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Friday
July 10, 1987

Briefings on How To Use the Federal Register—
For information on briefings in 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.

BOSTON, MA

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

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Presidential Documents

Title 3—

The President

Proclamation 5676 of July 8, 1987

Northwest Ordinance Bicentennial Day, 1987

By the President of the United States of America

A Proclamation

On July 13, we celebrate the Bicentennial of the Northwest Ordinance, considered one of the foundation documents of our Nation because it became a model for the Constitution and the Bill of Rights and because of its significance for the expansion of the Union.

The Confederation Congress adopted the Northwest Ordinance at the same time the Constitutional Convention in Philadelphia was drafting the new United States Constitution. The Ordinance embodied the highest ideals of a free people; its principles of civil liberty and its blueprint for national expansion so impressed the delegates to the Constitutional Convention that it became an important influence on the Constitution they were writing.

The Ordinance's arrangement for expansion included opening settlement of the area known as the Northwest Territory, providing civil government, and ensuring settlers the protection of Common Law under territorial government until permanent State governments could be created. States formed from the Territory—present-day Ohio, Indiana, Illinois, Michigan, Wisconsin, and part of Minnesota—would be organized and admitted into the Union "on an equal footing with the original States, in all respects whatsoever."

The Northwest Ordinance was vitally important for individual and civil rights in the United States. It forbade slavery in the Territory and guaranteed all citizens equality before the law. The Ordinance provided complete freedom of religion, the writ of habeas corpus, trial by jury, proportionate representation in the legislature, reasonable bail, no cruel or unusual punishment, and no deprivation of liberty or property but by the judgment of peers. The Ordinance also required full compensation for property or services taken for the common preservation and, in the just preservation of rights and property, forbade interference with bona fide private contracts and engagements.

Finally, the Northwest Ordinance recognized that religion, morality, and knowledge are all necessary elements for good government. It proclaimed that schools and the means of education would forever be encouraged to ensure the establishment of good government throughout the Territory.

In recognition of the importance of the Northwest Ordinance of 1787, the Congress, by House Joint Resolution 181, has authorized and requested the President to issue a proclamation calling upon the people of the United States to observe the Bicentennial of the enactment of this law.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim July 13, 1987, as Northwest Ordinance Bicentennial Day. I urge the people of the United States to observe this day with appropriate ceremonies and activities and to reflect on the role of the Northwest Ordinance in the Constitution whose Bicentennial we mark this year.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth 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 twelfth.

Ronald Reagan

[FR Doc. 87-15798
Filed 7-8-87; 2:04 pm]
Billing code 3195-01-M

Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 569]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 569 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 400,000 cartons during the period July 12 through July 18, 1987. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 569 (§ 910.869) is effective for the period July 12 through July 18, 1987.

FOR FURTHER INFORMATION CONTACT: James M. Scanlon, Acting Chief, Marketing Order Administration Branch, F&V, AMS, USDA, Washington, DC 20250, telephone: (202) 447-5697.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 has been determined to be a "non-major" rule under criteria contained therein.

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 orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their behalf. Thus, both statutes have small entity orientation and compatibility.

The regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910) regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674). This action is based upon the recommendation and information submitted by the Lemon Administrative Committee and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the marketing policy for 1986-87. The committee met publicly on July 7, 1987, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended by a 10 to 1 vote (with one abstention) a quantity of lemons deemed advisable to be handled during the specific week. The committee reports that the market is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which the regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreement and orders, California, Arizona, and Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.869 is added to read as follows:

§ 910.869 Lemon Regulation 569.

The quantity of lemons grown in California and Arizona which may be handled during the period July 12, 1987, through July 18, 1987, is established at 400,000 cartons.

Dated: July 8, 1987.

Ronald Cioffi,

Acting Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 87-15824 Filed 7-9-87; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 87-NM-32-AD; Amdt. 39-5670]

Airworthiness Directives; British Aerospace Model 146 Series Airplanes

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 British Aerospace Model BAe-146 series airplanes by individual telegrams. This AD requires an inspection and replacement, if necessary, of the pressure stator and brake wear pin to detect excessive wear on airplanes fitted with carbon brakes. This condition, if not corrected, could adversely affect the braking capability of the airplane.

DATES: *Effective* July 25, 1987.

This AD was effective earlier to all recipients of telegraphic AD T87-06-51, dated March 20, 1987.

ADDRESSES: The applicable service information may be obtained from British Aerospace, Service Bulletin

Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the Federal Aviation Administration, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION: On March 20, 1987, the FAA issued telegraphic AD T87-06-51, applicable to all British Aerospace Model BAe-146 series airplanes fitted with carbon brakes, which requires a one-time inspection to detect excessive wear of the brake stators and wear pins, in accordance with British Aerospace Service Bulletin 32-A74, dated March 17, 1987. This action was prompted by several reports of failure of the stator drives due to wear. This condition, if not corrected, could lead to a loss of braking capability.

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

The Federal Aviation Administration 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 document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required).

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

Adoption of the Amendment

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.

2. By adding the following new airworthiness directive:

British Aerospace: Applies to Model BAe-146 series airplanes, as listed in BAe Service Bulletin 32-A74, dated March 17, 1987, certificated in any category.

To prevent loss of braking capability due to failure of the stator drives, accomplish the following, unless previously accomplished:

A. Within 24 hours after the effective date of this AD, inspect the pressure stator and brake wear pin in accordance with BAe Service Bulletin 32-A74, dated March 17, 1987. Replace heat packs worn beyond the limits set forth in the service bulletin.

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

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

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

This amendment becomes effective July 25, 1987.

This AD was effective earlier to all recipients of telegraphic AD T87-06-51, dated March 20, 1987.

Issued in Seattle, Washington, on July 1, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-15638 Filed 7-9-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 960

[Docket No. 51191-7064]

Licensing of Private Remote-Sensing Space Systems

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: NOAA is establishing procedures to license operators of private remote-sensing space systems in the United States under Title IV of the Land Remote-Sensing Commercialization Act of 1984, Pub. L. 98-365, 15 U.S.C. 4201 *et seq.* (the Act). A Notice of Proposed Rulemaking (NPR) was published on March 24, 1986 (51 FR 9971). Twelve persons commented on the NPR, primarily on two issues: The jurisdictional scope of the regulations and the First Amendment rights of the press.

NOAA has responded to the comments and believes that the Final Regulations will facilitate licensing and thereby aid the agency in carrying out its responsibility to develop and promote private sector-owned remote-sensing systems while adequately protecting the basic U.S. interests articulated by the Act: National security, international obligations, including the supervision required by Article VI of the Outer Space Treaty, and ensuring access to unenhanced data on a nondiscriminatory basis.

EFFECTIVE DATE: This rule is effective August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Peggy Harwood, NOAA, National Environmental Satellite, Data, and Information Service, FB-4, Room 2051, Washington, DC 20233, (301) 763-4522; or call John Milholland, NOAA, Office of General Counsel at (202) 673-5200.

SUPPLEMENTARY INFORMATION: Title IV of the Act requires that any person subject to the jurisdiction or control of the United States who directly or indirectly operates a private remote-sensing space system must obtain a license from the Secretary of Commerce. The authority to issue this license has been delegated to the Administrator of the National Oceanic and Atmospheric Administration (NOAA) and redelegated to the Assistant Administrator for Environmental Satellite, Data, and Information Services.

NOAA believes that further refinement of the Act's detailed licensing criteria by regulation generally is not necessary or useful. As a result, the NPR proposed primarily procedural requirements and public comments were limited. Comments addressed principally two of the four issues on which NOAA specifically solicited comments in the NPR: The jurisdictional scope of the regulations, and the effect of national security and foreign policy concerns on First Amendment rights. These two issues are discussed first.

1. Jurisdictional Scope of the Regulations

Section 960.2 of the proposed regulations provides guidance on when the remote-sensing operations of a non-U.S. entity will have sufficient connections with the United States to subject the entity to U.S. jurisdiction or control for licensing purposes. This section balances the interest in ensuring that foreign companies compete with U.S. firms on an equal basis against that of imposing extra-territorial applications of U.S. law which could discourage foreign operators from dealing with U.S. companies.

Comment: During the initial comment period, NOAA received comments from the U.S. State Department, EOSAT Corporation, the National Research Council, SPOT Image Corporation, Messerschmitt-Boelkow-Blohm, GmbH (MBB), and the European Space Agency (ESA) on this issue. As a result of later consultations with the Departments of Defense and State, NOAA received additional comments on this issue from the Department of State. The State Department suggested that the United States should license any operator of a remote sensing space system who chooses to use a U.S. launch vehicle or space platform. It did not address the extent to which additional connections should provide the basis for licensing. The three non-U.S. commentators all supported NOAA's pragmatic approach, whereby licensing is not dependent solely on the use of a U.S. launch vehicle (e.g. Example 1), but objected to the potential jurisdictional reach over foreign operators particularly those operators whose only connection with the United States would be in maintaining a data acquisition, and processing and/or data distribution facility in the United States. They argued that jurisdiction should be limited to cases where the operator's "space segment is carried on the registry of the United States" or where "the primary spacecraft command and control center" is located in the United States. (Comments of MBB, p. 14–15; see also SPOT Image, p. 4–5, and ESA, p. 3). The National Research Council supported this view.

EOSAT, a U.S. corporation, urged NOAA to amend § 960.2 and specify that operation in the U.S. of either a command and data acquisition center or a small retail distribution outlet would subject the operator to U.S. licensing requirements at least where the operator is "sufficiently active in the U.S. remote sensing data market to have a significant competitive impact on that market, and upon U.S. companies (who are automatically subject to regulation under the Act)" (EOSAT comments, p. 3)

Response: NOAA reaffirms a basic premise of its scheme that jurisdiction under the Act pertains to operators of remote-sensing systems rather than the systems themselves and, for that reason, disagrees that registration of the spacecraft carrying a space system should be the controlling factor for purposes of licensing. NOAA agrees that the locus of operational control of the system should be a major factor in determining jurisdiction but believes that other ground operations which the operator or its affiliates conduct in the United States to support its remote-sensing operations may also be relevant. Under the approach suggested by the foreign commentators, they would have to obtain a license if they flew any space system on a U.S. launched spacecraft or the U.S. portion of the space station since both would be carried on the U.S. registry. Under the regulations, additional U.S. connections would be examined. (See Example 1 with which all commentators agree.)

NOAA has deleted proposed Example 3 which indicated that any operator of a remote-sensing system would have to obtain a license if it maintained both a processing and a distributing facility in the U.S. NOAA may still require a license in these circumstances, but in some cases to do so might be inappropriate. NOAA will retain the flexibility to make determinations on a case-by-case basis.

NOAA's approach is consistent with section 402(a) of the Act which precludes any person "subject to the jurisdiction or control of the United States" from operating any private remote-sensing space system without a license either "directly or through any subsidiary or affiliate". Clearly, this section anticipates the licensing of some operators doing business in the United States even if that business does not include the direct operation of the space system. There is no reason to distinguish between a U.S. data maketing company that forms a foreign subsidiary to launch and operate a space system and is subject to U.S. licensing requirements and a foreign company which forms a U.S. marketing subsidiary. In either case the U.S. undeniably has jurisdiction over an entity which is providing necessary support to an affiliated operator of a private remote-sensing space system. NOAA is sensitive to the practical effects of trying to assert its authority too aggressively, for example inducing companies to carry out their marketing activities offshore, and this is one reason for taking a case-by-case approach.

Comment: A related issue was raised by SPOT Image which pointed out that NOAA's licensing authority is limited to private remote-sensing space systems. It suggested that a public system be defined as " * * * any legal entity in which the majority of voting control is owned by one or more foreign governments or intergovernmental organizations or agencies thereof." The State Department, on the other hand, opposed any definition that might preclude licensing certain public foreign entities because of the difficulty in distinguishing when they are public, semi-public, or private.

Response: NOAA appreciates the Department of State's concern but wants to make clear that it has no intention of trying to license truly public, governmental remote-sensing systems and has amended the definition of "person" in § 960.3 accordingly. However, the commentators' suggested definition, which would apply only to foreign governmental systems and depends solely on voting control, is too narrow a criterion in view of the wide variety of potential public/private relationships. For licensing purposes, NOAA considers the Centre Natonale d'Etudes Spaciale, the government operator of the SPOT satellite system, to be a public entity.

2. The First Amendment and National Security Concerns

Comment: "Joint Media Parties" (Radio-Television News Directors Association (RTNDA), American Society of Newpaper Editors, National Broadcasting Company, Society of Professional Journalists/Sigma Delta Chi, and Turner Broadcasting System), the American Newspaper Publishers Association (ANPA), and the Reporters Committee for Freedom of the Press have commented on behalf of the news media that NOAA should be more explicit in recognizing that any licensing restrictions it may impose must comport with First Amendment standards. The RTNDA was the most active, commenting initially on May 23, 1986, on

the Proposed Regulations, on September 11, 1986, on NOAA's response to Representative Bill Nelson's inquiry concerning the RTNDA's position, and on February 11, 1987, on comments provided by the Department of State and Defense advocating that NOAA retain the case by case approach taken in the Proposed Regulations. The commentators objected because NOAA did not attempt to define more specifically the meaning of the terms "national security" and "international obligations" which occur throughout the Act. The RTNDA concluded that the regulations were unconstitutionally vague "because they would authorize NOAA to impose impermissible prior restraints and content-based regulations on the press." The RTNDA went on to say that this lack of specificity might have a chilling effect on media interest and/or investment in this new technology and suggested that NOAA's posture is overly regulatory and insufficiently sensitive to development of the remote-sensing industry. However, no commentator attempted to define these terms; rather the RTNDA formulated a standard for the judicial review of agency decisions to be included in this Preamble, and a related standard for § 960.11 of the regulations to be cross referenced in §§ 960.9, 960.12 and 960.14. (The RTNDA also suggested similar language for the legislative history of revisions to the Act).

Response: NOAA recognizes that its licensing authority is subject to all Constitutional and statutory safeguards and is committed to exercising this authority with full regard for the First Amendment rights of all applicants and licensees including the press. The Act requires NOAA to consult with the Departments of Defense and State on all matters affecting national security and foreign policy interests respectively. In response to NOAA's request for consultation on these regulations, both Departments have stated that they will not require NOAA to impose any restriction on remote-sensing activities that is not essential for national security purposes or to meet international obligations.

Nothing in these regulations is intended to place any limits on access to images that would not be placed on such access here on Earth. No provision in these rules, or any action implementing the Land Remote-Sensing Commercialization Act of 1984, is intended to detract in any way from the First Amendment rights of any person including any organization which engages in news gathering and dissemination. National security, foreign policy, and international considerations will not be invoked as a basis for taking any action adverse to the interests of licenses, applicants, users unless the remedy is necessary and effective under existing judicial standards.

Where the RTNDA disagrees with the Department of State and Defense is in determining what standards apply. In the RTNDA's view, "Since restrictions would in most cases be designed to prevent journalists from publishing certain information, those restrictions—whether in the form of application denials, license conditions or license sanctions such as suspension or termination—would function as prior restraints."

The agencies disagree. In certain situations, a restriction might be imposed on dissemination of images that would amount to a prior restraint and such a restriction would be subject to review in accordance with the applicable Constitutional standards for such cases. In many cases, however, a restriction may simply be a denial of access to information, for example to photograph a defense installation, a type of restriction already in effect. (*See* 18 U.S.C. 795, 796.). This action would be reviewed under a different standard but, under any standard, the restrictions imposed would have to be necessary and effective in accomplishing the intended purpose. Relevant factors could include the state of the art of remote-sensing at the time of an application, particularly that of unlicensed foreign operators and the feasibility of protecting sensitive areas. These factors can only be determined in the context of an individual application. Consequently, the regulations provide for pre-application consultation and encourage discussion of the issues in a meaningful way at the earliest possible time. NOAA is committed to fostering commercial use of remote-sensing to the maximum extent possible while still protecting vital national security interests.

Comment: The RTNDA expressed concern that § 960.12(d)(1) might allow the Departments of Defense or State to insert terms and conditions into a license without any express standard to ensure that these would be constitutional.

It suggested a modification requiring that NOAA independently review conditions proposed by either agency according to the review standards proposed by the RTNDA.

Response: NOAA does not have independent authority to determine whether national security or foreign policy conditions are justified. Section 607 of the Act states that the Secretaries of Defense and State "shall be responsible for determining those conditions, consistent with the Act, necessary to meet * * *" national security concerns and international obligations. Any such conditions are reviewable in accordance with the appropriate judicial standard as discussed earlier and § 960.9 has been amended to require explicitly that the determining Secretary fully document the basis for the determination.

Comment: The Proposed Regulations should be amended to ensure that an adequate record exists for any licensing action adverse to an applicant or licensee.

Response: The Proposed Regulations recognize in several sections the necessity of an adequate record for any action. Sections 960.9, 960.11, 960.12(d)(1), and 960.14 have been amended to incorporate additional suggestions of commentators.

3. Other Issues

Comment: The media commentators requested clarification that the Act's nondiscriminatory access requirements will not hinder news gathering organizations from publishing images gathered by remote-sensing before making the data available to other purchasers, particularly competitors.

Response: Under section 104(3) of the Act, which defines the boundaries of nondiscriminatory access, a licensed organization could collect data from the system, screen it for newsworthy items, and publish the unenhanced data without violating the Act. Section 104(3) explicitly states that a licensee need not make all its data publicly available, but it is obliged to distribute only those scenes it saves for its own actual use or for sale. It simply must make available whatever data it intends to use, or to offer for sale to one buyer, on equal terms to all prospective buyers. Where licensees use the data for general publication, which by definition will make it equally available to anyone willing to buy a newspaper or tune in a television, this distribution, coupled with a nondiscriminatory offer of sale of the data within a reasonable time of publication, complies with the requirement.

However, in most cases, a news organization does not publish unenhanced data but must specifically process it to get imagery that will be meaningful to the public. This processing constitutes a "value-added activity" and under section 402(b)(9) of the Act any licensed operator intending to engage in such activities must provide

a plan to ensure nondiscriminatory access to the unenhanced data. Therefore, NOAA has added a new subsection to § 960.11(b) confirming that, where the purpose of a value-added activity is to provide an image for widespread publication, the plan need only establish that the unenhanced data will be made available on a nondiscriminatory basis to all buyers at the time the image or other value-added product is published or as promptly as reasonably possible thereafter.

Comment: EOSAT suggested that NOAA's definition of "unenhanced data" in § 960.3 should refer to unprocessed or minimally processed signals and minimally processed film products derived from such signals but should not include film products *per se*. EOSAT also suggested that the definition should exclude from the concept of minimal processing any manipulations that are not "substantial" and "irreversible" and proposed adding the following examples of minimal processing: "contrast adjustments, geographic resampling (for map projections and geocoded products) and spatial sharpening of data through combination of signals collected by the licensee and having differing spatial resolution."

EOSAT generally endorsed NOAA's interdependent definition of "value-added activity" but suggested that this concept should refer to changes that are "irreversible" as well as "substantial" to be consistent with the concept of minimal processing and to sharpen the distinction between the two.

Another commentator, MBB, felt that EOSAT's suggestion with respect to film products could "adversely affect both value adders and other remote sensing operators" because space based remote-sensing by photographic means "could be adopted as a remote-sensing technique by a private remote-sensing operator [and] not all film products are necessarily derived from signals."

Comments: NOAA agrees that including "irreversible" and "substantial" changes in both definitions is useful and will ensure that changes such as a simple change of format will not frustrate the purpose of section 601 of the Act.

NOAA agrees with MBB that private operators could adopt photography as a space based remote-sensing technique and, therefore, does not accept the suggestion that film will never be used as a primary medium.

NOAA also disagrees that the specific examples suggested would clarify the distinction between unenhanced and value-added data products. After reviewing a discussion provided by EOSAT in connection with its Purchase Agreement NOAA concluded that the terms "contrast adjustments" and "spatial sharpening" still must be qualified by the terms, "substantial and irreversible."

Comment: The term "substantially failed to comply" should be more clearly defined.

Response: NOAA agrees and has incorporated commentators' definition in § 960.14.

Comment: The only "plans" which an applicant need provide with respect to providing nondiscriminatory access to data (§ 960.12) should be those required by § 960.6(f) for operators also engaged in value-added activities.

Response: NOAA agrees and has cross-referenced §§ 960.12 and 960.6 as requested.

Comment: The citizenship information specified by §§ 960.2 and 960.6 is confusing and possibly unnecessary.

Response: NOAA agrees and has modified these sections as requested.

Comment: An officer of a corporate general partner should be able to sign an application if authorized.

Response: NOAA agrees. See § 960.5(b).

Comment: The 120 day period within which the Administrator must act on an application for a license should start with the receipt of the application and should not be extended by the 21 days allocated by § 960.9 to determine whether the application is complete.

Response: The 120 day period begins to run upon receipt of a complete application. If the application contains all the necessary information at the time it is first received, the 120 days begins to run at this time. However, if it is incomplete, the time does not begin until the necessary information is received.

Comment: Section 960.11 is too burdensome in requiring operators engaged in value-added activities to provide a plan for ensuring nondiscriminatory access.

Response: The Act does not require such a plan for value-added products, but only for unenhanced data. Section 960.11 has been amended to clarify this point.

Comment: One commentator has indicated that the regulations may not adequately address the issue of classified information. Although privileges can be claimed to protect such information during the course of any administrative or judicial proceeding, this commentator suggested that is unclear what the impact of a successful claim of privileges would be upon the conduct and outcome of such proceedings.

Response: In light of this uncertainty NOAA intends to explore with the commentator ways of clarifying what the consequences of a successful claim of privilege would be.

The technology of remote sensing from space is developing rapidly. These regulations have been drafted in general terms to accommodate this development to the maximum extent possible. NOAA will periodically review the regulations to ensure that they do not inadvertently inhibit new commercial opportunities.

Other Actions Associated With Rulemaking

A. Classification Under Executive Order 12291

NOAA has concluded that these regulations are not major because they will not result in:

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

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

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

The regulations establish the procedures for licensing in accordance with the criteria established by the Act. The regulations will not result in the direct, or major indirect economic or environmental effect. They are intended to promote the U.S. space remote-sensing industry by facilitating the licensing process and by ensuring that foreign companies competing with U.S. companies in the remote-sensing market do so on an equal basis to the maximum extent practicable.

B. Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

This rule is essentially procedural and establishes a process intended to minimize any adverse impact on any entity—large or small—which may need a license to operate a remote-sensing space system. Because of the large size and cost of space remote-sensing projects, small businesses are unlikely to be able to amass the capital necessary to enter the field. The only involvement of small business concerns is likely to be as contractors or subcontractors who do not require a license. The General Counsel of the Department of Commerce has, therefore, certified that this regulation will not have a significant economic impact on a substantial number of small entities.

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

The information requirements for these regulations have been reviewed by the Office of Management and Budget. The control number is 0648–0174.

D. National Environmental Policy Act

Publication of this rule does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

List of Subjects in 15 CFR Part 960

Scientific equipment, Space transportation and exploration.

Dated: July 6, 1987.

Thomas N. Pyke, Jr.,

Assistant Administrator for Environmental Satellite, Data and Information Services.

Accordingly, a new Part 960 of Title 15 of the Code of Federal Regulations is added to subchapter D as follows:

PART 960—LICENSING OF PRIVATE REMOTE-SENSING SPACE SYSTEMS

Subpart A—General

Sec.

Subpart B—Application Process

Subpart C—Enforcement Procedures

Authority: 15 U.S.C. 4244.

Subpart A—General

§ 960.1 Purpose.

These regulations establish the minimum practicable procedures and informational requirements to license and supervise the operation of a private remote-sensing space system under Title IV of the Land Remote-Sensing Commercialization Act of 1984 (The Act). They are intended to facilitate the policy of the Act by encouraging development of private sector-owned remote-sensing space systems and promotion of commercialization of land remote-sensing systems in the United States while complying with the requirements of the Act, including:

(a) To preserve and promote the national security of the United States;

(b) To ensure that data from private operational remote-sensing space systems will be sold on a nondiscriminatory basis; and

(c) To fulfill the international obligations of the United States.

To the extent there is a tension between the policy of promoting the commercial use of remote-sensing systems and the policies of promoting national security interests as determined by the Secretary of Defense or international obligations as determined by the Secretary of State, the Secretary of Commerce may, in his or her discretion, undertake reasonable efforts to satisfactorily resolve the matter in favor of commercialization.

§ 960.2 Scope.

The Act and these regulations apply to any person subject to the jurisdiction or control of the United States who operates a private remote-sensing space system either directly or through an affiliate or subsidiary. For the purposes of these regulations, a person, affiliate, or subsidiary is subject to the jurisdiction or control of the United States if such person is:

(a) An individual who is a citizen of the United States;

(b) A corporation, partnership, association or other entity organized or existing under the laws of the United States or any state, territory or possession thereof; or

(c) Any other private space system operator having substantial connections with the United States or deriving substantial benefits from U.S. law that support its international remote-sensing operations. Relevant connections include using a U.S. launch vehicle and/or platform, operating a spacecraft command and/or data acquisition station in the U.S., and processing the data at and/or marketing it from facilities within the U.S. The following examples are intended to illustrate the application of this paragraph.

Example 1. A non-U.S. corporation launches an operational remote-sensing space system using a U.S. operated launch vehicle and/or a platform launched from U.S. territory. The company operates no spacecraft command ground station in the U.S. although it has technicians and supervisors present in the U.S. to ensure integration of the foreign-built satellite or space system with the launch vehicle. The company acquires data directly from the space system and processes and distributes it from facilities outside the U.S., although it advertises the availability of data and/or information in U.S. publications.

The company is not subject to U.S. jurisdiction or control and requires no license for its remote-sensing activities.

Example 2. A company's operation is the same as in Example 1 except that it acquires, processes and distributes the data to U.S. and foreign customers from one or more facilities within the U.S.

The company is subject to U.S. jurisdiction or control and requires a license.

Where ground activities in the U.S. are less extensive than those described above, such as mere operation of a data acquisition facility or a small retail distribution outlet for U.S. customers, the Administrator will decide on an individual basis whether the operator is subject to U.S. jurisdiction or control for purposes of Title IV. In such cases, the use of a U.S. launch vehicle and/or platform may be significant although such use alone is not a sufficient connection.

Interested persons with questions may request a formal, binding opinion from the Administrator concerning the application of these regulations to their operation. Informal opinions by agencies should not be relied upon.

§ 960.3 Definitions.

For purposes of these regulations, the following terms have the following meanings:

Act means the Land Remote-Sensing Commercialization Act of 1984 (Pub. L. 98–365, 15 U.S.C. 4201 *et seq.*);

Administrator means the adinistrator of NOAA, or his designee;

Affiliate means any person: (a) Which owns or controls more than 5% interest in the applicant or licensee, or (b) which is under common ownership or control with the applicant or licensee;

Application means any written request submitted under this part for: (a) Issuance of a license for the operation of a private remote-sensing space system; (b) transfer or renewal of any such license; or (c) an amendment to any such license as a result of a substantial change in any of the specified terms and conditions of the license;

Basic data set means data collected by any licensed private remote-sensing space system that (a) has been selected to be maintained by the United States Government in a pubic archive, and (b) shall remain distinct from any inventory of data that a system operator may maintain for sales and for other purposes. Section 602 of the Act

("Archiving of Data") sets forth the Government's interest and criteria for determining the "basic data set;"

Experimental data means data collected by the United States Government in experimental remote-sensing programs;

Measured values mean the assigned numbers, shades or colors, which represent, in some standardized system, an amount of electromagnetic radiation sensed in a spectral band.

NESDIS means the National Environmental Satellite, Data, and Information Service;

NOAA means the National Oceanic and Atmospheric Administration;

Person means any individual (whether or not a citizen of the United States), corporation, partnership, association, or other entity organized or existing under the laws of any nation. "Person" does not include any government or intergovernmental organization or agency thereof.

Remote-sensing space system means any instrument or device or combination thereof and any related ground based facilities capable of sensing the Earth's surface from space by making use of the properties of the electromagnetic waves emitted, reflected, or diffracted by the sensed objects. For purposes of these regulations, small, hand-held cameras shall not be considered remote-sensing space systems.

Subsidiary means an entity whose controlling interest is held by the applicant or licensee.

Unenhanced data means unprocessed or minimally processed signals or film collected from a licensed remote-sensing space system, or minimally processed film products derived from such signals. Such mimimal processing includes but is not limited to rectification of distortions, registration with respect to features of the Earth, and calibration of spectral response. Such minimal processing does not include conclusions, substantial and irreversible manipulations, or calculations derived from such signals or film products or the combination of the signals or film products with other data or information in such manner as to effect a substantial and irreversible modification thereof.

Value-added activity means any activity that substantially and irreversibly changes the information content of the unenhanced data by: (a) Altering or replacing the measured values of an unenhanced data product or (b) combing unenhanced signals or film products with other data or information. Production of unenhanced data products through minimal processing of signals and converting assigned values from one unit of measurement to another do not constitute value-added activities. Increasing the marketability or the price of an unenhanced data product does not by itself constitute a value-added activity. The product derived may be for sale, for any other form of distribution, or for the internal use of the system operator.

Subpart B—Application Process

§ 960.4 Pre-application consultation.

(a) Applicants are encouraged to consult with NOAA and other relevant federal agencies at the earliest possible planning stages. Such consultation may reveal design or data collection requirements that may be accommodated early at low cost or avoid costly changes in design or data collection characteristics. Consultation at the time a license application is being prepared may prove useful in defining informational requirements and in expediting review.

(b) *Consultation.* The Administrator shall consult upon request with any prospective applicant to assist the applicant in

(1) Properly preparing the application, and

(2) Contacting other Government agencies involved in the application review process in order to discuss the prospective application.

(c) *Request.* A prospective applicant who wishes to have a pre-application consultation should make such request in writing to the Assistant Administrator, National Environmental Satellite, Data and Information Service, Washington, DC 20233.

§ 960.5 General.

(a) *Where to file.* Applications and all related documents shall be filed with the Assistant Administrator, National Environmental Satellite, Data, and Information Service (NESDIS), NOAA, Washington, DC 20233.

(b) *Form.* No particular form is required but each application must be in writing, must include all of the information specified in this subpart, and must be signed as follow:

(1) For a corporation: By a principal executive officer at least the level of vice-president.

(2) For a partnership or a sole proprietorship: By a general partner or proprietor, respectively, or by any authorized principal executive officer of any corporate general partner.

(3) For an association or other entity: By a principal executive officer.

(c) *Number of copies.* Eight (8) copies of each application must be submitted.

§ 960.6 Information to be submitted with application.

