to Part 201 of the Commission's regulations.

The Commission is proposing to collect the following data items on this schedule, which are not collected as part of the Form No. 2, Statement G, or required to be maintained under Part 201 of the Commission's regulations. On Record (1), the Commission is proposing to collect information on the fuel used at the processing plant, where products are extracted from natural gas. This data item is used along with other information to determine the amount of products likely to be extracted from natural gas at that processing facility during a particular time period. The Commission is proposing to collect this data item because it is necessary in order to review the amount of revenues claimed as a credit from the pipeline's cost-of-service in Account Nos. 490 and 491.

Each of the data items proposed to be collected on Record (3) are requested in a rate case where incidental gasoline and oil sales are claimed as a credit to cost-of-service. The Commission is proposing to collect these data items to determine the validity of the amount claimed for such credits on this schedule.

On Record (4): Rents, the Commission is proposing to collect two data items, "Type of Rent" and "Basis of Revenue," which are requested routinely in rate cases where Account No. 493: Rent from gas property and Account No. 494: Interdepartmental rents are claimed as a credit from cost-of-service. The Commission is proposing to collect these data items to determine the validity of the amount claimed for such credits on this schedule.

On Record (5), Liquids and Liquefiables, the Commssion is proposing to collect information on the American Petroleum Institute well number and whether the well was connected before or after January 1, 1982. The Commission is proposing to collect this information to determine whether the Account No. 495 revenue credit for the transportation of liquids and liquefiable hydrocarbons conforms to current Commission policy.[24]

The Commission notes that the 85 nonmajor natural gas companies presently do not file data on cost-of-service revenue credits on FERC Form No. 2–A. However, the Commission proposes to collect this information from these natural gas pipelines. The Commission believes that the rationale for collecting cost-of-service information in Schedule C1 from major natural gas pipelines, *i.e.*, to develop an automated data base of current information on the cost-of-service of all natural gas pipelines, equally applies to nonmajor pipelines.

Finally, as discussed in Schedule C1, the Commission is proposing that, when a natural gas pipeline submits Schedule R1 and later requests a rate change, the base period information required for the rate change must be generated from data filed on Schedule R1. To that extent, only adjustments must be provided for the test period.

g. *Schedule E2: System Operations—(1) Schedule E2 Record (1): Compressor Station.* This record collects monthly information on the total flow of natural gas through each compressor station along a natural gas pipeline system. This record collects information in more detail than presently collected annually on the Format No. FERC 567: Annual System Flow Diagram, described in § 260.8 of the Commission's regulations.

The Commission is proposing the submission of this data to use in conjunction with the proposed engineering data on a pipeline's system contained in Schedule E1: Physical Engineering. For this reason, this record must be filed by major and nonmajor natural gas pipelines and storage companies under the jurisdiction of the Commission.

The combination of the information on Schedule E1 and the information on Schedule E2 Record (1) will enable the Commission to assess monthly utilization of a pipeline's system capacity.

(2) Schedule E2 Record (2): Storage Field/Reservoir—by Operator Respondent; Schedule E2 Record (3): Storage Field/Reservoir—by Non-Operator Respondent. These two records collect monthly information on the total amount of gas stored in jurisdictional underground facilities. The Commission is proposing that Record (2) be filed by an operator of a storage facility, whether or not the operator is an interstate natural gas pipeline. Record (2) provides the Commission with the amount of gas stored that is owned by the operator of the facility and by others. Record (3) is filed by persons with gas in storage who do not operate the storage facility. On both Record (2) and Record (3), the Commission proposed to collect storage information on each storage field where such gas is located. The Commission presently collects similar information on most of FERC Form No. 8, Underground

[22] Form No. 2, on page 300, collects information on the total amount of these revenues for the year and the total amount collected for the previous year. Form No. 2, on page 315, asks for additional detail on Account 490: Sales of products extracted from natural gas and Account 491: Revenues from natural gas processed by others. Form 2–A—Annual Report for Nonmajor Natural Gas Companies does not collect this data.

[23] 18 CFR 154.63 (1986).

[24] *See* Truckline Gas Co., 23 FERC ¶ 61,137 (1983).

Gas Storage Report.[25] This report is filed monthly by natural gas companies, which operate an underground natural gas storage field located in the United States. The Commission considered but rejected requiring monthly storage information to be filed on an annual basis. The Commission rejected this because monthly storage information, filed monthly, is essential if the Commission is to provide the public and the natural gas industry with timely information on gas supplies for storage. However, these two records differ from FERC Form No. 8 in the following areas.

Records (2) and (3) break down the amount of gas in storage by individual storage facilities. FERC Form No. 8 collects information only on the total amount of gas in storage. The Commission is proposing to expand the information collected on FERC Form No. 8 in order to develop, on an ongoing basis, better estimates of the capacity of a natural gas pipeline. One of the aspects of the total capacity of an individual pipeline is the amount of gas that can be stored near the pipeline facility. If the Commission acquires information on the amount of gas stored in each individual storage facility, it can better determine a pipeline's capacity.

Additionally, Records (2) and (3) propose to collect information on the pressure of gas in storage. Although, this information is not currently collected on FERC Form No. 8, the Commission believes that this information is necessary to evaluate how much gas is actually in the storage facility and to calculate how much gas can be taken from storage.

(3) Neither Record (2) nor Record (3) proposed to collect information on the reservoirs in a development stage on a monthly basis, even though this information is presently collected on FERC Form No. 8. The Commission is proposing to eliminate this requirement because it can be generated from data collected on individual storage facilities.

(4) Neither Record (2) nor Record (3) propose to collect information on the gas balance as of November 1 as is presently collected on FERC Form No. 8. The Commission is proposing to eliminate this requirement because both records require that information be provided on the gas balance as of the end of each month.

(5) Neither Record (2) nor Record (3) propose to collect the total base gas [26] in storage, the base gas owned by the company that operates a storage facility, and the base gas owned by persons other than the company that operates the storage facility. This information is presently collected on FERC Form No. 8. However, the Commission is proposing to delete this information collection requirement because this information can be calculated by subtracting the top gas in storage from the total gas [27] in storage.

(6) The Commission is also proposing to eliminate the requirement that the company report the name and phone number of the person to contact, as required by FERC Form No. 8. This information can be generated from Schedule G2: General Monthly Information. Therefore, the Commission is proposing to eliminate the FERC Form No. 8 once it implements FERC Form No. 591.

(7) FERC Form No. 8 is filed within 10 days after the end of the month. These two records would be filed, like other monthly schedules and records in FERC Form No. 591, within 45 days after the close of the month.

(8) Finally, neither Schedule E2 Record (2) or (3) or Schedule E1: Physical Engineering proposes to collect two items from FERC Form No. 8. These items include the percent of gas owned by operators and the co-owners of a storage field. The Commission is proposing to delete the items because neither is necessary to calculate pipeline capacity, the rationale for collecting information on Schedule E1, and the Commission does not consider such information essential storage field information.

h. *Schedule F3: Receipt and Delivery Point.* The Commission is proposing Schedule F3 to collect monthly information on the total volumes, the rates charged and the revenue generated, at each receipt and delivery point on the pipeline's system. The Commission is proposing to collect this information for each contractual and noncontractual transaction. This schedule consists of five records. Record (1) requires the reporting of general information on the receipt or delivery point, and noncontractual volume information. It also collects total volume throughput on a monthly basis at each receipt or delivery point.[28] Records (2) and (3) collect total volumes moving through each receipt and delivery point as a result of a contract. The Commission is proposing that Schedule F3 be filed by all major and nonmajor interstate natural gas pipelines and storage companies under the jurisdiction of the Commission.

Each of the data items on Record (1), with two exceptions, are currently being collected on an annual basis in Form No. 2.[29] The data items "Total Volume" and "Peak Day Volume," are currently collected on an annual basis in the Annual Flow Diagram, Format No. FERC 567.[30]

The Commission is proposing to collect the information in Schedule F3 on a monthly, rather than annual basis, for two reasons. First, monthly data would allow the Commission to compute pipeline capacity utilization, both along the entire pipeline and in isolated segments, at specific times during the year. The Commission would compare these estimates of capacity utilization with the design capacity computed using the data gathered by Schedule E1: Physical Engineering and Schedule E2 Record (1): Compressor Station of the FERC Form No. 591.

The Commission is proposing to collect the information to determine whether firm pipeline capacity may be available on segments of an interstate pipeline system, that is being overlooked. Such capacity may be overlooked because actual flowing capacity may not match steady-state design day capacity, which is the frequent benchmark used by natural gas pipelines for contracting capacity. By comparing data collected in Schedule F3 with data collected in Schedule E1 and Schedule E2 Record (1), the Commission will be able to identify underutilized and unrecognized firm capacity.

Second, monthly data will enable the Commission to detect seasonal trends related to capacity utilization and thus measure the economic efficiency of the rate design in place. The monthly volume and contractual volume data in Record (1) will be used in conjunction with the monthly cost data collected in Schedule C1: Pipeline Cost of FERC Form No. 591. These data items will be used to determine whether the rate objectives promulgated in Order No. 436 are being met. Section 284.7(c) of the

[25] The Commission is proposing to incorporate into Schedule E1: Physical Engineering information on the name of the storage reservoir and the amount of native gas, *i.e.*, the amount of gas originally in place in a particular underground storage as opposed to injected gas.

[26] Base gas is the gas needed in a reservoir, used for storage of natural gas, so the reservoir pressure will be sufficient for the storage gas to be recovered.

[27] Top gas is gas stored for varying periods of time in underground gas storage reservoirs before it is transported and delivered to customers.

[28] Total throughput includes noncontractual volumes and volumes that move through the point as a consequence of a contract between the natural gas pipeline and another party.

[29] *See* the section in Form No. 2 on Gas Accounts, pages 520 and 521.

[30] 18 CFR 260.8 (1986).

Commission's regulations states that maximum rates for both peak and off-peak periods must be designed to achieve the following three objectives:

(1) Rates for service during peak periods should ration capacity.

(2) Rates for firm service during off-peak periods and for interruptible service during all periods should maximize throughput; and

(3) The Pipeline's revenue requirement allocated to firm and interruptible services should be attained by providing the projected units of service in peak and off-peak periods at the maximum rate for each service.

The data in Schedule F3 will provide the Commission with the necessary volume information to determine whether these rate objectives are being met. The volume data is required on an individual receipt and delivery point basis, because capacity utilization is governed by individual inputs to and outputs from the pipeline system.

The Commission is proposing to require the information in Record (2) and Record (3) in order to collect volume information as a result of a contract. This is similar to the information collected by Record (1) of Schedule F3. Records (2) and (3) volume data is currently collected annually in FERC Form No. 2 and rate change applications. Similar data is also collected on that portion of FERC Form No. 16: Report of Gas Supply and Requirements contained in Schedules I: Summary of Actual Supply, Requirements and Net Deficiency or Surplus, Schedule II: Actual Sources of Supply Adjusted for Losses, Schedule III: Actual Storage Operations and Schedule IV: Actual Deliveries, Requirements and Net Deficiency or Surplus by Customer.[31]

As mentioned above, the Commission is proposing to require contract volume information on Records (2) and (3) in order to determine capacity utilization. In addition, contractual volume data in these two records will be used to develop distance based rate studies. These studies are used for the allocation of transmission costs in rate proceedings. Currently, the Commission's in-house data are insufficient to develop these studies properly. The Commission believes that in determining whether the rates requested under section 4 of the Natural Gas Act are "just and reasonable," the Commission must develop its own allocation factors and present its own alternatives based on historic data. Furthermore, Order No. 436 and § 284.7 of the Commission's regulations mandate rates differentiated by distance when a material cost differential exists. The contractual volume data on Records (2) and (3) will enable the Commission to closely examine the miles of haul attached to individual contracts and rates. This data will be used in conjunction with data in Schedule C1.

Although not currently collected by the Commission, the Commission is proposing in Record (2) to collect information on gas volumes retained as fuel. This information is not currently collected by the Commission. The Commission is proposing to collect this information because pipelines that have opted for the open access provisions of Order No. 436, as well as other pipelines, are filing rate schedules that call for fuel retention. The Commission notes that pipelines include fuel retention, expressed as a percentage of the volume transported, without variation based on mileage, rather than a fuel charge in the transportation rate. Therefore, the Commission believes that collecting volume data related to fuel will enable it to measure the accuracy of the fuel retention percentages reported in the pipeline's rate schedules.

The Commission is also proposing to collect in Record (2) data on revenue earned under each contract at each delivery point and costs billed at each delivery point where the natural gas pipeline receives a service. Currently, these types of data are collected in varying degrees in FERC Form No. 2 and rate change applications filed under § 154.63 of the Commission's regulations. For example, the data item "Amount Paid" in Record (2) is essentially the same information required to be filed in Schedule G of the rate change application. This item is also similar to information in Statement I–4 in a rate change application, when a pipeline reports the amounts paid to persons who transport or compress gas for the pipeline.

The Commission is proposing to collect this information at each receipt and delivery point to identify any differences in the revenue requirements for different services at the same point. With this information, the pipeline's customers would be able to evaluate the pipeline's decision to either buy gas from the pipeline or to only transport gas purchased directly from a producer. The Commission believes this is important to aid a sales customer in making conversion rights decisions afforded by § 284.10 of the Commission's regulations.

In Record (2), the Commission is proposing to collect discount rate information under a contract by receipt and delivery point. The Commission believes that this information would enable it to monitor the discount rate activities of a pipeline.

Presently, a pipeline's tariff rates do not reflect the discount rates charged for open access transportation. However, an Order No. 436 open access pipeline must file a report each month describing reduced rates or reservation fees charged under § 284.7(d)(5)(iv). This report requires the pipeline to provide the maximum fee actually charged during the billing period, lthe identity of the shipper, and any corporate affiliation between the shipper and transport pipeline. However, the Commission is proposing to collect discount rate information in Record (2) in more detail. The Commission believes that this level of detail is necessary in order to enable it to evaluate the discount rates at different delivery points.

On Record (3) the Commission is proposing to collect volumes at each receipt point from gas purchase agreements with producer suppliers. This information is required to determine pipeline capacity utilization.

Record (4): System Level Gas Received and Record (5): System Level Gas Delivered provide a monthly summary of data submitted on Schedule F3. Record (4) provides a monthly summary of receipts of natural gas. Record (5) provides a monthly summary of deliveries of natural gas.

Each of the data items on these two records are presently collected either on Form Nos. 2 or 2–A—Annual Report Major or Nonmajor Natural Gas Companies, or on Form No. 11—Natural Gas Pipeline Company Monthly Statement. The Commission is proposing these two records to determine whether the detailed data reported in Schedule F3 are accurately reported.

To the extent that information required in a rate filing has been provided in this schedule, only adjustments for the test period will need to be filed. In addition, the Commission is proposing to eliminate two items

[31] The remaining portion of FERC Form No. 16 is being incorporated into Schedule F2: Contract.

incorporated into Schedule F3, *i.e.*, the report on the discount rates provided during a billing period in § 284.7(d)(5)(iv) of the Commission's regulations and FERC Form No. 16, once it implements FERC Form No. 591.

4. Schedules Submitted Annually

a. The Commission is proposing that the following schedules be submitted annually. Schedule S1 would be submitted on April 1 of each year. Schedule F4 would be submitted on June 15th of each year. Schedule G3 must be submitted whenever the annual schedules are submitted.

(1) Schedule G3: General Annual Information
(2) Schedule S1: Gas Supply
(3) Schedule F4: Coincidental 3-Day Peak

b. *Schedule G3: General Annual Information.* Schedule G3 provides basic information on the schedules to be filed on an annual basis, such as the name of the company filing the schedule and the month and year the schedule is being filed. Schedule G3 is similar to Schedules G1, G2 and G4, which provide basic information on the schedules to be filed initially and updated as needed, the schedules to be filed initially and updated as needed, the schedules to be filed monthly and the schedules to be filed non-periodically. The Commission is proposing Schedule G3 and the other general information schedules in order to properly process the magnetic tapes submitted. Schedule G3 must be submitted whenever any of the annual schedules are submitted.

c. *Schedule S1: Gas Supply.* Schedule S1 will collect information annually on the total gas supply of each pipeline subject to the Commission's jurisdiction. Interstate pipelines which act only as a transporter of natural gas for another company will not file Schedule S1. These pipelines will continue to file the statement in § 260.7a. The Commission proposes to collect the same informationon Schedule S1, with certain exceptions, as is presently collected annually on FERC Form No. 15; Interstate Pipelines Annual Report of Gas Supply. The general purpose of Schedule S1 is the same as the present FERC Form No. 15, *i.e.*, to use as evidence in pipeline certificate and rate applications and to assist the Commission on matters of policy, such as abandonment.

The Commission proposes to collect the following new data items on Schedule S1.

(1) Estimated volume of remaining sellable supply dedicated to interstate pipelines under the Natural Gas Act at the end of the report period. This volume is defined as the gas which is dedicated to interstate pipeline and subject to abandonment under section 7(b) of the Natural Gas Act.

(2) Estimated volume of remaining sellable gas supply committed to interstate pipeline not subject to section 7(b) of the Natural Gas Act. This volume of gas is defined as gas which is committed to interstate pipelines but not subject to section 7(b) of the Natural Gas Act and is therefore not subject to the abandonment process.

Presently on FERC Form No. 15, the Commission collects the total of these two data items. However, the Commission is proposing to collect these two data items separately in keeping with its recent notice of proposed rulemaking on requests by a pipeline to abandon purchases.[32] The Commission intends to use this information to review the amount of gas supply committed and dedicated to interstate commerce under the Natural Gas Act. With this additional information, the Commission would be able to monitor the effect of its abandonment policy on the gas supply. Specifically, it could evaluate the amount of gas supply dedicated to interstate commerce under the Natural Gas Act.

Also on Schedule S1, the Commission is proposing to collect one additional data item, not presently collected on FERC Form No. 15. The Commission is proposing to collect the percentage of total gas reserves that a pipeline has under contract with a producer or producers in an offshore gas field compared to the total reserves in that field. Presently FERC Form No. 15 collects only the total gas reserves in a particular gas field.

The Commission is proposing to collect this information because it routinely requests this data in every rate case that involves offshore gas supplies. The Commission uses this information to calculate the depreciation component of a pipeline's cost-of-service. Specifically, it needs this information to determine the remaining life of the pipeline facilities that move gas, and to determine the accrual value of net salvage costs.[33]

The Commission is proposing not to collect certain information presently collected on FERC Form No. 15. First, the Commission is proposing not to collect any projections of gas supplies, either on an annual or field-by-field basis. Given the rapid change in the current interstate natural gas market, such projections of gas supplies are not very accurate and should only be acquired on a case-by-case basis, as needed. The Commission did consider collecting project data on the maximum daily production from a gas field for each year for a five-year period. This information is presently not collected on FERC Form No. 15. The Commission considered collecting this information because it is routinely requested in rate cases. It is used for three purposes. First, this information is necessary to determine unit-of-production depreciation rates for a particular company. Second, this information can be used to establish the throughput for companies and systems that have direct access to field purchases. Third, this information is used in studies calculating the gas supply status of a particular producing area. These studies are used in depreciation rate determinations. The Commission is not proposing to collect this information in this NOPR because it believes that the burden on natural gas companies of supplying projected data outweighs the benefits derived from collecting this information.

Second, the Commission is proposing to eliminate "Disclosure of Other Gas Supply Filings with Federal Agencies." These disclosures are primarily gas supply filings submitted to the Securities and Exchange Commission (SEC). The Commission is proposing to delete this item because it no longer uses this information. Third, the Commission is proposing to delete the total volume of company-owned recoverable gas in underground storage facilities at the end of the report period. It can acquire this information from storage field information in Schedule E2 Record (2), and Schedule E2 Record (3).

The Commission is proposing to eliminate FERC Form No. 15 once it implements FERC Form No. 591.

d. *Schedule F4: Coincidental 3-Day Peak.* The Commission is proposing to collect data on the total deliveries by a natural gas pipeline to each party under a contract during the highest three consecutive days of peak operating capacity of the natural gas pipeline, on an annual basis. The Commission is proposing that Schedule F4 be filed by all major and nonmajor interstate natural gas pipelines whose rates and charges are under the jurisdiction of the Commission.

The Commission currently collects similar information on FERC Form No.

[32] *See* Notice of Proposed Rulemaking in Docket No. RM87-16-000, Abandonment of Sales and Purchases of Natural Gas Under Expired Contracts, issued May 7, 1987.

[33] Net salvage cost is the cost to remove offshore facilities.

2,[34] Annual Report of Major Natural Gas Companies.[35]

Similarly, Schedule I–6 of a rate change filing under § 154.63 groups deliveries to jurisdictional and nonjurisdictional customers on the three continuous days of maximum transmission system deliveries during the winter heating season. The information presently collected on Schedule I–6 is used to allocate costs between jurisdictions and pipeline rate zones.

In Schedule F4, the Commission is proposing to collect information on the total deliveries to each party under a contract during the three-day peak period. The information proposed will be used in conjunction with other schedules of FERC Form No. 591, specifically Schedule F3: Receipt and Delivery Point. Deliveries to customers during a three-day peak period, with the receipt and delivery point information in Schedule F3, will allow the Commission to generally determine the use of pipeline capacity during the peak period. This can be done by comparing receipt and delivery point information on Schedule F3 for a particular customer with the customer's deliveries during the system peak. The Commission uses deliveries during the three-day peak to allocate demand costs between jurisdictions and among zones.

Although nonmajor natural gas companies currently do not file data on three-day peak system deliveries by customers on Form No. 2–A, the Commission is proposing to require that these companies file this information on Schedule F4. The Commission believes that the same rationale for requiring major natural gas companies to file this information applies to nonmajor pipelines.

Persons filing Schedule F4 will be required to file that portion of Schedule I–6 in a rate filing that contains any claimed adjustments for the test period. This is the same approach the Commission is proposing when monthly information, required in a rate filing, has been filed in Schedule C1: Pipeline Cost.

5. Schedules Submitted Nonperiodically

a. *Schedule G4: General Nonperiodic Information.* Schedule G4 is the basic information schedule concerning Schedule N1: Nonperiodic Filings, such as the name of a company filing N1 and the month and year the schedule is being filed, that must accompany any filing of Schedule N1.

b. *Schedule N1: Nonperiodic Filings.* The Commission is proposing that a natural gas pipeline company use Schedule N1 to file rate changes described in § 154.63 of the Commission's regulations; proposed changes in the pipelines' tariff on file with the Commission, rate restatements required under § 154.38 of the Commission's regulations and certificate applications under Part 157 of the Commission's regulations. The Commission is proposing to require that these filings be submitted on magnetic tape to reduce the amount of paper required to be filed with a rate filing and certificate application.

Schedule N1 is divided into four records. Record (1) is the Cross Reference Record. This record is to be used to reference data required in a rate filing or certificate application previously filed at the Commission. Record (2) is the Proposed Data record. This record would be used to file new data items, such as adjustments for the test period in a rate filing, not already on file at the Commission. Record (3) is the Proposed Text Record. This record would be used to describe the nature of the filing and to detail the positions, issues, and other pertinent matters essential for a complete filing. Record (4) is the Footnotes Record. This record is to footnote data previously filed with the Commission, which the pipeline proposes to use in its filing.

The Commission is proposing that all material required to be filed in a rate filing or certificate application would be filed on magnetic tape, except for maps or other diagrams required under Part 157. For map or diagrams, which are not appropriate for filing on magnetic tape, the Commission is proposing that the pipeline file one paper copy of the map diagram and on the magnetic tape file either information sufficient to enable the Commission to construct a map or diagram or statement that explains why the information cannot be provided on the magnetic tape.

As with all filings on FERC No. 591, the Commission is proposing that one paper copy be provided with each certificate application or rate filing submitted on magnetic tape. However, unlike other schedules and records of FERC Form No. 591, Schedule N1 does not have a specific format to submit information on magnetic tape. At the present time, the Commission does not believe that the data in a certificate application or rate filing, *i.e.*, proposals, etc.; can be supplied in this fashion. However, the Commission is continuing to review this matter and, in the final rule, a specific format for Schedule N1 may be developed.

6. Miscellaneous Provisions

a. The Commission is proposing to eliminate four forms and reports once it implements FERC Form No. 591.

(1) FERC Form No. 11: Natural Gas Pipeline Company Monthly Statement

FERC Form No. 11 is currently filed monthly by major natural gas pipelines, subject to Commission jurisdiction, whose combined gas sales for resale and whose gas transported or stored for a fee are in excess of 50 MMcf. FERC Form No. 11 provides data on revenues, income, expenses, and gas volumes by companies filing the form. The form collects specific information on (1) end-of-month sales of natural gas to customers, (2) income, (3) operation and maintenance expenses, (4) rates, and (5) gas supplies and production by type. The Commission is proposing to eliminate this form because it would duplicate the data collected through FERC Form No. 591.[36]

(2) FERC Form No. 14 — Annual Report for Importers and Exporters

The FERC Form No. 14 is an annual report to collect monthly information on the import and export of natural gas by persons who have received authorization under section 3 of the Natural Gas Act to import or export natural gas.

The Commission is proposing to eliminate this form from Part 260 of its regulations, because it no longer authorizes the import or export of natural gas.[37] FERC Form No. 14 was

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[34] Form No. 2–A—Annual Report of Nonmajor Natural Gas Companies does not request information on peak system deliveries.

[35] Specifically, Form No. 2 collects information on three-day peak deliveries in three places. First, Form No. 2 collects information on the total deliveries to customers subject to FERC rate schedules or non-jurisdictional customers during each day of the three consecutive peak day period. *See* page 518 of Form 2. In addition field and mainline sales of natural gas, *see* pages 306 through 309 of Form 2, and sales for resale of natural gas, *see* pages 310 and 311 of Form 2, are broken down by peak day deliveries to customers on a coincidental (Coincidental is the volume of gas delivered by the pipeline to the customer on the peak day of the pipeline.), and noncoincidental (Non-coincidental is the volume the customer took on the day the customer took the most gas for resale.) basis. The information on sales for resale of natural gas only collects information by customers if the pipeline bills its customer on non-conjunctive basis, *i.e.*, a separate bill is sent to each customer for each delivery point.

[36] The following schedules of FERC Form No. 591 would collect the same information provided on FERC Form No. 11: Schedule F1: Tariff; Schedule F2: Contract; Schedule F3: Receipt and Delivery Point; Schedule C1: Pipeline Cost; Schedule C2: Pipeline Cost Totals; Schedule P1: PGA Gas Purchases; Schedule R1: Pipeline Revenue.

[37] Prior to 1977, jurisdiction to regulate natural gas imports and exports under section 3 of the Natural Gas Act was vested in the Commission's predecessor, the Federal Power Commission. In

Continued

adopted when the Commission had such authority.[38] However, the Commission notes that it has authority to approve or disapprove the operation of particular facilities incident in the importation of natural gas. Therefore, while it is proposing to eliminate FERC Form No. 14, it is requiring the reporting of transactions involving imports and exports at each receipt and delivery and the docket number authorizing such imports and exports, incorporated in Schedule F3: Receipt and Delivery Point.

(3) FERC Form No. 16 — Report of Gas Supply and Requirements

FERC Form No. 16 collects information semi-annually from natural gas pipelines on their actual and projected supply and on their requirements for making sales for resale in interstate commerce. The Commission is proposing to eliminate this form because actual data collected on FERC Form No. 16 has been incorporated into Schedule F2: Contract and Schedule F3: Receipt and Delivery Point; and because the projected data on FERC Form No. 16 is inadequate and inappropriate in light of the current gas market.

The Form No. 16 is also used to determine how projected sales and transportation volumes used to design rates in a rate case compare to those filed on FERC Form No. 16. However, the Commission believes that the comparison of data in a rate case, with data filed in FERC Form No. 16, is insufficient to justify continuing to collect this information because the projections are likely to be inaccurate in the current natural gas market.

(4) Section 284.12 Filing of capacity

The report on capacity is filed annually by an interstate pipeline subject to Subpart A of Part 284 of the Commission's regulations. This report shows the estimated peak day capacity on the pipeline's system under reasonable representative operating assumptions, and the respective assignments of that capacity to the various firm services provided by the pipeline. The Commission is proposing to eliminate this report because it duplicates information proposed to be collected by Schedule E1: Physical Engineering, Schedule E2 Record (1): Compressor Station, Schedule F3: Receipt and Delivery Point and Schedule F4: Coincidental 3-Day Peak.

b. FERC Form Nos. 2 and 2–A — Annual Report of Major and Nonmajor Natural Gas Companies. The Commission is not proposing to eliminate FERC Form No. 2 — Annual Report of Major Natural Gas Companies and FERC Form No. 2–A—Annual Report of Non-major Natural Gas Companies. The Commission recognized that some of the information proposed to be collected in FERC Form No. 591 may duplicate the information collected by FERC Form Nos. 2 and 2–A. However, the Form Nos. 2 and 2–A are annual reports that contain complete financial statements, support schedules and operational information. Furthermore, the Form Nos. 2 and 2–A require that certain financial information be attested to by an independent certified public accountant (CPA) [39] as conforming to the Commission's Uniform System of Accounts. FERC Form No. 591 has no such requirement.

Also, the Commission recognizes that the Form Nos. 2 and 2–A are used by the general public, state commissions, and by the Commission for its compliance and enforcement functions.

7. Procedures

(a) Submittal of Schedules

Each schedule and record contained therein must be submitted on 9-track magnetic computer tape in the time frame prescribed by this rule. The magnetic tape must conform in all respects to the requirements of the Federal Information Processing Standards publication, FIPS Pub 79, "Magnetic Tape Tables and File Structure and Information Interchange." Level three labeling standards described in FIPS Pub 79 should be utilized for file formats, tape labels and record formats. The Commission is proposing these specifications so that the tapes submitted are standard in both content and format. Each tape must be accompanied by one paper copy of the data submitted on magnetic tape. The format of the paper copy to be submitted is discussed in Exhibit I of the instructions to FERC Form No. 591.

The magnetic tape and paper copy must also be accompanied by a cover letter with information on the file name, file attribute and recording density of the tape submitted. In addition, all filings with the Commission require the subscription and attestation prescribed in § 385.2005 of the Commission's regulations. The Commission is proposing that on the cover letter, natural gas pipelines attest that the information on the paper printout is the same as the information on the magnetic tape and that the signer knows the contents of the paper copy and magnetic tape and the contents as stated are true to the best knowledge and belief of the signer.

The Commission is proposing to copy the tape onto its computer system and return the tape to the natural gas pipeline within 30 days of its receipt.

(b) Revisions and Updates.

Schedule E1: Physical Engineering, Schedule F1: Tariff and Schedule F2: Contract provide for the initial filing of the information contained therein and updates as changes occur from the original or any subsequent submission of the information provided, such as a change in the physical structure of the pipeline or changes in tariffs or contract activity. FERC Form No. 591 also contemplates that data previously submitted would need to be revised as a result of other factors such as Commission orders, court rulings, accounting changes, errors, omissions or data processing errors. When a schedule or record requires revision, the applicable general information schedule must be submitted along with the entire schedule or record being revised.

(c) Waiver

The Commission realizes that some interstate pipelines do not possess and would not be able to acquire the computer capability necessary to meet the filing requirements proposed in this NOPR. Similarly, those pipelines that do have the computer capability necessary to make the filing proposed in the NOPR, may not have all the information that is sought and acquiring the information may require an unreasonable effort on the part of the interstate pipeline depending on the information sought and the size of the pipeline involved.

For these reasons, the Commission is proposing two waiver provisions. The first waiver provision would permit a pipeline to petition for a waiver of the requirement to file the information required under Part 260 on 9-track computer tape. Under this proposed provision, if a pipeline can demonstrate that it does not possess and is unable to

1977, Congress vested exclusive jurisdiction to decide import and export issues arising under section 3 in the Secretary of Energy. The Secretary thereafter delegated and divided his section 3 authority between the Administrator of ERA and the FERC pursuant to a series of delegation orders which culminated in Delegation Order Nos. 0204–111 and 0204–112 (49 FR 6684, February 22, 1984). Pursuant to those orders, the Administrator of the Department of Energy's Economic Regulatory Administration has exclusive jurisdiction under section 3 to authorize imports and exports of gas. The Commission has jurisdiction under section 3 to approve or disapprove the operation of particular facilities incident to the importation of natural gas.

[38] See Order 471, Import and Export of Natural Gas—Annual Report FPC Form No. 14, Docket No. R–457, 38 FR 4248 (February 12, 1973).

[39] This requirement was not applicable to natural gas pipelines classified as Class C or D prior to January 1, 1984.

reasonably acquire the computer capability necessary, the Commission would grant this pipeline a waiver from the requirement of filing the information on 9-track computer tape(s). However, this pipeline would still be required to file the information in either an alternate computerized medium or on paper in a format that the Commission will describe in the final rule. In addition, this waiver would be limited to a one-year period. At the close of this period, the pipeline would have to request a continuance of the waiver by demonstrating that it continues to lack computer capability.

The second waiver provision would permit a pipeline to petition for a waiver of the requirement to file a particular record or part of a particular record. Under this provision, if a pipeline can demonstrate that the information sought is not available and is not obtainable without an unreasonable effort on the part of the pipeline, the Commission would grant this pipeline a waiver from the requirement of filing the information in issue.

(d) Public Access and Document Retention

(1) *Public Access.* The Freedom of Information Act [40] requires the Commission, as a federal agency, to make public records available unless the information contained therein is exempt from disclosure under the nine exemptions provided in the Act.[41] Part 3 and Part 388 of the Commission's regulations govern the Commission's release of information under the Freedom of Information Act. The individual schedules and records of FERC Form No. 591 are public records within the meaning contained in the Freedom of Information Act.[42] The Commission will make information submitted in FERC Form No. 591 available to the public in conformance with the Commission's regulations.

(2) *Document Retention.* Presently, the Commission's regulations in Part 225 prescribe rules for the preservation of records of natural gas companies. The retention period of each record is based upon the document being retained, such as the present FERC Form No. 8, Underground Gas Storage Report. In this NOPR, the Commission is combining data items from various documents that are presently collected and retained. For this reason, and as part of the implementation of FERC Form No. 591, the Commission will review the information on each schedule and determine an appropriate retention schedule for the information on that schedule.

8. Public Comments Procedures

(a) Written Comments

The Commission invites interested persons to submit written comments, data, views, and other information concerning the matters set out in this notice. In this NOPR the Commission has outlined its proposal to automate many of the filings in the natural gas area presently submitted in paper form. The Commission is committed to this approach and in order for the final rule to fully incorporate the views of the persons to be affected by this rulemaking, the Commission would like specific comments and responses on the following:

(1) An estimate of the initial or start-up burden on an individual pipeline to gather, prepare and submit on magnetic tape the information proposed to be included in FERC Form No. 591. The estimate should be expressed in work hours and dollar costs in sufficient detail to demonstrate methodology and assumptions.

(2)(a) An estimate of the current burden on an individual pipeline to gather, prepare and submit the forms, certificate and rate filings and related data requests imposed by the Commission and affected by this NOPR.

(b) A comparative estimate of the impact of this NOPR, on current burden in 2(a) once the initial burden discussed in question (1) has been expended. Both estimates of current burden and impact should be in work hours and dollar costs in sufficient detail to demonstrate methodology and assumptions.

(3) Whether or not natural gas pipelines would collect and maintain this information absent the requirements of FERC Form No. 591.

(4) Whether 9-track magnetic tape is the only appropriate computerized medium to submit information to the Commission.

(5) What companies should be exempt from the provisions of FERC Form No. 591 and what standards should the Commission use in exempting such companies from this system.

(6) Can the data be submitted using the definitions and instructions in FERC Form No. 591 and can the data be submitted within the time specified in the instructions for response.

(7) Whether, the Commission should consider other data items for inclusion in FERC Form No. 591 and the reasons for such inclusion.

(8) Should the Commission consider a transition period for implementation of FERC Form No. 591 after issuance of the final rule.

(9) Whether a specified structured format for Schedule N1 should be developed based on the present data required to be filed under § 154.63, a proposed change in tariff, or Part 157 of the Commission's regulations.

(10) Whether technical conferences discussing the data processing and information items proposed to be collected on FERC Form No. 591 should be held.

An original and 14 copies of written comments should be filed with the Commission by September 8, 1987. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM87-17-000. All written submissions will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol, NE., Washington, DC 20426 during regular business hours.

(b) Technical Conferences

In addition to written comments, the Commission may propose, in a supplemental notice to this NOPR, a series of technical conferences to discuss FERC Form No. 591. This supplemental notice may be proposed within 30 days after the publication of the rule in the **Federal Register** and include the time and place of such conferences and the format to be followed.

IV. Paperwork Reduction Act

The information collection provisions in this notice of proposed rulemaking are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [43] and OMB's regulations.[44] Interested persons can obtain information on the 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 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).

[40] 5 U.S.C. 552 (1982).
[41] Id.
[42] Id.
[43] 44 U.S.C. 3501-3520 (1982).
[44] 5 CFR 1320.13 (1986).

V. Regulatory Flexibility Act

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, 5 U.S.C. 601–612 (1982), to prepare and make available for public comment an initial regulatory flexibility analysis. This analysis is prepared unless the Commission certifies, pursuant to section 605(b) of the RFA, that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The RFA is intended to ensure careful and informed agency consideration of rules that may 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. Most natural gas pipelines that would comply with this rule do not fall within the RFA's definition of small entity because of size. Therefore, the Commission certifies that this rule will not, if promulgated, have a "significant economic impact on a substantial number of small entities." Although the Commission certifies this rule will not have a "significant economic impact on a substantial number of small entities", the Commission has considered the potential impact of this rule on small pipelines that must comply with the rule. As a result, the Commission has included waiver provisions in this rule from the provisions of FERC Form No. 591.

List of Subjects

18 CFR Part 154

Alaska, Natural Gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

In consideration of the foregoing the Commission proposes to amend Parts 154, 157, 260 and 284, Chapter I, Title 18 of the Code of Federal Regulations, as set forth below.

By the Commission. Commissioner Sousa concurred with a separate statement attached.

Kenneth F. Plumb,

Secretary.

PART 154—RATE SCHEDULES AND TARIFFS

1. The authority citation for Part 154 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102–7352 (1982); EO 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1970).

2. Section 154.31 is revised to read as follows:

§ 154.31 Application.

Sections 154.32 through 154.41 are applicable to all rate schedules filed after December 1, 1948, except that such sections are only partially applicable, to rate schedules filed under § 154.52. For currently effective tariffs, the information and format in §§ 154.32 through 154.36, §§ 154.38 (a), (b), (c) and (d) (1), (2) and (3), and §§ 154.39 through 154.41 must be submitted on Schedule F1, Tariff Report of FERC Form No. 591, as specified in § 260.20 of this chapter. Proposed changes in tariffs must be submitted by using Schedule G4 and Schedule N1 of FERC Form No. 591, as specified in § 260.20 of this chapter.

§ 154.37 [Removed]

3. Section 154.37 is removed in its entirety.

4. Section 154.61 is revised to read as follows:

§ 154.61 Application.

Sections 154.62 through 154.65, except as otherwise specifically provided in this part, apply to all tariffs, executed service agreements or parts thereof, filed after December 1, 1948. All materials filed pursuant to § 154.63 of this chapter must be submitted on Schedule G4, General Nonperiodic Information, or Schedule N1, Nonperiodic Filings of FERC Form No. 591, as specified in § 260.20 of this chapter. Notwithstanding the provisions of § 154.63(b)(1) (i) and (ii), § 154.63(c) (1) and (2), § 154.63(d) (1), (3), and (4), and § 154.63(e)(4), the format for all filings pursuant to § 154.63 of this chapter must be in the manner specified in FERC Form No. 591.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

5. The authority citation for Part 157 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); EO 12009, 3 CFR 1978 Comp., p. 142.

6. In § 157.6, the section heading and paragraph (a) are revised to read as follows:

§ 157.6 Applications; general requirements.

(a) *Applicable rules*—(1) *Submissions required to be furnished by applicant under this subpart.* Applications, amendments thereto, and all exhibits and other submissions required to be furnished by an applicant to the Commission under this subpart must be submitted on 9-track magnetic computer tape(s) and furnished to the Commission in the format prescribed in Schedule G4, General Information Nonperiodic Filings, and Schedule N1, Nonperiodic Filings of FERC Form No. 591 as prescribed in § 260.20 of this chapter. To the extent that data required under this subpart has been provided in the schedules and records of FERC Form No. 591, such data need not be provided. The applicant must, however, include a statement identifying the schedules and records containing the required information and when that schedule or record was submitted. The applicant must submit one copy of applications and other submissions on computer tape and one copy on paper. All computer tapes must conform in all respects to the requirements of the Federal Information Processing Standards publication, FIPS Pub. 79, "Magnetic Tape Tables and File Structure for Information Interchange" and conform to the level three labeling standards described in that publication for file formats, tape labels, and record formats.

(2) *Maps and diagrams.* An applicant required to submit a map or diagram under this subpart must submit one paper copy of the map or diagram and include on the computer tape(s) submitted:

(i) Information sufficient to enable the Commission to construct the required map or diagram; or

(ii) A statement explaining why such information is omitted from the computer tape.

(3) *Waivers of computer tape filing requirement.* (i) An applicant may request a partial or full waiver of the requirement that submissions be furnished on computer tape. The request for waiver must be filed in accordance with § 260.20(f) of this chapter.

(ii) If a request for waiver is granted, the applicant must furnish a submission in the manner specified by the Commission in the decision granting waiver.

(4) *Other requirements.* Applications under section 7 of the Natural Gas Act must conform to the requirements of §§ 157.5 through 157.14 of this chapter. Amendments to or withdrawals of applications must conform to the requirements of §§ 385.213 and 385.214 of part 385 of this chapter. If the application involves an acquisition of facilities, it must conform to the additional requirements prescribed by §§ 157.15 and 157.16 of this chapter.

* * * * *

§ 157.13 [Amended]

7. In § 157.13, paragraph (a) is amended by removing the word "shall" and inserting in its place the words "must be submitted in the manner prescribed in § 157.6(a) of this chapter and".

8. In § 157.14, paragraph (a) is amended by removing the first full sentence and inserting, in its place, the words "Each application tendered for filing must be accompanied by each specified exhibit, except for Exhibits G and G–II, or a statement identifying the schedule and record containing the required information and data filed pursuant to FERC Form No. 591 in § 260.20 of this chapter. Exhibits G and G–II do not have to be filed to the extent that Schedule E1: Physical Engineering of the Natural Gas Data Collection System, specified in § 260.20, has been filed. Computer tape copies required to be filed pursuant to § 157.6(a) of this chapter provide information sufficient to enable the Commission to construct any map or diagram required to be submitted under this section or a statement explaining why such information is omitted from the computer tape."

9. In § 157.14 paragraph (a) is further amended by removing the words "Section 157.6(a) shall govern the number of copies to be furnished to the Commission." and inserting, in their place, "Section 157.6(a) governs the manner in which submissions are furnished to the Commission."

10. In § 157.14 paragraph (a)(8) is revised to read as follows:

§ 157.14 Exhibits.

(a) * * *

(8) *Exhibit G–I—Flow diagrams showing maximum design capacity and reflecting operation with and without proposed facilities added.* A flow diagram showing maximum design capacity and reflecting operating conditions with both proposed and existing facilities in operation. The flow diagrams shall include the following for the portion of the system affected:

(i) Diameter, wall thickness, and length of pipe installed and proposed to be installed and the diameter and wall thickness of the installed pipe to which connection is proposed.

(ii) For each proposed new compressor station and existing station, the size, type and number of compressor units, horsepower required, horsepower installed and proposed to be installed, volume of gas to be used as fuel, suction and discharge pressures, and compression ratio.

(iii) Pressures and volumes of gas at the main line inlet and outlet connections at each compressor station.

(iv) Pressures and volumes of gas at each intake and take-off point and at the beginning and terminus of the existing and proposed facilities and at the intake or take-off point of the existing facilities to which the proposed facilities are to be connected.

(v) Assumptions, bases, formulae, and methods used in the development and preparation of Exhibit G–I and accompanying data.