The following information on the applicant, and its affiliates and subsidiaries shall be provided by the applicant:

(a) The name, mailing address, telephone number and citizenship of the applicant and any affiliates or subsidiaries, and of each director or owner of greater than five (5) percent interest.

(b) A copy of the charter or instrument by which the applicant was formed and authorized to do business. If the applicant is a corporation its charter shall be certified by the Secretary of State or other appropriate authority of the jurisdiction in which incorporated.

(c) The name, address, and telephone number of a person upon whom service of all documents may be made.

(d) Adequate operational information regarding the applicant's remote-sensing space system on which to base review to ensure compliance with national security and international requirements including,

(1) The date of intended commencement of operations and the expected duration of such operations;

(2) The method of launch, and the name and location of the operator of the launch vehicle and the launch site;

(3) The range of orbits and altitudes requested for authorized operation;

(4) The range of spatial resolution or instantaneous field of view requested; and

(5) The spectral bands requested for authorized operation.

The applicant may wish to include information concerning the extent to which data to be acquired from the applicant's system could be acquired from foreign competitors who are not subject to these regulations.

(e) The applicant's intended data acquisition and distribution plans, including:

(1) Plans for data transmission to the ground;

(2) Method of data distribution including scheduling plans and procedures;

(3) Location of major data distribution outlets;

(4) Data reproduction policy;

(5) Pricing policy;

(6) The names and addresses of any parties that will engage in the marketing of data on a contractual basis with the applicant, or its affiliates and subsidiaries; and

(7) Any other information necessary to satisfy the requirements of section 601 of the Act.

(f) Any plans that the applicant, or any affiliate or subsidiary may have for engaging in value-added activities, including a plan and pricing policy for ensuring nondiscriminatory access to unenhanced data.

(g) All existing or anticipated agreements regarding system operation between the applicant, its affiliates and subsidiaries, and any foreign nation, entity or consortium.

(h) Proposed method of disposition of any remote-sensing satellites owned or operated by the applicant.

In the case of an application for an amendment to an existing license, only modifications or additions to previously submitted information need be provided.

§ 960.7 Amendment, withdrawal, and termination of an application.

(a) If information in an application becomes materially inaccurate or incomplete after it is filed but before the license application proceeding is completed, the applicant must promptly file an amendment that contains the corrected or additional information. The applicant should follow the procedures specified in § 960.5 for an original filing.

(b) If the Administrator determines that any amendment constitutes a major and substantial change to the applicant's original proposal, the Administrator may:

(1) Incorporate the amendment into the original application and, if necessary, extend the time period prescribed in the Act and in these regulations for processing the application by no more than 60 days; or

(2) Require the applicant to submit a new license application.

(c) An applicant may withdraw an application at any time before the license application review is completed by delivering or mailing a written notice of withdrawal to the Administrator.

(d) The Administrator shall terminate review of a license application if:

(1) The application is withdrawn before the decision approving or denying it is issued; or

(2) The applicant, after written notice by the Administrator pursuant to § 960.9(c), does not provide adequate additional information to complete the application within the time stated in the written notice.

§ 960.8 Confidentiality of information.

(a) Any person who submits information pursuant to this part, considered to be a trade secret, or commercial or financial information that is privileged or confidential, may request in writing that the information be given confidential treatment. Such request should:

(1) Be submitted at the time of submission of the information; and

(2) State the period of time for which confidential treatment is desired (e.g., until a certain date, or until the occurrence of a certain event, or permanently).

(b) Information for which confidential treatment is requested must be clearly marked with a legend such as "Proprietary Information" or "Confidential Treatment Requested." Where such marking proves impracticable, a cover sheet containing such legend must be securely attached.

(c) If a request for confidential treatment is received after the information itself is received, NESDIS will try to associate the request with copies of the information, but cannot guarantee that such efforts will be effective.

(d) Any request for confidential treatment may include a written justification, stating why the information is a trade secret, or commercial or financial information that is privileged or confidential, and describing:

(1) The commercial or financial nature of the information;

(2) The nature and extent of the competitive advantage enjoyed as a result of possession of the information;

(3) The nature and extent of the competitive harm that would result from public disclosure of the information;

(4) The extent to which the information has been disseminated to employees and contractors of the person submitting the information;

(5) The extent to which persons other than the person submitting the information possess, or have access to, the same information; and

(6) The nature of the measures that have been and are being taken to protect the information from disclosure.

(e) Request for disclosure.

(1) Requests for disclosure of information submitted, reported, or collected pursuant to this part shall be in accordance with 15 CFR 903.7.

(2) NOAA will not usually determine whether confidential treatment is warranted until it receives a request for disclosure of the information, unless it would encourage the submission of information not required to be submitted under this part.

(3) Upon receipt of a request for disclosure of information for which confidential treatment has been requested, the Administrator will notify immediately the person who submitted the information and:

(i) Inform such person of the date by which NOAA must determine whether confidential treatment is warranted in order to comply with the request for disclosure (usually within 10 working days of receipt of the request); and

(ii) Inquire whether such person continues to request confidential treatment.

(4) If the person waives or withdraws a request for confidential treatment in full or in part, the person shall deliver to NOAA a written statement to that effect. If the person confirms the request for confidential treatment, such person is strongly encouraged to deliver to NOAA a written statement in sufficient time for NOAA to fully consider it in making its formal determination (generally, not later than the close of business on the fourth working day after being notified under paragraph (e)(3) of this section). Such statement may:

(i) Address the issues listed in paragraph (d) of this section, describing the basis for believing that the information is deserving of confidential treatment, if such a statement was not previously submitted;

(ii) Update or supplement any statement previously submitted under paragraph (d) of this section; and

(iii) Present arguments against disclosure of the information.

(5) To the extent permitted by applicable law, part or all of any statement submitted under this section will be treated as confidential if so requested by the person submitting the response.

§ 960.9 Review procedures.

(a) The Administrator shall immediately forward a copy of any application or a summary thereof to the Department of Defense, the Department of State, and any other Federal agencies determined to have a substantial interest in the proposed activity, such as the National Aeronautics and Space Administration, and the Department of Transportation. The Administrator shall advise such agencies of the deadline prescribed by paragraph (b) of this section to require additional information from the applicant.

(b) Within 21 days after the receipt of an application, the Administrator shall determine whether the application appears to contain all of the information required by Subpart B of these regulations. In making this determination the Administrator shall consider timely comments provided by the Federal agencies consulted under paragraph (a) of this section.

(c) If the Administrator determines that all of the required information is not contained in the application, the Administrator may require by written notice to the applicant, that the

applicant file further information, analysis, or explanation.

(d) If the Administrator requires further information under paragraph (c) of this section, the time limitations prescribed by section 401(c) of the Act do not begin to run until the date on which the Administrator determines that the application appears to be complete and so notifies the applicant.

(e) Within sixty days of receipt of a complete application, each Federal agency consulted under paragraph (a) of this section shall recommend approval or disapproval of the application in writing.

(1) If the Secretary of Defense or the Secretary of State determines that the application may not be approved without modifications or conditions consistent with national security concerns or international obligations, the determination shall clearly state why the modifications or conditions are necessary to accomplish the intended purpose.

(2) If any other agency recommends disapproval, it shall state why it believes the application does not comply with any law or regulation within its area of responsibility and how it believes the application may be amended or the license conditioned to comply with the law or regulation in question.

(f) All determinations and recommendations shall be made a part of the public record for that application. If the recommendation contains classified material, the public record shall reflect at what point in the document deletions have been made.

§ 960.10 Timely approval or denial of application and issuance of license.

(a) The Administrator shall approve or deny a complete application as soon as practicable. If final action has not occurred within one hundred and twenty days after receipt, the Administrator shall inform the applicant of any pending issues and of actions required to resolve them.

(b) If the Administrator denies the application, he or she shall provide the applicant with a concise statement in writing of the reasons therefor. Within 30 days after receipt of a notice of denial, the applicant may appeal by written notice to the Administrator and may request either an informal hearing or a formal hearing to be held in accordance with the procedures set forth at 15 CFR Part 904, Subpart C.

(c) As soon as practicable after the close of a hearing or, in the case of a formal hearing, the issuance of a recommended decision by the Administrative Law Judge, the Administrator shall issue the final decision and serve notice thereof on the applicant. This decision shall be considered final agency action.

§ 960.11 Criteria for approval or denial.

Before approving an application and issuing a license or an amendment to a license, the Administrator shall find in writing that:

(a) The licensee will operate the system in a manner consistent with national security and the international obligations of the U.S.;

(b) The licensee will make available unenhanced data to all potential users on a nondiscriminatory basis in accordance with sections 104(3) and 601 of the Act.

(1) If the licensee or any affiliate or subsidiary will engage in any value-added activities, the plan required by section 402(b)(9)(B) of the Act must clearly identify all such value-added activities, whether conducted by the license itself or by any affiliate or subsidiary, and ensure that any unenhanced data generated by the system will be made available to all potential users on a nondiscriminatory basis;

(2) Where the value-added activity described in the plan required by section 402(b)(9) of the Act consists of processing data for general publication, the plan shall satisfy the requirements of this section if:

(i) Publication is timely;

(ii) The medium in which the imagery will be published will be available to any potential subscriber on a nondiscriminatory basis; and

(iii) All unenhanced data from which the imagery is derived will be available on a nondiscriminatory basis at the time of publication or within a reasonable time thereafter.

(c) The licensee will make available to the Administrator at the reasonable cost of reproduction and transmission all unenhanced data which the Administrator may request for a basic data set pursuant to section 602 of the Act; and

(d) If the space system will utilize a space platform owned or operated by the license, the licensee has agreed to dispose of such platform in a satisfactory manner.

In making the findings required by paragraph (a) of this section, the Administrator shall be entitled to rely upon the written recommendations of the Departments of Defense and State described in § 960.9(e).

§ 960.12 Contents of license.

Each license issued by the Administrator for the operation of a remote-sensing space system shall specify:

(a) The name and address of the person to whom the license is being issued, and the name and address of the agent for service of documents, if different;

(b) The effective date of the license and its duration;

(c) The characteristics of the system approved, including specifically:

(1) The range of orbits and altitudes authorized for operation;

(2) The range of spatial resolution or instantaneous field of view authorized; and

(3) The spectral bands authorized.

(d) Terms and conditions necessary to ensure:

(1) Compliance with any national security concerns and any international obligations specified by the Departments of Defense and State respectively.

(2) Adherence to the approved plans described in § 960.6(f) for the licensee to make unenhanced data available to all potential users on a nondiscriminatory basis;

(e) That the licensee will make available to the Administrator any data requested for a basic data set on reasonable terms and conditions;

(f) That the licensee will notify the Administrator of any agreement which it intends to enter into with any foreign nation or entity or any consortium involving a foreign nation or entity at least 30 days before concluding such an agreement;

(g) That the licensee will allow the Administrator or other appropriate federal officials access at any reasonable time to any facility or site of the licensee or any contractor of the licensee located within the jurisdiction or control of the United States:

(1) To verify that the space system conforms to representations made in the license application; or

(2) To monitor activities of the licensee under the license including the inspection of equipment, facilities and other records and ensure compliance with the terms of the license;

(h) That the licensee will surrender the license and terminate all operations immediately upon notification that the Administrator has determined under section 403(a)(1) of the Act that the licensee has substantially failed to comply with any of the requirements listed in section 403(a)(1);

(i) If the space system will utilize a civilian U.S. Government platform, that the licensee will reach an agreement with the appropriate agency to reimburse the Government for all

related costs and to ensure that the use of the platform will not interfere with the government's mission;

(j) Appropriate provisions governing the disposition of any space platforms owned or operated by the licensee, including at a minimum sufficient advance notification to the Administrator of such disposition to allow review and approval of the procedures proposed;

(k) The conditions that require an amendment of the license including any change:

(1) In ownership of the licensee;

(2) In citizenship of: The president, proprietor, or other chief executive officer of the licensee and, if the licensee is a corporation, the chairman of the board of directors, or if the licensee is a partnership, a general partner;

(3) In the operations of the licensee that would result in sensing activities outside the range of orbits and altitudes, the range of spatial resolution or instantaneous field of vision, or the spectral bands approved under paragraph (c) of this section, except in case of an emergency posing an imminent and substantial threat of harm to human life, property, the environment or the remote-sensing space system itself, in which cases the licensee shall attempt to obtain oral approval from the Administrator;

(l) That the licensee will notify the Administrator of any value-added activities that will be conducted by the licensee or by a subsidiary or affiliate.

Subpart C—Enforcement Procedures

§ 960.13 General.

Section 403(a) of the act authorizes the Administrator to take actions adverse to a licensee if the licensee fails to comply with the Act, these regulations, or any terms, conditions, or restrictions in the license. These adverse actions are:

(a) License sanctions, including modification, suspension, and termination of any licensee;

(b) Civil penalties not to exceed $10,000 for each day of operation in violation of a license, regulation, or the Act; and

(c) Seizure of any object, record, or report if there is probable cause to believe that such object, record, or report is being or is likely to be used to commit a violation.

This subpart establishes uniform rules and procedures for these adverse actions.

§ 960.14 License sanctions.

(a) If the Administrator determines, on the basis of available information, that the licensee is not in compliance with any applicable provision of the Act, any regulation, or any license condition or restriction, the Administrator may issue the licensee a Notice of License Sanction (NOLS) proposing to:

(1) Terminate the license;

(2) Suspend the license for a specified period of time or until certain stated requirements are met, or both; or

(3) Modify the license, to aid future enforcement efforts.

(b) The NOLS will contain;

(1) A concise statement of the facts believed to show a violation;

(2) A specific reference to the provisions of the Act, regulation, or license allegedly violated;

(3) The nature and duration of the proposed sanction; and

(4) The effective date of the sanction, which is 30 days after the date of the NOLS unless the Administrator requires immediate termination of some or all licensed activities under paragraph (e) of this section or unless the licensee requests a hearing under paragraph (d) of this section.

(c) The NOLS also may propose to assess a civil penalty in accordance with § 960.15.

(d) Within 30 days after receipt of the NOLS, the licensee may request a hearing by serving a written request on the Administrator either in person or by certified or registered mail, return receipt requested, at the address specified in the NOLS. Such hearing shall be held in accordance with the procedures set forth at 15 CFR Part 904, Subpart C.

(e) If the Administrator determines that the licensee has substantially failed to comply with any provision of the Act, these regulations, or with any term, condition, or restriction of the license, the NOLS will include a finding to this effect and may require immediate termination of some or all licensed operations. For purposes of this section, "substantially fails to comply" means:

(1) Any failure to comply with a material term or condition of a license or of the Act or these regulations, which the Administrator has reasonable basis to believe is willful or intentional;

(2) Any failure to comply after notice by the Administrator;

(3) Any failure to comply with a material term or condition of a license which the Secretary of Defense determines clearly poses a threat to the national security or which the Secretary of State determines clearly poses a threat to international obligations of the United States.

(f) Any request for a hearing under paragraph (d) of this section will not delay immediate termination under this paragraph and the licensee is entitled to treat the finding as final agency action for purposes of judicial review.

§ 960.15 Civil penalties.

Section 403(a)(3) of the Act authorizes the Administrator to assess civil penalties of up to $10,000 for any violation of any requirement of the Act, these regulations or any term or condition of a license. Each day of operation in violation constitutes a separate violation. Such penalties will be assessed in accordance with the procedures set forth at 15 CFR Part 904, Subpart B.

§ 960.16 Seizure.

(a) If the Administrator determines that there is probable cause to believe that any object, record, or report was used, is being used or is likely to be used in violation of the Act, these regulations or the requirements of any license, the Administrator may seize any such item and issue the licensee a Notice of Seizure (NOS) containing:

(1) A description of the object, record, or report seized;

(2) A concise statement of the facts believed to show use or possible use in a violation; and

(3) A specific reference to the provisions of the Act, regulation, or license allegedly violated.

(b) Within 30 days after receipt of a NOS, the licensee may request a hearing by serving a written and dated request on the Administrator either in person or by certified or registered mail, return receipt requested, at the address specified in the notice. Such hearing shall be held in accordance with the procedures set forth at 15 CFR Part 904, Subpart C. For good cause shown, the Administrator may in his or her sole discretion return the seized item pending the outcome of the hearing.

[FR Doc. 87-15577 Filed 7-9-87; 9:52 am]
BILLING CODE 3510-08-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 184

[Docket No. 82N-0239]

Enzyme-Modified Fats; Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that

enzyme-modified milk powder, enzyme-modified butterfat, enzyme-modified steam-rendered chicken fat, and enzyme-modified refined beef fat are generally recognized as safe (GRAS) for use as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review conducted by the agency.

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Hortense Macon, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 23, 1984 (49 FR 46164), FDA published a proposal to affirm that enzyme-modified milk powder, enzyme-modified butterfat, enzyme-modified steam-rendered chicken fat, and enzyme-modified refined beef fat are GRAS for use as direct human food ingredients. FDA published the proposal in accordance with its announced review of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review and the report of the Select Committee on GRAS Substances (the Select Committee) on enzyme-modified fats are available for public review in the Dockets Management Branch (HFA–305), Food and Drug Administration, Room 4–62, 5600 Fishers Lane, Rockville, MD 20857. Copies of these documents also are available for public purchase from the National Technical Information Service, as announced in the proposal.

In addition to proposing to affirm the GRAS status of enzyme-modified milk powder, enzyme-modified butterfat, enzyme-modified steam-rendered chicken fat, and enzyme-modified refined beef fat, FDA gave public notice that it was unaware of any prior-sanctioned food uses for these ingredients other than the proposed conditions of use. Persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions so that the safety of any prior-sanctioned uses could be determined. That notice was also an opportunity to have prior-sanctioned uses of enzyme-modified fats recognized by issuance of an appropriate regulation under Part 181—Prior Sanctioned Food Ingredients (21 CFR Part 181) or affirmed as GRAS under Part 184 or 186 (21 CFR Part 184 or 186), as appropriate.

FDA also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for enzyme-modified milk powder, enzyme-modified butterfat, enzyme-modified steam-rendered chicken fat, or enzyme-modified refined beef fat were submitted in response to the proposal. Therefore, in accordance with the proposal, any right to assert a prior sanction for use of these ingredients under conditions different from those set forth in this final rule has been waived.

FDA received three comments on the proposal. Two comments were from producers and users of enzyme-modified fats, and one comment was from a producer and supplier of enzymes.

A summary of the comments and the agency's responses to them follow.

1. One comment from a producer of enzyme-modified fats noted that the proposed regulation provided for the preparation of enzyme-modified milk powder only from a milk powder source. The comment asserted that data contained in its original request for GRAS affirmation of enzyme-modified milk powder demonstrated that enzyme-modified milk powder is also prepared from other sources such as reconstituted milk powder, whole milk, concentrated or condensed whole milk, and evaporated milk. The comment suggested that the proposed affirmation is too restrictive and requested that the agency include the additional sources in the final regulation on enzyme-modified milk powder.

The agency has reviewed this request and has found that these additional sources were inadvertently omitted from the proposal. Based on its review of the data in agency files, FDA finds that reconstituted milk powder, whole milk, concentrated or condensed whole milk, evaporated milk, and milk powder have a history of safe use prior to 1958 in the preparation of enzyme-modified milk powder. Therefore, the agency has amended the final rule to permit the use of reconstituted milk powder, whole milk, concentrated or condensed whole milk, and evaporated milk, in addition to milk powder, as sources in the preparation of enzyme-modified milk powder.

2. The same comment also asserted that enzyme-modified butterfat is produced from milkfat as well as butterfat. The comment requested that the final rule be amended to reflect this fact.

The agency has reviewed this request and has found that this source was inadvertently not included in the proposal when it was published. Based on a review of agency data, FDA finds that the use of milkfat has a history of safe use prior to 1958 in the preparation of enzyme-modified butterfat. In addition, the agency finds that the terms "butterfat" and "milkfat" identify the fatty portion of milk, and that it is this fatty portion that is enzyme modified. The agency considers milkfat derived from milk to be an appropriate source for the production of enzyme-modified butterfat. Therefore, the agency has amended the final rule to permit the use of milkfat as an additional source in the preparation of enzyme-modified butterfat.

3. One comment from a producer and user of enzyme-modified fats supported FDA's proposal to affirm enzyme-modified fats as GRAS.

The agency acknowledges this comment. Because this comment essentially agrees with FDA, the agency has not made any changes in the regulation as a result of this comment.

4. One comment from a producer and supplier of enzymes stated that esterase-lipase enzyme derived from *Mucor miehei* is approved for use as a flavor enhancer in cheeses, fats and oils, and milk products under § 173.140 (21 CFR 173.140), and that this enzyme product could also be used to prepare enzyme-modified fats. The comment stated that the proposed regulation should be amended to provide for the use of this food additive enzyme in the preparation of enzyme-modified fats.

The agency has reviewed the comment and finds that the proposal specifically provides for the use of GRAS enzymes in the production of GRAS enzyme-modified fats. Nonetheless, the use of esterase-lipase enzyme derived from *Mucor miehei* is regulated in § 173.140 as a flavor enhancer in a number of food categories including fats and oils. Therefore, because a food additive regulation exists that defines the proper use of this enzyme, the agency finds that it is unnecessary to modify § 184.1287 to include this food additive enzyme.

In the proposal, FDA stated that it would work with the Committee on Food Chemicals Codex of the National Academy of Sciences to develop acceptable specifications for enzyme-modified fats used as direct food ingredients and would incorporate those specifications into the regulation when they were developed. To date, however, work on the specifications is still incomplete. Until the specifications are developed, these ingredients for direct food uses must comply with the descriptions in their respective regulations and be of food-grade purity (21 CFR 170.30(h)(1) and 182.1(b)(3)).

The agency has previously considered the environmental effects of this rule as announced in the proposed rule of November 23, 1984 (49 FR 46164). No new information or comments have been received that would effect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

In accordance with the Regulatory Flexibility Act, the agency previously considered the potential effects that this rule would have on small entities, including small businesses. In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has determined that no significant impact on a substantial number of small entities would derive from this action. FDA has not received any new information or comments that would alter its previous determination.

In accordance with Executive Order 12291, FDA has previously analyzed the potential economic effects of this final rule. As announced in the proposal, the agency has determined that the rule is not a major rule as determined by the Order. The agency has not received any new information or comments that would alter its previous determination.

The agency's findings of no major economic impact and no significant impact on a substantial number of small entities, and the evidence supporting these findings, are contained in a threshold assessment which may be seen in the Dockets Management Branch (address above).

List of Subjects in 21 CFR Part 184

Direct food ingredients; Food ingredients; Generally recognized as safe (GRAS) food ingredients.

Therefore, under the Federal Food, Drug, and Cosmetic Act, Part 184 is amended as follows:

PART 814—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

1. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1046–1047 as amended, 1055–1056 as amended, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10 and 5.61.

2. By adding new § 184.1287, to read as follows:

§ 184.1287 Enzyme-modified fats.

(a) Enzyme-modified refined beef fat, enzyme-modified butterfat, and enzyme-modified steam-rendered chicken fat are prepared from refined beef fat; butterfat or milkfat; and steam-rendered chicken fat, respectively, with enzymes that are generally recognized as safe (GRAS). Enzyme-modified milk powder may be prepared with GRAS enzymes from reconstituted milk powder, whole milk, condensed or concentrated whole milk, evaporated milk, or milk powder. The lipolysis is maintained at a temperature that is optimal for the action of the enzyme until appropriate acid development is attained. The enzymes are then inactivated. The resulting product is concentrated or dried.

(b) FDA is developing food-grade specifications for these enzyme-modified ingredients in cooperation with the National Academy of Sciences. In the interim, the ingredients must be of purity suitable for their intended use.

(c) In accordance with § 184.1(b)(1), the ingredients are used in food with no limitation other than current good manufacturing practice. The affirmation of these ingredients as generally recognized as safe (GRAS) as direct human food ingredients is based upon the following current good manufacturing practice conditions of use:

(1) The ingredients are used as flavoring agents and adjuvants as defined in § 170.3(o)(12) of this chapter.

(2) The ingredients are used in food at levels not to exceed current good manufacturing practice.

(d) Prior sanctions for these ingredients different from the uses established in this section do not exist or have been waived.

Dated: June 30, 1987.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-15656 Filed 7-9-87; 8:45 am]

BILLING CODE 4160-01-M

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21 CFR Part 510

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

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor address for Fermenta Animal Health Co.

EFFECTIVE DATE: July 10, 1987.

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

SUPPLEMENTARY INFORMATION: Fermenta Animal Health Co. informed FDA of a change of address from 7528 Auburn Rd., P.O. Box 8001, Painesville, OH 44077, to 7410 NW. Tiffany Springs Parkway, Box 260, Kansas City, MO 64153-1865. The agency is amending 21 CFR 510.600(c) (1) and (2) to reflect the sponsor address change.

List of Subjects in 21 CFR Part 510

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

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

PART 510—NEW ANIMAL DRUGS

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

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Fermenta Animal Health Co.," and in paragraph (c)(2) in the entry for "054273" by revising the sponsor address to read "7410 NW. Tiffany Springs Parkway, Box 260, Kansas City, MO 64153-1865."

Dated: July 2, 1987.

Richard A. Carnevale,

Acting Associate Director for Scientific Evaluation, Center for Veterinary Medicine.

[FR Doc. 87-15693 Filed 7-9-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

[DoD Directive 5400.7 and DoD 5400.7-R]

DoD Freedom of Information Act Program

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This final rule implements certain provisions of the Freedom of Information Reform Act of 1986, which required agency promulgation of regulations specifying a uniform scheduled of fees and guidelines for determining waiver or reduction of such fees. This rule conforms with the Office

of Management and Budget's (OMB) Uniform Freedom of Information Act Fee Schedule and Guidelines, and is published pursuant to the Freedom of Information Reform Act of 1986 (Pub. L. 99–570); section 954 of the National Defense Authorization Act for Fiscal Year 1987 (Pub. L. 99–661), as amended by the Defense Technical Corrections Act of 1987 (Pub. L. 100–26).

EFFECTIVE DATE: August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Charlie Y. Talbott, Office of the Assistant Secretary of Defense (Public Affairs) Washington, DC 20301–1400, Telephone (202) 697–1180.

SUPPLEMENTARY INFORMATION: 32 CFR Part 286 was published in the **Federal Register** on April 29, 1980. The interim rule on revision to 32 CFR Part 286 was published for public comment in the **Federal Register** on April 24, 1987, 52 FR 13641. Three public comments were received and taken into consideration in developing the final rule. All commentators desired that the Department of Defense liberalize its definitions of the media and freelance journalists beyond that established by OMB. The Department of Defense considers the OMB definitions practical, and will remain in conformance with those definitions. One commentator considered the policy on release of personnel names and duty addresses too restrictive. The policy was reviewed and it was determined that the balancing test between the individuals' right to privacy and the public's right to know remained the basic criteria in determining disclosure on a case-by-case basis. Consequently, the Department of Defense elects not to affect any change to the policy. One commentator revealed a discrepancy in the Department of Defense's application of fee waiver factors, which has now been corrected in the final rule.

List of Subjects in 32 CFR Part 286

Freedom of information.

Accordingly, 32 CFR Part 286 is revised as follows:

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM

Subpart A—General Provisions

Subpart B—FOIA Reading Rooms

Subpart C—Exemptions

Subpart D—For Official Use Only

Subpart E—Release and Processing Procedures

Subpart F—Fee Schedule

Subpart G—Reports

Subpart H—Education and Training

Authority: Public Law 99–570, secs. 1801–1804; Pub. L. 99–661, sec. 2328; 5 U.S.C. 552.

Subpart A—General Provisions

§ 286.1 Purpose and applicability.

(a) *Purpose.* The purpose of this part is to provide policies and procedures for the Department of Defense (DoD) implementation of the Freedom of Information Act and to promote uniformity in the DoD Freedom of Information Act (FOIA) Program. This part amplifies enclosures 2 through 7 of DoD Directive 5400.[1]

(b) *Applicability.* (1) This part applies to the Office of the Secretary of Defense (OSD) (which includes for the purpose of this Regulation the Organization of the Joint Chiefs of Staff, Unified Commands and OSD administrative support agencies), the Military Departments and the Defense Agencies (hereafter referred to as "DoD Components"), and takes precedence over all Component regulations that supplement the DoD FOIA Program. A list of DoD Components is at Appendix F.

(2) The National Security Agency records are subject to the provisions of this part only to the extent the records are not exempt under Pub. L. 86–36.

§ 286.3 DoD public information.

(a) *Public information.* The public has a right to information concerning the activities of its government. DoD policy is to conduct its activities in an open manner and provide the public with a maximum amount of accurate and timely information concerning its activities, consistent always with the legitimate public and private interests of the American people. A DoD record requested by a member of the public who follows rules established by proper authority in the Department of Defense shall be withheld only when it is exempt from mandatory public disclosure under the FOIA. In the event a requested record is exempt under the FOIA, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by the release of the record. In order that the public may have timely information concerning DoD activities, records requested through public information channels by news media representatives that would not be withheld if requested under the FOIA should be released upon request. Prompt responses to requests for information from news media representatives should be encouraged to eliminate the need for these requesters to invoke the provisions of the FOIA and thereby assist in providing timely information to the public. Similarly, requests from other members of the public for information should continue to be honored through appropriate means even though the request does not qualify under FOIA requirements.

(b) *Control system.* A request for records that invokes the FOIA shall enter a formal control system designed to ensure compliance with the FOIA. A release determination must be made and the requester informed within the time limits specified in this part. Any request for DoD records that either explicitly or implicitly cites the FOIA shall be processed under the provisions of this part or under the Privacy Act, when the request is from the subject of the records requested (see § 286.7(d)).

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, Attn: Code 301, 5801 Tabor Avenue, Philadelphia, PA 19120.

§ 286.5 Definitions.

(a) *Definitions.* As used in this part, the following terms and meanings shall be applicable.

(b) *FOIA request.* A written request for DoD records, made by a member of the public, and either explicitly or implicitly invokes the FOIA, DoD Directive 5400.7, this part or DoD Component supplementing regulations or instructions.

(c) *Agency record.* (1) The products of data compilation, regardless of physical form or characteristics, made or received by a DoD Component in connection with the transaction of public business and preserved by a DoD Component primarily as evidence of the organization, policies, functions, decisions, or procedures of the DoD Component.

(2) The following are not included within the definition of the word "record":

(i) Library and museum material made, acquired, and preserved solely for reference or exhibition.

(ii) Objects or articles, such as structures, furniture, paintings, sculpture, three-dimensional models, vehicles and equipment, whatever their historical value, or value as evidence.