(vi) A description of the pipe and fittings to be installed, specifying the diameter, wall thickness, yield point, ultimate tensile strength, method of fabrication, and methods of testing proposed.

(vii) The maximum allowable operating pressure of each proposed facility for which a certificate is requested, as permitted by the Department of Transportation's safety standards. The applicant shall certify that it will design, install, inspect, test, construct, operate, replace, and maintain the facilities for which a certificate is requested in accordance with Federal safety standards and plans for maintenance and inspection or shall certify that it has been granted a waiver of the requirements of the safety standards by the Department of Transportation in accordance with the provisions of section 3(e) of the Natural Gas Pipeline Safety Act of 1968. Pertinent details concerning the wavier shall be set forth.

* * * * *

§ 157.16 [Amended]

11. Section 157.16 is amended by removing the word "therefrom." at the end of the second full sentence of the introductory text and inserting, in its place, the words "therefrom, unless the applicant includes a statement identifying the schedule and rate containing the required information and data filed pursuant to FERC Form No. 591 as prescribed in § 260.20 of this chapter. Section 157.6(a) of this chapter will govern the submission of exhibits required to be furnished to the Commission."

12. In § 157.16, the introductory text is further amended by removing the words "Section 157.6(a) shall govern the number of copies to be furnished to the Commission." and inserting, in their place, the words "Section 157.6(a) of this chapter will govern the submissions required to be furnished to the Commission."

§ 157.17 [Amended]

13. Section 157.17 is amended by removing the second full sentence and inserting, in its place, the words "Such application must be submitted in the manner prescribed in § 157.6(a) of this chapter. The paper copy submitted must be subscribed and verified by a responsible officer of applicant having knowledge of the facts. The computer tape and paper copy must state clearly and specifically the exact character of the emergency, the proposed method of meeting it, and the fact claimed to warrant issuance of a temporary certificate."

§ 157.18 [Amended]

14. Section 157.18 is amended by removing the word "below." at the end of the first full sentence of the introductory text and inserting, in its place, the words "below, unless the applicant includes a statement identifying the schedule and rate containing the required information and data filed pursuant to FERC Form No. 591 as prescribed in § 260.20 of this chapter. Section 157.6(a) will govern the submission of applications and exhibits required to be furnished to the Commission."

15. Section 157.23 is amended by adding paragraph (d) to read as follows:

§ 157.23 Applications for certificates of public convenience and necessity by independent producer.

* * * * *

(d)(1) *Submissions required to be filed by applicant under this subpart.* (i) Except as provided in paragraph (d)(1)(ii) of this section, applications,

amendments thereto, and all exhibits and other submissions required to be furnished by an applicant to the Commission under this subpart must be submitted on 9-track magnetic computer tape(s) and be furnished to the Commission in the format prescribed in Schedule G4, General Information Non-periodic Filings, and Schedule N1, Nonperiodic Filings of FERC Form No. 591 as prescribed in § 260.20 of this chapter.

(ii) *Exception.* An applicant that has already provided data required under this subpart in schedules and records of FERC Form No. 591, must only file:

(A) A statement identifying the schedules and records containing the required information and when that schedule or record was submitted, and

(B) One copy of the application on computer tape and one copy of the application on paper.

(iii) All computer tapes must conform in all respects to the requirements of the Federal Information Processing Standards Publication, FIPS Pub. 79, "Magnetic Tape Tables and File Structure for Information Interchange" and conform to the level three labeling standards described in that standard for file formats, tape labels, and record formats.

(2) *Maps and diagrams.* If an applicant is required to submit a map or diagram under this subpart, it must submit one paper copy of such map or diagram and include on the computer tape(s) submitted:

(i) Information sufficient to enable the Commission to construct the required map or diagram; or

(ii) A statement explaining why such information is omitted from the computer tape.

(3) *Waivers of computer tape filing requirements.* (i) An applicant may request a partial or full waiver of the requirement that submissions be furnished on computer tape. The request for waiver must be filed in accordance with § 260.20(f) of this chapter.

(ii) If a request for waiver is granted, the applicant must furnish required submissions in the manner specified by the Commission in the decision granting waiver.

(4) *Exhibits.* An application tendered for filing must be accompanied by:

(i) Each specified exhibit; or

(ii) A statement identifying the schedule and record, containing the required information and data, filed pursuant to FERC Form No. 591 as specified in § 260.20 of this chapter.

§ 157.25 [Amended]

16. Section 157.25 is amended by removing the first word of the first sentence, "There", and inserting, in its place, the words "Except as provided in § 157.23(d) of this chapter, there".

§ 157.28 [Amended]

17. Section 157.28 is amended by inserting in the introductory text after the words "may request" the words, "by filing an application in the manner prescribed in § 157.23(d) of this chapter".

18. In § 157.30, paragraph (a) is amended by removing the words "(original and three copies)".

19. Section 157.30 is further amended by adding paragraph (c) to read as follows:

§ 157.30 Abandonment of service.

* * * * *

(c) Applications under this section must be submitted in the manner prescribed in § 157.23(d) of this chapter. If the Commission grants a waiver of the requirement that an application or other required submission be filed on computer tape, the applicant must file in the manner specified by the Commission in the decision granting waiver.

§ 157.40 [Amended]

20. In § 157.40, paragraph (b)(1) is amended by inserting after the first full sentence the words "All applications must be submitted in the manner prescribed in § 157.23(d) of this chapter."

§ 157.42 [Amended]

21. In § 157.42, paragraph (d)(5) is amended in the first sentence by removing the words "and four conformed copies thereof" and by adding at the end of the paragraph the words "The statement required under this paragraph must be submitted in the manner prescribed by § 157.23(d) of this chapter. If a request for waiver of the requirement that the statement be filed on computer tape is granted, the transporter must file in the manner specified by the Commission in the decision granting waiver."

§ 157.53 [Amended]

22. In § 157.53, paragraph (b) is amended by removing the last sentence in that paragraph and inserting, in its place, the words "Persons undertaking any construction or operation of facilities or service under this section must file an annual statement by February 1 of each year, in the manner prescribed in § 157.23(d) of this chapter. If the Commission grants a waiver of the requirement that these filings be submitted on computer tape, the respondent must file, by February 1, of each year, in the manner specified by the Commision in the decision granting waiver."

§ 157.102 [Amended]

23. In § 157.102, paragraph (a)(1) is amended by removing the words "Any application under this subpart" and inserting, in their place, the words "Any application, amendment thereto, exhibits, and other submissions required under this subpart must be submitted in the manner prescribed in §§ 157.6(a) and 157.14(a) of subpart A of this part and".

§ 157.204 [Amended]

24. In § 157.204, paragraph (a) is amended by removing the period at the end of that paragraph and inserting, in its place, the words ", in accordance with the manner prescribed in §§ 157.6(a) and 157.14(a) of subpart A of this part."

§ 157.205 [Amended]

25. In § 157.205, paragraph (b) is amended by removing the words "an original and fifteen copies of".

26. In § 157.205, paragraph (b) is further amended by adding at the end of that paragraph the words "A request for authorization must be submitted in accordance with § 157.6(a) of Subpart A of this part. If the request for a waiver of the requirement that submissions be furnished on computer tape is granted, the applicant file the request for authorization in the manner specified by the Commission in the decision granting waiver."

§ 157.207 [Amended]

27. Section 157.207 is amended by inserting after the words "on or before May 1, of each year, the certificate holder must file," in the first sentence the words, "in the manner prescribed in § 157.6(a) of subpart A of this part,".

§ 157.211 [Amended]

28. In § 157.211, paragraph (c) is amended by inserting after the words "must report" the words "in the manner prescribed in § 157.6(a) of subpart A of this part:".

§ 157.215 [Amended]

29. In § 157.215, paragraph (b)(1) is amended by inserting after the words "shall file" the words, "in the manner prescribed in § 157.6(a) of subpart A of this part,".

30. In § 157.215, paragraph (b)(2) is amended by inserting after the words "shall file," the words "in the manner prescribed in § 157.6(a) of Subpart A of this part,".

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

31. The authority citation for Part 260 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); EO 12009, 3 CFR 1978 Comp., p. 142.

§ 260.3 [Removed and Reserved]

32. Section 260.3 FERC Form No. 11, Natural gas pipeline company monthly statement is removed in its entirety and reserved.

§ 260.4 [Removed and Reserved]

33. Section 260.4 FERC Form No. 14, Annual report for importers and exporters of natural gas is removed in its entirety and reserved.

§ 260.7 [Removed and Reserved]

34. Section 260.7 FERC Form No. 15, Interstate pipeline's annual report of gas supply is removed in its entirety and reserved.

§ 260.8 [Removed and Reserved]

35. Section 260.8 System flow diagrams: Format No. FERC 567 is removed in its entirety and reserved.

§ 260.11 [Removed and Reserved]

36. Section 260.11 FERC Form No. 8, Underground gas storage report is removed in its entirety and reserved.

§ 260.12 [Removed and Reserved]

37. Section 260.12 FERC Form No. 16, Report of gas supply and requirements is removed in its entirety and reserved.

38. In Part 260, a new § 260.20 is added to read as follows:

§ 260.20 FERC Form No. 591, Natural gas data collection system.

(a) *Prescription.* The following schedules comprise FERC Form No. 591:

(1) General System Information—Schedule G1
(2) Physical Engineering—Schedule El
(3) Tariff—Schedule Fl
(4) Contract—Schedule F2
(5) General Monthly Information—Schedule G2
(6) PGA Gas Purchases—Schedule P1
(7) PGA Totals—Schedule T1
(8) Receipt and Delivery Point—Schedule F3
(9) System Operations—Schedule E2
(10) Pipline Cost—Schedule C1
(11) Pipeline Cost Totals—Schedule C2
(12) Pipeline Revenue—Schedule R1
(13) General Annual Information—Schedule G3
(14) Gas Supply—Schedule S1
(15) Coincidental 3–Day Peak—Schedule F4
(16) General Nonperiodic Information—Schedule G4
(17) Nonperiodic Filings—Schedule N1

(b) *Who must file.* FERC Form No. 591 is applicable to all interstate natural gas pipelines and storage companies subject to the jurisdiction of the Federal Energy Regulatory Commission. The instructions for filing FERC Form No. 591 and the specific schedules and records contained therein can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street, NE., Washington, DC 20426.

(c) *When to file.* (1) The following schedules must be submitted by [insert date that is 120 days after issuance of the final rule]. The initial submission must include data for the date that is 45 days prior to [insert date that is 120 days after the issuance of the final rule].

(i) Schedule G1: General System Information
(ii) Schedule El: Physical Engineering
(iii) Schedule F1: Tariff
(iv) Schedule F2: Contract

The information submitted in each of these schedules, except for Schedule Fl, must be updated within the 45 days of the end of any month, where information has changed from the original submission or any subsequent update. The update to Schedule Fl must be the date such change in tariff becomes effective. Interstate pipelines with marketing affiliates, submitting Schedule F2 in lieu of the provisions of § 250.16 of the Commission's regulations, must file Schedule F2 within 15 days after the close of the month The updates provided by this subsection must consist of the submission of the schedule being changed with the data items being updated, and the original data items not being changed.

(2) The initial filing of the following schedules must be data for the third full calendar month after the schedules in (c)(1) were required to be submitted. The initial filing of each of these schedules, except for Schedule Pl and Schedule Tl, must be 45 days after the end of the third calendar month. Schedule Pl and Schedule T1 must be submitted 60 days after the end of the third calendar month.

(i) Schedule G2: General Monthly Information
(ii) Schedule P1: PGA Gas Purchases
(iii) Schedule T1: PGA Totals
(iv) Schedule F3: Receipt and Delivery Point
(v) Schedule E2: System Operations
(vi) Schedule C1: Pipeline Cost
(vii) Schedule C2: Pipeline Cost Totals
(viii) Schedule R1: Pipeline Revenue

All of the data items contained in these schedules must be resubmitted on a monthly basis after the initial filing of these schedules. These schedules, except for Schedule Pl and Schedule T1, must be resubmitted within 45 days following the last day of the end of the month. Schedule Pl and Schedule T1 must be resubmitted within 60 days following the last day of the end of the month.

(3) Schedule S1, Gas Supply, must be submitted for the first time on April 1 [insert date of the calendar year after the date of the calendar year that the final rule becomes effective] for calendar year [insert date of the calendar year that the final rule becomes effective]. Each year thereafter Schedule S1 must be submitted on April 1 and contain information for the previous calendar year. Schedule F4: Coincidental 3-Day Peak must be submitted for the first time on June 15 [insert date of the calendar year after the date of the calendar year that the final rule becomes effective for calendar year [insert date of the calendar year that the final rule becomes effective]]. Each year thereafter Schedule F4 must be submitted on June 15 and contain information for the previous calendar year. Schedule F4 and Schedule S1 must be accompanied by Schedule G3: General Annual Information at time of filing.

(4) The following schedules can be filed at any time:

(i) Schedule G4: General Nonperiodic Information
(ii) Schedule N1: Nonperiodic Filings

Schedule G4 and Schedule N1 must be submitted when an interstate natural gas pipeline or storage company subject to FERC Form No. 591 is requesting a proposed change in a tariff, new rates, rate changes, executed service agreement or part thereof under § 154.63 of the Commission's regulations or an application under section 7 of the Natural Gas Act is filed pursuant to Part 157 of the Commission's regulations.

(d) *What to file.* (1) Any filing of a schedule or an update described in paragraph (a) of this section must be submitted on 9-track magnetic tape.

(2) The magnetic tape submitted must conform to the requirements of the Federal Information Processing Standards Publication, FIPS Pub. 79.

(3) Level three labeling standards as described in FIPS Pub. 79 must be used for file formats, tape labels and record formats.

(4) The magnetic tape must be accompanied by one paper printout of

the information submitted on the magnetic tape.

(5) The format for the paper printout can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street, NE., Washington, DC 20426.

(6) The magnetic tape and paper printout submitted must be accompanied by a cover letter that includes the file name, file attribute, and the density of the magnetic tape submitted by the natural gas pipeline company.

(7) The subscription required by § 385.2005(a) of this chapter should state that the paper printout contains the same information as contained on the magnetic tape, that the signer knows the contents of the paper printout and magnetic tape, and that the contents as stated in the printout and magnetic tape are true to the best knowledge and belief of the signer.

(8) Within 30 days after it receives all magnetic tapes from a natural gas pipeline company, the Commission will return the tape(s) to the company.

(e) *Where to file.* The magnetic tape, paper printout and accompanying cover letter must be submitted to:

Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

Hand deliveries of a magnetic tape, paper printout and accompanying cover letter may be made to:

Office of the Secretary, Federal Energy Regulatory Commission, Room 3110, 825 North Capitol Street, NE., Washington, DC 20426.

(f) *Waivers.*—(1) *Filing of petition.* If an interstate pipeline does not have and is unable to acquire the computer capability to file the information required to be filed under this part on 9-track computer tape(s), or if the pipeline does not have and is unable to acquire the information required to be filed under this part, the pipeline may request waiver from the requirements of this part, by filing an original and two copies of a petition.

(2) *Standards*—(i) *General waiver.* The petition for waiver must show that the pipeline does not have the computer capability to file the information required under this section on 9-track computer tape(s) and that acquisition of the capability would cause the pipeline severe economic hardship. This waiver may be granted for up to one year.

(ii) *Waiver from filing particular records.* Before the Commission may grant a pipeline waiver from filing information required under this part, a pipeline must show that the information sought is not available and cannot be obtained without imposing undue burden on the pipeline.

(3) *Timing.* The petition for waiver must be filed by the date on which the information in the manner effected by the petition is required to be initially filed under this part.

(4) *Decision on petition.* The Commission or its designee will review a petition for waiver to determine whether the applicant has met the standards for waiver and notify the applicant of its grant or denial. Once the petition is decided, the pipeline will have 30 days from the date of notification of the decision to submit any information, in the manner specified by the Commission in the decision on the waiver petition, that was required to be filed while the petition was pending.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

39. The authority citation for Part 284 is revised to read as follows:

Authority: Natural Gas Act, 15 U.S.C. 717–717w (1982; as amended; Natural Gas Policy Act of 1978, 15 U.S.C. 3301–3432 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); EO 12009, 3 CFR 1978 Comp., p. 142.

§ 284.7 [Amended]

40. Section 284.7 is amended by removing paragraph (d)(5)(iv) in its entirety.

§ 284.12 [Removed]

41. Section 284.12 is removed in its entirety.

42. Section 284.13 is amended by revising paragraph (a) to read as follows:

§ 284.13 Recordkeeping requirement.

(a) Within 30 days after commencement of any transportation arrangement under subparts B, G, or H of this part, the interstate pipeline that provides such service, and who is not subject to § 250.16 of this chapter, must keep a log of the request for such service that, at a minimum, includes Schedule F2 Record (2) of FERC Form No. 591 as provided in § 260.20 of this chapter.

* * * * *

Sousa, Anthony G., Commissioner, *concurring:*

I am in complete agreement with my colleagues that it is time for this Commission to enter the electronic era. If this aspect of the rule is adopted, it should lead to better and faster analyses of certificate and rate filings.

One area of this Notice of Proposed Rulemaking (NOPR), however, does cause me concern. Significant amounts of new information will be required to be filed with the Commission if this proposed rule is adopted. I note that new data are required for receipt and delivery points (Sch. F3), engineering (Sch. E2), transporation requests (Sch F2, Records 2, 4 and 5) and various line item additions throughout the rest of Form No. 591. In addition, most of the data in Form 591 must be filed on a monthly basis as compared to the current requirements for annual or biannual filings. Also, waivers would be eliminated for most companies currently exempted from filing under current regulations. The NOPR asks for comments as to regulatory burden, and I encourage all forms of comment from the industry on this issue.

Even more important than the proposed increased reporting burden is the issue of whether the FERC requires this information. First, the NOPR states that there are increased reporting, review and monitoring requirements as a result of Order Nos. 436 and 451 (*mimeo* at 11, 12, 14, 18, 19, 21 and 28). I invite comments at to whether or not Order Nos. 436 and 451 actually require such an increase in federal involvement as proposed.

Second, it is difficult to anticipate future problems and regulatory needs (*mimeo* at pp. 6–7). Is is necessary to burden the industry to collect data for as yet undefined problems?

Third, if there is justification for different and increased data requirements to address today's problems, I would appreciate comments as to; (1) whether the whole industry should be burdened, as opposed to specific companies for specific problems or cases, and (2) whether there should be a "sunset" or data requirement review provision.

Finally, I am not fully comfortable with the stated objectives of monitoring all jurisdictional pipelines' management of their allocation of capacity (*mimeo* at 18 and 21) and capacity utilization (*mimeo* at 46). This Commission has traditionally been very hesitant to become involved in day-to-day pipeline management and operations. I invite comments on the regulatory need and purpose to be served by these objectives, and an evaluation of the software to perform the stated objectives.

Anthony G. Sousa,

Commissioner.

[FR Doc. 87–14841 Filed 7–6–87; 8:45 am]

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federal register

Tuesday
July 7, 1987

Part IV

Environmental Protection Agency

40 CFR Part 421

Water Pollution; Nonferrous Metals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards; Final Regulation

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 421

[OW-FRL-3166-1]

Water Pollution; Nonferrous Metals Manufacturing Point Source Category Effluent Limitations Guidelines, Pretreatment Standards and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final regulation.

SUMMARY: EPA is promulgating amendments to the regulation which limits effluent discharges to waters of the United States and the introduction of pollutants into publicly owned treatment works by existing and new sources that conduct primary aluminum and secondary aluminum operations. EPA proposed these amendments on May 20, 1986 (51 FR 18530) in accordance with two settlement agreements which resolved the various lawsuits challenging the final nonferrous metals manufacturing phase I regulation for these subcategories. The regulation was promulgated by EPA on March 8, 1984, 49 FR 8742.

The final amendments include: (1) Certain modifications of the effluent limitations for "best available technology economically achievable" (BAT), and "new source performance standards" (NSPS) for direct dischargers; and (2) certain modifications to the pretreatment standards for new and existing indirect dischargers (PSNS and PSES). EPA considered comments received from four commenters in response to the proposal. As a result of the favorable comments, EPA is promulgating a final rule.

DATES: In accordance with 40 CFR Part 23 (50 FR 7268), this regulation shall be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on July 21, 1987. This regulation shall become effective August 20, 1987.

The compliance date for new source performance standards (NSPS) and pretreatment standards for new source (PSNS) in the primary and secondary aluminum subcategories only is the date the new source begins operations. The compliance date for pretreatment standards for existing sources (PSES) remains March 8, 1987. All other compliance dates for standards not affected by these amendments remain unchanged. The PSES compliance date is not changed because EPA believes the companies do not need additional time to comply with these regulations because most of the changes result in less stringent requirements.

ADDRESS: Address questions on the final rule to Mr. Ernst P. Hall, Industrial Technology Division (WH-552), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Attention: ITD Docket Clerk, Nonferrous Metals Manufacturing Phase I Rule (WH-552).

The supporting information and all comments on this will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2404 (Rear) (EPA Library) 401 M Street, SW., Washington, DC. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Questions regarding this notice may be addressed to Mr. Ernst P. Hall at (202) 382-7126.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Legal Authority
II. Background
  A. Rulemaking and Settlement Agreements
  B. Effect of the Settlement Agreements
III. Final Amendments to the Nonferrous Metals Manufacturing Phase I Regulation
IV. Environmental Impact of the Final Amendments to the Nonferrous Metals Manufacturing Phase I Regulation
V. Economic Impact of the Final Amendments
VI. Public Participation and Response to Major Comments
VII. Executive Order 12291
VIII. Regulatory Flexibility Analysis
IX. OMB Review
X. List of Subjects in 40 CFR Part 421

I. Legal Authority

The regulation described in this notice is promulgated under authority of sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1251 et seq., as amended by the Clean Water Act of 1977, Pub. L. 95-217).