(iii) Commercially exploitable resources, including but not limited to:

(A) Maps, charts, map compilation manuscripts, map research materials and data if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component.

(B) Computer software, if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DoD Component. (This does not include the underlying data which is processed and produced by such software and which may in some instances be stored with the software).

(iv) Unaltered publications and processed documents, such as regulations, manuals, maps, charts, and related geophysical materials, that are available to the public through an established distribution system with or without charges.

(v) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(vi) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use.

(vii) Information stored within a computer for which there is no existing computer program or printout.

(3) A record must exist and be controlled by the Department of Defense at the time of the request to be considered subject to this part. There is no obligation to create, compile, or obtain a record to satisfy an FOIA request.

(d) *DoD component.* An element of the Department of Defense, as defined in § 286.1(b) authorized to receive and act independently on FOIA requests. A DoD Component has its own initial denial authority (IDA) or appellate authority, and general counsel.

(e) *Initial denial authority.* An official who has been granted authority by the head of a DoD Component to withhold records requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure.

(f) *Appellate authority.* The head of the DoD Component or the Component head's designee having jurisdiction for this purpose over the record.

(g) *Administrative appeal.* A request by a member of the general public, made under the FOIA, asking the appellate authority of a DoD Component to reverse an IDA decision to withhold all or part of a requested record or to deny a request for waiver or reduction of fees.

§ 286.7 Policy.

(a) *Compliance with the Freedom of Information Act (FOIA).* DoD personnel are expected to comply with the provisions of the FOIA and this part in both letter and spirit. This strict adherence is necessary to provide uniformity in the implementation of the DoD FOIA Program and to create conditions that will promote public trust.

(b) *Openness with the public.* The Department of Defense shall conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation. Records not specifically exempt from disclosure under the Act shall, upon request, be made readily accessible to the public in accordance with rules promulgated by competent authority, whether or not the Act is invoked.

(c) *Avoidance of procedural obstacles.* DoD Components shall ensure that procedural matters do not unnecessarily impede a requester from obtaining DoD records promptly. Components shall provide assistance to requesters to help them understand and comply with procedures established by this part and any supplemental regulations published by the DoD Components.

(d) *Prompt Action on Requests.* When a member of the public complies with the procedures established in this Regulation for obtaining DoD records, the request shall receive prompt attention; a reply shall be dispatched within 10 working days, unless a delay is authorized. In circumstances where a Component has a significant number of requests, e.g., 10 or more, the requests will be processed in order of receipt. This does not; however, preclude a Component from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt. Requests by individuals for access to records about themselves are processed under the provisions of the respective Act cited in the request. Requests that cite *both Acts or neither Act* are processed under both *Acts*, using the fee provisions of the Federal Privacy Act and the time limits of the FOIA. If access is controlled by another federal statute, follow the provisions of the controlling statute and § 286.13(a)(3). For further details, see DoD 5400.11–R.[2] Even though a request that invokes the FOIA is administratively processed under Privacy Act procedures, no record shall be withheld that would be released under FOIA procedures.

(e) *Use of exemptions.* Records that may be withheld under the exemptions outlined in Subpart C shall be made available to the public when it is determined that no governmental interest will be jeopardized by their release. Determination of jeopardy to governmental interest is within the sole discretion of the Component, consistent with statutory requirements, security classification requirements, or other requirements of law.

(f) *Public Domain.* Nonexempt records released under the authority of this part are considered to be in the public domain. Nonexempt records maintained in a DoD Component's Public Reading Room, or which can be made available in the Public Reading Room within a short time frame (15 minutes or less) are considered to be in the public domain. Exempt records released pursuant to this part or other statutory or regulatory authority, however, may be considered to be in the public domain only when their release constitutes a waiver of the FOIA exemption. When the release does not constitute such a waiver, such as when disclosure is made to a properly constituted advisory committee or to a Congressional Committee, the released

[2] Copies may be obtained, if needed, from the U.S. Dept of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

records do not lose their exempt status. Also, while authority may exist to disclose records to individuals in their official capacity, the provisions of this part apply if the same individual seeks the records in a private or personal capacity.

(g) *Creating a record.* A record must exist and be in the possession and control of the Department of Defense at the time of the request to be considered subject to this part. Mere possession of a record does not presume departmental control and such records, or identifiable portions thereof, would be referred to the originating Agency for direct response to the requester. There is no obligation to create nor compile a record to satisfy an FOIA request. A DoD Component, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessment for direct search, review (in the case of commercial requesters), and duplication associated with the request shall be in accordance with § 286.33(b).

(h) *Description of requested record.* (1) Identification of the record desired is the responsibility of the member of the public who requests a record. The requester must provide a description of the desired record, that enables the Government to locate the record with a reasonable amount of effort. The Act does not authorize "fishing expeditions." When a DoD Component receives a request that does not "reasonably describe" the requested record, it shall notify the requester of the defect. The defect should be highlighted in a specificity letter, asking the requester to provide the type of information outlined in § 286.7(h)(2). Components are not obligated to act on the request until the requester responds to the specificity letter. When practicable, Components shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the Act.

(2) The following guidelines are provided to deal with "fishing expedition" requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(3) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, nonrandom search based on the Component's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(4) The following guidelines deal with requests for personal records. Ordinarily, when personal identifiers are provided only in connection with a request for records concerning the requester, only records retrievable by personal identifiers need be searched. Search for such records may be conducted under Privacy Act procedures. No record may be denied that is releasable under the FOIA.

(5) The above guidelines notwithstanding, the decision of the DoD Component concerning reasonableness of description must be based on knowledge of its files. If the description enables DoD Component personnel to locate the record with reasonable effort, the description is adequate.

(i) *Referrals.* (1) A request received by a DoD Component having no records responsive to a request shall be referred routinely to another DoD Component, if the other Component confirms that it has the requested record, and this belief can be confirmed by the other DoD Component. In cases where the Component receiving the request has reason to believe that the existence or nonexistence of the record may in itself be classified, that Component will consult the DoD Component having a cognizance over the record in question before referring the request. If the DoD Component that is consulted determines that the existence or nonexistence of the record is in itself classified, the requester shall be so notified by the DoD Component originally receiving the request, and no referral shall take place. Otherwise, the request shall be referred to the other DoD Component, and the requester shall be notified of any such referral. Any DoD Component receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester.

(2) Whenever a record or a portion of a record is, after prior consultation, referred to another DoD Component or to a government agency outside of the Department of Defense for a release determination and direct response, the requester shall be informed of the referral. Referred records shall only be identified to the extent consistent with security requirements.

(3) A DoD Component shall refer an FOIA request for a classified record that it holds to another DoD Component or agency outside the DoD, if the record originated in the other DoD Component or outside agency or if the classification is derivative. In this situation, provide the record and a release recommendation on the record with the referral action.

(4) A DoD Component may also refer a request for a record that it originated to another DoD Component or agency when the record was created for the use of the other DoD Component or agency. The DoD Component or agency for which the record was created may have an equally valid interest in withholding the record as the DoD Component that created the record. In such situations, provide the record and a release recommendation on the record with the referral action. An example of such a situation is a request for audit reports prepared by the Defense Contract Audit Agency. These advisory reports are prepared for the use of contracting officers and their release to the audited contractor should be at the discretion of the contracting officer. Any FOIA request shall be referred to the appropriate contracting officer and the requester shall be notified of the referral.

(5) Within DoD, a Component shall ordinarily refer an FOIA request for a record that it holds, but that was originated by another DoD Component or that contains substantial information obtained from another DoD Component, to that Component for direct response, after direct coordination and obtaining concurrence from the Component. The requester then shall be notified of such referral. DoD Components shall not, in any case, release or deny such records without prior consultation with the other DoD Component.

(6) DoD Components that receive referred requests shall answer them in accordance with the time limits established by the FOIA and this part. Those time limits shall begin to run upon receipt of the referral by the official designated to respond.

(7) Agencies outside the Department of Defense that are subject to the FOIA:

(i) A Component may refer an FOIA request for any record that originated in an agency outside the DoD or that is

based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the Component must respond to the request.

(ii) A DoD Component shall not honor any FOIA request for investigative, intelligence, or any other type of records that are on loan to the DoD for a specific purpose, if the records are restricted from further release and so marked. Such requests shall be referred to the agency that provided the record.

(iii) Notwithstanding anything to the contrary in § 286.7(i), a Component shall forward a request for National Security Council (NSC) documents or White House files to NSC for a direct response to the requester. DoD documents in which the NSC has a concurrent reviewing interest shall be forwarded to DFOISR, OASD (Public Affairs) which shall effect this coordination with the NSC, and return the documents to the originating agency after the NSC review and determination.

(8) To the extent referrals are consistent with the policies expressed by this paragraph, referrals between offices of the same DoD Component are authorized.

(9) On occasion, the DoD receives FOIA requests for Government Accounting Office (GAO) documents containing DoD information, either directly from requesters, or as referrals from the GAO. The GAO is outside the Executive Branch, and as such, all FOIA requests for GAO documents containing DoD information will be processed under the provisions of Security Review or Mandatory Declassification Review (MDR) Directives (DoD 5200.1–R [3] and DoD Directive 5230.9 [4]). Requests received in DoD for unclassified GAO reports containing DoD information will be transferred to the GAO Distribution Center, ATTN: DHISF, P.O. Box 6015, Gaithersburg, MD 20877. Requests received in the DoD for classified GAO documents (for documents unidentifiable as to classification) will be referred to the GAO Office of Security and Safety, Washington, DC 20548. After internal review, the GAO will refer the request and documents to DoD, Office of the Inspector General, and the Component will refer the action to the Assistant Secretary of Defense (Public Affairs), Directorate for Freedom of Information and Security Review for processing under Security Review or MDR provisions. (See DoD Directive 7650.2 [4]).

(j) *Authentication.* Records provided under this part shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addtion to that required under FOIA and is not included in the FOIA fee schedule. DoD Components may charge for the service at a rate of $5.20 for each authentication.

(k) *Unified and specified commands.* (1) The Unified Commands are placed under the jurisdiction of the OSD, instead of the administering Military Department, only for the purpose of administering the DoD FOIA Program. This policy represents an exception to the policies directed in DoD Directive 5100.3 [5] it authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 and this part. The Unified Commands shall forward directly to the Office of the Assistant Secretary of Defense (Public Affairs), OASD(PA), all correspondence associated with the appeal of an initial denial for records under the provisions of the FOIA. Procedures to effect this administative requirement are outlined in Appendix A.

(2) The Specified Commands remain under the jurisdiction of the administering Military Department. The Commands shall designate IDAs within their headquarters; however, the appellate authority shall reside with the Military Department.

(l) *Records management.* FOIA records shall be maintained and disposed of in accordance with DoD Component Disposition instructions and schedules.

Subpart B—FOIA Reading Rooms

§ 286.9 Requirements.

(a) *Reading room.* Each Component shall provide an appropriate facility or facilities where the public may inspect and copy or have copied the materials described below. DoD Components may share reading room facilities if the public is not unduly inconvenienced. The cost of copying shall be imposed on the person requesting the material in accordance with the provisions of Subpart F.

(b) *Material availability.* The FOIA requries that so-called "(a)(2)" materials shall be made available in the FOI reading room for inspection and copying, unless such materials are published and copies are offered for sale. Identifying details that, if revealed, would create a clearly unwarranted invasion of personal privacy may be deleted from "(a)(2)" materials made available for inspection and copying. In every case, justification for the deletion must be fully explained in writing. However, a DoD Component may publish in the **Federal Register** a description of the basis upon which is will delete identifying details of particular types of documents to aviod clearly unwarranted invasions of privacy. I appropriate cases, the DoD Component may refer to this description rather than write a separate justification for each deletion. So-called "(a)(2)" materials are:

(1) Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(2) Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register.**

(3) Administration staff manuals and instructions, or portions thereof, that establish DoD policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DoD Component. Examples of manuals and instructions not normally made available are:

(i) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(ii) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

§ 286.11 Indexes.

(a) *"(a)(2)" materials.* (1) Each DoD Component shall maintain in each facility prescribed in § 286.9(a) and index of materials described in § 286.9(b) that are issued, adopted, or promulgated, after July 4, 1976. No "(a)(2)" materials issued, promulgated, or adopted after July 4, 1967 that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued, promulgated, or adopted before July 4, 1967, need not be indexed, but must be

[3] See footnote 2 to § 286.7(d).

[4] See footnote 1 to § 286.1(a).

[5] See footnote 1 to § 286.1(a).

made available upon request if not exempted under this part.

(2) Each DoD Component shall promptly published quarterly or more frequently, and distribute, by sale or otherwise, copies of each index of "(a)(2)" materials or supplements thereto unless it publishes in the **Federal Register** an order containing a determination that publication is unnecessary and impracticable. A copy of each index or supplement not published shall be provided to a requesters at a cost not to exceed the direct cost of duplication as set forth in Subpart F of this part.

(3) Each index of "(a)(2)" materials or supplement thereto shall be arranged topically or by descriptive words rather than by case name or numbering systems so that members of the public can readily locate material. Case name and numbering arrangements, however, may also be included for DoD Component convenience.

(b) *Other materials.* (1) Any available index of DoD Component material published in the **Federal Register**, such as material required to be published by section 552(a)(1) of the FOIA, shall be made available in DoD Component FOIA reading rooms.

(2) Althought not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials shall, when feasible, be made available in FOIA reading rooms for inspection and copying. Examples of "(a)(1)" materials are: Descriptions of an agency's central and field organization, and to the extent they affect the public rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revisions, or report of the aforementioned.

Subpart C—Exemptions

§ 286.12 General provisions.

(a) *General.* Records that meet the exemption criteria in § 286.13 may be withheld from public disclosure and need not be published in the **Federal Register**, made available in a library reading room, or provided in response to an FOIA request.

(b) *Jeopardy of government interest.* An exempted record, other than those being withheld pursuant to Exemptions 1, 3 or 6, shall be made available upon the request of any individual when, in the judgment of the releasing DoD Component or higher authority, no jeopardy to government interest would be served by release. It is appropriate for DoD Components to use their discretionary authority on a case-by-case basis in the release of given records. If a DoD Component determines that a record requested under the FOIA meets the Exemption 4 withholding criteria set forth in this part the DoD Component shall not ordinarily exercise its discretionary power to release, absent circumstances in which a compelling public interest will be served by release of that record. Further guidance on this issue may be found at § 286.13(a)(4) and § 286.27(h).

§ 286.13 Exemptions.

(a) *FOIA exemptions.* The following types of records may be withheld in whole or in part from public disclosure unless otherwise prescribed by law.

(1) *Number 1.* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by executive order and implemented by regulations, such as DoD 5200.1–R. Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures in DoD 5200.1–R, section 2–204f apply.

(2) *Number 2.* Those containing or constituing rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of a DoD Component if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense and they do not impose requirements directly on the general public. Examples include:

(i) Those operating rules, guidelines, and manuals for DoD investigators, inspectors, auditors, or examiners that must remain privileged in order for the DoD Component to fulfill a legal requirement.

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion.

(iii) Lists of DoD personnel names and duty addresses (civilian and military) created primarily for internal, trivial, housekeeping purposes for which there is no legitimate public interest or benefit. This exemption is appropriate when it would impose an administrative burden to process the request, and the requester is not seeking the information for the benefit of the general public (see also § 286.13(a)(6)(ii)).

(3) *Number 3.* Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. Examples of statutes are:

(i) National Security Agency Information Exemption, Pub. L. 86–36, section 6.

(ii) Patent Secrecy, 35 U.S.C. 181 through 188. Any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(iii) Restricted Data and Formerly Restricted Data, 42 U.S.C. 2162.

(iv) Communication Intelligence, 18 U.S.C. 798.

(v) Authority to Withhold From Public Disclosure Certain Technical Data, 10 U.S.C. 130 and 32 CFR Part 250.

(vi) Confidentiality of Medical Quality Records: Qualified Immunity Participants, 10 U.S.C. 1102.

(4) *Number 4.* Those containing trade secrets or commercial or financial information that a DoD Component receives from a person or organization outside the government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the government's ability to obtain necessary information in the future; or impair some other legitimate government interest. Examples include records that contain:

(i) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data.

(ii) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(iii) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(iv) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the Department of Defense.

(v) Scientific and manufacturing process or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(vi) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with Title 10, U.S.C. 2320 through 2321 and DoD Federal Acquisition Regulation Supplement (DFARS), Subpart 27.4. Technical data developed exclusively with federal funds may be withheld under exemption 3 if it meets the criteria of Title 10, U.S.C. 130 and 32 CFR Part 250 (see § 286.13(a)(3)(v)).

(5) *Number 5.* Except as provided in paragraphs (a)(5)(iii) through (v) of this section, internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies (as defined in 5 U.S.C. 552(e)) or within or among DoD Components.

(i) Examples include:

(A) The nonfactual portions of staff papers, to include after-action reports and situation reports containing staff evaluations, advice, opinions or suggestions.

(B) Advice, suggestions, or evaluations prepared on behalf of DoD individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(C) Those nonfactual portions of evaluations by DoD Component personnel of contractors and their products.

(D) Information of a speculative, tentative, or evaluative nature of such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(E) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the government's negotiating position or other commercial interests.

(F) Records that are exchanged among agency personnel and within and among DoD Components or agencies as part of the preparation for anticipated administrative proceeding by an agency or litigation before any Federal, State, or military court, as well as records that qualify for the attorney—client privilege.

(G) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DoD Components, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(ii) If any such intra or interagency record or reasonable segregable portion of such record hypothetically would be made available routinely through the "discovery process" in the course of litigation with the agency, i.e., the process by which litigants obtain information from each other that is relevant to the issues in a trial or hearing, then it should not be withheld from the general public even though discovery has not been sought in actual litigation. If, however, the information hypothetically would only be made available through the discovery process by special order of the court based on the particular needs of a litigant, balanced against the interests of the agency in maintaining its confidentiality, then the record or document need not be made available under this part.

(iii) Intra or interagency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through "discovery," and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(iv) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(v) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(6) *Number 6.* Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester would result in a clearly unwarranted invasion of personal privacy.

(i) Examples of other files containing personal information similar to that contained in personnel and medical files include:

(A) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(B) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(ii) In determining whether the release of information would result in a "clearly unwarranted invasion of personal privacy," consideration shall be given to the stated or ascertained purpose of the request. When determining whether a release is "clearly unwarranted," the public interest in satisfying this purpose must be balanced against the sensitivity of the privacy interest being threatened. One example of such is lists of names and duty addresses of DoD personnel (civilian and military) assigned to units that are sensitive, routinely deployable, or stationed in foreign territories. Release of such information could aid in the targeting of DoD employees and their families by terrorists (see also § 286.13(a)(2)(iii)). This exemption shall not be exercised in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family.

(iii) Individual's personnel, medical, or similar file may be withheld from them or their designated legal representative only to the extent consistent with 32 CFR Part 286a.

(iv) A clearly unwarranted invasion of the privacy of the persons identified in a personnel, medical or similar record may constitute a basis for deleting those reasonably segregable portions of that record, even when providing it to the subject of the record.

(7) *Number 7.* Records or information compiled for law enforcement purposes;

i.e., civil, criminal, or military law, including the implementation of executive orders or regualtions issued pursuant to law.

(i) This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(A) Could reasonably be expected to interfere with enforcement proceedings.

(B) Would deprive a person of the right to a fair trail or to an impartial adjudication.

(C) Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(D) Could reasonably be expected to disclose the identity of a confidential source, including a source within the DoD, a State, local, or foreign agency or authority, or any private institution which furnishes the information on a confidential basis.

(E) Could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(F) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(G) Could reasonably be expected to endanger the life or physical safety of any individual.

(ii) Examples include:

(A) Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related government litigation or adjudicative proceedings.

(B) The identity of firms or individuals being investigated for alleged irregularities involving contracting with Department of Defense when no indictment has been obtained nor any civil action filed against them by the United States.

(C) Information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DoD Component, or a lawful national security intelligence investigation conducted by an authorized agency or office within a DoD Component. National security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(iii) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500) is not diminished.

(iv) When the subject of an investigative record is the requester of the record, it may be withheld only as authorized by 32 CFR Part 286a.

(v) *Exclusions.* Excluded from the above exemption are the following two situations applicable to the DoD:

(A) Whenever a request is made which involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, Components may, during only such times as that circumstance continues, treat the records or information as not subject to exemption number 7. In such situation, the response to the requester will state that *no records* were found.

(B) Whenever informant records maintained by a criminal law enforcement organization within a DoD Component under the informant's name or personal identifier are requested by a third party using the informant's name or personal indentifier, the Component may treat the records as not subject to exemption number 7, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to exemption 7, the response to the requester will state that *no records* were found.

(8) *Number 8.* Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(9) *Number 9.* Those containing geological and geophysical information and data (including maps) concerning wells.

Subpart D—For Official Use Only

§ 286.15 General provisions.

(a) *General.* Information that has not been given a security classification pursuant to the criteria of an Executive Order, but which may be withheld from the public for one or more of the reasons cited in FOIA Exemptions 2 through 9 shall be considered as being for official use only. *No other material shall be considered or marked "For Official Use Only"* (FOUO), and FOUO is not authorized as an anemic form of classification to protect national security interests.

(b) *Prior FOUO application.* The prior application of FOUO markings is not a conclusive basis for withholding a record that is requested under the FOIA. When such a record is requested, the information in it shall be evaluated to determine whether, under current circumstances, FOIA exemptions apply in withholding the record or portions of it. If any exemption or exemptions apply or applies, it may nonetheless be released when it is determined that no governmental interest will be jeopardized by its release.

(c) *Historical papers.* Records such as notes, working papers, and drafts retained as historical evidence of DoD Component actions enjoy no special status apart from the exemptions under the FOIA.

(d) *Time to mark records.* The marking of records at the time of their creation provides notice of FOUO content and facilitates review when a record is requested under the FOIA. Records requested under the FOIA that do not hear such markings, shall not be assumed to be releasable without examination for the presence of information that requires continued protection and qualifies as exempt from public release.

(e) *Distribution statement.* Information in a technical document that requires a distribution statement pursuant to DoD Directive 5230.24 [6] shall bear that statement and shall not be marked FOUO.

§ 286.17 Markings.

(a) *Location of markings.* (1) An unclassified document containing FOUO information shall be marked "For Official Use Only" at the bottom on the outside of the front cover (if any), on the first page, on the back page, and on the outside of the back cover (if any).

(2) Within a classified document, an individual page that contains both FOUO and classified information shall be marked at the top and bottom with the highest security classification of information appearing on the page.

(3) Within a classified or unclassified document, an individual page that contains FOUO information but no classified information shall be marked "For Official Use Only" at the bottom of the page.

(4) Other records, such as, photographs, films, tapes, or slides, shall

[6] See footnote 1 to § 286.1(a).

be marked "For Official Use Only" or "FOUO" in a manner that ensures that a recipient or viewer is aware of the status of the information therein.

(5) FOUO material transmitted outside the Department of Defense requires application of an expanded marking to explain the significance of the FOUO marking. This may be accomplished by typing or stamping the following statement on the record prior to transfer:

This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemptions..... apply.

§ 286.19 Dissemination and transmission.

(a) *Release and transmission procedures.* Until FOUO status is terminated, the release and transmission instructions that follow apply:

(1) FOUO information may be disseminated within DoD Components and between officials of DoD Components and DoD Contractors, consultants, and grantees to conduct official business for the Department of Defense. Recipients shall be made aware of the status of such information, and transmission shall be by means that preclude unauthorized public disclosure. Transmittal documents shall call attention to the presence of FOUO attachments.

(2) DoD holders of FOUO information are authorized to convey such information to officials in other departments and agencies of the executive and judicial branches to fulfill a government function, except to the extent prohibited by the Privacy Act. Records thus transmitted shall be marked "For Official Use Only", and the recipient shall be advised that the information has been exempted from public disclosure, pursuant to the FOIA, and that special handling instructions do or do not apply.

(3) Release of FOUO information to Members of Congress is governed by DoD Directive 5400.4.[7] Release to the General Accounting Office (GAO) is governed by DoD Directive 7650.1.[7] Records released to the Congress or GAO should be reviewed to determine whether the information warrants FOUO status. If not, prior FOUO markings shall be removed or effaced. If withholding criteria are met, the records shall be marked FOUO and the recipient provided and explanation for such exemption and marking. Alternatively, the recipient may be requested, without marking the record, to protect against its public disclosure for reasons that are explained.

[7] See footnote 1 to § 286.1(a).

(b) *Transporting FOUO information.* Records containing FOUO information shall be transported in a manner that precludes disclosure of the contents. When not commingled with classified information, FOUO information may be sent via first-class mail or parcel post. Bulky shipments, such as distributions of FOUO Directives or testing materials, that otherwise qualify under postal regulations may be sent by fourth-class mail.

(c) *Electrically transmitted messages.* Each part of electrically transmitted messages containing FOUO information shall be marked appropriately. Unclassified messages containing FOUO information shall contain the abbreviation "FOUO" before the beginning of the text. Such messages shall be transmitted in accordance with communications security procedures in ACP-121 (US Supp 1) for FOUO information.

§ 286.21 Safeguarding FOUO information.

(a) *During duty hours.* During normal working hours, records determined to be FOUO shall be placed in an out-of-sight location if the work area is accessible to non-governmental pesonnel.

(b) *During nonduty hours.* At the close of business, FOUO records shall be stored so as to preclude unauthorized access. Filing such material with other unclassified records in unlocked files or desks, etc., is adequate when normal U.S. Government or government-contractor internal building security is provided during nonduty hours. When such internal security control is not exercised, locked buildings or rooms normally provide adequate after-hours protection. If such protection is not considered adequate, FOUO material shall be stored in locked receptacles such as file cabinets, deskb, or bookcases. FOUO records that are subject to the provisions of Pub. L. 86-36 shall meet the safeguards outlined for that group of records.

§ 286.23 Termination, disposal and unauthorized disclosures.

(a) *Termination.* The originator or other competent authority, e.g., initial denial and appellate authorities, shall terminate "For Official Use Only" markings or status when circumstances indicate that the information no longer requires protection from public disclosure. When FOUO status is terminated, all known holders shall be notified, to the extent practical. Upon notification, holders shall efface or remove the "For Official Use Only" markings, but records in file or storage need not be retrieved solely for that purpose.

(b) *Disposal.* (1) Nonrecord copies of FOUO materials may be destroyed by tearing each copy into pieces to preclude reconstructing, and placing them in regular trash containers. When local circumstances or experience indicates that this destruction method is not sufficiently protective of FOUO information, local authorities may direct other methods but must give due consideration to the additional expense balanced against the degree of sensitivity of the type of FOUO information contained in the records.

((2) Record copies of FOUO documents shall be disposed of in accordance with the disposal standards established under 44 U.S.C. Chapter 33, as implemented by DoD Component instructions concerning records disposal.

(c) *Unauthorized disclosure.* The unauthorized disclosure of FOUO records does not constitute an unauthorized disclosure of DoD information classified for security purposes. Appropriate administrative action shall be taken, however, to fix responsibility for unauthorized disclosure whenever feasible, and appropriate disciplinary action shall be taken against those responsible. Unauthorized disclosure of FOUO information that is protected by the Privacy Act may also result in criminal sanctions against responsible persons. The DoD Component that originated the FOUO information shall be informed of its unauthorized disclosure.

Subpart E—Release and Processing Procedures

§ 286.25 General provisions.

(a) *Public information.* (1) Since the policy of the Department of Defense is to make the maximum amount of information available to the public consistent with its other responsibilities, written requests for a DoD record made under the FOIA may be denied only when:

(i) The record is subject to one or more of the exemptions in Subpart C of this part, and the government's interest will be jeopardized by its release.

(ii) The record has not been described well enough to enable the DoD Component to locate it with a reasonable amount of effort by an employee familiar with the files.

(iii) The requester has failed to comply with the procedural requirements, including the written agreement to pay or payment of any required fee imposed by the instructions of the DoD Component concerned. When personally identifiable

information in a record is requested by the subject of the record or his attorney, notarization of the request may be required.

(2) Individuals seeking DoD information should address their FOI requests to one of the addresses listed in Appendix B.

(b) *Requests from private parties.* The provisions of the FOIA are reserved for persons with private interests as opposed to federal or foreign governments seeking information. Requests from private persons will be made in writing, and will clearly show all other addressees within the federal government to whom the request was also sent. This procedure will reduce processing time requirements, and ensure better inter and intra-agency coordination. Foreign governments seeking information from Department of Defense Components should use established official channels for obtaining information. Release of records to individuals under the FOIA is considered public release of information, except as provided for in § 286.7(f).

(c) *Requests from government officials.* Requests from officials of state, or local governments for DoD Component records shall be honored on an expeditious basis whenever possible. For purposes of determining whether the record or records shall be provided, such officials acting in an individual capacity shall be considered the same as any other requester.

(d) *Privileged release to officials.* (1) Subject to the provisions of DoD 5200.1–R, applicable to classified information, DoD Directive 5400.11, applicable to personal privacy, or other applicable law, records exempt from release under Subpart C of this part may be authenticated and released, in accordance with DoD Component regulations, to officials requesting them on behalf of local, state or federal governmental bodies, whether legislative, executive, administrative, or judicial, as follows:

(i) To Congress, in accordance with DoD Directive 5400.4.

(ii) To the Federal courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

(iii) To other Federal agencies, both executive and administrative, as determined by the head of a DoD Component or designee.

(iv) To state and local officials, as determined by the head of a DoD Component or designee.

(2) DoD Components shall inform officials receiving records under the provisions of § 286.25(d)(1) that those records are exempt from public release under the FOIA and are privileged. DoD Components shall also advise officials of any special handling instructions.

§ 286.27 Initial determinations.

(a) *Initial denial authority.* (1) Components shall limit the number of IDAs appointed. In designating its IDAs, a DoD Component shall balance the goals of centralization of authority to promote uniform decisions and decentralization to facilitate responding to each request within the time limitations of the FOIA.

(2) The initial determination of whether to make a record available upon request may be made by any suitable official designated by the DoD Component in published regulations. The presence of the marking "For Official Use Only" does not relieve the designated official of the responsibility to review the requested record for the purpose of determining whether an exemption under this part is applicable and should be invoked.

(3) The officials designated by DoD Components to make initial determinations should consult with public affairs officers (PAOs) to become familiar with subject matter that is considered to be newsworthy, and advise PAOs of all requests from news media representatives. In addition, the officials should inform PAOs in advance when they intend to withhold or partially withhold a record, if it appears that the withholding action may be challenged in the media.

(b) *Reasons for not releasing a record.* There are seven reasons for not complying with a request for a record:

(1) The request is transferred to another DoD Component, or to another federal agency.

(2) The request is withdrawn by the requester.

(3) The information requested is not a record within the meaning of the FOIA and this part.

(4) A record has not been described with sufficient particularity to enable the DoD Component to locate it by conducting a reasonable search.

(5) The requester has failed unreasonably to comply with procedural requirements, including payment of fees, imposed by this part or DoD Component supplementing regulations.

(6) The DoD Component determines through knowledge of its files and reasonable search efforts that it neither controls nor otherwise possesses the requested record. (A "no record" determination is not considered a denial; therefore an appeal is not appropriate).

(7) The record is denied in accordance with procedures set forth in the FOIA and this part.

(c) *Denial Tests.* To deny a requested record that is in the possession and control of a DoD Component, it must be determined that the denial meets the following tests:

(1) The record is included in one or more of the nine categories of records exempt from mandatory disclosure as provided by the FOIA and outlined in Subpart C of this part.

(2) The use of its discretionary authority is deemed unwarranted.

(d) *Reasonably segregable portions.* Although portions of some records may be denied, the remaining reasonably segregable portions must be released to the requester when the meaning of these portions is not distorted by deletion of the denied portions and when it reasonably can be assumed that a skillful and knowledgeable person could not reconstruct the excised information. When a record is denied in whole, the response advising the requester of that determination will specifically state that it is not reasonable to segregate portions of the record for release.

(e) *Response to requester.* (1) Initial determinations to release or deny a record normally shall be made and the decision reported to the requester within 10 working days after receipt of the request by the official designated to respond.

(2) When a decision is made to release a record, a copy should be made available promptly to the requester once he has complied with preliminary procedural requirements.

(3) When a request for a record is denied in whole or in part, the official designated to respond shall inform the requester in writing of the name and title or position of the official who made the determination, and shall explain to the requester the basis for the determination in sufficient detail to permit the requester to make a decision concerning appeal. The requester specifically shall be informed of the exemptions on which the denial is based. When the initial denial is based in whole or in part on a security classification, the explanation should include a summary of the applicable criteria for classification, as well as an explanation, to the extent reasonably feasible, of how those criteria apply to the particular record in question. The requester shall also be advised of the opportunity and procedures for appealing an unfavorable determination to a higher final authority within the DoD Component.

(4) The response to the requester should contain information concerning the fee status of the request, consistent with the provisions of Subpart F of this part.

(5) The explanation of the substantive basis for a denial shall include specific citation of the statutory exemption applied under provisions of this part. Merely referring to a classification or to a "For Official Use Only" marking on the requested record does not constitute a proper citation or explanation of the basis for invoking an exemption.

(6) When the time for response becomes an issue, the official responsible for replying shall acknowledge to the requester the date of the receipt of the request

(f) *Extension of time.* (1) In unusual circumstances, when additional time is needed to respond, the DoD Component shall acknowledge the request in writing within the 10-day period, describe the circumstances requiring the delay, and indicate the anticipated date for substantive response that may not exceed 10 additional working days. Unusual circumstances that may justify delay are:

(i) The requested record is located in whole or in part at places other than the office processing the request.

(ii) The request requires the collection and evaluation of a substantial number of records.

(iii) Consultation is required with other DoD Components or agencies having substantial interest in the subject matter to determine whether the records requested are exempt from disclosure in whole or in part under provisions of this part or should be released as a matter of discretion.

(2) The statutory extension of time for responding to an initial request must be approved on a case-by-case basis by the final appellate authority for the DoD Component, or in accordance with regulations of the DoD Component, or in accordance with regulations of the DoD Component that establish guidance governing the circumstances in which such extensions may be granted.

(3) In these unusual cases where the statutory time limits cannot be met and no informal extension of time has been agreed to, the inability to process any part of the request within the specified time should be explained to the requester with a request that he agree to await a substantive response by an anticipated date. It should be made clear that any such agreement does not prejudice the right of the requester to appeal the initial decision after it is made. Components are reminded that the requester still retains the right to treat this delay as a de facto denial with full administrative remedies.

(4) As an alternative to the taking of formal extensions of time as described in paragraphs (f) (1) through (3) of this section, the negotiation by the cognizant FOIA coordinating office of informal extensions in time with requesters is encouraged where appropriate.

(g) *Misdirected requests.* Misdirected requests shall be forwarded promptly to the DoD Component with the responsibility for the records requested. The period allowed for responding to the request misdirected by the requester shall not begin until the request is received by the DoD Component that manages the records requested.

(h) *Records of non-U.S. Government source.* (1) When a request is received for a record that was obtained from a non-U.S. Government source, or for a record containing information clearly identified as having been provided by a non-U.S. Government source, the source of the record or information (also known as "the submitter" for matters pertaining to proprietary data under 5 U.S.C. 552 Exemption (b)(4)) (Subpart C, § 286.13(a)(4)) will be notified promptly of that request and afforded reasonable time (eg. 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under Exemption (b)(4). If, for example, the record or information was provided with actual or presumptive knowledge of the non-U.S. Government source and established that it would be made available to the public upon request, there is no obligation to notify the source. Any objections shall be evaluated. The final decision to disclose information claimed to be exempt under Exemption (b)(4) shall be made by an official equivalent in rank to the official who would make the decision to withhold that information under the FOIA. When a substantial issue has been raised, the DoD Component may seek additional information from the source of the information and afford the source and requester reasonable opportunities to present their arguments on the legal and substantive issues involved prior to making an agency determination. When the source advises it will seek a restraining order or take court action to prevent release of the record or information, the requester shall be notified, and action on the request normally shall not be taken until after the outcome of that court action is known.

(2) The coordination provisions of this paragraph also apply to any non-U.S. Government record in the possession and control of DoD from multi-national organizations, such as NATO and NORAD, or foreign Governments. Coordination with foreign Governments under the provisions of this paragraph will be made through Department of State.

(i) *File of initial denials.* Copies of all initial denials shall be maintained by each DoD Component in a form suitable for rapid retrieval, periodic statistical compilation, and management evaluation.

(j) *Special mail services.* Components are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

(k) *Receipt accounts.* The Treasurer of the United States has established two accounts for FOIA receipts. These accounts, which are described in the following, shall be used for depositing all FOIA receipts, except receipts for industrially-funded and non-appropriated funded activities. Components are reminded that the below account numbers must be preceeded by the appropriate disbursing office two digit prefix. Industrially-funded and nonappropriated funded activity FOIA receipts shall be deposited to the applicable fund.

(1) *Receipt Account 3210.9999, Sale of Publications and Reproductions, Freedom of Information Act.* This account shall be used when depositing funds received from providing existing publications and forms that meet the Receipt Account Series description found in Federal Account Symbols and Titles.

(2) *Receipt Account 3210.0500, Fees and Other Charges for Services, Freedom of Information Act.* This account is used to deposit search fees, fees for duplicating and reviewing (in the case of commercial requesters) records to satisfy requests that could not be filled with existing publications or forms.

§ 289.29 Appeals.

(a) *General.* If the official designated by the DoD Component to make initial determinations on requests for records declines to provide a record because the official considers it exempt, that decision may be appealed by the requester, in writing, to a designated appellate authority. The appeal should be accompanied by a copy of the letter denying the initial request. Such appeals should contain the basis for

disagreement with the initial refusal. Appeal procedures also apply to the disapproval of a request for waiver or reduction of fees. A "no record" finding may not be appealed, although the requester may ask the agency to search other files or provide more detailed identification to facilitate another search of the files.

(b) *Time of receipt.* An FOI appeal has been received by a DoD Component when it reaches the office an of the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(c) *Time limits.* (1) The requester must file an appeal so that it reaches the appellate authority no later than 45 calendar days after the date of the initial denial letter. At the conclusion of this period, the case may be considered closed; however, such closure does not preclude the requester from filing litigation for denial of his appeal. In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the requester receives the last such notification. Records which are denied shall be retained during the time permitted for appeal.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt.

(d) *Delay in Responding to an Appeal.* (1) If additional time is needed due to the unusual circumstances described in § 286.27(f), the final decision may be delayed for the number of working days (not to exceed 10), that were not utilized as additional time for responding to the initial request.

(2) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances identified in § 286.27(f) they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The DoD Component shall continue to process the case expeditiously, whether or not the requester seeks a court order for release of the records, but a copy of any response provided subsequent to filing of a complaint shall be forwarded to the Department of Justice.

(e) *Response to the requester.* (1) When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal to provide a requested record or to approve a request for waiver or reduction of fees must be made in writing by the head of the DoD Component or by a designated representative. The response, at a minimum, shall include the following:

(i) The basis for the refusal shall be explained to the requester, in writing, both with regard to the applicable statutory exemption or exemptions invoked under provisions of this part.

(ii) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(iii) The final denial shall include the name and title or position of the official responsible for the denial.

(iv) The response shall advise the requester that the material being denied does not contain meaningful portions that are reasonably segregable.

(v) The response shall advise the requester of the right to judicial review.

(f) *Consultation.* (1) Final refusal, involving issues not previously resolved or that the DoD Component knows to be inconsistent with rulings of other DoD Components, ordinarily should not be made before consultation with the Office of the General Counsel of the Department of Defense.

(2) Tentative decisions to deny records that raise new or significant legal issues of potential significance to other agencies of the government shall be brought to the attention of the Freedom of Information Committee of the Department of Justice through the Office of Information Law and Policy.

§ 286.31 Judicial actions.

(a) *General.* (1) This section states current legal and procedural rules for the convenience of the reader. The statements of rules do not create rights or remedies not otherwise available, nor do they bind DoD to particular judicial interpretations or procedures.

(2) A requester may seek an order from a United States District court to compel release of a record after administrative remedies have been exhausted; i.e., when refused a record by the head of a Component or an appellate designee or when the DoD Component has failed to respond within the time limits prescribed by the FOIA and set forth in this Regulation.

(b) *Jurisdiction.* The requester may bring suit in the United States District Court in the district in which the requester resides or is the requester's place of business, in the district in which the record is located, or in the District of Columbia.

(c) *Burden of proof.* The burden of proof is on the DoD Component to justify its refusal to provide a record. The court shall evaluate the case de novo (anew) and may elect to examine any requested record in camera (in private) to determine whether the denial was justified.

(d) *Actions by the Court.* (1) When a DoD Component has failed to make a determination within the statutory time limits but can demonstrate due diligence in exceptional circumstances, the court may retain jurisdiction and allow the Component additional time to complete its review of the records.

(2) If the court determines that the requester's complaint is substantially correct, it may require the United States to pay reasonable attorney fees and other litigation costs.

(3) When the court orders the release of denied records, it may also issue a written finding that the circumstances surrounding the withholding raise questions whether DoD Component personnel acted arbitrarily and capriciously. In these cases, the special counsel of the Merit System Protection Board will conduct an investigation to determine whether or not disciplinary action is warranted. The DoD Component is obligated to take the action recommended by the special counsel.

(4) The court may punish the responsible official for contempt when a DoD Component fails to comply with the court order to produce records that it determines have been withheld improperly.

(e) *Non-United States Government source information.* A requester may bring suit in a U.S. District Court to compel the release of records obtained from a nongovernment source or records based on information obtained from a nongovernment source. Such source shall be notified promptly of the court action. When the source advises that it is seeking court action to prevent release, the DoD Component shall defer answering or otherwise pleading to the complainant as long as permitted by the

Court or until a decision is rendered in the court action of the source, whichever is sooner.

(f) *Litigation status sheet.* Freedom of Information managers at DoD Component level shall be aware of litigation under the FOIA. Such information will provide management insights into the use of the nine exemptions by Component personnel. The Litigation Status Sheet at Appendix C provides a standard format for recording information concerning FOIA litigation and forwarding that information to the Office of the Secretary of Defense. Whenever a complaint under the FOIA is filed in a U.S. District Court, the DoD Component named in the complaint shall forward a Litigation Status Sheet, with items 1 through 6 completed, and a copy of the complaint to the Director for Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs) with an information copy to the Office of Legal Counsel, Department of Defense General Counsel. A revised Litigation Status Sheet shall be provided at each stage of the litigation.

Subpart F—Fee Schedule

§ 286.33 General provisions.

(a) *Authorities.* The Freedom of Information Act (5 U.S.C. 552), as amended; by the Freedom of Information Reform Act of 1986; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 *et. seq.*); the Budget and Accounting Procedures Act (31 U.S.C. 67 *et. seq.*); the Defense Authorization Act for FY 87, section 954 (Pub. L. 99–661), as amended by the Defense Technical Corrections Act of 1987 (Pub. L. 100–26).

(b) *Application.* (1) The fees described in this section apply to FOIA requests, and conform to the Office of Management and Budget Uniform Freedom of Information Act Fee Schedule and Guidelines (52 FR 10012, March 27, 1987). They reflect direct costs for search, review (in the case of commercial requesters), and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, such as 32 CFR Part 288 which does not supersede the collection of fees under the FOIA. Nothing in this section shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that enables a government agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. Components should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs such as the GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

(2) The term "direct costs" means those expenditures a component actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to an FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed at § 286.1. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(3) The term "search" includes all time spent looking for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the document to determine if it, or portions thereof are responsive to the request. Components should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the Component and the requester. For example, Components should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is *not* search time, but review time. See § 286.33(b)(5) for the definition of review, and § 286.35(b)(2) for information pertaining to computer searches.

(4) The term "duplication" refers to the process of making a copy of a document in response to an FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disk), among others. Every effort will be made to insure that the copy provided is in a form that is reasonably usable by requesters. If it is not possible to provide copies which are clearly usable, the requester will be notified that their copy is the best available and that the agency's master copy will be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a Component estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(5) The term "review" refers to the process of examining documents located in response to an FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does *not* include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the *initial* review. Components may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(c) *Fee restrictions.* (1) No fees may be charged by any DoD Component if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, Components shall provide the first two hours of search time, and the first one hundred pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved two hours and ten minutes of search time, and resulted in one hundred and five pages of documents, a Component would determine the cost of only ten minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than the cost to the Component for billing the requester and processing the fee collected, no charges would result.

(2) Requesters receiving the first two hours of search and the first one hundred pages of duplication without charge are entitled to such only once per request. Consequently, if a Component, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DoD Component, or another federal agency to action their portion of the request, the referring Component shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(3) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the Component of receiving and recording a remittance, and processing the fee for deposit in the Treasury Department's special account. The cost to the Treasury to handle such remittance is negligible and shall not be considered in Components' determinations.

(4) For the purposes of these restrictions, the word "pages" refers to paper copies of a standard size, which will normally be "8½x11" or "11x14". Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction.

(5) In the case of computer searches, the first two free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24.00 (two hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time.

(d) *Fee waivers.* (1) Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters in § 286.33(e) when the Component determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the Department of Defense and is not primarily in the commercial interest of the requester.

(2) When direct costs for an FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category.

(3) Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

(i) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government."

(A) *The subject of the request.* Components should analyze whether the subject matter of the request involves issues which will significantly contribute to the public understanding of the operations or activities of the DoD. Requests for records in the possession of DoD which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value will likely not contribute to public understanding of the operations or activities of the DoD. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the DoD; however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the DoD, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the DoD.

(B) *The informative value of the information to be disclosed.* This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and will inform the public on the operations or activities of the DoD. While the subject of a request may contain information which concerns operations or activities of the DoD, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a heavily redacted record, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the DoD must be approached with caution, and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative, or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the DoD.

(C) *The contribution to an understanding of the subject by the general public likely to result from disclosure.* The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform the public, rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertion work, or indigency are insufficient without demonstrating the capacity to further disclose the information in a manner which will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(D) *The significance of the contribution to public understanding.* In applying this factor, components must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists prior to the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public. A decision regarding *significance* requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. Components *shall not* make value judgments as to whether the information is *important* enough to be made public.

(ii) Disclosure of the information "is not primarily in the commercial interest of the requester."

(A) *The existence and magnitude of a commercial interest.* If the request is determined to be of a commercial interest, Components should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine

whether the requester is of a commercial nature, Components may draw inference from the requester's identity and circumstances of the request. In such situations, the provisions of § 286.33(e) apply. Components are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must *clearly* override any personal or non-profit interest.

(B) *The primary interest in disclosure.* Once a requester's commercial interest has been determined, Components should then determine if the disclosure would be *primarily* in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a *primary* interest. Therefore, any commercial interest becomes secondary to the *primary* interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research, may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are *primarily* undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest *primarily* of a commercial nature.

(4) Components are reminded that the above factors and examples are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, Components should rule in favor of the requester.

(5) In addition, the following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(i) A record is voluntarily created to preclude an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(ii) A previous dinial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. $15.00–$30.00).

(e) *Fee assessment.* (1) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(2) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, Components shall adhere to the following procedures:

(i) Analyze each request to determine the category of the requester. If the Component determination regarding the category of the requester is different than that claimed by the requester, the component will:

(A) Notify the requester that he should provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the Component shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(B) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the Component.

(ii) Requesters must submit a fee declaration appropriate for the below categories.

(A) *Commercial.* Requesters must indicate a willingness to pay all search, review and duplication costs.

(B) *Educational or Noncommercial Scientific Institution or News Media.* Requesters must indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(C) *All Others.* Requesters must indicate a willingness to pay assessable search and duplication costs if more than two hours of search effort or 100 pages of records are desired.

(iii) If the above conditions are not met, then the request need not be processed and the requester shall be so informed.

(iv) In the situations described by paragraphs (e)(2) (i) and (ii) of this section, Components must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among Components, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should Component estimates exceed the actual amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(v) No DoD Component may require advance payment of any fee, i.e., payment before work is commenced or continued on a request, unless the requester has previously failed to pay fees in a timely fashion, or the agency has determined that the fee will exceed $250.00. As used in this sense, a timely fashion is 30 calendar days from the date of billing (the fees have been assessed in writing) by the Component.

(vi) Where a Component estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the Component shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(vii) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the Component may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he has paid the fee, and to make an advance payment of the full amount of the estimated fee before the Component begins to process a new or pending request from the requester. Interest will be at the rate prescribed in section 3717 of Title 31, U.S.C.A., and confirmed with respective Finance and Accounting Offices.

(viii) After all work is completed on a request, and the documents are ready for release, Components may request payment prior to forwarding the documents if there is no payment history on the requester, or if the requester has previously failed to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing). In the case of the latter, the provisions of paragraph (e)(2)(vii) of the section apply. Components may not hold documents ready for release pending payment from requesters with a history of prompt payment.

(ix) When Components act under paragraphs (e)(2) (i) through (vii) the administrative time limits of the FOIA (i.e., 10 working days from receipt of initial requests, and 20 working days from receipt of appeals, plus permissable extensions of these time limits) will begin only after the Component has received a willingness to pay fees and satisfaction as to category determination, or fee payments (if appropriate).

(x) Components may charge for time spent searching for records, even if that search fails to locate records responsive to the request, or if records located are determined to be exempt from disclosure. In practice, if the Component estimates that search charges are likely to exceed $25.00 it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with Component personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(3) *Commercial requesters.* Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought (see § 286.5(h))

(i) The term "commercial use' request" refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, Components must determine the *use* to which a requester will put the documents requested. Moreover, where a Component has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, Components should seek additional clarification before assigning the request to a specific category.

(ii) When Components receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) *are not* entitled to two hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because *use* is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(4) *Educational institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought (see § 286.7(h)). The term "educational institution" refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(5) *Non-commercial scientific institution requesters.* Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought (see § 286.7(h)). The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as defined in paragraph (e)(3) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(6) Components shall provide documents to requesters in paragraphs (e)(4) and (5) of this section for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible for inclusion in these categories, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly (from an educational institution) or scientific (from a non-commercial scientific institution) research.

(7) *Representatives of the news media.* Fees shall be limited to only reasonable standard charges for documents duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought (see § 286.7(h))

(i) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even through not actually employed by it. A publication contract would be the clearest proof, but Components may also look to the past publication record of a requester in making this determination.

(ii) To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (e)(7)(i) of this section and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(8) *All other requesters.* Components shall charge requesters who do not fit into any of the above categories, fees which recover the full direct cost of searching for and duplicating records, except that the first two hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought (see § 286.7(h)). Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. Components are reminded that this category of requester, as well

as the aforemention categories of requesters may be eligible for a waiver or reduction of fees if such is in the public interest as defined under § 286.33(d)(1). (See also § 286.33(e)(3)(ii)).

(f) *Aggregating requests.* Except for requests that are for a commercial use, a Component may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When a Component reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30 day period had been made to avoid fees. For requests made over a longer period; however, such a presumption becomes harder to sustain and Components should have a solid basis for determining that aggregation is warranted in such cases. Components are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may Components aggregate multiple requests on unrelated subjects from one requester.

(g) *Effect of the Debt Collection Act of 1982 (Pub. L. 97–365).* The Debt Collection Act of 1982 (Pub. L. 97–365) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. Components may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in section 3717 of Title 31 U.S.C.A. Components should verify the current interest rate with respective Finance and Accounting Offices. After one demand letter has been sent, and 30 calendar days have lapsed with no payment, Components may submit the debt to respective Finance and Accounting Offices for collection pursuant to the Debt Collection Act of 1982.

(h) *Computation of fees.* The fee schedule in this chapter shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

§ 286.35 Collection of fees and fee rates.

(a) *Collection of fees.* Collection of fees will be made at the time of providing the documents to the requester or recipient when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs. Collection of fees may not be made in advance unless the requester has failed to pay previously assessed fees within 30 calendar days from the date of the billing by the DoD Component, or the Component has determined that the fee will be in excess of $250 (see § 286.33(e)).

(b) *Search Time.* (1) Manual Search:

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below	12
Professional	01–06/GS9–GS/GM15	25
Executive	07/GS/GM16/ES1 and above.	45

(2) Computer Search:

Computer search is based on direct cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The salary scale (equating to paragraph (b)(1) of this section) for the computer operator/programmer determining how to conduct and subsequently executing the search will be recorded as part of the computer search.

(c) *Duplication.*

Type	Cost per page (cents)
Pre-Printed material	02
Office copy	15
Microfiche	25
Computer copies (tapes or printouts).	Actual cost of duplicating the tape or printout (includes operator's time and cost of the tape).

(d) *Review Time* (in the case of commercial requesters):

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below	12
Professional	01–06/GS9–GS15	25
Executive	07/GS16/ES1 and above	45

(e) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(f) *Other records.* Direct search and duplication cost for any record not described above shall be computed in the manner described for audiovisual documentary material.

(g) *Costs for special services.* Complying with requests for special services is at the discretion of the Components. Neither the FOIA, nor its fee structure cover these kinds of services. Components may, therefore, recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for one or more of the following services:

(1) Certifying that records are true copies.

(2) Sending records by special methods such as express mail, etc.

§ 286.37 Collection of fees and fee rates for technical data.

(a) *Fees for technical data.* (1) Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays *all reasonable* costs attributed to search, duplication and review of the records to be released. Technical data, as used in this section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information. Department of Defense Components shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. *All reasonable* costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full cost shall include all *direct* and *indirect* costs to

conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under § 286.35 for other types of information released under the FOIA.

(2) *Waiver.* Components shall waive the payment of costs required in paragraph a. above, which are greater than the costs that would be required for release of this same information under § 286.35 if:

(i) The request is made by a citizen of the United States or a United States corporation, and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer, or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, Components may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(ii) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(iii) The Component determines in accordance with § 286.33(d)(1) that such a waiver is in the interest of the United States.

(3) *Fee Rates*—(i) *Search Time.* (A) Manual Search:

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below	13.25
(Minimum Charge)		8.30

Professional (To be established at actual hourly rate prior to search. A munimum charge will be established at ½ hourly rates).

(B) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale in paragraph (a)(3)(i) of this section for the computer operator/programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(ii) *Duplication*:

Type	Cost
Aerial Photographs, Specifications, Permits, Charts, Blueprints, and other technical documents	$2.50
Engineering data (microfilm):	
Aperture cards:	
Silver duplicate negative, per card	.75
When key punched and verified, per card	.85
Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
35mm roll film, per frame	.50
16mm roll film, per frame	.45
Paper prints (engineering drawings), each	1.50
Paper reprints of microfilm indices, each	.10

(iii) *Review time*:

Type	Grade	Hourly rate (dollars)
Clerical	E9/GS8 and below	13.25
(Minimum Charge)		8.30

Professional (To be established at actual hourly rate prior to review. A minimum charge will be established at ½ hourly rates)

(4) *Other technical data records.* Charges for any additional services not specifically provided previously, consistent with 32 CFR Part 288 shall be made by Components at the following rates:

(i) Minimum charge for office copy (up to six images)	$3.50
(ii) Each additional image	.10
(iii) Each typewritten page	3.50
(iv) Certification and validation with seal, each	5.20
(v) Hand-drawn plots and sketches, each hour or fraction thereof	12.00

Subpart G—Reports

§ 286.39 Reports control.

General. The reporting requirement outlined in this section is assigned Report Control Symbol DD–PA (A) 1365.

§ 286.41 Annual report.

(a) *Reporting time.* Each DoD Component shall prepare statistics and accumulate paperwork for the preceding calendar year on those items prescribed for the annual report and submit them in duplicate to the ASD(PA) on or before each February 1. Existing DoD standards and registered data elements are to be used for all data requirements to the greatest extent possible in accordance with the provisions of DoD Directive 5000.11 [8]. The standard data elements are contained in DoD 5000.12–M [9].

(b) *Annual Report Content*: The following instructions and attached format shall be used in preparing the annual report.

(1) *Item 1*

(i) *Completed public requests.* Enter the total number of FOIA requests received and responded to during the reporting period.

(ii) *Completed reportable requests.* Enter the number of actions taken on a completed public request. To arrive at the figure, count the number of blocks checked in item a. of the Annual Report Worksheet (see § 286.41(d)) for each request processed.

Note.—This figure will be equal to or greater than paragraph (b)(1)(i) of this section.

(iii) *Number of Requests Denied.* Enter the number of FOIA requests which were denied in whole or in part based on one or more of the nine FOIA exemptions.

(iv) *Other Reason Responses.* Enter the number of FOIA requests in which you were unable to provide the requested information based on "Other Reason" response, (see paragraph (b)(2)(iii) of this section for an explanation of an "Other Reason" responses).

(v) *Total:* Enter the sum of paragraphs (b)(1) (iii) and (iv) of this section.

(2) *Item 2.* (i) *Exemptions invoked on initial determinations.* Identify the exemption(s) claimed for each request that was denied in whole or in part. Since more than one exemption may be claimed when responding to a single request, this number will be equal or greater than that of paragraph (b)(1)(iii) of this section.

(ii) *"(b)(3)" statutes invoked on initial determinations.* Identify the statute(s) cited when you claimed a "(b)(3)" exemption. Cite the specific sections when invoking the Atomic Energy Act of 1954, or the National Security Act of 1947.

(iii) *Initial request other reason responses.* Identify the "other reason" response cited when responding to an FOIA request and enter the number of times each was claimed.

(A) *Transferred requests.* Enter the number of times a request was transferred to another DoD Component or Federal agency for action.

(B) *Lack of records.* Enter the number of times a search of files failed to identify records responsive to subject request and there was no statutory obligation to create a record.

(c) *Failure of requester to reasonably describe record.* Enter the number of times an FOIA request could not be

[8] See footnote 8 of § 286.1(a)

[9] See footnote 9 of § 286.7(d)

acted on since the requester failed to reasonably describe the record(s) being sought.

(D) *Other failures by requester to comply with published rules and/or directives:* Enter the number of times a requester failed to follow published rules concerning time, place, fees, and procedures.

(E) *Request/Appeal withdrawn by requester.* Enter the number of times a requester withdrew a request/appeal.

(F) *Not an agency record.* Enter the number of items a requester was provided a response indicating the requested information was not an agency record.

Total. Enter the sum of paragraphs (b)(1) through (6). The total will be equal to or greater than paragraph (b)(1)(iv) since more than one other reason response may be claimed.

(3) *Item 3—Initial Dental Authorities (IDA's by Participation)—.* (i) *Total IDA's authorized.* Enter the total number of IDA's at your activity.

(ii) *Individuals involved in adverse determinations.* Enter the name, grade, activity and title of each individual who signed a partial/total denial or "other reason" response and cite the number of instances of participation.

(4) *Item 4—.*

Number of Appeals and Results

Number of appeals. Enter the disposition of appeals under the appropriate category and then the total.

(5) *Item 5—*(i) *Exemptions invoked on appeal determinations.* Identify the exemption(s) claimed for each appeal that is denied in whole or part. Since more than one exemption may be claimed when responding to a single appeal, this number will be equal to or greater than the total listed in paragraph (b)(4) of this section.

(ii) *Statutes invoked on appeal determinations.* Identify the statute(s) cited when you claimed a "(b)(3)" exemption.

(iii) *Other reasons cited on appeal determinations.* Identify the "other reason" response when responding to an appeal and enter the number of times each was claimed and the total.

(6) *Item 6—Participation of appellate authorities (those responsible for denials in whole or in part).* Enter the name, grade, activity, and title of each individual who signed a partial/total denial or "other reason" response and cite the number of instances of participation.

(7) *Item 7—Court opinions and action taken.* Briefly describe the results of each suit the Judge Advocate General and/or the General Counsel participated in during the calendar year. Provide a copy of each final court opinion or order.

(8) *Item 8—FOIA implementation rules or regulations.* List all changes or revisions of rules or regulations affecting the implementation of the FOIA Program, followed by the **Federal Register** reference (volume number, date, and page) that announces the change or revision to the public. Append a copy of each.

(9) *Item 9—FOIA instructional and educational efforts.* Report what training/seminars your activity has given or attended during this reporting period.

(10) *Item 10—*(i) *Cost of routine request.* Some reporting activities will find it economical to develop an average cost factor for processing repetitive routine requests rather than tracking costs on each request as it is processed. This section provides for that economy, but care must be exercised so that costs are comprehensive to include a 25% overhead, yet are not duplicated elsewhere in the report.

(ii) *Personnel costs.* (Civilian and Military)

(A) *Direct costs of personnel assigned FOI duties based upon estimated payroll manyears by grade.* Personnel costs are reported in two ways. This section uses a manyear/wage type of costing by grade. To achieve this computation, identify those individuals who are primarily involved in the planning, program management and/or administrative handling of FOIA requests. Use DoD Accounting Guidance Handbook (DoD 7220.9–M) for military personnel and Office of Personnel Management salary table for civilian personnel to identify salaries.

Sample computation.