II. Background

A. Rulemaking and Settlement Agreements

On February 17, 1983, EPA proposed a regulation to establish Best Practicable Control Technology Currently Available (BPT) Best Available Technology Economically Achievable (BAT), and Best Conventional Pollutant Control Technology (BCT) effluent limitations guidelines and New Source Performance Standards (NSPS), Pretreatment Standards for Existing Sources (PSES), and Pretreatment Standards for New Sources (PSNS) for the nonferrous metals manufacturing phase I point source category (48 FR 7032). EPA published the final nonferrous metals manufacturing phase I regulation on March 8, 1984 (49 FR 8742). Those regulations affected 80 direct dischargers and 85 indirect dischargers. The preambles to the proposed and final nonferrous metals manufacturing phase I regulation describe the history of the rulemaking. Correction notices were published in 49 FR 26738 (June 29, 1984), 49 FR 29792 (July 24, 1984), and 50 FR 12252 (March 28, 1985).

After publication of the nonferrous metals manufacturing phase I regulation, the Aluminum Association, Inc. Kaiser Aluminum and Chemical Corp., Reynolds Metals Company, the Aluminum Recycling Association, the American Mining Congress, Kennecott, Amax ASARCO Inc., Mallinckrodt, Inc., the Secondary Lead Smelters Association and intervenor Gulf Coast Lead, and St. Joe Minerals Corporation filed petitions to review the regulation. These challenges were consolidated into one lawsuit by the United States Court of Appeals for the Fourth Circuit (*Kennecott* v. *EPA*, 4th Cir. No. 84-1288 and Consolidated Cases). On December 26, 1985 the Fourth Circuit denied petitions to review the regulations for the primary lead, primary zinc, primary copper, metallurgical acid plants, secondary lead and the columbium-tantalum subcategories (780 F. 2d 445). The Supreme Court denied petitioners for a writ of certiorari on October 6, 1986. 107 S. Ct. 67.

Earlier in November of 1985 four aluminum parties in the consolidated lawsuits entered into two settlement agreements which resolved issues raised by the petitioners related to the primary aluminum and secondary aluminum regulations. In the Settlement Agreements, EPA agreed to publish a notice of proposed rulemaking and to solicit comments regarding certain amendments to the final nonferrous metals manufacturing phase I regulation for these subcategories. EPA proposed the amendments and solicited comments on May 20, 1986 in 51 FR 18530. EPA is promulgating amendments to the nonferrous metals manufacturing regulation and preamble language that are substantially the same as and do not alter the meaning of the proposed language; accordingly the petitioners have agreed to dismiss their lawsuits and not challenge the new amendments.

The final amendments promulgated today will result in increased discharges of pollutants for 24 direct discharging primary aluminum facilities, 14 indirect discharging secondary aluminum facilities, and 10 direct discharging secondary aluminum facilities, and 10 direct discharging secondary aluminum facilities. These amendments also affect new source performance standards for direct and indirect discharges of these two subcategories.

B. Effect of the Settlement Agreements

As part of the Settlement Agreements, on November 25, 1985 the parties jointly requested the United States Court of Appeals for the Fourth Circuit to stay the effectiveness of those portions of 40 CFR Part 421 which EPA is amending. The court granted the stay on January 8, 1986.

Copies of the Settlement Agreements have been sent to all EPA Regional Offices and to applicable State permit-issuing authorities. All limitations and standards contained in the final nonferrous metals manufacturing phase I regulation published on March 8, 1984 which are not specifically listed in the attached final regulation are not affected by today's rulemaking.

III. Final Amendments to the Nonferrous Metals Manufacturing Phase I Regulation

Below are descriptions of the final amendments to the nonferrous metals manfacturing phase I regulation. The amendments are based upon proper operation of the same technologies as those which formed the basis of the final regulation that was promulgated on March 8, 1984. See the preamble to the regulation at 49 FR 8742, for the Agency's findings with respect to these technologies. Effluent limitations which do not change are signified by asterisks in this regulation.

A. Subpart B—Primary Aluminum Subcategory

1. *Benzo(a)pyrene Limitations and Standards.* EPA is amending the BAT limitations and NSPS and PSNS for benzo(a)pyrene in §§ 421.23, 421.24, and 421.26. In 48 FR 7056 (February 17, 1983), the Agency proposed activated carbon adsorption as the model preliminary treatment technology for toxic organics, indicated by benzo(a)pyrene, in primary aluminum wastewaters. EPA proposed effluent limitations and standards based on an achievable concentration of 10 μg/l for benzo(a)pyrene, the level from the bench-scale study on POTW wastewater spiked with polynuclear aromatic hydrocarbons.

In the previous final regulation, the Agency decided not to rely on activated carbon because of another pilot-scale study, discussed in 48 FR 50906 (November 4, 1983), which evaluated treatment of primary aluminum potline scrubber blowdown and cathode reprocessing wastewater. The results of this study indicated that the toxic organic pollutants present were controlled through lime, settle and multimedia filtration ("lime, settle, and filter") treatment technology; removals by this technology exceeded 99 percent of all toxic organics present. In addition, benzo(a)pyrene appeared to be removed to the quantification limit of 10 μg/l by this technology. Thus, although the model treatment technology changed from activated carbon to lime, settle and filter, the concentration basis did not change between proposal and promulgation and no variability factors were adopted. We also proposed, in 1983, at-the-source limitations for toxic organic pollutants. These limitations were not promulgated because EPA was no longer relying on preliminary treatment to remove the toxic pollutants; rather, the model technology was centralized lime, settle and filter treatment.

In the previous final regulation, EPA applied the benzo(a)pyrene limitations to all of the processes since central treatment was expected (49 FR 8781 (March 8, 1984)). Under this approach processes which did not have benzo(a)pyrene present were also given a discharge allowance in order to assist permit writers in developing effluent limitations for combined wastestreams. In today's regulation EPA is adopting: (a) Differing 1-day and monthly average limitations for benzo(a)pyrene; (b) mass allowances for benzo(a)pyrene only in those processes that actually generate it; (c) clarification that the rule does not mandate at-the-source limitations for benzo(a)pyrene; and (d) clarification for how analytical values at or below the detection limit are to be treated for compliance purposes.

Petitioners asserted that it was inappropriate to promulgate the same 1-day and monthly limits for benzo(a)pyrene because the pilot plant study referred to above showed some variability in treatment of the compound. In addition, the model treatment technology, lime, settle and filter, has some associated operating variability. EPA agrees with these points, and accordingly is changing the benzo(a)pyrene effluent limitations and standards by increasing the daily maximum from 0.010 mg/l to 0.0337 mg/l and by adding a monthly maximum average of 0.0156 mg/l. These limitations were determined on the basis of statistical analysis of data on the treatability of benzo(a)pyrene obtained in the pilot study referenced above.

As a result of these changes, the limitations allowance for the discharge of benzo(a)pyrene will apply only to those processes that generate it. As noted, EPA provided such an allowance to encourage centralized treatment (49 FR 8781). As part of the Settlement Agreement, industry has agreed that an allowance for benzo(a)pyrene is only needed in the processes that generate it. Consequently, EPA is proposing that there be no allowance for benzo(a)pyrene in building blocks § 421.23 (o), (q), and (r), and the corresponding building blocks in NSPS and PSNS.

For those processes where benzo(a)pyrene is not present, the rule states (in the footnote to each relevant process) that there shall be no discharge allowance for this pollutant. This means that in calculating effluent limitations at the end of a combined treatment system, no allowance for benzo(a)pyrene shall be provided for these processes. In addition, this regulation does not require permit writers or the control authority to impose monitoring of benzo(a)pyrene at these processes (i.e. so-called at-the-source monitoring). However, monitoring could be required at the discretion of the permitting or control authority. See 40 CFR 122.45(i).

EPA is also amending the specialized definition in § 421.21 to state that if a permittee chooses to analyze for benzo(a)pyrene using any EPA-approved analytical method, any non-detected values will be counted as zeros for purposes of determining compliance. This approach is consistent with the methodology for developing the benzo(a)pyrene limitations since the methodology used to develop the limitations treated the non-detected values from the pilot plant study as zeros. The detection limit for the approved EPA methods of GC/MS and gas chromatography are 0.0025 and 0.01 mg/l, respectively.

2. *Fluoride Limitations and Standards.* EPA is promulgating amendments to the BAT limitations and NSPS and PSNS for fluoride in §§ 421.23, 421.24, and 421.26. In the previous final regulation for this subcategory, all of the fluoride limitations, except those for the cathode reprocessing segment (which were derived from the same pilot plant study described above), were based on long-term mean concentrations and variability factors obtained from the electrical and electronic component

manufacturing phase II regulation with slight modifications (48 FR 55690 of December 14, 1983). The promulgated limits in the nonferrous regulation were 35 mg/l for the daily maximum and 20 mg/l for the monthly average with variability factors of 2.40 and 1.38, respectively.

Petitioners claimed that these limitations are not achievable in the primary aluminum subcategory because of the presence of complex fluoride ions and aluminum salts. In response, EPA is retaining the long-term mean but increasing the variability factors (49 FR 8751, 8757). The fluoride limitations promulgated today are based on the pooled variability factors calculated from data for seven metal pollutants in the combined metals data base. The variability factors EPA is now using are 4.10 and 1.82 for the daily and monthly variability factors, respectively. The Agency believes that the variability associated with the metals data will more accurately represent the fluoride variability in this subcategory. These same variability factors were used to calculate the fluoride limitations in the final regulation for the cathode reprocessing building block (49 FR 8757). In addition, these are the same variability factors used for most other pollutants regulated in this subcategory, and in all other nonferrous metal manufacturing subcategories.

3. *Spent Potliner Leachate.* In the previous final regulation, EPA promulgated alternate treatment performance values for cathode reprocessing and potline scrubber liquor commingled with cathode reprocessing wastewaters. Petitioners have asserted that leachate resulting from runoff of spent potliners should also be subject to these alternate limitations under appropriate circumstances. Spent potliner leachate may receive the treatment performance values developed for cathode reprocessing provided:

(a) That the permit writer determines on a case-by-case basis that the wastewater matrices of cathode reprocessing and spent potliner leachate are comparable; and

(b) That the spent potliner leachate is not commingled with process or non-process wastewaters other than cathode reprocessing, or potline wet air pollution control operated in conjunction with cathode reprocessing.

Spent potliner leachate resulting from atmospheric precipitation runoff is considered to be a site-specific, non-scope waste stream by the Agency. For this reason, specific limitations are not provided for this waste stream in 40 CFR Part 421, §§ 421.23, 421.24, and 421.26. The brief guidance provided here was already implicit for direct dischargers in a permit writer's authority to establish limitations for non-scope flows on a case-by-case, Best Professional Judgement (BPJ) basis and for new source indirect dischargers, through application of the combined wastestream formula.

As part of the Settlement Agreement, petitioners retained the right to petition EPA to amend 40 CFR 421.23(k) based upon new information not presently in the record demonstrating that additional allowances are required for cathode reprocessing when spent potliners are brought in from another plant for chemical recovery of cryolite. Section 122.62(a)(3) of the NPDES regulations provides that a permit may be modified during its term if the effluent limitations guidelines regulations on which the permit was based have been changed by promulgation of amended effluent limitations guidelines regulations, provided the permittee requests such modification in accordance with § 124.5 within 90 days after **Federal Register** notice of the action on which the request is based. Permit writers may include a reopener clause in any permit specifically recognizing this cause for modification of the permit limitations based on an amendment to 40 CFR 421.23(k) as long as such cause for modification is authorized under the then applicable regulations.

4. *Direct Chill Casting Contact Cooling.* EPA is amending the pH standards for new sources in § 421.24(k). In the previous final NSPS regulation for direct chill casting contact cooling the pH range was 7.0 to 10.0 at all times. Petitioners asserted that this pH range does not coincide with state water quality standards which are usually 6 to 9 standard units. EPA is modifying this pH range to 6.0 to 10.0 at all times provided this stream is not commingled with other process wastewaters. If direct chill casting contact cooling water is commingled with process waters, it is subject to a pH range of 7.0 to 10.0 at all times. The data the Agency collected on this waste stream indicate that it may sometimes be relatively clean and compliance with NSPS may be possible without adjusting the pH. See Chapter V of the Supplemental Development Document for Primary Aluminum. Accordingly, the Agency is promulgating a broader pH requirement for direct chill casting contact cooling water if it is discharged separately without commingling with any other wastewater since the wider pH range will not affect achieving the mass limitations under these limited circumstances.

B. Subpart C—Secondary Aluminum Subcategory

1. *Ingot Conveyor Casting.* EPA is amending the BAT limitations and NSPS, PSES, and PSNS in §§ 421.33(g), 421.34(g), 421.35(g), and 421.36(g). The ingot conveyor casting regulatory flow allowance used to develop the previous final limitations for these sections was 43 l/kkg. The Aluminum Recyclers Association claimed that this flow allowance is in error due to data interpretation mistakes and because EPA unnecessarily excluded the water usage of plants that reported achieving zero discharge.

EPA is promulgating an amended flow allowance of 67 l/kkg, which is based on corrected water usage data from five plants (these data involving water usage and operating schedules were interpreted incorrectly by EPA in constructing the flow allowance in the final rule) and including three plants' water usage that reported achieving zero discharge. This is consistent with EPA's methodology throughout the nonferrous metals rulemaking, where EPA typically used water usage at zero discharging plants in determining what degree of flow reduction represents BAT, PSES, NSPS and PSNS.

2. *Demagging Wet Air Pollution Control.* EPA is amending the BAT limitations and NSPS, PSES and PSNS in §§ 421.33(d), 421.34(d), 421.35(d), and 421.36(d). The demagging wet air pollution control flow allowance used to develop the final rule was 697 l/kkg. Secondary aluminum petitioners have asserted that this allowance is incorrect due to a data interpretation error regarding the number of scrubbers associated with the water usage for one facility. EPA agrees that it made an error in this calculation and is adjusting the water usage for this plant upwards. EPA is correcting this regulatory flow allowance to 771 l/kkg.

IV. Environmental Impact of the Final Amendments to the Nonferrous Metals Manufacturing Phase I Regulation

The proposed amendments described above affect 48 facilities in the primary aluminum and secondary aluminum subcategories. These final amendments would allow a greater discharge of pollutants for these facilities than was allowed by the March 1984 regulation. The increase in the mass of pollutants allowed to be discharged is not expected to be substantial, however. Each of these subcategories listed above is discussed below.

A. Primary Aluminum Subcategory

The proposed amendments for the primary aluminum subcategory would increase the limitations for the pollutants benzo(a)pyrene and fluoride, although, as noted earlier, for some processes there would be a decrease in the amount of benzo(a)pyrene which would be discharged, since EPA no longer is providing an allowance for processes not generating benzo(a)pyrene. The removal estimates for fluoride did not change because the long-term average treatment effectiveness value used to calculate the quantity of pollutant discharged is unchanged.

B. Secondary Aluminum Subcategory

The proposed amendments to the regulatory flow allowances for ingot conveyor casting contact cooling and demagging wet air pollution control flow allowances affect 24 facilities. Ten of these facilities are direct dischargers, while 14 are indirect dischargers.

The amended ingot conveyor casting contact cooling regulatory flow would increase the allowable discharge of toxic metals by 0.2 kg/yr and 0.5 kg/yr for the indirect and direct dischargers, respectively. For the indirect dischargers, 0.9 kg/yr of additional aluminum could be discharged, while for the direct dischargers 2.1 kg/yr of additional aluminum could be discharged. Increased discharge of the nonconventional pollutants ammonia and total phenols (as measured by the 4AAP method) is not expected from this final amendment since these pollutants are specific to other processes unaffected by this proposed rule.

For the direct discharging secondary aluminum plants, the amendment for the demagging wet air pollution control flow allowance is expected to have only minor impact on the mass of pollutants discharged. Each of the direct dischargers is currently meeting the regulatory flow EPA is proposing for this waste stream. For the indirect dischargers, an additional 1.2 kg/yr of toxic metals and 4.0 kg/yr of aluminum are expected to be discharged. An increased discharge of ammonia and total phenols is not anticipated for the same reason given above.

V. Economic Impact of the Final Amendments

The amendments do not alter the recommended technologies for complying with the nonferrous metals manufacturing phase I regulation. The Agency considered the economic impact of the regulation when the final regulation was promulgated (see 49 FR 8742). EPA concluded at that time that the regulation was economically achievable.

Since today's amendments would slightly reduce regulatory requirements, EPA's conclusions as to economic impact and achievability are unaffected.

VI. Public Participation and Response to Major Comments

Since proposal of these amendments, four commenters submitted nine individual comments on the proposed amendments: Aluminum Recycling Association, Reynolds Aluminum, The Aluminum Association and General Motors Corporation. We considered all of the comments carefully. Six major issues raised in comments are addressed in this section of the preamble. All comments received and our detailed responses to these comments are included in the document entitled Response to Public Comments on the Amendment to Primary and Secondary Aluminum Subcategory effluent limitations and standards which has been placed in the public record for this regulation. The following is a discussion of the Agency's responses to the principal comments.

1. Support for the Proposed Amendments

Comment: All four commenters supported the proposed amendments to the primary and secondary aluminum regulations.

Response: EPA appreciates the commenters' support of the proposed amendments.

2. Benzo(a)pyrene

Comment: The benzo(a)pyrene limits and standards are intended to be end-of-pipe limits.

Response: Nowhere in the proposal does EPA express this intention. In fact, EPA states that while "this regulation does not require . . . at-the-source monitoring . . . monitoring *could be* required at the discretion of the permitting or control authority" [emphasis added]. At-the-source monitoring could be appropriate, for example, if there is a possibility that limitations will be met by reducing these organic pollutants to below the limit of detection through dilution. See 48 FR 7056 (Feb. 17, 1983).

Comment: The lack of a limit for benzo(a)pyrene for a particular waste stream should not be interpreted as a zero-discharge limit. Instead, that waste stream will not have a mass limit that will contribute to the calculation of the entire plant's mass limit.

Response: This statement implies a poor understanding of the proposed regulatory guidelines. The lack of a discharge limit for benzo(a)pyrene for certain streams means that these streams have *no* benzo(a)pyrene discharge allowance. It does not mean that these streams have an unlimited benzo(a)pyrene allowance. The three Primary Aluminum streams for which EPA has proposed no discharge allowance, and is providing no discharge allowance in this final regulation, for benzo(a)pyrene are:

(o) Degassing Wet Air Pollution Control
(q) Direct Chill Casting Contact Cooling
(r) Continuous Rod Casting Contact Cooling

Comment: The commenter requests that EPA clarify how non-detected values be treated in determining regulatory compliance with all point source categories, including the following eight specific categories:

Battery Manufacturing
Metal Molding and Casting
Aluminum Forming
Copper Forming
Coil Coating
Nonferrous Metals Manufacturing (Phase I and Phase II)
Nonferrous Metals Forming

Response: This request is not germane to this final regulation. EPA has promulgated final rules for all eight categories listed above. Seven of the eight rules are based, in part, on the Combined Metals Data Base (CMDB) (the one exception is Metal Molding and Casting). In the CMDB, and in Metal Molding and Casting treated effluent data base, EPA considered concentration values reported below the analytical quantification values as zero values, and used these data in calculating treatment effectiveness concentrations. Therefore, it is reasonable to consider "below quantification" values as zero values when determining compliance for these eight categories. However, EPA is only codifying this determination for benzo(a)pyrene in the primary aluminum subcategory (§ 421.21(c)). This consideration *cannot* be extended to all point source categories, and cannot be amended to the NPDES or General Pretreatment Regulations. Generally, this is a determination which will be made by the permitting or control authority. The commenter must specify which categorical limitations are applicable to his/her facilities, and determine how "non-detected" or "below quantification" values were considered in each specific rulemaking.

3. Fluoride

Comment: One commenter states that plants in the Electrical and Electronic Components Phase II (E&EC Phase II) Point Source Category have different wastewater matrices and treatment systems than plants in the Primary Aluminum industry. The commenter concludes that these differences are the reasons EPA cited for revising the fluoride variability factors.

Response: This is not true. EPA cited the presence of complex fluoride ions and aluminum salts as the basis for revising the fluoride variability factors (51 FR 18531). Further, EPA did not state that primary aluminum plants have different wastewater matrices and treatment systems than E&EC Phase II plants.

4. Variability Factors

Comment: The commenter cites the proposed metal molding and casting guidelines as supporting the contention that toxic organic pollutants treatment effectiveness concentrations should include variability factors.

Response: The promulgated metal molding and casting BAT guidelines do not regulate any toxic organic compounds (EPA 440/1–85/070; October 1985; p. 495).

5. pH Range for Direct Chill Casting Contact Cooling Water

Comment: The commenter presents a detailed discussion of difficulties involved with the promulgated pH range of 7–10.

Response: EPA must point out that the commenter's broad discussion is not germane to the proposal's discussion for direct chill contact cooling water. EPA's reason for expanding this specific pH range is because this expansion will not detrimentally impact discharge water quality.

Direct chill casting contact cooling water does not need to be maintained above pH 7 for effective treatment system performance. Therefore, the allowable discharge range has been expanded to pH 6–10, when direct chill casting contact cooling water is not commingled with other waste streams.

6. Spent Potliner Leachate

Comment: we believe that spent potliner leachate should be dealt with explicitly, as it will be controlled in many cases.

Response: EPA clearly states in the proposal: "Spent potliner leachate . . . is considered to be a site-specific, non-scope waste stream by the Agency" (51 FR 18532). EPA has not proposed a specific mass discharge allowance for this stream, but has merely provided guidance to permit-writing authorities. EPA appreciates that spent potliner pile leachate will be controlled in many cases, but stresses that the regulation of this waste must be examined on a case-by-case basis by the permit-writing authority.

VII. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. Major rules are defined as rules that impose an annual cost to the economy of $100 million or more, or meet other economic criteria. This regulation, which modestly reduces regulatory requirements, is not a major rule.

VIII. Regulatory Flexibility Analysis

Pub. L. 96–354 requires that EPA prepare a Regulatory Flexibility Analysis for regulations that have a significant impact on a substantial number of small entities. In the preamble to the March 8, 1984 final nonferrous metals manufacturing phase I regulation, the Agency concluded that there would not be a significant impact on a substantial number of small entities (49 FR 8775). For that reason, the Agency determined that a formal regulatory flexibility analysis was not required. That conclusion is equally applicable to these amendments, since the amendments slightly reduce the regulatory requirements.