Grade	Number of personnel	Salary	Percent of time	Costs
0–5	1	$50,000	10	$5,000
0–1	1	21,000	30	6,000
GS–12	1	35,000	50	17,500
GS–5	1	18,000	50	9,000

To determine the manyear computation: Add the total percentages of time and divide the percentage by 100.

Sample computation. Manyears = 140% divided by 100 = 1.4 manyears.

(B) *Direct costs for other personnel involved in processing request not included above upon accumulation of total hourly data.* This section accounts for all other personnel (not reported above) who are involved in processing FOIA requests. Enter the total hourly cost for each area. Only search, review, and reproduction costs may be recouped from the requester. Review costs may only be recouped from commercial requesters. In the case of collections resulting from release of technical data, all reasonable costs for search and reproduction may be recouped (See § 286.37).

(*1*) *Search Time Cost.* This includes only those direct costs associated with time spent looking for material that is responsive to a request, including line-by-line identification of material within a document to determine if it is responsive to the request. Searches may be done manually or by computer using existing programming.

(*2*) *Classification review costs.* This includes all direct costs incurred during the process of examining documents located in response to a commercial use request to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure; e.g. doing all that is necessary to excise them and otherwise prepare them for release. It does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(*3*) *Coordination and Approval/Denial Decision Costs.* This includes all costs involved in coordinating the release/denial of documents requested under the FOIA.

(*4*) *Correspondence and Form Preparation Costs.* This includes all costs involved in typing responses, filling out forms and/or logbooks, supplies, etc., to respond to an FOIA request.

(*5*) *Other Activity Costs.* This includes all other processing costs not covered above, such as processing time by the mail room.

Total Manhour Costs: Enter the sum of § 286.41(b)(2)(i) through (v).

(C) *Application of Overhead.* The overhead rate is 25% and includes the cost of supervision, space and administrative support. Add items 1 and 2, then multiply the sum by 25%

(iii) *Other Case Related Costs:* Using the fee schedule, enter the total amounts incurred in each area to process FOIA requests.

(iv) *Other Operating Costs:* Report all other costs which are easily identifiable, such as: Per diem, operation of courier vehicles, training courses, printing (indexes and forms), long distance telephone calls, special mail services, use of indicia, etc.

(v) *Summary.* The summary data provides a total cost figure for administering the FOIA Program and a recap of the fees collected.

(11) *Item 11.* (i) *Formal time extensions.* Enter the total number of instances in which it was necessary to seek a formal 10 working day time extension, because of:

(A) *Location.* The need to search for and collect the requested records from another activity that was separate from the office processing the request.

(B) *Volume.* The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records indicated in a single request.

(C) *Consultation.* The need for consultation with another agency having substantial interest in the material requested.

(D) *Court involvement.* Where court actions were taken on the basis of exhaustion of administrative procedures because the department/activity was unable to comply with the request within the applicable time limits, and in which a court allowed additional time upon a showing of exceptional circumstances, provide a copy of each court opinion and court order containing such an extension of time.

(ii) *Total.* Enter the sum of paragraphs (b)(1) through (4) of this section.

(c) Annual report format

ITEM 1

(A) Completed Public Requests	(B) Completed Reportable Requests	(C) Number of Requests Denied (Partial and Total)	(D) Number of "Other Reason" Responses Made	(E) Total (C + D)

ITEM 2

A. Exemptions Claimed in Denial Letters—

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	Total

B. "(b)(3)" Statutes Claimed in Denial Letters—

List of "(b)(3)" Statutes Claimed	Number of Times Cited

C. "Other Reasons" Cited in Response to FOIA Requests	1	2	3	4	5	6	Total

ITEM 3.—DENIALS AND "OTHER REASON" RESPONSES

A. Total Number of IDA's Authorized to Sign Denial Letters	

B. List of All individuals who Signed a Denial Letter or "Other Reason" Responses.

Name	Rank	Title	Number of Instances of Participation	
			Exemption	Other

ITEM 4

A. Number of Appeals Received and Action Taken—

(1) Granted in Full	(2) Granted in Part	(3) Denied in Full	(4) Total

ITEM 5

A. Exemptions Invoked on Appeal Determinations—

(b)(1)	(b)(2)	(b)(3)	(b)(4)	(b)(5)	(b)(6)	(b)(7)	(b)(8)	(b)(9)	Total

B. "(b)(3)" Statutes Invoked on Appeal Determinations—

List of "(b)(3)" Statutes Invoked	Number of Times Cited

C. "Other Reasons" Cited on Appeal Determination	1	2	3	4	5	Total

ITEM 6

A. List of All Individuals Who Signed an Appeal Determination or "Other Reason" response—

Name	Rank	Title	Number of Instances of Participation	
			Exemption	Other

ITEM 7

A. Court Opinions and Actions Taken, for Example—

J.Q. Public v. *Department of the Army*, Civil No. 87-2600 (S.D. Cal.). On January 1, 1987, plaintiff filed suit seeking a CID investigation which was being reviewed by the United States Attorney for possible prosecution. Plaintiff is a former Army General attorney. Final order, May 1987, ordered release of majority of CID report of investigation.

ITEM 8

A. FOIA Implementation Rules or Regulations (Published During the Reporting Period)—

Document Identification	Federal Register Reference		
	Number	Date	Page

ITEM 9

A. FOIA Instructional and Educational Efforts—

Course	Sponsor	Date	Hours

ITEM 10

	Cost
A. Cost of Routine Requests Processed: (Number of reportable requests X cost factor per request).	$———
B. Personnel Costs (Civilian and Military):	
1. Direct costs of personnel assigned FOI duties based upon estimated payroll man-years by grade, Total Man-years.	$———
2. Direct costs for other personnel involved in processing requests not included above based upon accumulation of total hourly data:	
a. Search Time Costs	$———
b. Classification Review and Excising Action Costs.	$———
c. Coordination/Approval/Denial Decision Costs.	$———
d. Correspondence and Form Preparation Costs.	$———
e. Other Activity Costs	$———
Total Man-hour Costs	$———
3. Application of Overhead (Subtotal 1+2)×25% overhead.	$———
Total of Personnel Costs	$———
C. Other Case Related Costs:	
1. Computer	$———
2. Office Copy Reproduction	$———
3. Microfiche Reproduction	$———
4. Cost of Printed Records	$———
Total of Other Costs	$———

ITEM 10—Continued

	Cost
D. Other Operating Costs:	
1. Reporting Costs:	
a. Operational	$———
b. User	$———
c. Overhead: (a+b)×25%	$———
2. Other Costs as Directed or Which can be Reasonably Ascertained.	$———
Total Other Operating Costs (Subtotal 1+2).	$———
E. Summary:	
1. Total Costs of Sections 10A through 10C	$———
2. Amount Collected from Requesters during this Reporting Period:	
a. Search	$———
b. Copy	$———
c. Review	$———
d. Total Collected	$———

ITEM 11

A. Formal Time Limit Extension Taken:

(1) Location	(2) Volume	(3) Consultation	(4) Court involvement

B. Total ———

(d) *Annual Report Worksheet.*

a. Action(s) Taken on Completed Public Request:

_____ Granted in Full
_____ Granted in Part
_____ Denied
Other:
_____ Transferred to: _____
_____ Lack of Records
_____ Requester failed to reasonably describe the record
_____ Requester failed to comply with established rules/directives
_____ Requester withdrew request/appeal
_____ Not an agency record

b. Completed Reportable Requests: _____ (Count the number of actions checked in a. and enter total)

c. Statutory FOIA Exemptions Invoked: _____

(Enter total number blocks checked below)

_____ (b)(1)
_____ (b)(2)
_____ (b)(3)
_____ (b)(4)
_____ (b)(5)
_____ (b)(6)
_____ (b)(7)
_____ (b)(8)
_____ (b)(9)

d. List of (b)(3) Statutes Invoked: _____

e. Name, Command and Title of Initial Denial Authority: _____

f. Remarks: _____

Subpart H—Education and Training

§ 286.43 Responsibility and purpose.

(a) *Responsibility.* The head of each DoD Component is responsible for the establishment of educational and training programs on the provisions and requirements of this part. The educational programs should be targeted toward all members of the DoD Component, developing a general understanding and appreciation of the DoD FOIA Program; whereas, the training programs should be focused toward those personnel who are involved in the day-to-day processing of FOI requests, and should provide a thorough understanding of the procedures outlined in this Regulation.

(b) *Purpose.* The purpose of the educational and training programs is to promote a positive attitude among DoD personnel and raise the level of understanding and appreciation of the DoD FOIA Program, thereby improving the interaction with members of the public and improving the public trust in the Department of Defense.

(c) *Scope and principles.* Each Component shall design its FOIA educational and training programs to fit the particular requirements of personnel dependent upon their degree of involvement in the implementation of this part. The program should be designed to accomplish the following objectives:

(1) Familiarize personnel with the requirements of the FOIA and its implementation by this Regulation.

(2) Instruct personnel, who act in FOI matters, concerning the provisions of this Regulation, advising them of the legal hazards involved and the strict prohibition against arbitrary and capricious withholding of information.

(3) Provide for the procedural and legal guidance and instruction, as may be required, in the discharge of the responsibilities of initial denial and appellate authorities.

(4) Advise personnel of the penalties for noncompliance with the FOIA.

(d) *Implementation.* To ensure uniformity of interpretation, all major educational and training programs concerning the implementation of this Regulation should be coordinated with the Director, Freedom of Information and Security Review, OASD (Public Affairs).

(e) *Uniformity of legal interpretation.* In accordance with DoD Directive 5400.7 the General Counsel of the Department of Defense shall ensure uniformity in the legal position and interpretation of the DoD FOIA Program.

Appendix A—Unified Commands—Processing Procedures for FOI Appeals

1. General.

a. In accordance with DoD Directive 5400.7 and this part, the Unified Commands are placed under the jurisdiction of the Office of the Secretary of Defense, instead of the administering Military Department, only for the purpose of administering the Freedom of Information (FOI) Program. This policy represents an exception to the policies in DoD Directive 5100.3.

b. The policy change above authorizes and requires the Unified Commands to process FOI requests in accordance with DoD Directive 5400.7 and DoD Instruction 5400.10 [10], August 20, 1981, and to forward directly to the Office of the Assistant Secretary of Defense (Public Affairs) all correspondence associated with the appeal of an initial denial for information under the provisions of the Freedom of Information Act (FOIA).

2. Responsibilities of Commands.

Unified Commanders in Chief shall:

a. Designate the officials authorized to deny initial FOI requests for records.

b. Designate an office as the point-of-contact for FOI matters.

c. Refer FOI cases to the ASD(PA) for review and evaluation when the issues raised are of unusual significance, precedent setting, or otherwise require special attention or guidance.

d. Consult with other OSD and DoD Components that may have a significant interest in the requested record prior to a final determination. Coordination with agencies outside of the Department of Defense, if required, is authorized.

e. Coordinate proposed denials of records with the appropriate Unified Command's Office of the Staff Judge Advocate.

f. Answer any request for a record within 10 working days of receipt. The requester shall be notified that his request has been granted or denied. In unusual circumstances, such notification may state that additional time, not to exceed 10 working days, is required to make a determination.

g. Provide to the ASD(PA) when the request for a record is denied in whole or in part, a copy of the response to the requester or his representative, and any internal memoranda that provide background information or rationale for the denial.

h. State in the response that the decision to deny the release of the requested information, in whole or in part, may be appealed to the ASD(PA), the Pentagon, Washington, DC 20301.

i. Upon request, submit to ASD(PA) a copy of the records that were denied. ASD(PA) shall make such requests when adjudicating appeals.

3. Fees for FOI Requests.

The fees charged for requested records shall be in accordance with Subpart F of this part.

4. Communications.

Excellent communication capabilities currently exist between the Office of the ASD(PA) and the Public Affairs Offices of the Unified Commands. This communication capability shall be used for FOI cases that are time sensitive.

5. Reporting Requirements.

a. The Unified Commands shall submit to the ASD(PA) an annual report. The instructions for the report are outlined in Subpart F of this part.

b. The annual report shall be submitted in duplicate to the ASD(PA) not later than each February 1. This reporting requirement is assigned Report Control Symbol DD-PA 1365.

[10] See footnote 1 to § 286.1(a)

Appendix B—Addressing FOIA Requests

1. General.

a. The Department of Defense includes the Office of the Secretary of Defense and the Organization of the Joint Chiefs of Staff, the Military Departments, the Unified and Specified Commands, and such other agencies as the Secretary of Defense establishes to meet specific requirements.

b. The Department of Defense does not have a central repository for DoD records. FOI requests, therefore, should be addressed to the DoD Component that has custody of the record desired. In answering inquiries regarding FOI requests, DoD personnel shall assist requesters in determining the correct DoD Component to address their requests. If there is uncertainty as to the ownership of the record desired, the requester shall be referred to the DoD Component that is most likely to have the record.

2. Listing of DoD Component Addresses for FOI Requests.

a. Office of the Secretary of Defense/ Organization of the Joint Chiefs of Staff (OSD/OJCS).

Send all requests for records from the below listed offices to: Directorate for Freedom of Information and Security Review, Assistant Secretary of Defense (Public Affairs), Room 2C757, The Pentagon, Washington, DC 20301-1400.

Executive Secretariat
Under Secretary of Defense (Policy)
  Deputy Under Secretary of Defense (Policy)
  Deputy Under Secretary of Defense (Policy & Resources)
  Deputy Under Secretary of Defense (Trade Security Policy)
Under Secretary of Defense (Acquisition)
  Assistant Secretary of Defense (Procurement & Logistics)
  Assistant Secretary of Defense (Command, Control, Communication and Intelligence)
  Assistant Secretary of Defense (Research and Technology)
  Assistant Secretary of Defense (Atomic Energy)

Director of Defense Research and Engineering
Director of Small and Disadvantaged Business Utilization
Assistant Secretary of Defense (Comptroller)
Assistant Secretary of Defense (Force Management & Personnel)
Assistant Secretary of Defense (Health Affairs)
Assistant Secretary of Defense (International Security Policy)
Deputy Assistant Secretary of Defense (European & NATO Policy)
Deputy Assistant Secretary of Defense (Negotiations Policy)
Deputy Assistant Secretary of Defense (Nuclear Forces & Arms Control Policy)
Assistant Secretary of Defense (International Security Affairs)
Deputy Assistant Secretary of Defense (African Affairs)
Deputy Assistant Secretary of Defense (East Asian & Pacific Affairs)
Deputy Assistant Secretary of Defense (Inter-American Affairs)
Deputy Assistant Secretary of Defense (Near East & South Asian Affairs)
Deputy Assistant Secretary of Defense (Policy Analysis)
Defense Security Assistance Agency
Assistant Secretary of Defense (Legislative Affairs)
Assistant Secretary of Defense (Public Affairs)
Assistant Secretary of Defense (Reserve Affairs)
Assistant to the Secretary of Defense (Intelligence Oversight)
General Counsel
Inspector General
Net Assessment
Program Analysis & Evaluation
Defense Advanced Research Projects Agency
Strategic Defense Initiative Organization
Operational Test and Evaluation
Defense Systems Management College
National Defense University
Armed Forces Staff College
Department of Defense Dependents Schools
Uniformed Services University of the Health Sciences

b. Department of the Army.

Army records may be requested from those Army officials who are listed in 32 CFR Part 518, Appendix B. Send requests to Chief, Information Access Branch, AS–OPS–MRA, Hoffman I, Room 1146, 2461 Eisenhower Avenue, Alexandria, VA 22331–0301, for records of the Headquarters, U.S. Army, or if there is uncertainty as to which Army activity may have the records.

c. Department of the Navy.

Navy and Marine Corps records may be requested from any Navy or Marine Corps activity by addressing a letter to the Commanding Officer and clearly indicating that it is an FOI request. Send requests to Director, OPNAV Support Services Division, OP–09B30, Pentagon, Room 5E521, Washington, DC 20350–2000, for records of the Headquarters, Department of the Navy, and to Freedom of Information and Privacy Act Office, Code MPI–60, HQMC, Room 4046, Washington, DC 20308–0001, for records of the U.S. Marine Corps, or if there is uncertainty as to which Navy or Marine activities may have the records.

d. Department of the Air Force.

Air Force records may be requested from the Commander (ATTENTION: DADF) of any Air Force installation, major command, or separate operating agency, or from the Headquarters, United States Air Force. Requester should send FOI requests to Freedom of Information Manager, HQ USAF/DADF, Pentagon, Room 4A1088C, Washington, DC 20330–5025, for Air Force records of Headquarters, United States Air Force, or if there is uncertainty as to which Air Force activity may have the records.

e. Defense Contract Audit Agency (DCAA).

DCAA records may be requested from any of its regional offices or from its headquarters. Requesters should send FOI requests to the Defense Contract Audit Agency, ATTN: CMR, Cameron Station, Alexandria, VA 22304–6178, for records of its headquarters or if there is uncertainty as to which DCAA region may have the records sought.

f. Defense Communications Agency (DCA).

DCA records may be requested from any DCA field activity or from its headquarters. Requesters should send FOI requests to Defense Communications Agency, Code H104, Washington, DC 20305–2000.

g. Defense Intelligence Agency (DIA).

FOI requests for DIA records may be addressed to Defense Intelligence Agency, ATTN: RTS–1 (FOIA), Washington, DC 20340–3299.

h. Defense Investigative Service (DIS).

All FOI requests for DIS records should be sent to the Defense Investigative Service, ATTN: V0020, 1900 Half St., SW, Washington, DC 20324–1700.

i. Defense Logistics Agency (DLA).

DLA records may be requested from its headquarters or from any of its field activities. Requesters should send FOI requests to Defense Logistics Agency, ATTN: DLA–XAM, Cameron Station, Alexandria, VA 22304–6130.

j. Defense Mapping Agency (DMA).

FOI requests for DMA records may be sent to the Defense Mapping Agency, Naval Observatory Building 56, Washington, DC 20305–3000.

k. Defense Nuclear Agency (DNA).

FOI requests for DNA records may be sent to the Defense Nuclear Agency, Public Affairs Office, Room 111, Washington, DC 20305–1000.

l. National Security Agency (NSA).

FOI requests for NSA records may be sent to the National Security Agency/Central Security Service, ATTN: Q–43, Fort George G. Meade, MD 20755–6000.

3. Other Addresses.

Although the below organizations are OSD/OJCS Components, for the purposes of the FOIA, requests may be sent direct to the addresses indicated.

a. Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS).

Director, Attention: Freedom of Information Officer, OCHAMPUS, Aurora, CO 80045–6900.

b. Chairman, Armed Services Board of Contract Appeals (ASBCA).

Chairman, Armed Services Board of Contract Appeals, Hoffman II, 200 Stovall Street, Alexandria, VA 22332.

c. U.S. Central Command.

U.S. Central Command/CCAG, MacDill Air Force Base, FL 33608.

d. U.S. European Command.

Records Administrator, Headquarters, U.S. European Command/ECJ1–A, APO New York 09128.

e. U.S. Southern Command.

Attorney-Advisor (International), Headquarters U.S. Southern Command/SCSJA, APO Miami 34003–0007.

f. U.S. Pacific Command.

Administrative & Security Programs Division (J147A), Joint Secretariat, CINCPAC Box 28, Camp H.M. Smith, HI 96861–5025.

g. U.S. Special Operations Command.

Freedom of Information Officer, ATTN: U.S. Special Operations Command, MacDill Air Force Base, FL 33608.

h. U.S. Atlantic Command.

Commander-in-Chief, Atlantic Command, Code J008, Norfolk, VA 23511.

i. U.S. Space Command.

Chief, Records Management Division, Directorate of Administration, United States Space Command, Peterson Air Force Base, CO 80914–5001.

4. National Guard Bureau.

FOI requests for National Guard Bureau records may be sent to the Chief, National Guard Bureau, (NGB–PO), Pentagon, Room 2E383, Washington, DC 20301–2500.

5. Miscellaneous.

If there is uncertainty as to which DoD component may have the DoD record sought, the requester may address a Freedom of Information request to the Director, Freedom of Information and Security Review, Office of the Assistant Secretary of Defense (Public Affairs), Room 2C757, Pentagon, Washington, DC 20301–1400.

Appendix C—Litigation Status Sheet

1. Case Number [1]
2. Requester
3. Document Title or Description
4. Litigation
   a. Date Complaint Filed
   b. Court
   c. Case File Number [1]
5. Defendants (agency and individual)
6. Remarks: (brief explanation of what the case is about)
7. Court Action

[1] Number used by Component for reference purposes.

a. Court's Finding
b. Disciplinary Action (as appropriate)
8. Appeal (as appropriate)
a. Date Complaint Filed
b. Court
c. Case File Number [1]
d. Court's Finding
e. Disciplinary Action (as appropriate)

Appendix D–Other Reason Categories

1. Transferred Requests

This category applies when responsibility for making a determination or a decision on categories 2, 3, or 4 below is shifted from one Component to another, or to another federal agency.

2. Lack of Records

This category covers those situations wherein the requester is advised the DoD Component has no record or has no statutory obligation to create a record.

3. Failure of Requester to Reasonably Describe Record

This category is specifically based on Section 552(a) (3)(a) of the FOIA.

4. Other Failures by Requesters to Comply with Published Rules or Directives

This category is based on section 552(a)(3)(b) of the FOIA and includes instances of failure to follow published rules concerning time, place, fees, and procedures.

5. Request Withdrawn by Requester

This category covers those situations wherein the requester asks an agency to disregard the request (or appeal) or pursues the request outside FOIA channels.

6. Not an Agency Record

This category covers situations where the information requested is not an agency record within the meaning of the FOIA and this part.

BILLING CODE 3810-01-M

APPENDIX E

RECORD OF FREEDOM OF INFORMATION (FOI) PROCESSING COST

Please read instructions on reverse before completing form.

1. REQUEST NUMBER	2. TYPE OF REQUEST (X one)		3. DATE COMPLETED (YYMMDD)
	a. INITIAL	b. APPEAL	

	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
4. CLERICAL HOURS (E-9/GS-8 and below)			
a. SEARCH		X $12.00 =	*
b. REVIEW/EXCISING			**
c. CORRESPONDENCE AND FORMS PREPARATION			
d. OTHER ACTIVITY			
5. PROFESSIONAL HOURS (0-1 - 0-6/GS-9 - GS/GM-15)	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. SEARCH		X $25.00 =	*
b. REVIEW/EXCISING			**
c. COORDINATION/APPROVAL/DENIAL			
d. OTHER ACTIVITY			
6. EXECUTIVE HOURS (0-7/GS/GM-16/ES 1 and above)	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. REVIEW/EXCISING		X $45.00 =	**
b. COORDINATION/APPROVAL/DENIAL			
7. COMPUTER SEARCH	TOTAL HOURS (1)	HOURLY RATE (2)	COST (3)
a. MACHINE HOURS		X =	*
8. OFFICE COPY REPRODUCTION	NUMBER (1)	RATE (2)	COST (3)
a. PAGES REPRODUCED		X .15 =	
9. MICROFICHE REPRODUCTION	NUMBER (1)	RATE (2)	COST (3)
a. MICROFICHE REPRODUCED		X .25 =	*
10. PRINTED RECORDS	TOTAL PAGES (1)	RATE (2)	COST (3)
a. FORMS		X .02 =	*
b. PUBLICATIONS			*
c. REPORTS			*

11. *For FOI Office Use Only*

a. SEARCH FEES PAID		e. TOTAL COLLECTABLE COSTS	
b. COPY FEES PAID		f. TOTAL PROCESSING COSTS	
c. TOTAL PAID		g. TOTAL CHARGED	
d. DATE PAID (YYMMDD)		h. FEES WAIVED/REDUCED (X one)	Yes / No

* Chargeable to all requesters
** Chargeable only to commercial requesters

DD Form 2086, JUN 87 *Previous editions are obsolete.*

BILLING CODE 3810-01-C

Instructions for Completing DD Form 2086

This Form is Used To Record Costs Associated With the Processing of a Freedom of Information Request

1. REQUEST NUMBER—First two digits will express Calendar Year followed by dash (—) and Component's request number, i.e., 87–001.

2. TYPE OF REQUEST—Mark the appropriate block to indicate initial request or appeal of a denial.

3. DATE COMPLETED—Enter year, month and day, i.e., 870621.

4. CLERICAL HOURS—For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search—Time spent in locating from the files the requested information.

Review/Excising—Time spent reviewing the document content and determining if the entire document must retain its classification or segments could be excised thereby permitting the remainder of the document to be declassified. In reviews for other than classification, FOI exemptions 2 through 9 should be considered

Correspondence and Forms Preparation—Time spent in preparing the necessary correspondence and forms to answer the request.

Other Activity—Time spent in activity other than above, such as duplicating documents, hand carrying documents to other locations, restoring files, etc.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester. Further discussion of chargeable fees is found in DoD Directive 5400.7, Enclosure 6.

5. PROFESSIONAL HOURS—For each applicable activity category, enter time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Search/Review/Excising, and Other Activity—See explanation above.

Coordination/Approval/Denial—Time spent coordinating the staff action with interested offices or agencies and obtaining the approval for the release or denial of the requested information.

—Multiply the time in the total hours column of each category by the hourly rate and enter the cost figures for each category. Only search cost may be charged to the requester.

6. EXECUTIVE HOURS—For each applicable activity category, enter the time expended to the nearest 15 minutes in the total hours column. The activity categories are:

Review/Excising—See explanation above.

Coordination/Approval/Denial—See explanation above.

—Multiply the time in the total hours column in each category by the hourly rate and enter the cost figures for each category.

7. COMPUTER SEARCH—Enter exact computer processing value in the total hours column. The salary scale (equating to items 4 and/or 5) for the programmer/operator executing the search will be recorded as part of the computer search cost.

—Multiply the total hours by the computer hourly rate and enter the cost figures. Computer search will be based on direct cost only of the Central Processing Unit, input/output devices, and memory capacity of the actual computer configuration used. This amount is fully chargeable to the requester.

8. OFFICE COPY REPRODUCTION—Enter the number of pages reproduced.

—Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

9. MICROFICHE REPRODUCTION—Enter the number of microfiche copies reproduced.

—Multiply by the rate per copy and enter cost figures. The entire cost is chargeable to the requester.

10. PRINTED RECORDS—Enter total pages in each category. The categories are:

Forms *(Include any type of printed forms)*

Publications *(Include any type of bound document, such as directives, regulations, studies, etc.)*

Reports *(Include any type of memorandum, staff action paper, etc.)*

—Multiply the total number of pages in each category by the rate per page and enter cost figures. The entire cost of each category is chargeable to the requester.

11. FOR FOI OFFICE USE ONLY—

Search Fees Paid—Enter total search fees paid by the requester.

Copy Fees Paid—Enter the total of copy fees paid by the requester.

Total Paid—Add search fees paid and copy fees paid. Enter total in the total paid block.

Date Paid—Enter year, month and day, i.e., 871024, the fee payment was received.

Total Collectable Costs—Add the blocks in the cost column marked with an asterisk and enter total in the total collectable cost block. Only search, reproduction and printed records are chargeable to the requester.

Total Processing Costs—Add all blocks in the cost column and enter total in the total processing cost block. The total processing cost in most cases will exceed the total collectable cost.

Total Charged—Enter the total amount that the requester was charged, taking into account the fee waiver threshold and fee waiver policy.

Fees Waived/Reduced—Indicate if the cost of processing the request was waived or reduced by placing an "X" in the "Yes" block or an "X" in the "No" block.

Appendix F—DoD Freedom of Information Act Program Components

Office of the Secretary of Defense/ Organization of the Joint Chiefs of Staff/Unified Commands and Other Agencies Assigned to OSD for Administrative Support

Department of the Army
Department of the Navy
Department of the Air Force
Defense Communications Agency
Defense Contract Audit Agency
Defense Intelligence Agency
Defense Investigative Service
Defense Logistics Agency
Defense Mapping Agency
Defense Nuclear Agency
National Security Agency

June 30, 1987.

Linda M. Lawson,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 87–15178 Filed 7–9–87; 8:45 am]

BILLING CODE 3810–01–M

PANAMA CANAL COMMISSION

35 CFR Part 257

Enforcement of Nondiscrimination on the Basis of Handicap in Panama Canal Commission Programs

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: This regulation requires that the Panama Canal Commission operate its programs and activities to assure nondiscrimination against qualified individuals with handicaps. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for "individual with handicaps" and "qualified individual with handicaps", and establishes a complaint mechanism for resolving allegations of discrimination. This regulation is issued under the authority of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the

basis of handicap in programs or activities conducted by Federal executive agencies.

DATES: This rule is effective August 10, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Office of the Secretary, Panama Canal Commission, Suite 550, 2000 L Street NW., Washington, DC 20036–4996 (Tel. No. 202–634–6441 TDD) or Mr. John L. Haines, Jr., General Counsel, Panama Canal Commission, APO Miami 34011–5000 (Tel. No. 011–507–52–7511). Copies of this regulation will be made available on tape for persons with impaired vision who request them.

SUPPLEMENTARY INFORMATION: The Panama Canal Commission published proposed regulations concerning the enforcement of nondiscrimination on the basis of handicap on June 11, 1986 at 51 FR 21314. One comment was received concerning the proposed regulation, and the proposed regulation is adopted without substantive change.

Background

The purpose of this rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to certain programs and activities conducted by Panama Canal Commission. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Section 119, Pub. L. 95–602, 92 Stat. 2982) and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that:

> No otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

Section 504 requires that regulations that apply to the programs and activities of Federal executive agencies be submitted to the appropriate authorizing committees of Congress and that such regulations take effect no earlier than the thirtieth day after they have been so submitted. The Panama Canal Commission is submitting these regulations to the Senate Committee on Labor and Human Resources and to the House Committee on Education and Labor. This rule will become effective on August 10, 1987.

The substantive nondiscrimination obligations of the agency, as set forth in this rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. *See* 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment during debate on the floor of the House of Representatives that the Federal Government should have the same obligations under section 504 as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) (remarkes of Rep. Jeffords); 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); 124 Cong. Rec. at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this final rule and the Federal government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico* v. *Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association* v. *Lewis*, 655 F.2d 1272 (D.C. Cir. 1981); (APTA); *See also Rhode Island Handicapped Action Committee* v. *Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander* v. *Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify a limitation on the duration of Medicaid coverage for inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.*, at n. 21 [emphasis added].

Incorporation of these language changes makes this regulation consistent with the section 504 regulations for federally assisted programs as they have been interpreted by the Supreme Court. Many of the regulations for federally assisted programs were issued prior to the *Davis* decision, the lower court cases interpreting *Davis*, and the *Alexander* decison; therefore, their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these regulations for federally assisted programs must be interpreted to reflect the holdings of the Federal judiciary. Hence, the Panama Canal Commission believes that there are no significant differences between this final rule for federally conducted programs and the Federal government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298), and by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

This regulation is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and, therefore, a regulatory impact analysis has not been prepared. This regulation does not have an impact on small entities and is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601 through 612).