IX. OMB Review

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA reponse to those comments are available for public inspection at Room M2404, U.S. EPA, 401 M. Street, SW., Washington, DC 20460 from 9:00 a.m. to 4:00 p.m. Monday through Friday, excluding Federal holidays.

List of Subjects in 40 CFR Part 421

Metals, Nonferrous metals manufacturing, Water pollution control, Waste treatment and disposal.

Dated: June 29, 1987.

Lee M. Thomas,

Administrator.

For the reasons stated above, EPA is amending 40 CFR Part 421 as follows:

PART 421—NONFERROUS METALS MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for Part 421 continues to read as follows:

Authority: Secs. 301, 304 (b), (c), (e), and (g), 306 (b) and (c), 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act") 33 U.S.C. 1311, 1314 (b), (c), (e), and (g), 1316 (b) and (c), 1317 (b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. Section 421.21 is amended by adding a new paragraph (c) to read as follows:

§ 421.21 Specialized definitions.

* * * * *

(c) If a permittee chooses to analyze for benzo(a)pyrene using any EPA-approved method, any "non-detected" measurements shall be considered zeroes for the purpose of determining compliance with this regulation.

3. Section 421.23 is amended by revising the entries for benzo(a)pyrene and fluoride (if listed below) in paragraphs (a)–(h), (j)–(o), (q)–(r) to read as follows:

§ 421.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

* * * * *

(a) Subpart B—Anode and Cathode Paste Plant Wet Air Pollution Control.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of paste produced	
Benzo(a)pyrene..	0.005	0.002
* *	* *	*
Fluoride.....	8.092	3.591

(b) Subpart B—Anode Contact Cooling and Briquette Quenching.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of anodes cast	
Benzo(a)pyrene..	0.007	0.003
* *	* *	*
Fluoride.....	12.440	5.518

(c) Subpart B—Anode Bake Plant Wet Air Pollution Control (Closed Top Ring Furnace).

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of anodes baked	
Benzo(a)pyrene..	0.146	0.067
* * * * *		
Fluoride.....	257.300	114.200

(d) Subpart B—Anode Bake Plant Wet Air Pollution Control (Open Top Ring Furnace With Spray Tower Only).

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of anodes baked	
Benzo(a)pyrene..	0.002	0.001
* * * * *		
Fluoride.....	2.975	1.320

(e) Subpart B—Anode Bake Plant Wet Air Pollution Control (Open Top Ring Furnace With Wet Electrostatic Precipitator and Spray Tower).

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of anodes baked	
Benzo(a)pyrene..	0.025	0.011
* * * * *		
Fluoride.....	43.440	19.270

(f) Subpart B—Anode Bake Plant Wet Air Pollution Control (Tunnel Kiln).

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of anodes baked	
Benzo(a)pyrene..	0.038	0.018

BAT Effluent Limitations—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Fluoride.....	67.710	30.050

(g) Subpart B—Cathode Reprocessing (Operated With Dry Potline Scrubbing and Not Commingled With Other Process or Nonprocess Waters).

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of cryolite recovered	
Benzo(a)pyrene..	1.181	0.547
* * * * *		

(h) Subpart B—Cathode Reprocessing (Operated With Dry Potline Scrubbing and Commingled With Other Process or Nonprocess Waters).

BAT Effluent Limitations

Pollutant or poliutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of cryolite recovered	
Benzo(a)pyrene..	1.181	0.547
* * * * *		
Fluoride.....	2,084.000	924.800

* * * * *

(j) Subpart B—Potline Wet Air Pollution Control (Operated Without Cathode Reprocessing).

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from electrolytic reduction	
Benzo(a)pyrene..	0.028	0.013
* * * * *		
Fluoride.....	49.860	22.130

(k) Subpart B—Potline Wet Air Pollution Control (Operated With Cathode Reprocessing and Not Commingled With Other Process or Nonprocess Waters).

BAT Effluent Limitations

Pollutant or pollutant property	maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from electrolytic reduction	
Benzo(a)pyrene..	0.028	0.013
* * * * *		

(l) Subpart B—Potline Wet Air Pollution Control (Operated With Cathode Reprocessing and Commingled With Other Process or Nonprocess Waters).

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from electrolytic reduction	
Benzo(a)pyrene..	0.028	0.013
* * * * *		
Fluoride.....	49.860	22.130

(m) Subpart B—Potroom Wet Air Pollution Control.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from electrolytic reduction	
Benzo(a)pyrene..	0.056	0.026
* * * * *		
Fluoride.....	98.770	43.830

(n) Subpart B—Potline SO_2 Emissions Wet Air Pollution Control.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from electrolytic reduction	
Benzo(a)pyrene..	0.045	0.021

BAT EFFLUENT LIMITATIONS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
* * * * *		
Fluoride	79.790	35.400

(o) Subpart B–Degassing Wet Air Pollution Control.

BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of aluminum produced from electrolytic reduction	
Benzo(a)pyrene	[1]	[1]
* * * * *		
Fluoride	155.300	68.880

[1] There shall be no discharge allowance for this pollutant.

* * * * *

(q) Subpart B—Direct Chill Casting Contact Cooling.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of aluminum product from direct chill casting	
Benzo(a)pyrene	[1]	[1]
* * * * *		
Fluoride	79.080	35.090

[1] There shall be no discharge allowance for this pollutant.

(r) Subpart B—Continuous Rod Casting Contact Cooling.

BAT EFFLUENT LIMITATIONS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of aluminum product from rod casting	
Benzo(a)pyrene	[1]	[1]
* * * * *		
Fluoride	6.188	2.746

[1] There shall be no discharge allowance for this pollutant.

* * * * *

4. Section 421.24 is amended by revising the entries for benzo(a)pyrene and fluoride (if listed below) in paragraphs (b), (d), (e), (h), (k) and (l) to read as follows:

§ 421.24 Standards of performance for new sources.

* * * * *

(b) Subpart B—Anode Contact Cooling and Briquette Quenching.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of anodes cast	
Benzo(a)pyrene	0.007	0.003
* * * * *		
Fluoride	12.440	5.518

* * * * *

(d) Subpart B—Cathode Reprocessing (Operated With Dry Potline Scrubbing and Not Commingled With Other Process or Nonprocess Waters).

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cryolite recovered	
Benzo(a)pyrene	1.181	0.547

(e) Subpart B—Cathode Reprocessing (Operated With Dry Potline Scrubbing and Commingled With Other Process or Nonprocess Waters.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (pounds per million pounds) of cryolite recovered	
Benzo(a)pyrene	1.181	0.547
* * * * *		
Fluoride	2,084.000	924.800

* * * * *

(h) Subpart B—Potline SO_2 Emissions Wet Air Pollution Contol.

NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from electrolytic reduction	
Benzo (a) pyrene	0.045	0.021
* * * * *		
Flouride	79.790	35.400
* * * * *		

(k) Subpart B—Direct Chill Casting Contact Cooling.

NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from direct chill casting	
Benzo (a) pyrene	[1]	[1]
* * * * *		
Flouride	79.080	35.090
* * * * *		
pH	[2]	[2]

[1] There shall be no discharge allowance for this pollutent.

[2] The pH shall be maintained within the range of 7.0 to 10.0 at all times except for those situations when this waste is discharged separately and without commingling with any other waste-water in which case the pH shall be within the range of 6.0 to 10.0 at all times.

(l) Subpart B—Continuous Rod Casting Contact Colling.

NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from rod casting	
Benzo (a) pyrene	[1]	[1]
* * * * *		
Flouride	6.188	2.746

NSPS—Continued

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
* * * * *		

[1] There shall be no discharge allowance for this pollutant.

* * * * *

5. Section 421.26 is amended by revising the entries for benzo (a) pyrene and flouride (if listed below) for paragraphs (b), (d), (e), (h), (k), (l) to read as follows:

§ 421.26 Pretreatment standards for new sources.

* * * * *

(b) Subpart B—Anode Contact Cooling and Briquette Quenching.

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of anodes cast	
Benzo (a) pyrene	0.007	0.003
* * * * *		
Flouride	12.440	5.518

* * * * *

(d) Subpart B—Cathode Reprocessing (Operated With Dry Potline Scrubbing and Not Commingled With Other Process or Nonprocess Waters).

PSNS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/kg (lb/million lbs) of cryolite recovered	
Benzo (a) pyrene	1.181	0.547
* * * * *		

(e) Subpart B—Cathode Reprocessing (Operated With Dry Potline Scrubbing and Commingled With Other Process or Nonprocess Waters.

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of cryolite recovered	
Benzo(a)pyrene	1.181	0.547
* * * * *		
Fluoride	2,084.000	924.800

* * * * *

(h) Subpart B—Potline SO_2 Emissions Wet Air Pollution Control.

PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum produced from electrolytic reduction	
Benzo(a)pyrene	0.045	0.021
* * * * *		
Fluoride	79.790	35.400

* * * * *

(k) Subpart B—Direct Chill Casting Contact Cooling.

PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum product from direct chill casting	
Benzo(a)pyrene	[1]	[1]
* * * * *		
Fluoride	79.080	35.090

[1] There shall be no discharge allowance for this pollutant.

(l) Subpart B—Continuous Rod Casting Contact Cooling.

PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum product from rod casting	
Benzo(a)pyrene	[1]	[1]
* * * * *		
Fluoride	6.188	2.746

[1] There shall be no discharge allowance for this pollutant.

6. Section 421.33 is amended by revising paragraphs (d) and (g) to read as follows:

§ 421.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

* * * * *

(d) Subpart C—Demagging Wet Air Pollution Control.

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum demagged	
Lead	0.216	0.100
Zinc	0.786	0.324
Aluminum	4.711	2.090
Ammonia (as N)	102.800	45.180

* * * * *

(g) Subpart C—Ingot Conveyor Casting Contact Cooling (When Chlorine Demagging Wet Air Pollution Control is Not Practiced On-Site).

BAT Effluent Limitations

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum cast	
Lead	0.019	0.009
Zinc	0.068	0.028
Aluminum	0.409	0.182
Ammonia (as N)	8.931	3.926

7. Section 421.34 is amended by revising paragraphs (d) and (g) to read as follows:

§ 421.34 Standards of performance for new sources.

* * * * *

(d) Subpart C—Demagging Wet Air Pollution Control.

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum demagged	
Lead	0.216	0.100
Zinc	0.786	0.324

NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Aluminum	4.711	2.090
Ammonia (as N)	102.800	45.180
Total suspended solids	11.570	9.252
Oil and grease	7.710	7.710
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

* * * * *

(g) Subpart C—Ingot Conveyor Casting Contact Cooling (When Chlorine Demagging Wet Air Pollution Control is Not Practiced On-Site).

NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum cast	
Lead	0.019	0.009
Zinc	0.068	0.028
Aluminum	0.409	0.182
Ammonia (as N)	8.931	3.926
Total suspended solids	1.005	0.804
Oil and grease	0.670	0.670
pH	(1)	(1)

[1] Within the range of 7.0 to 10.0 at all times.

8. Section 421.35 is amended by revising paragraphs (d) and (g) to read as follows:

§ 421.35 Pretreatment standards for existing sources.

* * * * *

(d) Subpart C—Demagging Wet Air Pollution Control.

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum demagged	
Lead	0.216	0.100
Zinc	0.786	0.324
Amomonia (as N)	102.800	45.180

* * * * *

(g) Subpart C—Ingot Conveyor Casting Contact Cooling (When Chlorine Demagging Wet Air Pollution Control is Not Practiced On-Site).

PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum cast	
Lead	0.019	0.009
Zinc	0.068	0.028
Amomonia (as N)	8.931	3.926

9. Section 421.36 is amended by revising paragraphs (d) and (g) to read as follows:

§ 421.36 Pretreatment standards for new sources.

* * * * *

(d) Subpart C—Demagging Wet Air Pollution Control.

PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum demagged	
Lead	0.216	0.100
Zinc	0.786	0.324
Amomonia (as N)	102.800	45.180

* * * * *

(g) Subpart C—Ingot Conveyor Casting Control Cooling (When Chlorine Demagging Wet Air Pollution Control is Not Practiced On-Site).

PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/kg (lb/million lbs) of aluminum cast	
Lead	0.019	0.009
Zinc	0.068	0.028
Amomonia (as N)	8.931	3.926

[FR Doc. 87-15242 Filed 7-6-87; 8:45am]
BILLING CODE 6560-50-M

federal register

Tuesday
July 7, 1987

Part V

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Schedules of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning on or After July 1, 1986 but Before July 1, 1987 and Cost Reporting Periods Beginning on or After July 1, 1987; Notice With Comment Period

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-399-NC]

Medicare Program; Schedules of Limits on Home Health Agency Costs per Visit for Cost Reporting Periods Beginning on or After July 1, 1986 but Before July 1, 1987 and Cost Reporting Periods Beginning on or After July 1, 1987

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period sets forth, in accordance with section 9315 of the Omnibus Budget Reconciliation Act of 1986, a revised schedule of limits on home health agency (HHA) costs that may be reimbursed under the Medicare program for cost reporting periods beginning on or after July 1, 1986 but before July 1, 1987. It also sets forth an updated schedule of limits applicable to cost reporting periods beginning on or after July 1, 1987.

EFFECTIVE DATE: The schedules of limits are effective for cost reporting periods beginning on or after July 1, 1986 but before July 1, 1987 and for cost reporting periods beginning on or after July 1, 1987.

COMMENT PERIOD: Although these schedules of limits are final, we will consider comments on the methodology we used to factor in the new billing and verification add-on. Comments will be considered if they are received at the appropriate address, as provided below, no later than 5:00 p.m. on September 8, 1987.

ADDRESS: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BERC-399-NC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

In commenting, please refer to file code BERC-399-NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: Steven R. Kirsh, (301) 597-1803.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1) of the Social Security Act (the Act) authorizes the Secretary to establish limits on allowable costs incurred by a provider of services that may be reimbursed under the Medicare program, based on estimates of the costs necessary for the efficient delivery of needed health services. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. This provision of the statute is implemented under regulations at 42 CFR 413.30.

Under this authority, we have maintained limits on home health agency (HHA) per visit costs since 1979. In this notice, we set forth two schedules of limits. (See sections III & IV) The first schedule replaces the schedule that we published in the **Federal Register** on May 30, 1986 (51 FR 19734), which was applicable to cost reporting periods beginning on or after July 1, 1986 but before July 1, 1987. Corrections to that set of limits were published on August 7, 1986 (51 FR 28439) and on August 19, 1986 (51 FR 29521). The May 30, 1986 notice set the limits using the three-year methodology that was previously annnounced in the July 5, 1985 **Federal Register** (50 FR 27734). That is, the limits were established on a per discipline basis, at 115 percent of mean cost, using the latest available cost data (1982) data, adjusted by the latest estimates in the market basket index. In this notice, in the first schedule of limits below, we are replacing the May 30, 1986 schedule in order to comply with section 9315 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509) enacted on October 21, 1986.

Section 9315(a) of Pub. L. 99-509, amended section 1861(v)(1)(L) of the Act to provide that for cost reporting periods beginning on or after July 1, 1986 but before July 1, 1987 the limits are to be set at 115 percent of the mean of the labor-related and nonlabor per visit costs for free standing HHAs, and for cost reporting periods beginning on or after July 1, 1987 at 112 percent of the mean. Section 1861(v)(1)(L)(ii) of the Act further provided that, effective July 1, 1986, the limits are to be applied on an aggregate basis, rather than on a discipline-specific basis, with appropriate adjustment for administrative and general costs of hospital agencies. Section 9315(b) of Pub. L. 99-509 requires that, in establishing limits on payments for HHA services for cost reporting periods beginning on or after July 1, 1986, the limits are to be set using the most recent data available, and that no cost report data for periods beginning earlier than October 1, 1983 are to be used. Section 9315(b) also provides that, in setting the HHA limits, HCFA is to take into account any added costs incurred by HHAs for billing and verification procedures that result from changes in the requirements for these procedures. These procedures include required completion of HCFA forms 485 (Plan of Treatment and Home Health Certification Form), form 486 (the medical information form), form 487 (addendum to HCFA 485 and 486) and form 488, (HHA intermediary medical information request.)

The second schedule (See section IV) set forth below updates the limits to take into account the effects of inflation on HHA operating costs and is applicable to cost reporting periods beginning on or after July 1, 1987.

II. Add-on for Changes in Billing and Verification Procedures to Account For Increased Costs in Preparing HCFA Forms 485-488

In September 1985, HCFA changes the forms for HHA billing and verification procedures. We instituted the HCFA 485 series of forms. This series consists of the Plan of Treatment and Home Health Certification Form (HCFA-485), the Medical Information Form (HCFA-486), Addendum to the HCFA 485 and 486 (HCFA-487), and the HHA Intermediary Medical Information Request (HCFA-488). The information on these forms is needed to determine eligibility of beneficiaries for services. Many HHAs have complained about the costs associated with completing this series of forms. Congress responded to these complaints by enacting section 9315(b)(2) of Pub. L. 99-509. This section requires that, in establishing the HHA limits for cost reporting periods beginning on or after July 1, 1986, HCFA must take into account the changes in costs of HHAs for billing and verification procedures that result from HCFA changing the requirements for these procedures. Thus, to satisfy the statutory requirement of section 9315(b)(2) of Pub. L. 99-509, HCFA has increased the base limit values included in Table I below for both the July 1, 1985

and July 1, 1987 limits. The amount of increase is our estimate of the added costs incurred by an HHA in completing these forms. The estimate is based on the same methodology and assumptions used in obtaining approval for these forms from the Executive Office of Management and Budget. To arrive at these figures, we estimated that an HHA would spend about one half hour completing the forms 485 and 486 and that these forms would be completed for every other claim. We also estimated that the form 488 would be required about twenty percent of the time that a 485 is required and would take approximately one quarter of an hour to complete. Using 1984 claim and visit data, indicated below, we have calculated that it takes, on average, about 275 hours per claim at a cost of $2.75 per claim using a standard figure of $10.00 per hour (the figure EOMB uses to estimate paperwork burden) or $.37 per visit to complete the HCFA 485 series of forms. Since the form preparation costs per visit is to apply to the cost limit schedules for cost reporting periods beginning on and after July 1, 1986 and on and after July 1, 1987, we adjusted the costs to take into account inflation from September 30, 1985 (the effective date of the forms) through the midpoint of each schedule of limits. To adjust the cost per visit for inflation, we used inflation rates of 3.2 percent, 3.8 percent and 4.9 percent for calendar years 1986, 1987 and 1988 respectively. (See section V.A.) This resulted in an inflation factor adjustment of 1.0267 for the schedule of limits effective July 1, 1986 and 1.0714 for the schedule effective July 1, 1987.

Calculation of Add-on for Billing Costs

1984 visits, 39,660,931.
1984 claims, 5,258,174.

1984

Forms 485/486

5,258,174 claims × .5 = 2,629,087 claims for which forms are completed
2,629,087 claims × .5 hours = 1,314,544 hours to complete the forms

Form 488

2,629,087 claims × .20 = 525,817 claims for which forms are completed
525,817 claims × .25 hours = 131,454 hours to complete the forms
Total hours

Hours Forms 485/486	1,314,544
Hours Form 488	+131,454
Hours on all forms	1,445,998

1,445,998 hours ÷ 5,258,174 claims = .275 hours per claim

1,445,998 hours ÷ 39,660,931 visits = .0365 hours per visit
At a cost of $10.00 per hour, $2.75 per claim or $.365 per visit.
$.365 per visit × 1.0267 inflation factor = .3747 or $.37 per visit for the base period covered by the July 1, 1986 schedule of limits.
$.365 per visit × 1.0714 inflation factor = .3910 or $.39 per visit for the base period covered by the July 1, 1987 schedule of limits.

We believe that the per visit add-on for billing and verification amounts described above are reasonable and equitable add-on figures that should adequately accommodate any increased costs attributable to the completion of these billing and verification forms. However, we invite specific public comment on the methodology we used to determine the add-on amounts.

III. Limits Effective July 1, 1986

With the exception of applying the limits on an aggregate basis, rather than on a discipline-specific basis, of allowing a billing and verification add-on that takes into account the increased costs incurred in filling out HCFA forms 485–488, and of using a later (1984) cost data base, the methodology used to recalculate the schedule of limits applicable to cost reporting periods beginning on or after July 1, 1986 but before July 1, 1987 is the same as explained in the May 30, 1986 notice. In order to comply with the requirement of section 9315 of Pub. L. 99–509 that these limits be based on cost report data for periods beginning no earlier than October 1, 1983, a special data collection effort was mounted whereby the post 1983 HHA cost report data were collected. Each HHA for which data for a fiscal year beginning on or after October 1, 1983 was not available, was identified. Later cost reports for these HHAs were submitted, and data from these later cost reports were used in calculating these limits.

The data base used to develop the limits in this notice includes data from a number of new HHAs, (that is, agencies that have been in business for less than three years.) The costs of these HHAs tend to include start-up costs associated with a new business enterprise. By virtue of their recent entry into the home health field, these agencies also tend to have a low volume of visits. The interaction of these two factors, higher overhead costs coupled with low volume, results in per visit cost in excess of that incurred by the more efficiently operated established HHAs.

We have noted two major effects of the inclusion of data from these new HHAs in the cost data used to establish the limits contained in this notice. First, in a reversal of a long-standing historical trend, the number of visits per agency in eight of the twelve freestanding cells has decreased, reflecting the lower volume of the new agencies. Second, the inclusion of these higher cost HHAs has resulted in a significant increase in the limits.

In order to compute the limits in accordance with section 9315 of Pub. L. 99–509, we have updated the relative cost shares contained in the market basket index. The categories used in the market basket contained in this schedule have not changed from those used for the May 30, 1986 notice. However, the relative cost shares used change over time because of differences in the increase in the various price variables. Categories with higher rates of price increases receive higher weights and vice versa. Thus, in this revised schedule of limits we have updated these relative cost shares to reflect the latest available data. The labor portion of per visit cost used in the revised tables was 80.17 percent. We have also revised the following Tables of the May 30, 1986 notice.