Section-by-Section Analysis

Section 257.101 Purpose

Section 257.101 states the purpose of the rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973, to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 257.102 Application.

The regulation applies to all programs or activities conducted by the agency except for programs or activities conducted outside the United States which do not involve individuals with handicaps in the United States.

Section 257.103 Definitions.

"Agency." For purposes of this regulation "agency" means the Panama Canal Commission.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Auxiliary aids are addressed in § 257.160(a)(1), and are discussed further in the analysis of that section.

"Complete complaint." A "complete complaint" is defined to include all the information necessary to enable the agency to investigate a complaint. The definition is necessary because the 180-day period for the agency's investigation (*see* § 257.170(d)) begins when it receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs, 28 CFR 41.3(f), except that the phrase "or interest in such property" has been deleted and the phrase "rolling stock or other conveyances" has been added. The phrase, "or interest in such property," is deleted, because the term "facility" as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the agency involving individuals with handicaps in the United States, regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in §§ 257.149, 257.150 and 257.170(f).

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appears in the section 504 coordination regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the agency can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College* v. *Davis*.

In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment prevented her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." 442 U.S. at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make it clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered, not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The definition of "qualified individual with handicaps" has been revised to make it clear that the agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in §§ 257.150(a) and 257.160(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable an individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

Paragraph (2) explains that "qualified individual with handicaps" means "qualified handicapped person," as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 257.140(2) of this rule. Nothing in this part changes existing regulations applicable to employment.

For programs or activities that do not fall under the first two paragraphs, paragraph (3) adopts the existing definition of "qualified handicapped person" with respect to services in the coordination regulation for programs receiving Federal financial assistance (28 CFR 41.32(b)). Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 257.110 Self-evaluation.

This section requires that the agency conduct a self-evaluation of its

compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes effective and efficient implementation of section 504.

This final rule uses the same provision adopted by the Department of Justice in its final rule implementing section 504 for its federally conducted programs. 28 CFR 39.110. The Department of Justice determined that this regulatory language was appropriate after it had analyzed the Federal Advisory Committee Act (5 U.S.C. app.) Executive Order 12024, and 41 CFR Part 101–6, the regulation of the General Services Administration implementing the Act.

This final rule provides that the agency shall afford an opportunity for interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process and development of transition plans (§ 257.150(d)) by submitting comments (both oral and written).

Section 257.111 Notice.

Section 257.111 requires the agency to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 257.130 General prohibitions against discrimination.

Section 257.130 is an adaptation of the corresponding section of the coordination regulation under section 504 for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 257.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. Whenever the agency has violated a provision in any of the subsequent sections, it has also violated one of the general prohibitions found in § 257.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. The Department of Justice has said, for example, in the prototype regulations that it would be permissible to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce, but it may not be permissible to disqualify automatically all those who are blind in just one eye.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 257.149, 257.150 and 257.151) and communications (§ 257.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided to individuals with handicaps only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the agency from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 257.130(b)(3) to the process of selecting sites for construction of new facilities or existing facilities to be used by the agency. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped person to the fullest extent possible.

Section 257.140 Employment.

Section 257.140 prohibits discrimination on the basis of handicap

in employment. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner* v. *Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith* v. *U.S. Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt* v. *U.S. Postal Service*, 662 F.2d 292, 302–304 (5th Cir. 1981). *Contra McGuinness* v. *U.S. Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd* v. *U.S. Postal Service*, 752 F.2d 410, 413–414 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262, *Prewitt*, 662 F.2d at 304. Accordingly, § 257.140 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. (It should be noted, however, that section 501 and 29 CFR Part 1613 apply not only to handicapped persons in the United States but also to the employment of U.S. citizens outside the United States.) In addition to this section, § 257.170(b) of this regulation specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination.

The final rule has not been changed. Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. While this rule could define terms with respect to employment and enumerate what practices are covered and what requirements apply, the agency is adopting the EEOC's recommendation that, in order to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the government-wide EEOC rules is sufficient. The class of Federal employees and applicants covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Section 257.149 Program accessibility: Discrimination prohibited.

Section 257.149 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 257.150 and 257.151.

Section 257.150 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.56 through 41.58), with certain modifications. Thus, § 257.150 requires that the agency's program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 257.150(a)(1)). Section 257.150(a)(2), unlike 28 CFR 41.56 and 41.57, places explicit limits on the agency's obligation to ensure program accessibility.

Paragraph (a)(2) generally codifies case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 257.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College* v. *Davis*, that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, the courts of appeals have applied this limitation on a showing that only one of the two undue burdens would be created as a result of the modification sought to be imposed under section 504. *See e.g., Dopico* v. *Goldschmidt, supra*; *American Public Transit Association* v. *Lewis, supra* (cited as *APTA*).

This interpretation is also supported by the recent decision of the Supreme Court in *Alexander* v. *Choate, supra*. *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days a year. The plaintiffs argued that this reduction violated section 504, because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by Section 504 or its implementing regulations. 469 U.S. at 299. Relying on *Southeastern Community College* v. *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the [Federal] grantee offers", *Id.* at 301, and that "*reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n. 21 (emphasis added). However, section 504 does not require "'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration[s] in the nature of a program.'" *Id.* at n. 20 (citations omitted).

Alexander supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus, failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation. This provision is unchanged from the proposed rule.

The agency is adopting the proposed rule's procedural requirements for application of the "fundamental alteration" and "undue financial and administrative burdens" language. The agency believes that, in most cases, making an agency program accessible will not result in undue burdens. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered. The burden of proving that compliance with § 257.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any

specific class of persons has been injured by the agency head's decision or failure to make a decision may file a compliant under the compliance procedures established in § 257.170. Finally, even if there is a determination that making a program accessible will fundamentally alter the nature of the program, or will result in undue financial and administrative burdens, the agency must still take actions, short of that outer limit, that will open participation in the agency program to individuals with handicaps to the fullest extent possible.

Paragraph (b)(1) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with the provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits, as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within sixty days.

Section 257.151 Program accessibility: News construction and alterations.

Overlapping coverage exists with respect to new construction under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157). Section 257.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 through 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 257.150. To the extent that the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 257.151.

Federal practice under section 504 has always treated newly-leased buildings as subject to the program accessibility standard for existing facilities. Unlike the construction of new buildings, where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose* v. *United States Postal Services,* 774 F.2d. 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as condition of lease, and the case was remanded to the District Court for, among other things, consideration of that issue. The agency may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 257.160 Communications.

Section 257.160 requires the agency to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 257.160(a)(1) to afford an individual with handicaps and equal opportunity to participate in, and enjoy the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency [§ 257.160(a)(1)(i)]. The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 257.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (see discussion of § 257.150(a)(3)). Unless not required by § 257.160(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

The regulation requires the agency to provide auxiliary aids to ensure that individuals with handicaps have "an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency." Where the form of communication is different for individuals with handicaps than for non-handicapped people (*e.g.*, oral instead of written for person with impaired vision, sign language instead of speech for persons with impaired hearing) the effectiveness of the communication is the appropriate measurement of equality of treatment.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. Then, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to make clear to the public (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective. The agency shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings.

If sign language interpreters are necessary, the agency may require that it be given reasonable advance notice of

the need for an interpreter. Moreover, the agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 257.160(a)(1)(ii)). For example, the agency need not provide eyeglasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

The language in § 257.160(a)(1)(ii) that states that the agency need not provide individually prescribed devices or readers for personal use is intended to distinguish between communications that are necessary to obtain the benefits of Federal programs and those that are not. This language parallels the requirements of the Federal government's section 504 regulations for federally assisted programs. For example, a federally operated library would have to ensure effective communication between its librarian and a patron, but not between the patron and a friend who had accompanied him or her to the library.

Paragraph (b) requires the agency to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the agency to provide signs at inaccessible facilities that direct users to locations with information about accessible facilities.

Section 257.170 Compliance procedures.

The compliance procedures in this section follow the same basic scheme as the Justice Department's regulations. These regulations are less detailed, however. To the extent that the Commission determines that additional compliance procedures are warranted, they will be adopted in the form of internal regulations. Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

The agency is required to accept and investigate all complete complaints (§ 257.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal government (§ 257.170(e)). The agency has not adopted a rule requiring the referral of a complaint to the appropriate agency, because there may be circumstances in which there is not any agency which has jurisdiction over the matter complained of or the complaint does not contain sufficient information for the Commission to determine which agency has responsibility.

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal. One appeal within the agency shall be provided (§ 257.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 257.170(i)).

Paragraph (l) permits the agency to delegate its authority for investigating complaints to order Federal agencies. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 35 CFR Part 257

Blind, Buildings, Civil rights, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

For the reasons set forth in the preamble, 35 CFR Chapter I is amended as follows.

Dated: May 15, 1987.

D.P. McAuliffe,

Administrator.

A new Part 257 is added to read as follows:

PART 257—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY PANAMA CANAL COMMISSION

Sec.

Authority: 29 U.S.C. 794.

§ 257.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 257.102 Application.

This part applies to all programs or activities conducted by the agency except for programs or activities conducted outside the United States which do not involve individuals with handicaps in the United States.

§ 257.103 Definitions.

For purposes of this part, the term—

"Agency" means the Panama Canal Commission.

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, materials in Braille, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the agency's alleged discriminatory actions in sufficient detail to inform the agency of the nature and date of the alleged violation of

section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to any covered agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to employment, an individual with handicaps who meets the definition of "qualified handicapped person" set forth in 29 CFR 1613.702(f), which is made applicable to this part by § 257.140; and

(3) With respect to any other covered program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 257.104–257.109 [Reserved]

§ 257.110 Self-evaluation.

(a) The agency shall, by July 11, 1988, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps, or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The agency shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection—

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 257.111 Notice.

The agency shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the agency head finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§§ 257.112–257.129 [Reserved]

§ 257.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the offices of the agency located in the United States.

(b)(1) The agency, in providing any aid, benefit, or service may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others; or

(v) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by

others receiving the aid, benefit, or service.

(2) The agency may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissible separate or different programs or activities.

(3) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 257.131–257.139 [Reserved]

§ 257.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the agency. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 257.141–257.148 [Reserved]

§ 257.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 257.150 no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 257.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the agency to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 257.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignments of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section by October 8, 1987, except that where structural changes in facilities are undertaken, such changes shall be made by July 10, 1990, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop, by January 11, 1988, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section, and if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period;

(4) Indicate the official responsible for implementation of the plan.

§ 257.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on

behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151 through 4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 257.152–257.159 [Reserved]

§ 257.160 Communications.

(a) The agency shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the agency communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The agency shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall provide signs at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 257.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his designee after considering all agency resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 257.161–257.169 [Reserved]

§ 257.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) Responsibility for implementation and operation of this section shall be vested in the Director of Equal Opportunity.

(d) The agency shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151 through 4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, the agency shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt by the complainant of decision required by § 257.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by Administrator of the Panama Canal Commission.

(j) The Administrator shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the Administrator determines that it needs additional information from the complainant, he shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

§§ 257.171–257.999 [Reserved]

[FR Doc. 87–15657 Filed 7–9–87; 8:45 am]
BILLING CODE 3640–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL 3203–3]

Air Quality; Approval and Promulgation of Implementation Plans; Illinois

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is approving two negative declarations by the State of Illinois. The first indicates that there are no manufacturers of high density polyethylene or polypropylene resins. The second indicates that there are no vegetable oil processing sources with potential volatile organic compound (VOC) emissions greater than 100 tons per year in Illinois' ozone nonattainment areas. USEPA's approval of these negative declarations exempts the State of Illinois from the necessity of developing a control plan for these types of sources.

Section 172 of the Clean Air Act (Act) requires that each State with an ozone extension area develop reasonably available control technology (RACT) emission limits for certain VOC sources within the extension area. The VOC sources that have to be addressed are those covered under the Control Techniques Guidelines (CTG's) issued by USEPA. Two such source categories are polyethylene and polypropylene resin manufacturing. If USEPA issues a CTG for which the State has no sources, the State can submit a "negative declaration". Approval of the "negative declaration" by USEPA exempts that State from developing a control plan for VOC sources in that CTG category.

Similarly, USEPA's policy on State Implementation Plans: Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension 46 FR 7182 (January 22, 1981), interprets section 172(b) of the Act as requiring the State to adopt regulations to apply RACT to all major (with more than 100 tons per year potential emissions as defined under section 302(j) of the Act) stationary sources of VOC's not covered by a CTG. USEPA did not publish a CTG for vegetable oil processing.

DATE: This action will be effective September 8, 1987, unless notice is received on or before August 10, 1987, that someone wishes to submit adverse or critical comments.

ADDRESSES: Copies of the State's submittal and other material related to this rulemaking are available for inspection at the following addresses (it is recommended that you telephone Randolph O. Cano, at (312) 886–6036 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

U.S. Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460

Illinois Environmental Protection Agency, Division of Air Pollution Control, 2200 Churchill Road, Springfield, Illinois 62706

Written comments should be sent to: Gary Gulezian, Chief, Regulatory Analysis Section, Air and Radiation Branch (5AR–26), Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, at (312) 886–6036.

SUPPLEMENTARY INFORMATION:

Background

Section 172 of the Act allows USEPA to grant extensions to those States that could not demonstrate attainment of the ozone National Ambient Air Quality Standards (NAAQS) by December 31, 1982, if certain conditions were met by the State in revising its air pollution control program. The revised programs had to include additional RACT emission limits for various types of VOC sources located in the areas needing the extension.

Since Illinois could not demonstrate attainment of the ozone NAAQS by the required date of December 31, 1982, in the Chicago and St. Louis areas, Illinois requested and received an extension of time until December 31, 1987 to attain the ozone NAAQS there. This extension obligated the State of Illinois to develop RACT regulations for those sources addressed by Group III CTG's (RACT III) and to develop RACT regulations for major sources in these Illinois ozone nonattainment areas.

Polyethylene and Polypropylene

On November 14, 1983 (48 FR 51848), USEPA published the release notice for the CTG for emissions from the manufacture of high density polyethylene, polypropylene and polystyrene resins. Regulations for emissions from this source category were due from Illinois to USEPA by January 1, 1985.

On June 16, 1986, the State of Illinois submitted a "Negative Declaration" stating that they have carefully reviewed the emissions inventory and determined that there are no manufacturers of high density polyethylene or polypropylene in Illinois' ozone nonattainment areas.

It should be noted that USEPA first discussed this "negative declaration" in a November 24, 1986 final rulemaking (51 FR 42221). At that time, however, no final action was taken on this negative declaration due to administrative error by USEPA.

USEPA has reviewed the available source and emissions data for Illinois ozone nonattainment areas. This review agrees with the Illinois assessment, finding that there are no major sources in those two categories for which Illinois has submitted negative declarations. Therefore, USEPA is approving these "negative declarations". This action exempts Illinois from developing a plan for control of VOC emissions for these source categories for which they have no sources.

Vegetable Oil Processing

Similarly, USEPA's policy on State Implementation Plans: Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension 46 FR 7182 (January 22, 1981), interprets section 172(b) of the Act as requiring the State to adopt regulations to apply RACT to all major (with more than 100 tons per year potential emission as defined under section 302(j) of the Act) stationary sources of VOC's not covered by a CTG (non-CTG).

On October 2, 1986, the State of Illinois submitted a "negative declaration" stating that they have carefully reviewed the Illinois' emissions inventory and found that there are no vegetable oil processing sources with VOC emissions equal to or greater than 100 tons per year located in Illinois' ozone nonattainment areas [1]

USEPA has reviewed the available source and emissions data for Illinois ozone nonattainment areas. The results of our review agrees with the Illinois' finding that there are no major sources in those two categories for which Illinois has submitted negative declarations. Therefore, USEPA is approving these "negative declarations".

This action exempts Illinois from developing a plan for control of VOC emissions from these source categories.

Because USEPA considers today's action noncontroversial and routine, we are approving it today without prior proposal. This action will become effective September 8, 1987. However, if USEPA receives notice by August 10, 1987, that someone wishes to submit critical comments, then, USEPA will publish: (1) A notice that withdraws this action; and (2) a notice that begins a new rulemaking by proposing these actions and establishing a public comment period. USEPA will only do this for a source category on which it receives critical comments.

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

Under 5 U.S.C 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 1987. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

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[1] USEPA notes that there is no requirement for Illinois to submit negative declarations for non-CTG source categories. However, because Illinois submitted such a declaration for vegetable oil processing, USEPA is taking rulemaking action on it.

List of Subjects in 40 CFR Part 52

Air pollution control Ozone, Hydrocarbons, Intergovernmental relations.

Dated: May 13, 1987.

Lee M. Thomas,

Administrator.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Title 40 of the Code of Federal Regulations, Chapter I, Part 52, Subpart O is amended as follows:

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

Authority: 42 U.S.C. 7401–7642.)

Subpart O—Illinois

2. Section 52.726 is amended by adding paragraph (c) to read as follows:

§ 52.726 Control Strategy: Ozone.

* * * * *

(c) *Negative Declarations—Stationary Source Catagories.* The State of Illinois has certified to the satisfaction of USEPA that no sources are located in the nonattainment areas of the State which are covered by the following Control Technique Guidelines:

(1) High density polyethylene and polypropylene manufacturers.

(2) Vegetable oil processing sources with volatile organic compound emissions equal to or greater than 100 tons per year.

* * * * *

[FR Doc. 87–11406 Filed 7–9–87; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 261

[FRL–3231–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Technical Correction

AGENCY: Environmental Protection Agency.

ACTION: Technical Correction to Hazardous Waste Definition.

SUMMARY: On November 25, 1980 (45 FR 78524) EPA promulgated an interim final rule to define the regulatory status of residues remaining in a container or an inner liner removed from a container that does hold one of the commercial chemical products that are identified as hazardous waste when discarded or intended to be discarded. The language in the regulation was inadvertently changed when the 1984 edition of the Code of Federal Regulations was printed; the 1985 and 1986 editions also contain the incorrect language. Today's notice restores the correct language.

EFFECTIVE DATE: July 10, 1987.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll free at (800) 424–9436 or at (202) 382–3000. For specific questions on the notice, contact Michael Petruska, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475–6676.

SUPPLEMENTARY INFORMATION:

I. Technical Correction

On November 25, 1980, EPA amended § 261.33(c) to clarify that residues remaining in containers (or liners of containers) that have held commercial chemical products on the § 261.33 (e) and (f) lists are hazardous wastes when discarded, not the containers or liners themselves. (see 45 FR 78527.) When the 1984 edition of the Code of Federal Regulations (CFR) was printed however, the language in § 261.33(c) was inadvertently changed back to the pre-November 25, 1980 language. EPA did not intend this, and the § 261.33(c) language in the 1984, 1985, and 1986 CFR editions is incorrect. EPA recently became aware of this error and is today revising § 261.33(c) so that it once again reads correctly. That is, § 261.33(c) now states, as intended, that it is the residues remaining in a container (or an inner liner) that may be hazardous waste, not the containers or the liner itself.

EPA finds that it has good cause to make this correction immediately effective and to promulgate it without prior notice and opportunity to comment. Comment is unnecessary because the public already had an opportunity to comment for issues involved in the context of the November 1980 rulemaking. Section 3010(b) of RCRA provides that EPA's hazardous waste regulations must take effect six months after promulgation. The purpose of this requirement is to allow persons handling waste sufficient time to comply with major new requirements. In this case, however, six months is unnecessary because the public had notice of these requirements from 1980 through 1983. Moreover, the incorrect version that appeared in the *Code of Federal Regulations* from 1984 through 1986 still generally indicated that containers (and presumably, the residues contained within them) were subject to regulation. Consequently, EPA believes that today's correction affects no new segment of the regulated community.

II. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore, subject to the requirements of a Regulatory Impact Analysis (RIA). Since this notice merely makes technical corrections and does not change the previously approved final rule, this rule is not major and no RIA is required.

List of Subjects in 40 CFR Part 261

Hazardous material, Waste treatment and disposal, Recycling.

Dated: July 7, 1987.

J.W. McGraw,

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

For the reasons set out in the preamble, Title 40 of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

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

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

2. Section 261.33 is amended by revising paragraph (c) to read as follows:

§ 261.33 Discarded commercial chemical products, off-specification species, container residues, and spill residues thereof.

* * * * *

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) of this section, unless the container is empty as defined in § 261.7(b)(3) of the chapter.

[Comment: Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, EPA considers the residue to be intended for discard, and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.]

* * * * *

[FR Doc. 87–15832 Filed 7–9–87; 8:45 am]

BILLING CODE 1505–01–M

40 CFR Part 271

[FRL-3229-3]

Florida; Schedule of Compliance for Modification of Hazardous Waste Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Florida compliance schedule to adopt program modifications.

SUMMARY: On September 22, 1986 EPA promulgated amendments to the deadlines for State program modifications, and published requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Florida to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

DATES: For dates of compliance see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Chief, Waste Planning Section, RCRA Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347-3016.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (section 3006(b)), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR 271.1 through 271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines and procedures specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986 for a complete discussion of these procedures and deadlines.

B. Florida

Florida received final authorization of its hazardous waste program on February 12, 1985. [50 FR 3908, January 29, 1985]. Today EPA is publishing a compliance schedule for Florida to obtain program modifications for section 3006(f), Availability of Information, of the Hazardous and Solid Waste Act Amendments of 1984 (HSWA).

The State has agreed to obtain the needed program revisions according to the following schedule or earlier if practicable:

Date	Interim milestones
May 1, 1987	Draft of Florida's Availability of Information (AOI) rule (F.A.C. 17-30.310) sent to EPA for review.
May 22, 1987	Notice of Public Workshop on proposed AOI rule published in *Florida Administrative Weekly (FAW).*
July 31, 1987	Public notice of proposed AOI rule adoption published in *FAW.*
September 1, 1987	Public hearing on proposed AOI rule if requested by general public.
October 1, 1987	AOI rule adopted by the Florida Department of Environmental Regulation (FDER).
October 15, 1987	Notice of program modification sent to EPA.
November 1, 1987	New AOI rule effective, necessary internal FDER administrative procedures completed in order to implement new AOI rule.
December 1, 1987	Draft program revision application for AOI submitted to EPA for review.
December 31, 1987	EPA comments on Florida's draft program revision application for AOI returned to the State.
March 1, 1987	Final program revision application submitted to EPA for authorization of Florida's AOI equivalency.

Florida expects to submit a final application to EPA for authorization of the above-mentioned program revisions by March 1, 1988. The State has submitted a final application for the non-HSWA provisions promulgated prior to July 1, 1984 and the non-HSWA Cluster I provisions, excluding 3006(f). Authorization for these program modifications is expected by fall of 1987 under Immediate Final Rulemaking (§ 271.21(b)(3)).

This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Dated: June 12, 1987.

Lee A. DeHihns, III,

Acting Regional Administrator.

[FR Doc. 87-15470 Filed 7-9-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 272

[FRL-3229-4]

Tennessee; Final Authorization of State Hazardous Waste Program; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of correction of date.

SUMMARY: This notice corrects the date previously published in the Federal Register, June 12, 1987 (52 FR 22443), as the deadline for receipt of comments of the Agency's immediate final decision to grant Tennessee final authorization to administer and enforce radioactive mixed waste requirements analogous to those found in the Federal Hazardous Waste Management Program under the Resource Conservation and Recovery Act (RCRA).

DATE: The comment period is extended until the close of business July 13, 1987.

FOR FURTHER INFORMATION CONTACT: Otis Johnson, Jr., tel.: (404) 347-3016.

Dated: June 29, 1987.

Joseph Franzmathes,

Acting Regional Administrator, EPA, Region IV.

[FR Doc. 87-15469 Filed 7-9-87; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 70845-7085]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of inseason adjustment and request for comments.

SUMMARY: NOAA announces an adjustment to recreational ocean salmon management measures in the subarea from the Queets River to Leadbetter Point, Washington. The adjustment modifies the closed area to 0-10 nautical miles offshore, and the daily bag limit to 2 fish, only 1 of which may be a chinook salmon. The Director, Northwest Region, NMFS (Regional Director), has determined in consultation with representatives of the Pacific Fishery Management Council (Council), the Oregon Department of Fish and Wildlife (ODFW), and the Washington Department of Fisheries (WDF), that the adjustment is necessary to conform to the chinook quotas established in the preseason announcement of 1987 management measures. This action is intended to extend the recreational season.

DATES: Modification of the closed area and the recreational daily bag limit in the subarea from the Queets River to Leadbetter Point, Washington, is effective at 0001 hours local time, July 7, 1987. Comments on this notice will be received until July 22, 1987.

ADDRESS: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, NMFS, BIN C15700, 7600 Sand Point Way NE., Seattle, WA

98115–0070. Information relevant to this notice has been complied in aggregate form and is vailable for public review during business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Rolland A. Schmitten (Regional Director) at 206–526–6150.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries are codified at 50 CFR Part 661. Management measures for 1987 were effective on May 1, 1987 (52 FR 17264, May 6, 1987). The 1987 recreational fishery for all salmon species north of Cape Falcon, Oregon, is divided into three subareas. The recreational season in all three subareas began on June 28 and will continue through the earliest of September 24, attainment of subarea chinook or coho quotas, or attainment of overall troll and recreational chinook or coho quotas for the area between Cape Falcon, Oregon, and the U.S.-Canada border.

For the subarea from the Queets River to Leadbetter Point, the area from 0 to 3 nautical miles offshore was closed under the preseason regulations. The subarea has quotas of 28,000 chinook and 74,300 coho salmon, and the daily bag limit is 2 fish.

Effective July 5, 1987, the recreational salmon fishery in the subarea from the Queets River to Leadbetter Point was adjusted by modifying the closed area to include the area from 3 to 6 nautical miles offshore from Cape Shoalwater (46°44'06" N latitude) to Point Brown (46°55'2" N latitude), Washington (July 2, 1987). This inseason action was necessary to slow the catch of chinook and to extend the recreational season.

The best available information for the recreational fishery in the subarea from the Queets River to Leadbetter Point indicates at least one-third of the subarea chinook quota has been caught during the period June 28–July 6, 1987. Further inseason action is necessary to slow the catch of chinook and to extend the recreational season.

NOAA therefore issues this notice to adjust the recreational salmon fishery in the EEZ from the Queets River to Leadbetter Point, Washington, by modifying the closed area and the daily bag limit. The area from 0 to 10 nautical miles offshore from the Queets River to Leadbetter Point, Washington, is closed, and the daily bag limit is modified to 2 fish only 1 of which may be a chinook.

This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating to this or other areas.

The Regional Director consulted with the Chairman of the Council and representatives of ODFW and WDF regarding this inseason adjustment for the recreational fishery from the Queets River to Leadbetter Point, Washington. The WDF representative confirmed that Washington will manage the recreational fishery in state waters adjacent to this area of the EEZ in accordance with this Federal action.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: July 7, 1987.

Bill Powell,

Executive Director, National Marine Fisheries Service.

[FR Doc. 87–75726 Filed 7–7–87; 4:53 pm]

BILLING CODE 3510–22–M

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50 CFR Part 674

[Docket No. 70619–7119]

High Seas Salmon Fishery Off Alaska

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

ACTION: Notice of closure.

SUMMARY: The Secretary of Commerce (Secretary) closes a small area in the U.S. exclusive economic zone (EEZ) off Southeastern Alaska for commercial salmon fishing. This action is necessary to conserve the chinook salmon stocks that contribute to the Alaska, British Columbia, Washington, Oregon, and Idaho salmon fisheries. The intent of this action is to ensure that the harvest of chinook salmon does not exceed the limit imposed by the Pacific Salmon Treaty. This action complements similar actions on the commercial troll fishery in waters managed by the State of Alaska.

DATES: This notice is effective 4:52 p.m. on July 7, 1987, until 2400 hours ADT on September 20, 1987. Public comments are invited until August 7, 1987.

ADDRESSES: Send comments to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802–1688. During the 30-day public comment period, the data upon which this notice is based will be available for public inspection during the hours of 0800 to 1630 (ADT) Monday through Friday at the NMFS Regional Office, Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Aven M. Andersen (Fishery Management Biologist, NMFS) 907–586–7229.

SUPPLEMENTARY INFORMATION: Salmon fishing in the EEZ off Alaska is managed under the Fishery Management Plan for the High Seas Salmon Fishery off the Coast of Alaska (FMP), which was developed and amended by the North Pacific Fishery Management Council (Council). The regulations at 50 CFR Part 674 govern the salmon fisheries in the EEZ off the coast of Alaska east of 175° east longitude. The regulations were issued under section 7(a) of Pub. L. 99–5, the Pacific Salmon Treaty Act of 1985 (16 U.S.C. 3631 *et seq.*) and under section 305 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

The Pacific Salmon Commission limited the 1987 harvest by all salmon fisheries in southeast Alaska to 263,000 chinook salmon, exclusive of the harvest of chinook salmon resulting from Alaska's new enhancement activities. On June 22, 1987, NMFS issued a final rule to announce that limit and to set fishing periods for the 1987 commercial troll fishery in the EEZ (52 FR 23450).

Section 674.23 of the regulations provides that the Secretary may modify the fishing periods and areas by publishing a notice in the **Federal Register**. Any such modification must be based on a determination by the Director of the Alaska Region of NMFS (Regional Director) that (a) the condition of the salmon species is "substantially different from the condition anticipated in the FMP" and (b) this difference requires a modification of the fishing times and areas to adequately conserve that salmon species. The regulations specify the factors the Regional Director may consider. The regulations also specify that the Secretary must consult with the Alaska Department of Fish and Game before he makes his modifications.

In view of these requirements, the Regional Director (acting on behalf of the Secretary) has consulted with the Alaska Department of Fish and Game. Also, he has reviewed the information on the 1987 salmon fishery to date, has determined that the chinook stocks in 1987 are substantially depressed from the condition anticipated in the FMP, and has determined that this difference in stock condition requires that, in conjunction with area closures made by the Alaska Department of Fish and Game, a small area of the EEZ known as

the Fairweather Grounds should be closed to all commercial salmon fishing as of 0001 hours on July 4, 1987. This area and those closed by Alaska are areas where adult and juvenile (less than legal length) chinook salmon concentrate. If they were left open to commercial salmon fishing, the chinook quota would be reached by July 13 and a large number of sublegal chinook would be caught and released, with a resulting substantial incidental mortality of those released.

A provision of the Pacific Salmon Treaty requires that each party to the treaty "minimize * * * all sources of induced fishing mortality * * * of chinook salmon" (Annex 4, Chapter 3, paragraph 1(e)). In a move to achieve this requirement, the Alaska Board of Fisheries and the Council decided to manage the salmon fisheries to slow down the rate chinook salmon were being harvested so that the quota would not be reached until after July 26. This policy is intended to keep as short as possible, any salmon fishing period when fishermen would have to throw back the chinook salmon they caught during fisheries for other salmon species, thereby reducing the number of chinook salmon dying after being hooked, handled, and released.

Counts, estimates, and forecasts of harvested chinook salmon by the Alaska Department of Fish and Game show that the summer commercial salmon troll fishery will have harvested 114,000 chinook salmon through July 2, 1987. In addition, the winter trool fishery (October 1, 1986 to April 15, 1987) harvested an estimated 30,000 chinook, and an experimental test fishery in state waters harvested 4,000 chinook. The commercial net fisheries in Southeast Alaska are expected to harvest about 20,000 chinook and the sport fisheries, 22,000 chinook salmon. Combined, these predictions total 190,000 chinook, or 73,000 less than the limit of 263,000 imposed by the Pacific Salmon Commission. About 600 boats are participating in the commercial troll fishery. The rate of catch this year is somewhat higher than it was last year at this time. Some areas have particularly high catch rates. By closing these high-catch areas, The Alaska Department of Fish and Game and NMFS predict that they can extend the chinook fishery for the trollers so they will be able to continue fishing for the remaining 73,000 chinook until about July 26, the date adopted by the Board and Council.

If, after the actual harvests have been tabulated, the total number of chinook harvested falls considerably short of the limit, then the troll fishery will be allowed to harvest the remainder of its quota before the troll season closes on September 20.

The area of the EEZ this notice closes to all commercial salmon fishing is known as the Inner and Outer Fairweather Grounds. It is roughly rectangular and is bounded by lines connecting the following points:

58°56.8′ N. lat., 138°02.7′ W. long.
58°22.5′ N. lat., 139°26.5′ W. long.
57°56.5′ N. lat., 138°17.9′ W. long.
58°25.7′ N. lat., 137°10.4′ W. long.

The following Loran C lines are provided as estimates of the boundary lines at the request of fishermen. The closed area is roughly bounded on the northwest by Loran C line 7960–Y–29700 running seaward from a point on the beach about 9 nautical miles northwest of Cape Fairweather, on the seaward side by Loran C line 7960–X–14400, and on the southeast by Loran C line 7960–Y–29200, which runs seaward from a point on the beach about 4 nautical miles northwest of Icy Point, (as shown on NOAA chart 16760).

The closure will become effective after it has been broadcast over VHF channel 16 and publicized for 48 hours through procedures of the Alaska Department of Fish and Game.

Classification

This action is exempt from sections 4 through 8 of the Administrative Procedure Act, the Regulatory Flexibility Act, and Executive Order 12291 because, as is expressly provided in section 7(a) of Pub. L. 99–5, it involves a foreign affairs function. It contains no requirement for collecting information for purposes of the Paperwork Reduction Act.

Section 674.23(b)(3) requires the Secretary to accept and consider public comments for 30 days after the effective date of this notice which does not provide an opportunity for the public to comment before it becomes effective. The aggregated data upon which this closure was based are available for public inspection at the address given above. If comments are received, the Secretary will reconsider the necessity of this action and will publish another notice in the **Federal Register** either confirming the notice's continued effect, modifying it, or rescinding it, unless the notice has already expired or been rescinded.

List of Subjects in 50 CFR Part 674

Fisheries, Fishing, International organizations.

Authority: 16 U.S.C. 3631 *et seq;* 16 U.S.C. 1801 *et seq.*

Dated: July 7, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries National Marine Fisheries, Service.

[FR Doc. 87–15725 Filed 7–7–87; 4:52 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 52, No. 132
Friday, July 10, 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

Agricultural Marketing Service

7 CFR Part 1065

Milk in the Nebraska-Western Iowa Marketing Area; Proposed Temporary Revision of Diversion Limitation Percentages

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed emporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to continue to relax temporarily certain provisions of the Nebraska-Western Iowa Federal milk order. The proposed action would relax for the months of July and August 1987 the limits on how much milk not needed for fluid (bottling) use may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association representing producers supplying the market in order to prevent uneconomic movements of milk.

DATE: Comments are due no later than July 17, 1987.

ADDRESS: Comments (two copies) should be sent to: Dairy Division, Agricultural Marketing Service, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447–7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601 through 612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action would provide greater assurance that handlers will not engage in uneconomic movement of the market's reserve milk supplies in qualifying such milk for pricing status under the order. The action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 through 674), and the provisions of § 1065.13(d)(4) of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Nebraska-Western Iowa marketing area is being considered for the months of July and August 1987.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the Dairy Division, AMS, Room 2968, South Building, U.S. Department of Agriculture, Washington, DC 20250, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include July 1987 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the diversion limitation percentages set forth in § 1065.13(d). The revisions would be applicable for the months of July and August 1987. The specific revisions would increase the diversion limitation percentages for the months of July and August 1987 by 10 percentage points from the present 50 percent to 60 percent. The order's diversion limits were revised temporarily from 50 to 60 percent for the months of May through August 1986, from 40 to 60 percent for the months of January through March 1987.

Section 1065.13(d) of the Nebraska-Western Iowa milk order allows the Director of the Dairy Division to increase the diversion limitation percentages by up to 20 percentage points during any month to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

National Farmers Organization (NFO), a cooperative association which represents producers supplying the Nebraska-Western Iowa market, requested that for the months of July and August 1987, the percentage of allowable diversions be increased 10 percentage points.

The cooperative states that the decline of approximately one percent per year in Class I sales under the Nebraska-Western Iowa order has been accompanied by a reduction in the demand of pool plants for producer milk supplies. According to NFO, the percentage of producer milk used in Class I under the order was only 33 percent for the month of May 1987, and can be expected to decline during the summer months particularly in July and August. As a consequence, the cooperative states, the amount of producer milk surplus to the Nebraska-Western Iowa market's Class I needs during those months can be expected to be well in excess of 60 percent of the milk pooled.

According to NFO, the milk surplus to the fluid needs of the market must be diverted to manufacturing facilities. In order to comply with the order's present diversion limits, the cooperative states that the required percentage of its members' milk must be delivered to pool plants. However, a significant amount of its members' milk is not needed at pool plants and it is unloaded, then reloaded and transshipped to a nonpool plant to be used. NFO states that such uneconomic milk shipments will be necessary for the months of July and August 1987 if the milk of its member producers customarily pooled under the Nebraska-Western Iowa order is to continue to be priced under the order and receive the benefits of such pricing. According to NFO, the proposed temporary increase of the diversion limits is necessary to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers historically associated with the market will continue to have their milk price under the order.

Therefore, it may be appropriate to relax the aforementioned provisions of § 1065.13(d) for the months of July and August 1987 to prevent uneconomic shipments of milk.

List of Subjects in 7 CFR Part 1065

Milk marketing orders, Milk Dairy products.

PART 1065—[AMENDED]

The authority citation for 7 CFR Part 1065 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC on July 7, 1987.

Edward T. Coughlin,

Director, Dairy Division.

[FR Doc. 87–15716 Filed 7–9–87; 8:45 am]

BILLING CODE 3410–02–M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 564

[No. 87–738]

Settlement of Insurance; Federal Savings and Loan Insurance Corp.

Dated: June 30, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Proposed rule.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board" or "Board") as the operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC") proposes to amend its regulations pertaining to the settlement of insurance on accounts held jointly. The Board proposes to delete the current requirement that each co-owner of a joint account must personally execute a signature card for the account in order for the account to be separately insured. The Board believes the current rule may have caused hardship to depositors and added to the recordkeeping burden on institutions without appreciably reducing the risks of fraudulent claims of entitlement to separate joint account insurance coverage. The Board also proposes to consolidate provisions of its regulations governing joint accounts and to clarify the provisions affecting joint accounts established by intermediaries.

DATE: Comments must be received by September 8, 1987.

ADDRESS: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be publicly available at this address.

FOR FURTHER INFORMATION CONTACT: Deborah Dakin, Assistant Director, Regulations and Legislation Division, Office of General Counsel, (202) 377–6445; or Theresa Stark, Attorney, Insurance Division, Federal Savings and Loan Insurance Corporation, (202) 377–6620, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board's current Settlement of Insurance Regulations ("Insurance Regulations") require that in order for a joint account to qualify for separate insurance coverage, each holder of the joint account must personally execute a signature card for it and must possess equal withdrawal rights, unless the account is evidenced by a negotiable certificate of deposit. The Federal Deposit Insurance Corporation ("FDIC") has for some time exempted certificates of deposit and accounts evidenced by negotiable instruments from signature-card and withdrawal requirements. *See* 12 CFR 330.9(b) (1987) (FDIC). To date, the Board has retained these requirements, which were intended to ensure that joint account relationships were not fabricated in order to increase insurance coverage. The FSLIC's recent experience in liquidating institutions in default, however, indicates that the signature card requirement of the current regulation should not be retained. The FSLIC's experience has been that the utility of the requirement in reducing the risks of fraudulent claims of joint ownership of what are, in fact, individual funds, is often outweighed by the hardship it causes depositors of jointly held funds who have failed to comply with it. This hardship may occur if depositors are misinformed about the necessity for completing a signature card or if an insured institution has lost a completed signature card.

Currently, insurance coverage of no other type of account depends solely on the presence, absence, or correct completion of a single account record such as a signature card. The Board believes that the determination of insurance coverage of any type of joint asccount, regardless of whether the account is evidenced by a certificate of deposit, a passbook, or a negotiable instrument, should depend on the manner in which the account is held, as evidenced by the books and records of the insured institution as of the date of default. Such determinations should be based on all facts available from the books and records of the institution, rather than on any single account record.

Today, the Board is proposing to remove its signature card requirements for all joint accounts. The Board believes that, based on the FSLIC's experience, the account records of insured institutions, taken as a whole and coupled with the requirement that all named holders of a joint account must possess equal withdrawal rights, provide a sufficient safeguard against fraudulent claims on joint accounts. Signature cards, when signed by depositors, will of course continue to be an important account record evidencing knowledge of a joint account and the capacity in which it is held. Certificates of deposit, safekeeping receipts, passbooks, and monthly activity statements are additional records of the institution evidencing the form of the account. Accountholders have both knowledge of and ready access to these records.

The Board currently contemplates retaining the equal withdrawal rights requirement for joint accounts, but solicits comments on whether that requirement continues to serve a useful purpose in minimizing fraud and whether it should be retained or replaced. Since the current regulation was first promulgated, the withdrawal rights requirement has consistently been interpreted by the Board as the right of each holder of a joint account to withdraw funds from the account on the same basis as any other holders of the account. This characteristic distinguishes a joint account from other capacities in which accounts are held. If this requirement is retained, the Board believes that the addition of the word "equal," codifying this longstanding Board interpretations, will make the regulation easier for accountholders and insured institutions to understand and apply. In neither accountholder may withdraw funds from the the account, each would still be considered to have equal withdrawal rights for purposes of determining insurance coverage. Thus, negotiable certificates of deposit that are jointly owned would still be considered as joint accounts for insurance purposes even though no owner had withdrawal rights before maturity of the certificate.

These proposed amendments to the Insurance Regulations are not intended to serve as a substitute for the more comprehensive revision to the regulations discussed at 52 FR 8611, 8612 (1987), but merely to address certain concerns that have arisen about the insurance coverage available to joint accounts. The Board is taking this opportunity to propose consolidation of certain provisions affecting joint

account coverage that currently appear in the recordkeeping provisions of the Insurance Regulations. The Board believes that this consolidation will assist accountholders and insured institutions in determining the coverage available to such accounts.

The Board is also taking this opportunity to restate its longstanding position that the insurance coverage of joint accounts depends on how the accounts are shown on the books and records of an institution. The Board wishes to clarify that neither its present regulations governing joint accounts nor the changes proposed herein require the FSLIC to look to state law to determine which accounts are joint accounts for purposes of measuring insurance coverage. As noted above, the FSLIC will look at the institution's books and records, including signature cards, saving instruments, and computer records, to determine which accounts are held jointly and should be insured accordingly.

Finally, the Board is taking this opportunity to set forth the circumstances under which accounts held through intermediaries may qualify for separate joint account coverage. Some confusion has arisen about the interaction of the joint account regulation and other regulations such as the agency account regulation (12 CFR 564.3(b)) and the trust account regulation (12 CFR 564.10). Confusion has also arisen as to the aggregation and the recordkeeping requirements applicable to such accounts. Finally, questions have arisen as to the treatment of funds commingled for investment purposed by an intermediary. Although a number of these related concerns are more approprately addressed in the context of a more comprehensive revision to the Insurance Regulations than that undertaken today, the Board would like to take this opportunity to clarify that accounts in fact held jointly by individuals but established at an insured institution through an agent, nominee, guardian, custodian, conservator, or loan servicer are insured as joint accounts under the same conditions as if the accounts had been established directly by those holding the funds jointly if all applicable recordkeeping requirements are met. Under the current regulations governing non-negotiable accounts and today's proposal, this would require, first, that the accountholder disclose in the records of the institution the relationship pursuant to which it had invested funds (*e.g.*, as agent or nominee for others). The intermediary would then be required to provide records showing that the funds were in fact held jointly. Such accounts will be aggregated for insurance purposes with other joint accounts held by or for the same individuals, however, established. The Board is also restating its longstanding position that trust accounts held for multiple beneficiaries are considered held for those beneficiaries as individuals, not jointly, for purposes of determining insurance coverage.

The Bank Board currently contemplates amending and reissuing the relevant portions of the Appendix and examples of the insurance coverage under the joint account regulation contained therein to conform to the regulation as developed by this rulemaking.

Initial Regulatory Flexibility Analysis

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

1. Reasons, objectives, and legal basis underlying the proposed rule

These elements have been incorporated elsewhere in the **SUPPLEMENTARY INFORMATION** regarding the proposal.

2. Small entities to which the proposed rule would apply

The rules would apply to all savings institutions the accounts of which are insured by the FSLIC.

3. Impact of the proposed rule on small institutions

The proposal would ease the recordkeeping burden on such institutions.

4. Overlapping or conflicting Federal rules

There are no known Federal rules that may duplicate, overlap, or conflict with the proposal.

5. Alternatives to the proposed rule

To the extent that there are alternatives to any elements of the proposed rule, discussion of them has been incorporated into the **SUPPLEMENTARY INFORMATION**.

List of Subjects in 12 CFR Part 564

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

Accordingly, the Board hereby proposes to amend Part 564, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 564—SETTLEMENT OF INSURANCE

1. The authority citation for Part 564 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–405, 407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1728, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–48 Comp. p. 1071.

§ 564.2 [Amended]

2. Amend § 564.2 by removing paragraph (b)(3) and by reserving the paragraph designation for future use.

3. Revise § 564.9 to read as follows:

§ 564.9 Joint accounts.

(a) *Separate insurance coverage.* Funds held in an account in the names of two or more persons, each possessing equal withdrawal rights, shall be insured as a joint account, separately from funds invested in individual accounts of the named persons, unless, pursuant to § 564.2(b), the account records of the insured institution disclose that the funds are held pursuant to a different relationship (for example, agent, nominee, custodian, or trustee).

(b) *Determination of withdrawal rights.* The withdrawal rights of each named holder of a joint account shall be deemed equal unless the records of the insured institution state otherwise.

(c) *Failure to qualify.* An account which does not qualify as a joint account because of a lack of equal withdrawal rights shall be deemed to be held by each of the named persons as an individual account and the interests of each person in the account shall be added to any other individual accounts of such persons in the same institution and insured up to $100,000 in the aggregate.

(d) *Determination of interests.* The interests of each named holder of a qualifying joint account shall be deemed equal unless the insured institution's records state otherwise.

(e) *Determination of coverage on joint accounts.* All qualifying joint accounts held by the same combination of persons shall first be added together and insured up to $100,000 in the aggregate. The interests of each person in all qualifying joint accounts held by different combinations of persons shall then be added together and insured up to $100,000 in the aggregate.

(f) *Accounts held by intermediaries.* Funds held by an agent, nominee, guardian, custodian, conservator or loan servicer, disclosed as such in accordance with § 564.2(b), where records maintained in good faith and in the ordinary course of business demonstrate that two or more persons hold the funds in the account jointly, shall be insured as a joint account of those persons and aggregated with any other joint accounts held by those persons either directly or pursuant to this paragraph (f).

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Acting Secretary.

[FR Doc. 87-15570 Filed 7-9-87; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 144

Disaster Home Loans; Debt Collection

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Small Business Administration proposes to amend the debt collection regulations for certain Disaster Home Loans. These proposed regulations would govern a one-time program to permit the prepayment at a discount of certain outstanding disaster home loans. The regulations would also provide for a methodology for computing the discounted value of the loan to be paid.

DATE: Comments must be received on or before August 10, 1987.

ADDRESS: Comments should be addressed to the Associate Administrator for Finance and Investment, Small Business Administration, Room 800, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: James W. Hammersley, Financial Analyst, (202-653-5954).

SUPPLEMENTARY INFORMATION: The Disaster Home Loan (DHL) Program provides long term loans at favorable interest rates to repair or replace property lost or damaged as a result of such physical disasters as floods, hurricanes, tornadoes, and other catastrophes. Further discussion and the regulations governing the operation of the DHL program can be found at 13 CFR 123.1 through 123.29.

The President's Budget for FY 1988 requires the Small Business Administration to conduct asset sales as part of Federal credit reform. The Administrator has determined that a proposal to allow disaster home loan borrowers to prepay their loans at a discount may provide a favorable rate of return to the government.

Under the proposed regulation, (if adopted in final form) a written offer would be made during the summer of 1987 by mail to each DHL borrower whose loan had an original approval amount of $5,000 or less and is in current status. Current status as defined by the proposed regulation would include all loans that are paying according to schedule and those loans in which the borrower is late on one payment (loan is no more than 31 days past due). The offer would only be made to borrowers with current loans as defined in the proposed rule. Borrowers who are not current are precluded from this offer of prepayment so as not to receive any benefit from their delinquency. The SBA does not have the authority and cannot offer prepayment to those borrowers whose loans are in litigation status. Loans of $5,000 and less were selected because these loans are generally unsecured.

Borrowers would have a specified period of time to respond to the offer. The deadline for response for all eligible borrowers would be a date certain specified in the offer. The response would be made by sending a check for the amount of the offer to the SBA. If SBA receives payment within the time frame identified in the offer, the borrower's loan would be considered paid in full. SBA would take any steps necessary to release all encumbrances for any collateral on the loan and to assign all notes back to the borrowers. Borrowers claiming that they did not receive the offer would be permitted the opportunity to discuss their loan with the SBA Servicing office at (800)-[Number to be supplied if rule is implemented]. The disposition of these situations would be handled on a case by case basis.

The amount of the prepayment necessary to discharge the indebtedness in each instance would be calculated by determining the present value of the remaining payments on the loan at an interest rate that would provide a potential investor a yield to maturity required by market conditions. The SBA financial advisor would provide input into the establishment of the discount rate, however, the decision would be made by SBA. The factors considered in the discount rate decision, which may change from time to time, would include, but will not be limited to, the following: (1) The current market yield on outstanding obligations of similar maturity and quality, (2) the current interest rates charged by private financial institutions that make loans of comparable quality and maturity to the DHLs, (3) current and anticipated administrative costs for servicing the DHLs, and (4) the current net proceeds that the government would receive from investors if the loans prepaid were sold without recourse to the government.

Reason for Action

The Small Business Administration is proposing this prepayment of disaster home loans in keeping with the budgetary initiative of this Administration. It is believed that a favorable monetary return can be obtained from these loans by the proposal for prepayment at a discount.

Regulatory Flexibility Statement

These proposed regulations would not have a significant economic impact on a substantial number of small entities because DHL borrowers are not considered "small entities" under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

Executive Order 12291

These regulations are, however, classified as a major rule within the meaning of the Executive Order because the discount prepayment program could affect disaster home loans with a current outstanding balance in excess of $100,000,000.

The amendments to the regulations are beneficial to the disaster home loan borrowers. Applications for discounted prepayment are voluntary and the borrowers accepting the proposal will be the only entities affected by the proposed regulation.

There is little or no potential cost to the borrower in accepting the prepayment offer. If the funds used to make the prepayment are borrowed, there may be an application charge by the lender. The SBA feels that such charges would be negligible.

The benefits to the borrower include the elimination of a debt, and the opportunity to prepay a loan at less than the balance outstanding.

The only available alternative would be to sell these loans to private investors. The sale back to the borrower was chosen first because (1) there are fewer sale expenses involved in selling a loan to the borrower than in running an underwritten sale to private investors, and (2) buyers do not have to consider the various factors that investors do (default rate, prepayment rate, collateral value, cost of collection, cost of monthly payment processing) when deciding whether to make the investment. It is felt that offering the

loans to the borrowers first has the lowest cost to society.

Paperwork Reduction Act of 1980

SBA certifies that this regulation imposes no reporting or recordkeeping requirements subject to the Paperwork Reduction Act. The offer will be prepared by SBA. The borrower may respond to it or discard it. Response to the offer is, therefore, considered "consent" and is specifically excluded from the requirements of the Act by 5 CFR 1320.7(k)(1).

* * * * *

List of Subjects in 13 CFR Part 144

Loan programs—disaster home loans, Reporting and recordkeeping requirements.

Accordingly, pursuant to section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), Part 144, is added to read as follows:

PART 144—DISCOUNTED PREPAYMENT OF DISASTER HOME LOANS

Sec.

AUTHORITY: Section 5(b)(6) of the Small Business Act, (15 U.S.C. 634(b)(6)).

§ 144.1 General information.

Under this one-time program for Fiscal Year 1987, the SBA may provide a discount for prepayment in full of an outstanding disaster home loan to those borrowers that meet the conditions established in this subpart.

§ 144.3 Applicability and eligibility.

This discount program is applicable to all disaster home loans [see 13 CFR 123.1 through 123.29 for details] which have been fully disbursed and outstanding for a period of 12 months at the time of offer and which are in a current status. A loan in "Current Status" as defined for this regulation is one which is paying according to the current payment schedule or the borrower is late on one payment. In no case will the offer be made to a borrower whose loan is more than 31 days past due.

§ 144.5 Proposal for prepayment

(a) The SBA will calculate the appropriate discount and make a written offer to each eligible disaster home loan borrower. The offer will be mailed by the SBA to the address now used for the monthly billing of the loan.

(b) Upon issuance by SBA of the proposal for discounted prepayment, the borrower will have a specified period of time to respond to the offer. A timely acceptance will be signified by payment of the amount identified in the offer by the deadline stated in the offer. Late payment or nonresponse will be considered a decline of the offer.

(c) The issue date will be the date on which SBA mails the offer to the borrower. The deadline will be a date specified in the offer.

(d) A borrower who feels he/she should have been contacted but did not received an offer will have a fair opportunity to discuss their loan with SBA. Such presentation will be made to the SBA office servicing the loan.

§ 144.7 Acceptance of proposal.

(a) A borrower accepting the proposal to prepay his/her loan at a discount shall forward the payment coupon provided with the proposal and submit payment for the discounted amount to the Small Business Administration, Denver, Colorado 80259–0001 not later than the deadline specified in the offer.

(b) The receipt of the offer for discounted prepayment does not relieve the disaster home loan borrower from the requirement for the periodic payment under the loan until such time as the offer is accepted by the borrower and payment made to SBA. Rejection of the offer by the borrower does not affect the payment terms of the loan.

(c) Upon receipt of the acceptance and payment in full of the discounted amount, SBA will return the promissory note stamped paid-in-full and take any appropriate action necessary to release all encumbrances for any collateral on the loan and to make proper recordation releasing the note back to the borrower.

§ 144.9 Calculation of discount.

The SBA will establish a present value of the remaining payments required under a disaster home loan by calculating a price on that loan which would, if the loan were purchased and held to maturity, produce a yield or return to the purchaser equal to the market interest rate determined by the Administrator. A standard net present value calculation will be used. The discount rate will be determined by the Administrator after consultation with the financial advisor and consideration of other factors relevant to this program.

§ 144.11 Tax implication.

SBA will advice borrowers that the discounted amount may be considered taxable income and will advise the Internal Revenue Service of the amount of discount applicable to each loan which is prepared.

James Abdnor,

Administrator.

[FR Doc. 87–15047 Filed 7–9–87; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Docket No. 25319; Summary Notice No. PR–87–6]

Special Air Traffic Rules; Summary of Rulemaking Petition Received From United Air Lines, Inc.

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Notice of petition for rulemaking.

SUMMARY: pursuant to FAA's rulemaking privisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of a petition by United Air Lines, Inc., seeking an amendment to the Federal Aviation Regulations to conform the requirements for allocating international arrival and departure slots at O'Hare International Airport (O'Hare) to the requirements allocating such slots at John F. Kennedy Airport (JFK) and to reasonable international practice. The amendment as proposed would remove the provision in the current rule which requires the FAA to make international slots at O'Hare available even if slots must be withdrawn from domestic carriers currently holding the slots. The purpose of this notice is to improve the public's awareness of this aspect of FAA's regulatory activities. Neither the publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and be received on or before September 8, 1987.

ADDRESS: Send comments on the petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket [AGC–204]. Docket No. 25319, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC–230, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591, (202) 267–3491.

SUPPLEMENTARY INFORMATION: The Petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rule. Docket [AGC–204], Room 915, FAA Headquarters Building [FOB–10A], Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591: telephone (202) 267–3132.

Petitioner requests that the requirements of § 93.217 of the Federal Aviation Regulations (14 CFR 93.217) be amended to make the procedures for allocating international slots at O'Hare indentical with the procedures for allocating international slots at JFK. Current regulations affecting JFK permit the allocation of international slots "to the extent vacant slots are available" and "if required by international obligations" (§ 93.217(a)(8)), while the regulations pertaining to O'Hare require the FAA to allocate international slots upon request by an international carrier even if the slots must be withdrawn from a domestic carrier (§ 93.217 (a)(6)).

Petitioner states that such discrepancy is disruptive to the planning and investment decisions made in reliance on the continued operation of the slots as well as a hardship to the domestic carrier because of the uncertainty and operating inefficiencies which can create economic penalities when slots are withdrawn. The Petitioner contends that the amendment would eliminate the inequities and place the domestic carries at O'Hare on the same footing with the domestic carriers at JFK.

To achieve the desired result, the Petitioner requests that 14 CFR 93.217 be amended as follows:

§ 93.217. [Amended]

1. Delete § 93.217(a)(6).

2. Amend § 93.217(a)(8) to include O'Hare International Airport under the requirements currently applicable to John F. Kennedy Airport.

3. Amend § 93.217(a)(9) to delete the reference to "§ 93.217(a)(6)."

4. Amend § 93.217(e) to delete the reference to "§ 93.217(a)(6)."

Issued in Washington, DC, on July 6, 1987

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 87–15639 Filed 7–9–87; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 87–NM–63–AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require inspection for cracking of longeron skin splice fittings and tension bolts common to the fitting, in fuselage Body Section 48, and replacement if necessary. This proposal is prompted by reports of cracking of longeron skin splice fittings or tension bolts on airplanes. This condition, if not corrected, could lead to the inability to withstand required loads and resultant structural damage.

DATE: Comments must be received no later than August 29, 1987.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–63–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Yarges, Airframe Branch, ANM–120S; telephone (206) 431–1925. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attn: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–63–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168.

Discussion

There have been recent reports of cracking of three Body Station 2598 longeron skin splice fittings and three tension bolts, common to the fitting, in Body Section 48 on six Boeing Model 747 airplanes that had accumulated between 17,813 to 19,921 flights. The cracking of the fittings was caused by fatigue and stress corrosion. The tension bolts failed due to stress corrosion. Operation of an airplane with cracked fittings or tension bolts could lead to the inability to withstand required loads and resultant structural damage.

The FAA has reviewed and approved the Boeing Commercial Airplane Company Alert Service Bulletin 747–53A2280, dated April 16, 1987, which describes procedures for visual inspections of the above fittings and tension bolts, and procedures for replacement with new splice fittings made from 7075 aluminum and new tension bolts made from inconel.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require inspection of the Body Station 2598 longeron skin splice fittings and tension bolts, and replacement, if necessary, in accordance with the service bulletin previously mentioned.

It is estimated that 106 airplanes of U.S. registry would be affected by this AD, that it would take approximately 6 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $25,440.

For the reasons, the FAA has determined that this document: (1)

Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) 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.

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–53A2280, dated April 16, 1987, certificated in any category. Compliance required as indicated, unless previously accomplished.

To detect cracking of the Body Station (BS) 2598 longeron skin splice fittings and tension bolts common to the fittings, accomplish the following:

A. Prior to the accumulation of 10,000 landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform a detailed visual inspection of BS 2598 longeron skin splice fittings and tension bolts common to these fittings for cracking, in accordance with Boeing Alert Service Bulletin 747–53A2280, dated April 16, 1987, or later FAA-approved revision. Reinspect the splice fittings and tension bolts common to stringer 11 longeron at intervals not to exceed 2,000 landings; and reinspect the splice fitting and tension bolts common to stringer 23 longeron at intervals not to exceed 4,000 landings.

B. If any longeron skin splice fitting is cracked, prior to further flight replace the fitting and the tension bolt common to that fitting, in accordance with Boeing Alert Service Bulletin 747–53A2280, dated April 16, 1987, or later FAA-approved revision.

C. If only the tension bolt is cracked, prior to further flight replace the bolt, in accordance with Boeing Alert Service Bulletin 747–53A2280, dated April 16, 1987, or later FAA-approved revision. Replacement of the bolt constitutes termination action for the requirement to inspect the tension bolt.

D. Prior to the accumulation of 10,000 landings on BS 2598 longeron skin splice fittings installed in accordance with paragraph B. of this AD, perform a detailed visual inspection of the splice fittings for cracking, in accordance with Boeing Alert Service Bulletin 747–53A2280, dated April 16, 1987, or later FAA-approved revision. Reinspect the splice fittings common to stringer 11 longeron at intervals not to exceed 3,000 landings; and reinspect the splice fittings common to stringer 23 longeron at intervals not to exceed 6,000 landings. Replace cracked fittings prior to further flight in accordance with the service bulletin.