- Table I—Per Visit Limits for Home Health Agencies by Metropolitan Statistical area (MSA), New England County Metropolitan area (NECMA) and non-MSA locations.
- Table II—Add-On Amounts for Hospital-Based HHAs by MSA/NECMA.
- Table IV Cost Reporting Year Adjustment Factors.

For further explanation of the specifics of the methodology used to calculate the limits, see the discussion in section IV below, which describes the methodology used to set the July 1, 1987 limits.

REVISED MARKET BASKET RELATIVE IMPORTANCE FACTORS

Cost categories	Relative importance 1987 factors
Wages and salaries	66.73
Employee benefits	7.94
Transportation	4.21
Office costs	2.92
Medical nursing supplies and rental equipment	2.53
Rent	1.22
Nonrental space occupancy	1.11
Miscellaneous	6.47
Contract services	6.87
Total (percent)	100

REVISED TABLE I—PER VISIT LIMITS FOR HOME HEALTH AGENCIES [1]

Type of visit	Limit	Labor portion	Nonlabor portion
MSA (NECMA) location			
Skilled nursing care	57.34	45.14	12.20
Physical therapy	55.03	43.39	11.64
Speech pathology	59.17	46.62	12.55
Occupation therapy	56.53	44.38	12.15
Medical social services	85.98	67.10	18.88
Home health aide	32.86	25.94	6.92
Non-MSA location			
Skilled nursing care	63.03	51.99	11.04
Physical therapy	63.56	52.49	11.07
Speech pathology	72.67	59.80	12.87
Occupational therapy	69.76	57.32	12.44
Medical social services	111.00	91.00	20.00
Home health aide	33.66	27.73	5.93

[1] Nonlabor component of limits for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands will be increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui, Lanai, and Molokai	1.200
Hawaii (island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

Revised Table II—Add-On Amounts for Hospital-Based Home Health Agencies

	A&G Add-On	Labor portion	Nonlabor portion
MSA (NECMA) location			
Skilled nursing care	5.94	4.66	1.29
Physical therapy	5.57	4.35	1.22
Speech pathology	6.39	4.99	1.40
Occupational therapy	5.86	4.55	1.31
Medical social services	9.23	7.17	2.06
Home health aide	3.44	2.70	.74
Non-MSA location			
Skilled nursing care	6.76	5.55	1.21
Physical therapy	7.35	6.01	1.34
Speech pathology	8.69	7.11	1.58
Occupational therapy	8.91	7.21	1.70
Medical social services	11.06	8.95	2.11

Revised Table II—Add-On Amounts for Hospital-Based Home Health Agencies—Continued

	A&G Add-On	Labor portion	Nonlabor portion
Home health aide	3.72	3.06	.66

REVISED TABLE IV—COST REPORTING YEAR ADJUSTMENT FACTORS [1]

	The adjustment factor is—
If the HHA cost reporting period begins:	
Aug. 1, 1986	1.0032
Sept. 1, 1986	1.0064
Oct. 1, 1986	1.0094
Nov. 1, 1986	1.0127
Dec. 1, 1986	1.0158
Jan. 1, 1987	1.0190
Feb. 1, 1987	1.0231
Mar. 1, 1987	1.0269
Apr. 1, 1987	1.0311
May 1, 1987	1.0351
June 1, 1987	1.0394

[1] Based on compounded projected market basket inflation rates of 3.8 percent for 1987 and 4.9 percent for 1988. These adjustment factors are subject to change based on later estimates of cost increases.

IV. Provisions of the Limits Effective July 1, 1987

The schedule of limits set forth below was calculated using 112 percent of mean cost and is based on the latest available cost data adjusted by the latest estimates in the market basket index.

The new schedule of limits effective July 1, 1987 provides for:

A. A classification system based on whether an HHA is located within an MSA, a NECMA or a non-MSA area. (See Table III.A., below, for the listing of MSA/NECMA areas.)

B. The use of a single schedule of limits for hospital-based and freestanding agencies. This single limit is based on the cost experience of freestanding agencies. It includes a billing and verification add-on to reflect any additional costs incurred in completing the HCFA 485 series of forms as discussed in section II above. For each hospital-based discipline we have also provided for an add-on adjustment of the freestanding HHA limit (which is equal to 10.77 percent of the mean cost for the MSA hospital-based group and 11.65 percent for the non-MSA hospital-based group) to account for the higher A & G costs resulting from Medicare cost allocation requirements. That is, the labor-related portion of the add-on, adjusted by the appropriate wage index, plus the nonlabor portion, will be added to each freestanding limit to determine the per discipline limits for hospital-based agencies.

C. The use of the following market basket index developed from the price of goods and services purchased by HHAs to account for the impact of changing wage and price levels on HHA costs. The limit values contained in this schedule reflect the latest available actual and projected rates of inflation in HHA expenses. The categories used were identified through an analysis of 1977 Medicare cost reports and other available home health industry surveys. The categories of expenses are weighted according to the estimated proportion of HHA costs attributable to each category.

The categories used in the market basket contained in this schedule have not changed from those used for the July 1, 1986 schedule. However, the relative costs shares used change over time because of differences in the rate of increase in the various price variables. Categories with higher rates of price increases receive higher weights and vice versa.

In developing the market basket index, we obtained historical and projected rates of increase in the resource prices for each category. The price variables and the source of the forecast for calendar years 1987 through 1989 are identified in the third and fourth columns of the updated market basket included in this notice.

HOME HEALTH AGENCY INPUT PRICE INDEX: COST CATEGORIES, RELATIVE IMPORTANCE, FORECASTERS, AND PRICE VARIABLES USED

Cost Categories	Relative [1] importance 1988	Forecaster of [2] percent (1987–89)	Price variables used
Wages and salaries	66.59	DRI–CFS	Average hourly earnings of nonsupervisory private hospital workers (SIC 806) Source: U.S. Dept. of Labor, Bureau of Labor Statistics, Employment and Earnings (Monthly).

HOME HEALTH AGENCY INPUT PRICE INDEX: COST CATEGORIES, RELATIVE IMPORTANCE, FORECASTERS, AND PRICE VARIABLES USED—Continued

Cost Categories	Relative [1] importance 1988	Forecaster of [2] percent (1987–89)	Price variables used
Employee benefits	8.10	DRI–TL	Supplements to wages and salaries per worker in non-agriculture establishments. Source: For supplements to wages and salaries—U.S. Dept. of Commerce, Bureau of Economic Analysis, Survey of Current Business (monthly.) For total employment—U.S. Department of Labor, Bureau of Labor Statistics, Employment and Earnings (monthly).
Transportation	4.25	DRI–TL	Transportation component of Consumer Price Index, all urban. Source: U.S. Department of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Office Costs	2.92	DRI–TL	Services Component of Consumer Price Index, all urban. Source: U.S. Department of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Medical nursing supplies and rental equipment.	2.52	HCFA–HHS	Medical equipment and supplies component of the Consumer Price Index, all urban. Source: U.S. Department of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Rent	1.20	DRI–CFS	Residential rent component of Consumer Price Index, all urban. Source: U.S. Department of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Nonrental space	1.11	DRI–TL	Composite Fuel and Other Utilities Index. Source: HHS–HCFA Community Hospital Price Index.
Miscellaneous	6.44	DRI–TL	Consumer Price Index for all items, all urban. Source: U.S. Department of Labor, Bureau of Labor Statistics, Monthly Labor Review.
Contract Services	6.87		Weighted mean of price variables for the preceding eight items.
Total	100.00		

[1] Relative cost weights for 1977 were derived from special studies by HCFA using primarily data from HCFA Medicare cost reports and data from the Council of Home Health Agencies and Community Health Services. A Laspeyres price index was constructed using 1977 weights and price variables indicated in this table. The relative importance values change over time in accordance with price changes for each price variable. Cost categories with relatively higher price increases get higher relative importance values and vice versa.

[2] DRI–TL refers to Data Resources, Inc., Trendlong (TL 0187) 29 Hartwell Avenue, Lexington, Massachusetts 02173; DRI–CFS refers to Data Resources, Inc., Cost Forecasting Services (CFS–871), 1750 K Street NW., Washington, DC 20006.

D. An adjustment to the limits if the estimated market basket rate differs from the actual rate by more than 3/10 of one percentage point (that is, higher or lower).

E. The use of the HCFA survey-based gross wage index that was developed based on data obtained from a survey conducted by HCFA. The survey provided for the extraction of specific hospital salary and fringe benefit data from the Medicare cost report and for the extraction from hospital records of data on paid hours worked. A complete description of the survey results, can be found in the following **Federal Register** publications:

- Proposed rule published on July 3, 1984 (49 FR 27439);
- Final rule published on August 31, 1984 (49 FR 34764);
- Proposed rule published on June 10, 1985 (50 FR 24375); and
- Final rule published on September 3, 1985 (50 FR 35646).

A description of the methodology used to compute the gross wage index (see tables III.A and III.B) was described in the March 25, 1986 proposed notice concerning the use of the HCFA survey-based wage index in calculating HHA cost limits for cost reporting periods beginning on or after July 1, 1986. Corrections of data for several areas were made subsequent to the publication of the proposed notice and were incorporated in the wage indexes included in the May 30, 1986 final notice (51 FR 19734). The wage index is used to adjust the labor-related portion of the limits and the A&G add-on to reflect differing wage levels among the areas (MSA/NECMA, and non-MSA) in which HHAs are located. The employee wage portion of the market basket index (66.59 percent) and the employee benefits portion (8.10 percent), plus a factor representing a proportionate share of contract services (5.51 percent), is used to determine the labor component (80.20 percent) of all HHA per visit costs used to set the limits.

If the Executive Office of Management and Budget (EOMB) announces changes in the MSA designations effective before July 1, 1987, we will recalculate the wage indexes for the affected areas and direct our intermediaries to use these revised indexes in determining the limits for HHAs they service.

F. Separate treatment of the labor-related and nonlabor components of per visit costs. The separate components of costs are calculated by obtaining actual HHA cost data for each agency for cost periods beginning on and after October 1, 1983 and increasing those data by the actual and projected increases in the HHA market basket. We then separate each HHA's per visit costs into labor and nonlabor portions, and divide the labor portion by the wage index value for the agency's location to control for the effect of wage geographic variations in prevailing wage levels. Separate means are computed for the labor and nonlabor components of per visit costs. For each comparison group, the resulting amounts are shown in Table I.

G. The use of a cost of living adjustment to the nonlabor portion of the limit for HHAs in Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

H. Limits that are determined for the per visit cost of each type of service: Skilled nursing care, physical therapy, speech pathology, occupation therapy, medical social services, and home health aide.

I. Included in the limit values set forth in Table I below is a factor of thirty-nine cents per visit to cover the additional billing and verification costs incurred by HHAs in completing HCFA forms 485–488. See the discussion above in section

II of this notice for information on how we calculated this factor.

J. Application of the limits in the aggregate after the provider's actual costs are reduced. Appropriate changes to the Medicare HHA cost reporting form will be issued. A provider's actual costs are reduced by the amount of individual items of cost that are found to be excessive under Medicare principles of provider reimbursement and reimbursable costs that are not included in the limitation amount. The limits are applied in the aggregate to the costs remaining after these adjustments are made.

V. Methodology for Determining Cost per Visit Limits

A. Data

The limit values were determined by extracting actual cost per visit data from Medicare cost reports for periods beginning on and after October 1, 1983. We then adjusted the data using the latest available market basket factors to reflect cost increases occurring between the cost reporting periods contained in our data base and December 31, 1987 (the midpoint of the first cost reporting period to which the limits will apply). The annual percentage increases used to compute the per visit costs are:

	Percent increase
Calendar year:	
1984	[1] 5.1
1985	[1] 4.7
1986	[2] 3.2
1987	[2] 3.8
1988	[2] 4.9

[1] Final rate.

[2] Forecasted increases. The projected rate of increase in the market basket index will be adjusted to the actual inflation rate if the actual rate of increase differs from the estimated rate by more than 3/10 of one percentage point. We will notify the Medicare intermediaries of the actual rate of increase and advise them to adjust each HHA's cost limit at the time of final settlement.

B. Standardization for Wage Levels

After adjustment by the market basket index, we divided each HHA's per visit costs into labor and nonlabor portions. The labor portion of costs (80.20 percent) was determined by using the 74.69 percent employee wage and benefit factor from the market basket, plus 5.5 percent, which represents a proportionate share of the market basket relative importance for contract services. We then divide the labor portion of per visit costs by the wage index applicable to the HHA's location to arrive at an adjusted labor cost.

C. Adjustment for "Outliers"

We transformed all per visit cost data into their natural logarithms and grouped them by type of service and MSA/NECMA and non-MSA locations, in order to determine the mean cost and standard deviation for each group. We then eliminated all "outlier" costs, retaining only those per visit costs within two standard deviations from the mean in each service.

D. Basic Service limit

A basic service limit equal to 112 percent of the mean labor and nonlabor portions of the per visit costs of freestanding HHAs is calculated for each type of service. (See Table I.)

VI. Computing the Adjusted Limit

A. Adjustment of Limits by Wage Index

To arrive at the adjusted limit, which is to be applied to each service furnished by an HHA, the Medicare fiscal intermediary first multiplies the labor-related component of the limit for the comparison group by the appropriate wage index. (See Tables I, III.A. and III.B.) The adjusted limit applicable to an HHA is the sum of the nonlabor component plus the adjusted labor-related component.

Example-Calculation of Adjusted Occupational Therapy limit for a Freestanding HHA in Dallas, TX

Labor component (Table I)	$45.12
Wage index (Table III.A.)	×1.0733
Adjusted labor component	$48.43
Nonlabor component (Table I)	+12.34
Adjusted occupational therapy limit	$60.77

B. Adjustment for Reporting Year

If an HHA has a cost reporting period beginning on or after August 1, 1987, the adjusted per visit limit for each service is revised by a factor from Table IV that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the limits become effective.

For example, an HHA's cost reporting period begins January 1, 1988. As calculated in the example in section VI.A. of this notice, the labor adjusted per visit limit for occupational therapy for this HHA's group is $60.77.

Computation of Revised Limit for Occupational Therapy

Adjusted per visit limit	$60.77
Adjustment factor from Table IV	×1.0244
Revised Per visit limit	62.25

In this example, the revised adjusted per visit limit for occupational therapy applicable to this HHA for the cost reporting period beginning January 1, 1988 is $62.25 per visit.

If an HHA uses a cost reporting period that is not 12 months in duration, a special calculation of the adjustment factor must be made. This results from the fact that projections are computed to the midpoint of the cost reporting period. For cost reporting periods of other than 12 months in duration, the calculation must be done specifically for the midpoint of the cost reporting period. In such cases, the intermediary for the HHA must obtain this adjustment factor from HCFA.

c. Adjustment for Hospital-Based Agencies

If an HHA participates in the Medicare program as part of a hospital that is required to file a HCFA–2522 cost report (hospital cost report) (See Provider Reimbursement Manual, HCFA Pub. 15–2, Chapters 12, 15, and 19), and qualifies as hopsital-based in accordance with the requirements specified in the schedule of limits published June 5, 1980 (45 FR 38014), the HHA will be considered a hospital-based agency and will be considered entitled to an adjustment of the per visit limit to account for higher administrative and general costs resulting from the Medicare cost allocation requirements. (See section IV.B.) The intermediary will compute the adjusted cost limit as described in the example following Table II.

VII. Schedule of Limits Effective July 1, 1987

The schedule of limits set forth below applies to cost reporting periods beginning on or after July 1, 1987. The intermediaries will compute the adjusted limits using the wage indexes published in Tables III.A and III.B. and notify each HHA they service of its applicable limits.

The HHA costs that are subject to the limits include the cost of medical supplies routinely furnished in conjuction with patient care. Medical supplies that are not routinely furnished in conjuction with patient care visits and are directly identifiable as services to an individual patient (that is, medical supplies for which a separate charge is made, in addition to the per visit charge)

are excluded from the per visit cost if they meet all of the following criteria—

- The common and established practice of comparable HHAs in the area is to charge separately for the items.
- The HHA follows a consistent charging practice for Medicare and non-Medicare patients receiving the item.
- Generally, the item is not frequently furnished to patients.
- The item is directly identifiable to an individual patient and its cost can be identified and accumulated in a separate cost center.
- The item is furnished at the direction of the patient's physician and is specifically identified in the plan of treatment.

This explanation of nonroutine medical supplies is consistent with instructions for reporting the cost of these supplies on the revised HHA cost report, forms HCFA–1728 and HCFA–2552K. The reasonable cost of durable medical equipment and supplies that are not routinely furnished in conjuction with patient care visits will be reimbursed without regard to the schedule of limits.

The intermediary determines the limit for each HHA by multiplying the number of Medicare visits for each type of service furnished by the provider by the respective per visit cost limit. The sum of these amounts is compared to the HHA's total allowable cost.

Example: HHA A, a freestanding agency located in Charlottsville, Virginia made 5000 skilled nursing, 2000 physical therapy, and 4000 home health aide covered visits to Medicare beneficiaries during its 12-month cost reporting period begining July 1, 1986.

The aggregate cost limit would be determined as follows:

Type of visit	Visit	Nonlabor portion	Adjusted labor portion	Adjusted limit	Aggregate limit
Skilled nursing	5,000	$12.29	$42.89	$55.18	$275.900
Physical therapy	2,000	11.83	41.22	53.05	106.100
Home Health aide	4,000	7.03	24.64	31.67	126.680
Aggregate cost limit					508,680

Before the limits are applied at cost settlement, the provider's actual costs will be reduced by the amount of individual items of cost (for example, administrative compensation or contract services) that are found to be excessive under Medicare principles of provider reimbursement. In this regard, the fiscal intermediaries will review the various reported costs against such screens as the cost guidelines for physical therapy under arrangements (see § 413.106) and against the limitation on costs that are substantially out of line those of comparable agencies (see § 413.9).

TABLE I—PER VISIT LIMITS FOR HOME HEALTH AGENCIES [1]

Type of visit	Limit	Labor portion	Nonlabor portion
MSA (NECMA) location			
Skilled nursing care	58.19	45.90	12.29
Physical therapy	55.94	44.11	11.83
Speech pathology	60.14	47.39	12.75
Occupation therapy	57.46	45.12	12.34
Medical social services	87.40	68.22	19.18
Home health aide	33.40	26.37	7.03
NON-MSA location			
Skilled nursing care	64.07	52.85	11.22
Physical therapy	64.61	53.37	11.24
Speech pathology	73.87	60.79	13.08

TABLE I—PER VISIT LIMITS FOR HOME HEALTH AGENCIES [1]—Continued

Type of visit	Limit	Labor portion	Nonlabor portion
Occupation therapy	70.92	58.28	12.64
Medical social services	112.82	92.51	20.31
Home health aide	34.22	28.20	6.02

[1] Nonlabor component of limits for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands will be increased by multiplying them by the following cost-of-living adjustment factors:

Location	Adjustment factor
Alaska	1.250
Hawaii:	
Oahu	1.225
Kauai	1.175
Maui, Lanai, and Molokai	1.200
Hawaii (island)	1.150
Puerto Rico	1.100
Virgin Islands	1.125

TABLE II—ADD-ON AMOUNTS FOR HOSPITAL-BASED HOME HEALTH AGENCIES

Type of visit	A&G add-on	Labor portion	Nonlabor portion
MSA (NECMA) location			
Skilled nursing care	6.20	4.86	1.34

TABLE II—ADD-ON AMOUNTS FOR HOSPITAL-BASED HOME HEALTH AGENCIES—Continued

Type of visit	A&G add-on	Labor portion	Nonlabor portion
Physical therapy	5.81	4.54	1.27
Speech pathology	6.67	5.21	1.46
Occupational therapy	6.12	4.75	1.37
Medical social services	9.63	7.49	2.14
Home health aide	3.59	2.82	.77
NON-MSA location			
Skilled nursing care	7.05	5.79	1.26
Physical therapy	7.67	6.28	1.39
Speech pathology	9.07	7.42	1.65
Occupational therapy	9.30	7.53	1.77
Medical social services	11.54	9.34	2.20
Home health aide	3.89	3.20	.69

Example:
A hospital-based agency in Orlando, FL has a wage index of 1.0188. It provides the following services:
Skilled nursing.
Physical therapy.
Home health aides.

The published limits for that agency are:

	Limit labor portion	Non-labor portion	Add-on labor portion	Non-labor portion
SN	45.90	12.29	4.86	1.34
PT	44.11	11.83	4.54	1.27
HHA	26.37	7.03	2.82	.77

Calculation of Hospital-Based Limit With Add-On

	SN	PT	HHA
Limit labor portion	$45.90	$44.11	$26.37
Add-on labor portion	+4.86	+4.54	+2.82
Total labor portion	50.76	48.65	29.19
Wage index	×1.0188	×1.0188	×1.0188
Adjusted labor portion	51.71	49.56	29.74
Limit nonlabor portion	12.29	11.83	7.03
Add-on nonlabor portion	+1.34	+1.27	+.77
Adjusted limits	$65.34	$62.66	$37.54

VII. Wage Indexes

TABLE I.—WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties or county equivalents)	Wage index
Abilene, TX	0.9003
Taylor, TX	
Aguadilla PR	[1].5881
Aguada, PR	
Aguadilla, PR	
Isabella, PR	
Moca, PR	
Akron, OH	1.1080
Portage, OH	
Summit, OH	

TABLE I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Albany, GA	.8183
Dougherty, GA	
Lee, GA	
Albany-Schenectady-Troy, NY	.9248
Albany, NY	
Greene, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Albuquerque, NM	1.1078
Bernalillo, NM	
Alexandria, LA	.9169
Rapides, LA	
Allentown-Bethlehem, PA-NJ	1.0454
Warren, NJ	
Carbon, PA	
Lehigh, PA	
Northampton, PA	
Altoona, PA	1.0022
Blair, PA	
Amarillo, TX	.9595
Potter, TX	
Randall, TX	
Anaheim-Santa Ana, CA	1.2616
Orange, CA	
Anchorage, AK	1.5849
Anchorage, AK	
Anderson, IN	.9882
Madison, IN	
Anderson, SC	.8369
Anderson, SC	
Ann Arbor, MI	1.2607
Washtenaw, MI	
Anniston, AL	.8519
Calhoun, AL	
Appleton-Oshkosh-Neenah, WI	1.0666
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
Arecibo, PR	[1].6081
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
Quebradillas, PR	
Asheville, NC	.8844
Buncombe, NC	
Athens, GA	.8179
Clarke, GA	
Jackson, GA	
Madison, GA	
Oconee, GA	
Atlanta, GA	.9663
Barrow, GA	
Butts, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
De Kalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
Atlantic City, NJ	1.0566
Atlantic, NJ	
Cape May, NJ	
Augusta, GA-SC	.9602
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Aurora-Elgin, IL	1.1015
Kane, IL	
Kendall, IL	
Austin, TX	1.1177
Hays, TX	
Travis, TX	
Williamson, TX	
Bakersfield, CA	1.2059
Kern, CA	
Baltimore, MD	1.1150
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Annes, MD	
Bangor, ME	.9285
Penobscot, ME	
Baton Rouge, LA	.9825
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
Battle Creek, MI	1.0302
Calhoun, MI	
Beaumont-Port Arthur, TX	1.0082
Hardin, TX	
Jefferson, TX	
Orange, TX	
Beaver County, PA	1.0919
Beaver, PA	
Bellingham, WA	1.1471
Whatcom, WA	
Benton Harbor, MI	.8911
Berrien, MI	
Bergen-Passaic, NJ	1.0748
Bergen, NJ	
Passaic, NJ	
Billings, MT	1.0226
Yellowstone, MT	
Biloxi-Gulfport, MS	.8489
Hancock, MS	
Harrison, MS	
Binghamton, NY	.9558
Broome, NY	
Tioga, NY	
Birmingham, AL	.9663
Blount, AL	
Jefferson, AL	
Saint Clair, AL	
Shelby, AL	
Walker, AL	
Bismarck, ND	.9943
Burleigh, ND	
Morton, ND	
Bloomington, IN	.9899
Monroe, IN	
Bloomington-Normal, IL	.9844
McLean, IL	
Boise City, ID	1.0584
Ada, ID	
Boston-Lawrence-Salem-Lowell-Brockton, MA	1.1560
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Boulder-Longmont, CO	1.1326
Boulder, CO	
Bradenton, FL	.9196
Manatee, FL	
Brazoria, TX	.8742
Brazoria, TX	
Bremerton, WA	.9813
Kitsap, WA	
Bridgeport-Stamford-Norwalk-Danbury, CT	1.1846
Fairfield, CT	
Brownsville-Harlingen, TX	.8977
Cameron, TX	
Bryan-College Station, TX	.9569
Brazos, TX	
Buffalo, NY	1.0687
Erie, NY	
Burlington, NC	.7926
Alamance, NC	
Burlington, VT	1.0131
Chittenden, VT	
Grand Isle, VT	
Caguas, PR	[1].6279
Caguas, PR	
Gurabo, PR	
San Lorenz, PR	
Aguas Buenas, PR	
Cayey, PR	
Cidra, PR	
Canton, OH	1.0080
Carroll, OH	
Stark, OH	
Casper, WY	1.1063
Natrona, WY	
Cedar Rapids, IA	1.0174
Linn, IA	
Champaign-Urbana-Rantoul, IL	.9965
Champaign, IL	
Charleston, SC	.8912
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
Charleston, WV	1.0482
Kanawha, WV	
Putnam, WV	
Charlotte-Gastonia-Rock Hill, NC-SC	.8991
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
Charlottesville, VA	.9345
Albermarle, VA	

TABLE I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
Chattanooga, TN-GA	1.0041
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
Sequatchie, TN	
Cheyenne, WY	.9702
Laramie, WY	
Chicago, IL	1.2351
Cook, IL	
Du Page, IL	
McHenry, IL	
Chico, CA	1.2463
Butte, CA	
Cincinnati, OH-KY-IN	1.1050
Dearborn, IN	
Boone, KY	
Campbell, KY	
Kenton, KY	
Clermont, OH	
Hamilton, OH	
Warren, OH	
Clarksville-Hopkinsville, TN-KY	.8183
Christian, KY	
Montgomery, TN	
Cleveland, OH	1.1565
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Medina, OH	
Colorado Springs, CO	1.0439
El Paso, CO	
Columbia, MO	1.1022
Boone, MO	
Columbia, SC	.9168
Lexington, SC	
Richland, SC	
Columbus, GA-AL	.7929
Russell, AL	
Chattanoochee, GA	
Muscogee, GA	
Columbus, OH	.9684
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
Union, OH	
Corpus Christi, TX	.9899
Nueces, TX	
San Patricio, TX	
Cumberland, MD-WV	.8996
Allegany, MD	
Mineral, WV	
Dallas, TX	1.0733
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Kaufman, TX	
Rockwall, TX	
Danville, VA	.8087
Danville City, VA	
Pittsylvania, VA	
Davenport-Rock Island-Moline, IA-IL	1.0660
Scott, IA	
Henry, IL	
Rock Island, IL	
Dayton-Springfield, OH	1.0939
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
Daytona, Beach, FL	.9139
Volusia, FL	
Decatur, IL	.9592
Macon, IL	
Denver, CO	1.2865
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
Des Moines, IA	1.0556
Dallas, IA	
Polk, IA	
Warren, IA	
Detroit, MI	1.1725
Lapeer, MI	
Livingston, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
Saint Clair, MI	
Wayne, MI	
Dothan, AL	.8457
Dale, AL	
Houston, AL	
Dubuque, IA	1.0590
Dubuque, IA	
Duluth, MN-WI	.9930
St. Louis, MN	
Douglas, WI	
Eau Claire, WI	.9498
Chippewa, WI	
Eau Claire, WI	
El Paso, TX	9437
El Paso, TX	
Elkhart-Goshen, IN	.9650
Elkhart, IN	
Elmira, NY	.9741
Chemung, NY	
Enid, OK	9626
Garfield, OK	
Erie, PA	.9991
Erie, PA	
Eugene-Springfield, OR	1.1163
Lane, OR	
Evansville, IN-KY	1.0217
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
Fargo-Moorhead, ND-MN	1.0644
Clay, MN	
Cass, ND	
Fayetteville, NC	.8330
Cumberland, NC	
Fayetteville-Springdale, AR	.8078
Washington, AR	
Flint, MI	1.2104
Genesee, MI	
Florence, AL	.7889
Colbert, AL	
Lauderdale, AL	
Florence, SC	.7686
Florence, SC	
Fort Collins-Loveland, CO	1.0846
Larimor, CO	
Fort Lauderdale-Hollywood-Pompano Beach, FL	1.1249
Broward, FL	
Fort Myers-Cape Coral, FL	.9533
Lee, FL	
Fort Pierce, FL	1.0215
Martin, FL	
St. Lucie, FL	
Fort Smith, AR-OK	.9243
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
Fort Walton Beach, FL	.8751
Okaloosa, FL	
Fort Wayne, IN	.9568
Allen, IN	
De Kalb, IN	
Whitley, IN	
Fort Worth-Arlington, TX	.9998
Johnson, TX	
Parker, TX	
Tarrant, TX	
Fresno, CA	1.1490
Fresno, CA	
Gadsden, AL	.8777
Etowah, AL	
Gainesville, FL	.9642
Alachua, FL	
Bradford, FL	
Galveston-Texas City, TX	1.1412
Galveston, TX	
Gary-Hammond, IN	1.0978
Lake, IN	
Porter, IN	
Glens Falls, NY	.9607
Warren, NY	
Washington, NY	
Grand Forks, ND	.9871
Grand Forks, ND	
Grand Rapids, MI	1.0663
Kent, MI	
Ottawa, MI	
Great Falls, MT	1.0722
Cascade, MT	
Greeley, CO	1.0763
Weld, CO	
Green Bay, WI	1.0326
Brown, WI	
Greensboro-Winston-Salem-High Point, NC	.9388
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
Greenville-Spartanburg, SC	.9130
Greenville, SC	

TABLE I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Pickens, SC	
Spartanburg, SC	
Hagerstown, MD	.9585
Washington, MD	
Hamilton-Middletown, OH	1.0214
Butler, OH	
Harrisburg-Lebanon-Carlisle, PA	.9868
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
Hartford-Middletown-New Britain-Bristol, CT	1.1486
Hartford, CT	
Middlesex, CT	
Tolland, CT	
Hickory, NC	.8982
Alexander, NC	
Burke, NC	
Catawba, NC	
Honolulu, HI	1.2022
Honolulu, HI	
Houma-Thibodaux, LA	.9229
Lafourche, LA	
Terrebonne, LA	
Houston, TX	1.0668
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
Huntington-Ashland, WV-KY-OH	.9509
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
Huntsville, AL	.8661
Madison, AL	
Indianapolis, IN	1.0594
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
Iowa City, IA	1.3084
Johnson, IA	
Jackson, MI	1.0206
Jackson, MI	
Jackson, MS	.9354
Hinds, MS	
Madison, MS	
Rankin, MS	
Jackson, TN	.7916
Madison, TN	
Jacksonville, FL	.9481
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
Jacksonville, NC	.7966
Onslow, NC	
Janesville-Beloit, WI	.9422
Rock, WI	
Jersey City, NJ	1.1108
Hudson, NJ	
Johnson City-Kingsport-Bristol, TN-VA	.8617
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
Johnstown, PA	.9526
Cambria, PA	
Somerset, PA	
Joliet, IL	1.1253
Grundy, IL	
Will, IL	
Joplin, MO	.9202
Jasper, MO	
Newton, MO	
Kalamazoo, MI	1.2341
Kalamazoo, MI	
Kankakee, IL	.9510
Kankakee, IL	
Kansas City, KS-MO	1.0660
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
Kenosha, WI	1.0875
Kenosha, WI	
Killeen-Temple, TX	.8849
Bell, TX	
Coryell, TX	
Knoxville, TN	.8996
Anderson, TN	
Blount, TN	
Grainger, TN	
Jefferson, TN	
Knox, TN	
Sevier, TN	
Union, TN	
Kokomo, IN	.9870
Howard, IN	
Tipton, IN	
LaCroose, WI	1.0167
LaCrosse, WI	
Lafayette, LA	1.0114
Lafayette, LA	
St. Martin, LA	
Lafayette, IN	.9163
Tippecanoe, IN	
Lake Charles, LA	1.0036
Calcasieu, LA	
Lake County, IL	1.1637
Lake, IL	
Lakeland-Winter Haven, FL	.8851
Polk, FL	
Lancaster, PA	1.0396
Lancaster, PA	
Lansing-East Lansing, MI	1.0769
Clinton, MI	
Eaton, MI	
Ingham, MI	
Laredo, TX	.8163
Webb, TX	
Las Cruces, NM	.8767
Dona Ana, NM	
Las Vegas, NV	1.1254
Clark, NV	
Lawrence, KS	1.0180
Douglas, KS	
Lawton, OK	.9469
Comanche, OK	
Lewiston-Auburn, ME	.9426
Androscoggin, ME	
Lexington-Fayette, KY	.9873
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Scott, KY	
Woodford, KY	
Lima, OH	.9866
Allen, OH	
Auglaize, OH	
Lincoln, NE	.9710
Lancaster, NE	
Little Rock-North Little Rock, AR	1.1135
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
Longview-Marshall, TX	.8410
Gregg, TX	
Harrison, TX	
Lorain-Elyria, OH	1.0280
Lorain, OH	
Los Angeles-Long Beach, CA	1.3290
Los Angeles, CA	
Louisville, KY-IN	1.0681
Clark, IN	
Floyd, IN	
Harrison, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
Shelby, KY	
Lubbock, TX	1.0128
Lubbock, TX	
Lynchburg, VA	.9215
Amherst, VA	
Campbell, VA	
Lynchburg City, VA	
Macon-Warner Robins, GA	.9325
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Madison, WI	1.0902
Dane, WI	
Manchester-Nashua, NH	.9724
Hillsborough, NH	
Mansfield, OH	.9919
Richland, OH	
Mayaguez, PR	[1].5732
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	

TABLE I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Mayaguez, PR	
San German, PR	
McAllen-Edinburg-Mission, TX	.8105
Hidalgo, TX	
Medford, OR	1.0356
Jackson, OR	
Melbourne-Titusville, FL	.9378
Brevard, FL	
Memphis, TN-AR-MS	1.0494
Crittenden, AR	
De Sotol, MS	
Shelby, TN	
Tipton, TN	
Merced, CA	1.2134
Merced, CA	
Miami-Hialeah, FL	1.0703
Dade, FL	
Middlesex-Somerset-Hunterdon, NJ	1.0349
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
Midland, TX	1.1305
Midland, TX	
Milwaukee, WI	1.1411
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
Minneapolis-St. Paul, MN-WI	1.1772
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Washington, MN	
Wright, MN	
St. Croix, WI	
Mobile, AL	.8927
Baldwin, AL	
Mobile, AL	
Modesto, CA	1.2103
Stanislaus, CA	
Monmouth-Ocean, NJ	.9924
Monmouth, NJ	
Ocean, NJ	
Monroe, LA	.9343
Ouachita, LA	
Montgomery, AL	.8876
Autauga, AL	
Elmore, AL	
Montgomery, AL	
Muncie, IN	1.0065
Delaware, IN	
Muskegon, MI	.9912
Muskegon, MI	
Naples, FL	1.0448
Collier, FL	
Nashville, TN	.9414
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford, TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
Nassau-Suffolk, NY	1.3399
Nassau, NY	
Suffolk, NY	
New Bedford-Fall River-Attleboro, MA	.9795
Bristol, MA	
New Haven-Waterbury-Meriden, CT	1.1276
New Haven, CT	
New London-Norwich, CT	1.1103
New London, CT	
New Orleans, LA	.9344
Jefferson, LA	
Orleans, LA	
St. Bernard, LA	
St. Charles, LA	
St. John The Baptist, LA	
St. Tammany, LA	
New York, NY	1.3809
Bronx, NY	
Kings, NY	
New York City, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
Newark, NJ	1.1404
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Niagara Falls, NY	.8963
Niagara, NY	
Norfolk-Virginia Beach-Newport News, VA	.9692
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
James City Co., VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
Oakland, CA	1.4893
Alameda, CA	
Contra Costa, CA	
Ocala, FL	.8735
Marion, FL	
Odessa, TX	.9619
Ector, TX	
Oklahoma City, OK	1.0930
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
Olympia, WA	1.0787
Thurston, WA	
Omaha, NE-IA	1.0509
Pottawattamie, IA	
Douglas, NE	
Sarpy, NE	
Washington, NE	
Orange County, NY	.9299
Orange, NY	
Orlando, Fl	1.0188
Orange, FL	
Osceola, FL	
Seminole, FL	
Owensboro, KY	.8243
Daviess, KY	
Oxnard-Ventura, CA	1.2851
Ventura, CA	
Panama City, FL	.8354
Bay, FL	
Parkersburg-Marietta, WV-OH	.9121
Washington, OH	
Wood, WV	
Pascagoula, MS	.9678
Jackson, MS	
Pensacola, FL	.8742
Escambia, FL	
Santa Rosa, FL	
Peoria, IL	1.0584
Peoria, IL	
Tazewell, IL	
Woodford, IL	
Philadelphia, PA-NJ	1.1783
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
Phoenix, AZ	1.0801
Maricopa, AZ	
Pine Bluff, AR	.8009
Jefferson, AR	
Pittsburgh, PA	1.1011
Allegheny, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
Pittsfield, MA	1.0246
Berkshire, MA	
Ponce, PR	[1].6935
Juana Diaz, PR	
Ponce, PR	
Portland, ME	1.0114
Cumberland, ME	
Portland, OR	1.2074
Clackamas, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Portsmouth-Dover-Rochester, NH	.9373
Rockingham, NH	
Strafford, NH	
Poughkeepsie, NY	1.0052
Dutchess, NY	
Providence-Pawtucket-Woonsocket, RI	1.0553
Bristol, RI	
Kent, RI	
Providence, RI	

TABLE I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Washington, RI	
Provo-Orem, UT	.9858
Utah, UT	
Pueblo, CO	1.1210
Pueblo, CO	
Racine, WI	1.0002
Racine, WI	
Raleigh-Durham, NC	.9720
Durham, NC	
Franklin, NC	
Orange, NC	
Wake, NC	
Rapid City, SD	.9623
Pennington, SD	
Reading, PA	1.0248
Berks, PA	
Redding, CA	1.2396
Shasta, CA	
Reno, NV	1.1839
Washoe, NV	
Richland-Kennewick, WA	1.0256
Benton, WA	
Franklin, WA	
Richmond-Petersburg, VA	.9564
Charles City Co., VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
Riverside-San Bernardino, CA	1.2517
Riverside, CA	
San Bernardino, CA	
Roanoke, VA	.8997
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
Rochester, MN	1.0284
Olmsted, MN	
Rochester, NY	1.0226
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
Rockford, IL	1.1354
Boone, IL	
Winnebago, IL	
Sacramento, CA	1.2969
Eldorado, CA	
Placer, CA	
Sacramento, CA	
Yolo, CA	
Saginaw-Bay City-Midland, MI	1.1070
Bay, MI	
Midland, MI	
Saginaw, MI	
St. Cloud, MN	1.0018
Benton, MN	
Sherburne, MN	
Stearns, MN	
St. Joseph, MO	.9487
Buchanan, MO	
St. Louis, MO–IL	1.0827
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Salem, OR	1.0971
Marion, OR	
Polk, OR	
Salinas-Seaside-Monterey, CA	1.2571
Monterey, CA	
Salt Lake City-Ogden, UT	1.0354
Davis, UT	
Salt Lake, UT	
Weber, UT	
San Angelo, TX	.8719
Tom Green, TX	
San Antonio, TX	.8943
Bexar, TX	
Comal, TX	
Guadalupe, TX	
San Diego, CA	1.3104
San Diego, CA	
San Francisco, CA	1.6517
Marin, CA	
San Francisco, CA	
San Mateo, CA	
San Jose, CA	1.4805
Santa Clara, CA	
San Juan, PR	[1].6197
Barcelona, PR	
Bayoman, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trojillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Santa Barbara-Santa Maria-Lompoc, CA	1.1822
Santa Barbara, CA	
Santa Cruz, CA	1.2432
Santa Cruz, CA	
Santa Fe, NM	.9809
Los Alamos, NM	
Santa Fe, NM	
Santa Rosa-Petaluma, CA	1.3112
Sonoma, CA	
Sarasota, FL	.9639
Sarasota, FL	
Savannah, GA	.8917
Chatham, GA	
Effingham, GA	
Scranton-Wilkes Barre, PA	.9982
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Monroe, PA	
Wyoming, PA	
Seattle, WA	1.1579
King, WA	
Snohomish, WA	
Sharon, PA	.9757
Mercer, PA	
Sheboygan, WI	.9885
Sheboygan, WI	
Sherman-Denison, TX	.8619
Grayson, TX	
Shreveport, LA	.9613
Bossier, LA	
Caddo, LA	
Sioux City, IA–NE	1.0062
Woodbury, IA	
Dakota, NE	
Sioux Falls, SD	1.0211
Minnehaha, SD	
South Bend-Mishawaka, IN	1.0087
St. Joseph, IN	
Spokane, WA	1.1559
Spokane, WA	
Springfield, IL	1.0664
Menard, IL	
Sangamon, IL	
Springfield, MO	.9863
Christian, MO	
Greene, MO	
Springfield, MA	1.0060
Hampden, MA	
Hampshire, MA	
State College, PA	1.0772
Centre, PA	
Steubenville-Weirton, OH–WV	.9655
Jefferson, OH	
Brooke, WV	
Hancock, WV	
Stockton, CA	1.2871
San Joaquin, CA	
Syracuse, NY	1.0301
Madison, NY	
Onondaga, NY	
Oswego, NY	
Tacoma, WA	1.1052
Pierce, WA	
Tallahassee, FL	.9509
Gadsden, FL	
Leon, FL	
Tampa-St. Petersburg-Clearwater, FL	.9830
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Penellas, FL	

TABLE I.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties or county equivalents)	Wage index
Terre Haute, IN	.8456
Clay, IN	
Vigo, IN	
Texarkana-TX-Texarkana, AR	.8650
Miller, AR	
Bowie, TX	
Toledo, OH	1.2267
Fulton, OH	
Lucas, OH	
Wood, OH	
Topeka, KS	1.0632
Shawnee, KS	
Trenton, NJ	1.0317
Mercer, NJ	
Tucson, AZ	1.0090
Pima, AZ	
Tulsa, OK	1.0131
Creeks, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
Tuscaloosa, AL	1.0172
Tuscaloosa, AL	
Tyler, TX	1.0035
Smith, TX	
Utica-Rome, NY	.8840
Herkimer, NY	
Oneida, NY	
Vallejo-Fairfield-Napa, CA	1.3397
Napa, CA	
Solano, CA	
Vancouver, WA	1.1659
Clark, WA	
Victoria, TX	.8205
Victoria, TX	
Vineland-Millville-Bridgeton, NJ	.9929
Cumberland, NJ	
Visalia-Tulare-Porterville, CA	1.0643
Tulare, CA	
Waco, TX	.9117
McLennan, TX	
Washington, D.C.-MD-VA	1.1965
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Stafford, VA	
Waterloo-Cedar Falls, IA	.9993
Black Hawk, IA	
Bremer, IA	
Wausau, WI	.9871
Marathon, WI	
West Palm Beach-Boca Raton-Delray Beach, FL	.9972
Palm Beach, FL	
Wheeling, WV-OH	.9771
Belmont, OH	
Marshall, WV	
Ohio, WV	
Wichita, KS	1.1589
Butler, KS	
Harvey, KS	
Sedgwick, KS	
Wichita Falls, TX	.8776
Wichita, TX	
Williamsport, PA	.9048
Lycoming, PA	
Wilmington, DE-NJ-MD	1.0588
New Castle, DE	
Cecil, MD	
Salem, NJ	
Wilmington, NC	.9591
New Hanover, NC	
Worcester-Fitchburg-Leominster, MA	1.0094
Worcester, MA	
Yakima, WA	1.0389
Yakima, WA	
York, PA	.9853
Adams, PA	
York, PA	
Youngstown-Warren, OH	1.0480
Mahoning, OH	
Trumbull, OH	
Yuba City, CA	1.0460
Sutter, CA	
Yuba, CA	

[1] Approximate value for area.

TABLE II.—WAGE INDEX FOR RURAL AREAS

Non-urban area	Wage index
Alabama	.7466
Alaska	1.4989
Arizona	.9323
Arkansas	.7703
California	1.1385
Colorado	.9326
Connecticut	1.0880
Delaware	.8645
Florida	.8815
Georgia	.7779
Hawaii	1.0157
Idaho	.9130
Illinois	.8917
Indiana	.8685
Iowa	.8719
Kansas	.8481
Kentucky	.8036
Louisiana	.8605
Maine	.8701
Maryland	.8773
Massachusetts	1.0548
Michigan	.9589
Minnesota	.8788
Mississippi	.7705
Missouri	.8325
Montana	.9154
Nebraska	.8310
Nevada	1.0799
New Hampshire	.9234
New Jersey [2]	
New Mexico	.9213
New York	.8730
North Carolina	.8130
North Dakota	.9061
Ohio	.9100
Oklahoma	.8462
Oregon	1.0782
Pennsylvania	.9427
Puerto Rico	[1] .5736
Rhode Island	.9553
South Carolina	.7827
South Dakota	.8263
Tennessee	.7733
Texas	.8180
Utah	.9505
Vermont	.8888
Virginia	.8194
Virgin Islands	[1] 1.0000
Washington	1.0273
West Virginia	.8816
Wisconsin	.8995
Wyoming	.9745

[1] Approximate value for area.
[2] All counties within the State are classified urban.

TABLE IV—COST REPORTING YEAR ADJUSTMENT FACTORS [1]

If the HHA cost reporting period begins:	The adjustment factor is
Aug. 1, 1987	1.0041
Sept. 1, 1987	1.0082
Oct. 1, 1987	1.0121
Nov. 1, 1987	1.0163
Dec. 1, 1987	1.0203
Jan. 1, 1988	1.0244
Feb. 1, 1988	1.0285
Mar. 1, 1988	1.0323
Apr. 1, 1988	1.0365
May 1, 1988	1.0405
June 1, 1988	1.0446

[1] Based on compounded projected market basket inflation rates of 4.9 percent for 1988 and 4.8 percent for 1989. These adjustment factors are subject to change based on later estimates of cost increases.

VIII. Regulatory Impact Statement

Executive Order (E.O.) 12291 requires us to prepare and publish a regulatory impact analysis for any notice such as this, that meets one of the E.O. criteria for a "major rule"; that is, that would be likely to result in: An annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or, significant adverse effects on

competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless the Secretary certifies that a notice such as this would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we treat all HHAs as small entities.

We are implementing new limits as required by law and have not otherwise changed the methodology of computing the HHA cost limits, except for developing a specific methodology to compute the add-on recognizing the costs of recently required forms. For all affected Federal fiscal years (FYs), these new limits will result in higher expenditures compared to those that would have been made under the previous per discipline limits.

Based on the data available to us, we estimate the new limits will increase Medicare expenditures as follows:

Fiscal year	Cost reporting periods beginning July 1, 1986 to June 30, 1987	Cost reporting periods July 1, 1987 to June 30, 1988
1986	[1]	
1987	$25 million [2]	Negligible.[3]
1988	$10 million	$20 million.
1989		$10 million.

[1] No effect. Additional payments for portion of cost reporting periods falling in fiscal year 1986 will be made in fiscal year 1987.
[2] All estimates include the effect of the add-on recognizing the costs of recently required forms.
[3] Rounding to the nearest $5 million, less than $2.5 million.

We have determined that a regulatory impact analysis is not required. Further, we have determined, and the Secretary certifies, that this notice will not have a significant economic impact on a substantial number of small entities, and we have therefore not prepared a regulatory flexibility analysis.

IX. Other Required Information

A. Paperwork Burden

This notice does not impose information collection requirements. Consequently, it does not need to be reviewed by EOMB under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507)

B. Waiver of Proposed Rulemaking and Delayed Effective Date

This notice contains two schedules of limits for HHA costs. The first schedule of limits is effective for cost reporting periods beginning on or after July 1, 1986 but before July 1, 1987 while the second schedule is effective for cost reporting periods beginning on or after July 1, 1987.

In sections I, II, III, and IV of this preamble, we noted that these two schedules of limits were calculated in accordance with section 9315 of Pub. L. 99–509. That is, the limits are applied on an aggregate basis, they reflect an increase in HHA costs attributable to additional administrative costs incurred by HHAs in preparing billing forms, and they are set at 115 percent of the mean for cost reporting periods beginning on or after July 1, 1986 but before July 1, 1987, and 112 percent of the mean for cost reporting periods beginning on or after July 1, 1987.

Generally, we issue a notice in proposed form and provide a period for public comment before implementing amendments to the law through notices of this kind. Also, we normally publish rules and notices thirty days prior to their effective date. However, we may waive these procedures if they would be impractical, unnecessary or contrary to the public interest.

The first schedule contained herein is a revised schedule of limits applicable to cost reporting periods beginning on or after July 1, 1986 but before July 1, 1987 as required by section 1861(v)(1)(L)(ii) of the Act, as enacted by section 9315(a) of Pub. L. 99–509. Similarly, the limits for cost reporting periods beginning on or after July 1, 1987 were determined in accordance with the statutory requirements of section 1861(v)(l)(L)(ii) of the Act. The only aspect of these limits (issued to implement the requirements of section 9315 of Pub. L. 99–509) open to discretion concerns the amount of and the methodology for calculating the additional add-on to account for the increased costs HHAs are incurring in completing the HCFA forms 485–488 series.

The research and data development time required to construct a viable methodology to account for the increased costs attributable to billing and verification procedures, coupled with the considerable time required to develop a data base comprised of later cost report data, did not allow us sufficient time to follow the usual notice and comment procedures or to issue this notice with a 30-day delayed effective date. We note that it is important that the revised schedule of limits effective for cost reporting periods beginning on or after July 1, 1986 but before July 1, 1987 be published in final at this time because the initial cost reporting periods subject to the July 1, 1986 limits will be ending on June 30, 1987. In the absence of these revised limits, HHAs would be unable to determine their Medicare reimbursable costs. Thus, we believe that the delay in implementing these schedules of limits that would be necessitated by issuing a proposed notice and a final notice with a 30-day delay in the effective date would be impractical and contrary to public interest. Therefore, we find good cause to waive a prior public comment period and the normal 30-day delay in the effective date. However, as noted, we are providing a 60-day comment period so that interested parties may comment on the amount of the add-on for billing and verification and the methodology that we used to calculate this increased amount.

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare Hospital Insurance)

Dated: May 7, 1987.

William L. Roper,

Administrator, Health Care Financing Administration.

Approved: June 11, 1987.

Otis R. Bowen,

Secretary.

[FR Doc. 87–15347 Filed 7–1–87– 4:25 pm]

BILLING CODE 4120–01–M

federal register

Tuesday
July 7, 1987

Part VI

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 545

South African Transactions Regulations; Uranium Ore and Uranium Oxide; Notice of Interpretation

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 545

South African Transactions Regulations; Uranium Ore and Uranium Oxide

AGENCY: Department of the Treasury.

ACTION: Notice of Interpretation.

SUMMARY: This notice informs the public that the Treasury Department's interim regulation permitting temporary importation of uranium ore and uranium oxide from South Africa for U.S. processing and reexport, interim § 545.427 of the South African Transactions Regulations ("the Regulations"), was allowed to lapse at 12:01 a.m. Eastern Daylight Time ("E.D.T.") on July 2, 1987. Taking into account comments received in response to this interim regulation, the Department has determined that the language of section 309 of the Comprehensive Anti-Apartheid Act of 1986 ("the Act"), 22 U.S.C. 5039, and the congressional intent require that such importation be banned.

DATES: Interim § 545.427 expired by its terms at 12:01 a.m. e.d.t. on July 2, 1987.

FOR FURTHER INFORMATION CONTACT: Marilyn L. Muench, Chief Counsel, Office of Foreign Assets Control, Treasury Department, 1331 G Street, NW., Washington, DC 20220, tel.: 202/376-0408.

SUPPLEMENTARY INFORMATION: Section 309 of the Act prohibits the importation of uranium ore and uranium oxide from South Africa. This prohibition was implemented by the Office of Foreign Assets Control in § 545.211 of the Regulations. 52 FR 7273 (March 10, 1987). Conflicting legislative history on the scope of this import prohibition, specifically, whether it applies to imports of uranium ore and uranium oxide for processing in the United States and reexport, led the Office of Foreign Assets Control ("FAC") to issue an interim interpretation of § 545.211, which continued to permit such temporary imports through July 1, 1987. Regulations, interim § 545.427, 52 FR 7274 (March 10, 1987). In this notice, FAC also requested public (including congressional comments on the legislative intent in adopting this import prohibition. The major legislative history conflict resulted from a colloquy on the purpose of section 309 among Senators Lugar, McConnell, and Ford. The purpose of the interim regulation was to preserve the position of the domestic uranium conversion and enrichment industry with respect to contracts covering uranium for processing and reexport until public comments clarifying the congressional intent could be submitted and considered.

In response to its request for comments, Treasury received comments from some 230 firms and individuals, including members of Congress. A large number of these comments came from employees of the Department of Energy's uranium enrichment plant in Paducah, Kentucky, their family members, and other local residents. These comments, and those of the Department of Energy, noted the potentially negative impact on employment and the economy of Paducah, if a substantial portion of the enrichment plant's foreign customers could no longer have uranium oxide of South African origin converted and enriched in the United States. A number of the comments noted as support the unpublished August 15, 1986 colloquy among Senators Lugar, McConnell and Ford excerpted in the March 10, 1987 **Federal Register** notice of interim regulation 545.427.

Congressional comments submitted to Treasury were divided on the intended scope of the section 309 import ban. Certain members, joined by several officials from states with uranium conversion or enrichment facilities, favored making the interim regulation permanent on policy grounds. Some of these comments cited with approval the colloquy among Senators Lugar, McConnell, and Ford as the basis for issuance of a final rule adopting the regime of the interim regulation.

Other members of Congress cited no legislative history, but expressed similar views in favor of adopting the interim regulation in final form to avoid injury to the domestic uranium processing industry. In this regard, they pointed out that the majority of past uranium oxide imports from South Africa were for processing and reexport. Several comments also noted the potential for injury to the image of American industry in general if existing long-term processing contracts could not be honored under the Act. Views similar to those expressed by these congressional commenters were expressed by the domestic uranium processing industry.

Many members of Congress, joined by several commenters from anti-apartheid organizations and bar associations and by several individual commenters, stated that the interim regulation was inconsistent with the definition of "importation" in the Regulations and the treatment of other import prohibitions in the Act. Several questioned whether varying definitions of the term "importation" could be supported. They noted that coal and textile imports, covered by the same section of the Act, are treated differently from uranium imports under the interim regulation. They stated that reading the same word differently in applying it to import categories within the same sentence of section 309 could not have been intended by Congress.

Some congressional commenters stated that, for the Act to be effective, it must be construed to ban the largest group of importations and, therefore, ban all uranium ore and uranium oxide imports. Others noted that the colloquy among Senators Lugar, McConnell, and Ford was not limited by its terms to uranium ore and oxide alone. If applied to all import sanctions in the Act, little impact on the South African economy would result from the Act, which would be inconsistent with congressional intent.

A large number of congressional commenters stated that the colloquy among Senators Lugar, McConnell and Ford never occurred on the floor of the Senate, and that they were denied an opportunity to object to its content. These commenters stated they would have objected had the colloquy been presented in actual floor debate.

The comments received confirmed that the colloquy was mistakenly omitted from the daily edition of the *Congressional Record*. Treasury, therefore, considered it as part of the legislative history of the section 309 ban on importation of uranium ore and uranium oxide which, together with the language of the Act, was thoroughly examined by Treasury. That analysis led to the clear conclusion that Congress intended to bar all imports of South African uranium ore and oxide, regardless of end use or end user. Thus, implementation of the Act as Congress intended required that the interim regulation be allowed to lapse. In reaching this conclusion, Treasury was cognizant of the impact of this decision on the domestic uranium processing industry. Such concerns, while important, must be addressed to the Congress.

Major elements of the legal analysis requiring this result are noted below.

Section 309(a) of the Act states:

> Notwithstanding any other provision of law, no—
>
> (1) uranium ore,
>
> (2) uranium oxide,
>
> (3) coal, or
>
> (4) textiles,

that is produced or manufactured in South Africa may be imported into the United States.

The language of this subsection parallels that of the Act's import prohibitions on other South African goods. In implementing those prohibitions, and in implementing the section 309 prohibitions on imports of coal and textiles, Treasury has applied the definition of "importation" in § 545.303 of the South African Transactions Regulations, issued pursuant to the 1985 Executive orders concerning South Africa. That definition provides:

> The term "importation" means the bringing of any item within the jurisdictional limits of the United States with the intent to unlade it.

This is the standard, traditional Customs law formulation of "importation."

The interim regulation was issued in light of a colloquy among Senators Lugar, McConnell, and Ford, omitted from the August 15, 1986 *Congressional Record*. In this exchange, a different definition of importation was put forth in the course of debate on an amendment to delete the uranium import bans from the bill. This colloquy raised the possibility that Congress had intended a definition of "importation" for the uranium provisions of the Act different from the customary Customs definition. The colloquy includes Senator Lugar's statement that:

> [t]he bill is not designed to have any punitive impact except on products which are imported into the United States for consumption in the United States. I think economists have defined a distinction between temporary imports and imports for consumption. It is the latter that we are targeting when we refer to imports in this bill.

Under standard rules of statutory construction, deference is accorded the commentary of the sponsoring committee chairman and floor manager of the bill, Senator Lugar in this instance. The colloquy is, however, the only basis on which an interpretation of "importation" different from the existing definition could rest. In interpreting and implementing section 309, Treasury's examination of the Act's language and remaining legislative history compels the conclusion that the colloquy is outweighed by other expressions of congressional intent.

The meaning of section 309 is clear from the words in which Congress expressed itself. The text of section 309 on its face does not limit its prohibition to "imports for consumption." Dictionary definitions and the uniformly applied definition in Customs law of the term are both in accord with the meaning of "imported" used by Treasury in implementing other sections of the Act. There is no doubt that uranium brought into the country for processing and reexport would be "imported" for tariff purposes.

Section 601 of the Act confirms this result. This section directs the President to take steps necessary to continue in effect the measures against South Africa imposed by the 1985 Executive orders, "and by any rule, regulation, license, or order issued thereunder (to the extent such measures are not in consistent with [the] Act)." Retention of the "importation" definition in § 545.303 of the Regulations is not inconflict with the text of any provision of the Act and, therefore, is directed by section 601 of the Act.

Analysis of the Act's legislative history further demonstrates the congressional intent to give effect to the plain language of section 309, notwithstanding the exchange among Senators Lugar, McConnell, and Ford. The uranium ore and oxide ban was enacted without change from the Senate Foreign Relations Committee bill (S. 2701, section 311) as reported. The Committee report explains the uranium ore and oxide ban as follows:

> Imports of South African uranium ore, uranium oxide and coal are banned. The ban takes effect 90 days after enactment to permit goods already purchased and in transit to be imported. After this date, however, *no South African uranium ore, uranium oxide or coal can be imported into the United States.*

S. Rep. 370, 99th Cong., 2d Sess. (Aug. 6, 1986) 14 (emphasis added). The report does not define "importation." The report does, however, state that the bill codifies the Executive order sanctions on South Africa, including an importation ban on Krugerrands. *Id.* at 1. In its implementation of this ban, Treasury already had adopted the Customs Service definition of "importation," set forth above. Nowhere in the report does the Committee indicate an intent to alter or limit the pre-existing import prohibition to articles entered for domestic consumption, or to adopt a narrower scope for the additional import bans proposed in the bill. A statement of such intent would be typical—if not required—where a change in interpretation was intended.

A further indication of intent to retain the Customs definition of "importation" in the legislative history appears in Senator Lugar's introductory remarks on the bill:

> Mr. President, one of the purposes of S. 2701 is to codify the provisions of the Executive orders President Reagan issued last fall with respect to South Africa. To implement those Executive orders, the Departments of Treasury, Commerce and others issued a variety of regulations. To the greatest extent possible, those regulations should be relied upon in implementing S. 2701. In drafting S. 2701, staff of the Foreign Relations Committee looked to these regulations.

132 *Cong. Rec.* S11627 (daily ed. Aug. 14, 1986). Senator Lugar's statement indicates that the Committee and the staff were mindful of the existing Regulations, including the definitional sections, as they wrote the uranium ore and oxide and other import bans in S. 2701. No effort was made in the Committee bill, or in floor amendments, to limit the scope of Regulation § 545.303 to consumption entries. This supports the view that the Customs definition of "importation" used in the South African Executive order sanctions program was accepted and intended as the basis for implementing the Act's import bans.

To the extent possible, the provisions of a statute should be interpreted to form a harmonious whole, without conflicting usages of language. Treasury thus examined the policy statement contained in the colloquy against other statements of legislative intent in the Act and its legislative history, to determine whether a consistent intent could be found that would inform Treasury's interpretation of "importation."

The colloquy is not limited by its terms to uranium ore or oxide, although it relates to a debate on an unsuccessful amendment to delete import sanctions on uranium ore and oxide from the bill. Giving the word "importation" a consistent interpretation by adoption of the colloquy's approach, even in the context of section 309 alone, would allow temporary imports of South African coal and textiles. There are no indications outside the colloquy that these results were intended, and there have been no suggestions in the legislative history that Treasury should adopt such a interpretation.

The colloquy, which occurred during debate on Senator Dole's amendment to delete the uranium import ban from the bill, addresses potential injury to U.S. producers from a complete embargo on uranium ore and oxide, and resolves the policy question in favor of avoiding that injury. The remaining debate on the Dole amendment, however, indicates that the potential for injury to the domestic industry from this ban was considered by the Senate when it voted to table that amendment. 132 *Cong. Rec.* S11852 (daily ed. Aug. 15, 1986). Thus, the policy basis for the colloquy's "imports for consumption" definition, *i.e.*, avoidance of injury to the domestic

industry, appears to have been examined and rejected by the Senate.

Accordingly, taking into account the comments received, along with Treasury's analysis of the language of the statute and its legislative history, the Treasury Department has determined that Congress intended the section 309 import ban on uranium ore and uranium oxide of South African origin to bar all importations, regardless of end use or end user. Under this interpretation, the term "importation," as traditionally defined by the Customs Service and as set forth in § 545.303 of the Regulations, will be consistently applied throughout the Act.

The Treasury Department has consulted the General Counsel of the Nuclear Regulatory Commission, an agency which has jurisdiction over the importation of uranium. The General Counsel concurs in Treasury's conclusion as to the meaning of section 309 of the Act.

Interim § 545.427 of the Regulations lapsed at 12:01 a.m. e.d.t. on July 2, 1987. The provisions of interim § 545.427 will, however, continue to apply to all uranium ore and uranium oxide previously imported pursuant to the interim regulation.

Dated: July 2, 1987.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 2, 1987.

Gerald Hilsher,

Acting Assistant Secretary, (Enforcement).

[FR Doc. 87-15500 Filed 7-2-87; 4:44 pm]

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Federal Register

Vol. 52, No. 129

Tuesday, July 7, 1987

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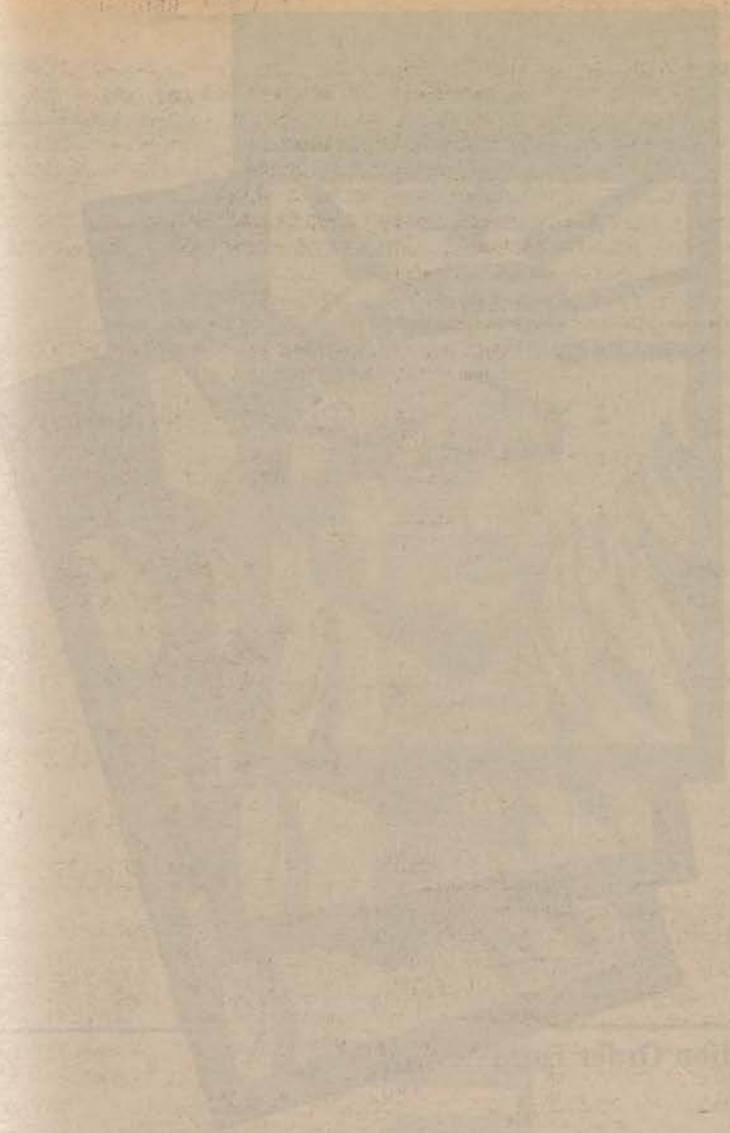
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