E. An alternate means of compliance or adjustment of the compliance time, which provide an acceptable level of safety and which has the concurrence of an FAA Principal Maintenance Inspector, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

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

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to the Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 1, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87–15640 Filed 7–9–87; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 87–NM–75–AD]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes an airworthiness directive (AD), applicable to certain Fokker Model F27 series airplanes, that would require modification of the rudder trim tab. This AD is prompted by several reports of rudder trim tab flutter. The proposed AD is needed to prevent further occurrences of rudder trim tab flutter, which could result in the loss of the trim tab and damage to the rudder.

DATE: Comments must be received no later than August 29, 1987.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–75–AD, 17900 Pacific Highway South, C–68966, Seattle, Washington 98168. The applicable service information may be obtained from the Fokker Aircraft USA, Inc., 1199 North Fairfax St., Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel (Attention: ANM–103), Attention: Airworthiness Rules Docket No. 87–NM–75–AD, 17900 Pacific

Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Ministerie van Verkeer en Waterstaat, Rijksluchtvaartdienst (RLD), which is the civil aviation authority of the Netherlands, has, in accordance with existing provisions of a bilateral airworthiness agreement, notified the FAA of an unsafe condition which may exist on Fokker Model F27 series airplanes. There have been seven reports of rudder trim tab flutter on this model airplane. The flutter, in some cases, resulted in the loss of the trim tab and damage to the rudder. This flutter problem is the result of the loss of structural integrity of the tab due to fatigue cracks, repairs (some inadequate), errors in mass balance, and long term structural degradation. Fokker Aircraft issued Service Bulletin F27/55-62, dated August 18, 1986, which describes a modification to reduce the span of rudder trim tab. The service bulletin was declared mandatory by the RLD. Revision 1 to the service bulletin was issued April 15, 1987, for the purpose of clarification of the accomplishment instructions and the material information.

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

Since these conditions are likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require modification of the rudder trim tab on certain Fokker Model F27 series airplanes in accordance with the service bulletin previously mentioned.

It is estimated that 38 airplanes of U.S. registry would be affected by this AD, that is would take approximately 80 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. The estimated cost per modification kit is $1,600. Based on these figures, tht total cost impact of this AD to U.S. operators is estimated to be $182,400.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regualtory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because of the minimal cost of compliance per airplane ($4,800). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

PART 39—[AMENDED]

The Proposed Amendment

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

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

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

2. By adding the following new airworthiness directive:

FOKKER B.V.: Applies to Fokker B.V. Model F27 series airplanes, serial numbers 10102 through 10684, 10686, 10687, 10689 through 10692, certificated any category. Compliance required within one year after the effective date of this AD, unless previously accomplished.

To prevent flutter of rudder trim tab, accomplish the following:

A. Modify the rudder trim tab in accordance with Part 2, Accomplishment Instructions, of Fokker Service Bulletin No. F27/55-62, dated August 18, 1986, or Revision 1, dated April 15, 1987.

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

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

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 North Fairfax St., Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on July 1, 1987.

Wayne J. Barlow,

Director, Northwest Mountain Region.

[FR Doc. 87-15641 Filed 7-9-87; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 87-ASO-11]

Proposed Alteration of Transition Area, Venice, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to increase the size of the Venice, Florida, transition area to accommodate instrument flight rules (IFR) operations at the Venice Municipal Airport. This action lowers the base of controlled airspace from 1200 feet to 700 feet above the surface in the vicinity of the airport. An instrument approach procedure predicated on the Venice nondirectional radio beacon (RBN) has been developed to serve the airport and additional controlled airspace is required for the protection of IFR aeronautical activities.

DATES: Comments must be received on or before: August 27, 1987.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 87-ASO-11, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: Water H. Wulff, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION: .

Comments Invited

Interested parties are invited to participate in this proposed rule-making by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to

Airspace Docket No. 87–ASO–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received.

All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the Venice, Florida, transition area. This action will provide additional controlled airspace for aircraft executing a new instrument approach procedure to the Venice Municipal Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6C dated January 2, 1987.

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

List of Subjects in 14 CFR Part 71

Aviation safety, transition area.

The Proposed Amendment

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

PART 71—[AMENDED]

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Venice, Florida [Revised]

Venice, FL

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Venice Municipal Airport (Lat. 27°04'30"N, Long. 82°26'00"W); within 3 miles each side of the 137° bearing from the Venice RBN (Lat. 27°03'38"N., Long. 82°25'47"W.) extending from the 6.5 mile radius area to 8.5 miles of the RBN.

Issued in East Point, Georgia, on July 2, 1987.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 87–15642 Filed 7–9–87; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

22 CFR Part 503

Freedom of Information Reform Act of 1986

AGENCY: United States Information Agency (USIA).

ACTION: Proposed rule.

SUMMARY: The U.S. Information Agency's proposed fee schedule and fee waiver regulations comply with appropriate provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–570) and OMB Administrative Guidelines published in the **Federal Register** on March 27, 1987, Volume 52, No. 59, pages 10017–10020. The Freedom of Information Reform Act permits agencies to charge for direct costs of providing FOIA services such as search, duplication, and in certain cases, review. OMB has interpreted this "direct cost" provision to mean the actual costs each agency incurs in operating its FOIA program.

The OMB guidelines implement certain provisions of the Freedom of Information Reform Act of 1986 which require the U.S. Information Agency to devise a fee schedule in accordance with USIA's proposed fee schedule is consistent with OMB's guidelines which provide a set of definitions and procedures that permit agencies to develop their own rates in conformance with government-wide standards.

The Freedom of Information Reform Act requires further that agencies promulgate "procedures and guidelines for determining when such fees should be waived or reduced" (5 U.S.C. 552(a)(4)(A)(i)). The Department of Justice published a memorandum, dated April 2, 1987, with recommendations to consider in applying the fee waiver standard set forth in section 552(a)(4)(A)(iii).

USIA invites interested parties to provide comments on this Agency's proposal.

DATE: Comments must be received by August 10, 1987.

ADDRESS: Send comments to the United States Information Agency, Office of the General Counsel, Freedom of Information Branch, Room M–10, 301 Fourth Street SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Charles Jones, Jr., Freedom of Information/Privacy Acts Coordinator, Office of the General Counsel, U.S. Information Agency, phone (202) 485–7499.

SUPPLEMENTARY INFORMATION: The proposed fee schedule requires the following changes to USIA's current schedule set forth at 22 CFR 503.6(c) (1) and (2).

Required Implementing Actions

USIA, in accordance with section 1804(b)(1) of the Freedom of Information Reform Act, will issue final regulations in conformance with OMB's schedule and guidelines published in the **Federal Register** of March 27, 1987, and the Department of Justice memorandum dated April 2, 1987.

List of Subjects in 22 CFR Part 503

Freedom of information.

For the reasons set out in the preamble, Title 22, Chapter V, Part 503, is proposed to be amended as set forth below.

PART 503—[AMENDED]

1. The authority citation for Part 503 is revised to read as follows:

Authority: 22 U.S.C. 2658; 31 U.S.C. 483a; 5 U.S.C. 301; 5 U.S.C. 552 as amended by Pub. L. 93–502, 88 Stat. 1561; E.O. 10477, as amended, 18 FR 4540, 3 CFR 1949–1953 Comp., page 958, at 22 U.S.C.A. 811a; E.O. 11652, 37 FR 5209, 3 CFR (1979), page 339; 44 U.S.C. Ch. 35; 31 U.S.C. 1 *et. seq.*; 31 U.S.C. 67 *et seq.*, Pub. L. 99–570, secs. 1801–1804, 100 Stat. 3207–48, (1986).

2. Section 503.6(c)(1)(v), (vi) and (vii) are added; § 503.6(c)(2)(i) through (iv) is revised; § 503.6(c)(2)(v) through (vii) is redesignated as § 503.6(c)(2)(vi) through (viii), and new paragraph (c)(2)(v) is added; § 503.6(c)(3) is added.

§ 503.6 Proposed Uniform Freedom of Information Act Fee Schedule and Fee Waiver Guidelines.

* * * * *

(c) *Fees.*

(1) *Schedule of Standard Fees and Fee Waiver Guideline.* * * *

(v) *Computer Searches for Records.* Reference § 503.6(v)(1)(ii).

(vi) *Review of Records.* Reference § 503.6(c)(1)(ii).

(vii) *Other Usages.* Sending records by certified/registered mail, express mail, etc—fees based on U.S. postal rates and private courier rates.

(2) *Determination of Non-Standard Fees.* (i) When no specific fee has been established for a service, (i.e., certification of records as true copies, packaging/mailing records, search involving special travel, transportation or communication costs), the Director of Public Liaison (Chairman, CPIP) is authorized to determine the direct costs of the service and include such costs in the fees chargeable under this section.

(ii) Where USIA estimates or determines that allowable fees a requester may be required to pay are likely to exceed $250.00, the Agency will require a requester to make an advance payment of the entire fee before continuing with processing the request.

(iii) Search costs are due and payable even if the record(s) requested cannot be located after all reasonable efforts or if the Agency determines that a record which is exempt from disclosure under this part is to be withheld. When USIA acts pursuant to paragraphs (c)(1) and (c)(2) of this section the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial request and 20 working days from receipt of appeal from initial denial, plus permissible extentions of these time limits) will begin only after the USIA has received fee payments described above.

(iv) Where a requester has previously failed to pay a fee on a timely basis (i.e., within 30 days of the date of the billing), the USIA will require the requester to first pay the full amount owed plus an applicable interest, and to make an advance payment of the full amount of the estimated fee before the Agency begins to process a new request or a pending request from the requester. Interest will be charged requesters who fail to pay fees charged. USIA will assess interest on the amount billed starting on the 31st day following the day on which billing is mailed. Interest rate will be at the rate prescribed in Title 31 U.S.C. 3717.

(v) Aggregating requests: based on a reasonable belief that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading assessment of fees, the USIA will aggregate any such requests and charge accordingly.

* * * * *

(3) *Fee Waiver or Reduction.* The USIA shall furnish documents without charge or at a charge reduced below the feew established by these regulations if disclosure of the information is in the public interest because it is likely to contribute to public understanding of the operation or activities of the government and is not primarily in the commercial interest of the requester. In making a determination under this subparagraph, the USIA shall consider the following:

(i) Disclosure of information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government. In making a determination, USIA will consider the following factors:

(A) Whether the subject of the requested records concerns "the operations or activities of the government;"

(B) Whether disclosure of the information is "likely to contribute" to an understanding of government operation or activities;

(C) Whether disclosure of the requested information will contribute to "public understanding;", and

(D) Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.

(ii) Disclosure of information is not primarily in the commercial interest of the requester. The following will be considered:

(A) Whether the requester has a commercial interest that could be furthered by the requested disclosure; and if so,

(B) Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest, in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(iii) Application of Fee Waiver Factors. Disclosure of the information is in the public interest because it is likely to contribute to public understanding of the operations or activities of the government. For purposes of determining whether the request meets this factor:

(A) USIA will consider whether disclosure will contribute to the understanding of the public at large as opposed to the understanding of the requester or a narrow segment of interested persons;

(B) USIA will consider the identity and qualifications of the requester to determine whether the requester is in a position to contribute to public understanding through disclosure of information; and,

(C) USIA will consider the expertise of a requester and, where no readily apparent, requesters will be required to describe specifically their qualifications, nature of the research, purpose for which they intend to use the information, and their intended dissemination to the public.

(iv) Whether the contribution to public understanding of government operations or activities will be significant. In determining whether this factor has been met:

(A) USIA will consider whether the general public's understanding of the subject matter in question is likely to be significantly enhanced by the disclosure; and,

(B) USIA will compare the likely level of public understanding of the subject matter of the request before and after disclosure.

(v) After consideration of the preceding factors in paragraph (c)(3) of this section, USIA will consider whether disclosure is primarily in the commercial interest of the requester. In determining whether a requester's interest is primarily commercial:

(A) USIA will consider the magnitude of the requester's commercial interest. if the requester's interest in the records sought is unclear and there are reasonable inferences from the requester's identity and circumstances surrounding the request in determining the existence of a commercial interest, the requester will be given an opportunity to provide information rebutting such reasonable inferences or

clarifying circumstances of the request where necessary;

(B) USIA will consider the magnitude of the identified commercial interest of the requester and whether that interest is primary. If determined to be primary, a fee waiver will be denied; and,

(C) USIA will weigh the magnitude of the public interest. Where that interest is satisfied, and the public interest can be fairly regarded as greater than the requester's commercial interest, a fee waiver or reduction will be granted.

(vi) A requester may appeal a USIA determination of fees to be charged or waived under these regulations as he or she would appeal an initial determination of documents to be disclosed under paragraph (b)(2) of § 503.6 of these regulations.

Dated: July 2, 1987.

John A. Lindburg,

Acting General Counsel.

[FR Doc. 87-15598 Filed 7-9-87; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

DEPARTMENT OF DEFENSE

38 CFR Part 21

Veterans Education; Transfer of Entitlement Under the Educational Assistance Test Program

AGENCY: Veterans Administration and Department of Defense.

ACTION: Proposed regulations.

SUMMARY: The Department of Defense Authorization Act, 1986 contains a provision which affects some people who are eligible to receive educational assistance and subsistence allowance under the Educational Assistance Test Program (EATP). This provision makes it easier for some members or veterans of the Navy or Marine Corps to transfer their educational entitlement to their dependents. This proposal implements this provision of law.

DATES: Comments must be received on or before August 10, 1987. Comments will be available for public inspection until August 21, 1987. The Veterans Administration (VA) and the Department of Defense propose making this amended regulation retroactively effective on November 8, 1985. This is the effective date of the section of Pub. L. 99-145 which supports the amended regulation.

ADDRESSES: Send written comments to: Administrator of Veterans Affairs (271A), Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until August 21, 1987.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Department of Veterans Benefits, (202) 233-2092.

SUPPLEMENTARY INFORMATION: Section 21.5743 is amended to provide liberalized provisions concerning transfer of entitlement to educational assistance and subsistence allowance made by some members and veterans of the Navy or Marine Corps.

The VA and the Department of Defense find that good cause exists for making this regulation, like the section of the law it implements, retroactively effective on November 8, 1985. To achieve the maximum benefit of this legislation for the affected individuals, it is necessary to implement this provision of law as soon as possible. A delayed effective date would be contrary to statutory design; would complicate administration of this provision of law; and might result in denial of a benefit to a dependent of a member or veteran of the Navy or Marine Corps who is entitled by law to it.

The VA and the Department of Defense have determined that this amended regulation does not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulation will not have a $100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. It will have no 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.

The Administrator of Veterans Affairs and the Secretary of Defense have certified that this amended regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 through 612. Pursuant to 5 U.S.C. 605(b), the amended regulation, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

This certification can be made because the amended regulation affects only individuals. It will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

There is no Catalog of Federal Domestic Assistance number for the program affected by this amended regulation.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs-education, Loan programs-educatin, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 3, 1987.

Thomas K. Turnage,

Administrator.

Approved: March 9, 1987.

A. Lukeman,

Deputy Assistant Secretary of Defense.

PART 21—[AMENDED]

38 CFR Part 21, *Vocational Rehabilitation and Education,* § 21.5743(a) is proposed to be revised to read as follows:

§ 21.5743 Transfer of entitlement.

(a) *Entitlement may be transferred.* (1) A veteran or servicemember may transfer all or part of his or her entitlement to educational assistance and subsistence allowance to a spouse or dependent child. He or she may not transfer entitlement to more than one person at a time.

(2) The Secretary of the Navy may authorize a member or veteran of the Navy or Marine Corps to make a transfer described in paragraph (a)(1) of this section provided:

(i) The servicemember or veteran has entitlement to educational assistance as provided in § 21.5742;

(ii) The enlistment that established the servicemember's or veteran's entitlement was his or her second reenlistment as a member of the Armed Forces;

(iii) The servicemember of veteran has completed at least four years of active service of that second reenlistment; and

(iv) The servicemember's or veteran's second reenlistment was for a period of at least six years.

(3) No transfer, other than one described in paragraph (a)(2) of this section, may be made until the veteran or servicemember—

(i) Has completed the enlistment upon which his or her entitlement is based or has been discharged for reasons described in § 21.5740(b)(2), and

(ii) Has thereafter reenlisted.

(4) The servicemember of veteran may revoke at any time a transfer described in either paragraph (a)(2) or (3) of this section.

(5) If a veteran attempts to transfer entitlement after 10 years have elapsed from the date he or she has retired, has been discharged or has otherwise been separated from active duty, the transfer shall be null and void.

(10 U.S.C. 2147(a), 2148; Pub. L. 96-342, Pub. L. 99-145)

* * * * *

[FR Doc. 87-15646 Filed 7-9-87; 8:45 am]

BILLING CODE 8320-01-M

FEDERAL MARITIME COMMISSION

46 CFR Part 586

[Docket No. 87-6]

Actions To Adjust or Meet Conditions Unfavorable to Shipping in the United States-Peru Trade

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule—further extension of time to comment.

SUMMARY: Pursuant to a request from three Peruvian-flag carriers, the Federal Maritime Commission is extending the period for filing comments in this proceeding.

DATE: Comments due on or before July 31, 1987 or a date fourteen (14) days after the receipt by the Commission of Memorandum of Understanding regulations promulgated by the Government of Peru, whichever date is the earlier. The earlier comment date, if necessary, will be announced in the **Federal Register**.

ADDRESS: Send comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573 (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573 (202) 523-5740.

SUPPLEMENTARY INFORMATION: The Commission instituted this proceeding by Notice published in the **Federal Register** on April 13, 1987 (52 FR 11832) to address apparent conditions unfavorable to shipping in the United States/Peru trade ("the Trade") pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876. Comments on the proposed rule were originally due May 13, 1987, however, by Notice of May 11, 1987 ("May Notice") (52 FR 18408) this period was extended until July 3 1987.

In its May Notice, the Commission took note of the Memorandum of Understanding ("MOU") reached between the Government of Peru and the Government of the United States on May 1, 1987. The Commission recognized that the MOU appeared to be a significant development which may be expected to affect access of non-Peruvian-flag carriers to the Trade. Accordingly, the Commission extended the comment period in order to "obtain the views of interested persons on this recent development."

Three Peruvian-flag carriers, Compania Peruana de Vapores, Naviera Neptuno, S.A., and Empresa Naviera Santa, S.A. ("Petitioners"), have now jointly filed a Petition to extend the time for comments "until July 31, 1987, or a date fourteen (14) days after the receipt by the Commission of the regulations promulgated by the Government of Peru to implement the MOU, whichever is the earlier." Petitioners contend that while the proposed regulations from the Government of Peru are under active consideration "it is not anticipated that such regulations will be promulgated sufficiently in advance of July 3, 1987" to allow interested persons to comment.

The U.S. Department of Transportation has advised that discussions with the Government of Peru are ongoing and "if the Commission desires to keep the docket open in order to place the Peruvian regulations in the docket for comment, we would not object to a brief extension of the comment period."

Therefore, the time within which interested parties may file comments in the proceeding is extended to July 31, 1987, or a date fourteen (14) days after the receipt by the Commission of the MOU regulations promulgated by the Government of Peru, whichever date is the earlier.

By the Commission.

Tony P. Kominoth,

Assistant Secretary.

[FR Doc. 87-15710 Filed 7-9-87; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 178

[Docket No. HM-176A]

DOT 3AL Aluminum Cylinders; Safety Problems

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory and advance notice of proposed rulemaking.

SUMMARY: Cylinders made of aluminum alloy 6351 manufactured by Luxfer USA Limited in accordance with DOT Specification 3AL (49 CFR 178.46) have developed cracks during service, which occasionally result in leakage and the loss of cylinder contents. The purpose of this notice is to inform all persons that possess DOT 3AL cylinders of the problems, to identify those cylinders at risk, to suggest steps that should be taken to minimize risks, and to request comments concerning the extent of the problem and how to resolve it.

DATE: Comments must be received by August 10, 1987.

ADDRESS: Address comments to: Dockets Unit (DHM-30), Office of Hazardous Materials Transportation, RSPA, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and be submitted, if possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in Room 8426, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Public Dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Charles H. Hochman, Technical Division, Office of Hazardous Materials Transportation (OHMT), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-4545. Office Hours are 8:30 a.m. to 5:00 p.m.

SUPPLEMENTARY INFORMATION: RSPA is aware of incidents of cracks in the neck and threaded areas of DOT 3AL cylinders manufactured by Luxfer USA Limited (Luxfer) from aluminum alloy 6351. The cracking was first brought to RSPA's attention by persons retesting cylinders under the periodic retest procedures of 49 CFR 173.34.

Five cylinders suspected of having cracks were sent by RSPA to the National Bureau of Standards (NBS) for analysis. They had marked service pressures ranging from 1800 through 2200 pounds per square inch gauge (psig) and were made of both high lead content (100 parts per million or more) and low lead content (less than 100 ppm) varieties of aluminum alloy 6351. The NBS inspection and examination confirmed that each of the five cylinders

exhibited crack-like indications which were at least 0.050 inch deep.

Following the NBS analysis, RSPA requested that Luxfer provide available information concerning leaks or cracks in DOT 3AL cylinders. Luxfer provided information on the number of cylinders returned because of cracks or leakage. This information revealed the following:

(1) Of 3,278 cylinders made of high lead aluminum alloy 6351 and with tapered threads, at least 33 (1.0%) are known to have leaked or had neck or shoulder flaws (i.e., cracks).

(2) Of 60,000 cylinders made of low lead aluminum alloy with tapered threads, 23 (0.038%) are known to have leaded or had neck or shoulder flaws.

(3) Of 312,000 cylinders made of high lead aluminum alloy 6351 with straight threads, 268 (0.086%) are known to have leaked or had neck or shoulder flaws.

(4) Of approximately 5.02 million cylinders made of low lead aluminum alloy 6351 with straight threads, 106 (0.002%) are known to have leaked or had neck or shoulder flaws.

RSPA believes that the above statistics underrepresent the extent of the cracking and leakage problems since NBS noted in its report that identification of cracking is very difficult even when an individual is specifically looking for cracks.

Work performed by Luxfer on neck cracking of DOT exemption hoop wrapped composite cylinders made of aluminum alloy 6351 (which have neck and shoulder areas identical to DOT 3AL cylinders but operated at a higher operating stress level) indicated that cracking is a time dependent phenomenon that is accelerated when the lead content of the alloy exceeds 100 ppm. Further, it was found that the probability of cracking increases with an increase in stress level. Analysis of the stress levels present in the necks of DOT 3AL cylinders indicated that higher stress levels are present in cylinders with tapered threads. This analysis, confirmed by the in-service data, shows that the probability of neck cracking is much higher in DOT 3AL cylinders with tapered threads. Based on Luxfer's analysis and testing, it is anticipated that the frequency of cracks and leakage will increase with the length of time these cylinders are in service. Analysis and testing performed by Luxfer also shows that, for typical DOT 3AL cylinders made of aluminum alloy 6351 (service pressure less than or equal to 3000 psig), the failure mode is by leakage of the cylinder contents and not by bursting. It should be noted that at the present time, only DOT 3AL cylinders made by Luxfer of aluminum alloy 6351 have been reported to RSPA as having leaked or had neck or shoulder flaws (cracks). Other manufacturers of DOT 3AL cylinders made of aluminum alloy 6351 using different manufacturing processes have reported no leaks or neck or shoulder flaws in a total population in excess of 1 million cylinders. Further, all of the information available to RSPA indicates that cylinders made of aluminum alloy 6061, the other alloy authorized by specification DOT 3AL, are not susceptible to the cracking problems that have arisen in cylinders made aluminum alloy 6351.

DOT 3AL cylinders are authorized to be manufactured from two aluminum alloys, 6061 and 6351. Based on information presently available to DOT, the overwhelming majority of DOT 3AL cylinders produced have been made of aluminum alloy 6351. However, the number identifying the alloy used is not required to be stamped on the cylinder. The only way to determine which alloy was used to manufacture a DOT 3AL cylinder is through the cylinder manufacture using the serial number applied by the manufacturer when the cylinder was made.

DOT 3AL cylinders are authorized and used for the transportation of a number of extremely hazardous materials. These include poisonous and flammable gases, liquids which are toxic by inhalation (see 49 CFR 173.3a) and oxygen. It should be noted that tapered threads are required on cylinders used for Poison A materials, but not for other toxic gases that are not identified as Poison A materials such as diborane or hydrogen selenide.

RSPA is initiating rulemaking to correct any regulatory deficiencies concerning the manufacture, maintenance and use of cylinders made under specification DOT 3AL. In the interim, this notice serves to inform all persons in possession of DOT 3AL cylinders of the cracking problem, and recommends that those persons take the following steps to minimize risks:

DOT 3AL Cylinders Made of High Lead Aluminum Alloy 6351 With Tapered Threads

DOT 3AL cylinders made of high lead (greater than 100 ppm) aluminum alloy 6351 manufactured by Luxfer USA Limited in 1982 and 1983 bearing the serial numbers which appear in Appendix A to this document should not be refilled or used in hazardous materials service. Both RSPA and Luxfer have been in contact with the original purchasers of these cylinders and requested that the cylinders be removed from service and returned to Luxfer as soon as practicable. Persons in possession of a cylinder listed in Appendix A should contact the cylinder supplier for proper disposition of the cylinder.

All DOT 3AL Cylinders Made of Aluminum Alloy 6351

DOT 3AL cylinders which presently contain Poison A materials, flammable gases, pyrophoric liquids or gases, liquids toxic by inhalation or highly toxic gases other than Poison A should be stored in well ventilated areas. Additionally, DOT 3AL cylinders containing oxygen, if stored or used in confined spaces, should be checked for leakage to prevent the possibility of an oxygen enriched environment.

Eash person possessing a leaking DOT 3AL cylinder which contains a Poison A material, a flammable gas, a pyrophoric liquid or gas, liquids toxic by inhalation or a toxic gas other than Poison A, should contact the material supplier (the name and address of the supplier is found on the shoulder decal of the cylinder) or the cylinder manufacturer. Leaking cylinders may not be offered for transportation.

Advance Notice of Proposed Rulemaking

RSPA is requesting additional information from manufacturers and users of DOT 3AL cylinders. RSPA requests that anyone having information on cracked or leaking DOT 3AL cylinders provide this information to RSPA in written form. Additionally, comments are solicited on ways to address the cracking problem in DOT 3AL cylinders and controls that may be necessary for the continued use of existing cylinders.

Issued in Washington, DC, on July 6, 1987 under authority delegated in 49 CFR Part 106, Appendix A.

Alan I. Roberts,

Director, Office of Hazardous Materials Transportation.

PART 178—[AMENDED]

APPENDIX A—DOT 3AL CYLINDERS MADE OF HIGH LEAD ALUMINUM ALLOY 6351 WITH TAPERED THREADS

Serial No.	Cast code
ALQ 11-64	897-898
ALQ 92	897
SG 201-301	129-132
SG 303-368	131-133
SG 377	934
SG 381-382	934
SG 392	934
SG 395-396	933-934
SG 416	934
SG 421	934
SG 425-431	932-934
SG 433-449	931-933
SG 451-453	932-933
SG 455-459	932-933

APPENDIX A—DOT 3AL CYLINDERS MADE OF HIGH LEAD ALUMINUM ALLOY 6351 WITH TAPERED THREADS—Continued

Serial No.	Cast code
SG 461–474	932–934
SG 476	934
SG 480–482	934
SG 484	934
SG 486–487	934
SG 489	933
SG 503–510	933–934
SG 520–521	934
SG 525–528	934
SG 531–532	934
SG 534–535	934
SG 538	934
SG 544	933
SG 548–582	931–932
SG 584	931
SG 586–589	932
SG 591–594	931–932
SG 596–620	129–132/931–932
SG 622–635	129–133
SG 637–661	130–133
SG 665	931
SG 667	934
SG 689	934
SG 703	934
SG 706–725	131–132
AL 554	932
AL 577–589	932–933
AL 591–593	933
AL 595–617	932–933
AL 619	934
AL 621–623	934
AL 628–631	934
AL 633–635	934
AL 675	934
AL 677–678	934/129
AL 681	132
AL 683	129
AL 685–686	129/132
AL 688–692	120/132
AL 698	934
AL 701	130
AL 704	934
AL 706–735	129–130
AL 738	129
AL 740–741	130
AL 743	130
AL 745	129
AL 748	130
AL 753	130
AL 756	130
AL 766	129
AL 768–722	129
AL 774–776	129
AL 88001–88013	897–898
AL 88015–88041	897–898
AL 88043–88048	897–898
AL 88050	897
AL 88091–88093	898–899/64
LL 1142–1149	850/897
LL 1151–1177	897
LL 1270	899
LL 1287	34
LL 1290	33
LL 1294–1295	952/32
LL 1303	953
LL 1312	897
LL 1314–1315	897
LL 17990–18010	897–898
LL 18012–18015	898
LL 18018–18031	897–898
LL 18106	898
LL 18158–18160	897
LL 18172–18251	897–898/850
LL 18253–18276	897–898
LL 18280–18290	897–898/850
LL 18292–18315	897–898/850
LL 18318–18321	897–898/850
LL 18323–18328	897–898/850
LL 18330–18334	897–898
LL 18336–18350	897–898/850
LL 18352–18359	897–898/850
LL 18361–18368	897–898
LL 18453–18459	897–898/850
LL 18463–18478	897–898/850
LL 18481–18496	897–898/850
LL 18498–18500	897–898
LL 18502–18507	897–898
LL 18510–18512	898

APPENDIX A—DOT 3AL CYLINDERS MADE OF HIGH LEAD ALUMINUM ALLOY 6351 WITH TAPERED THREADS—Continued

Serial No.	Cast code
LL 18516–18587	897–898
LL 18589–18636	897–898/850
LL 18638–18639	897–898
LL 18641–18653	897–898
LL 18655–18657	897–898
LL 18757	898
LL 18760–18763	898–899
LL 18765	899
LL 18772–18773	899
LL 18775	898
LL 18787–18788	899/953
LL 18792–18793	898
LL 18811	953
LL 18818	899
LL 31845	132
IL 2038	931
IL 2041–2042	931–932
IL 2044	931
IL 2051	931
IL 2064	932
IL 2070–2071	931–932
IL 2098	932
IL 2168	932
IL 2170–2173	931
IL 2177	931
IL 2183	931
IL 2188	931
IL 2193	931
IL 2198–2199	931–932
IL 2287	931
IL 2291–2292	931
IL 2294–2295	931
IL 2297	931
IL 2300	931
IL 2307	931
IL 2614	934
IL 2629	934
IL 2633–2634	934
IL 2643	934
IL 2645–2646	934
IL 2650–2652	934
IL 2654	934
IL 2657–2659	934
IL 2682	934
IL 2666	934
BAL 3007	64
BAL 3023	953
BAL 3202	897
BAL 3280	953
AAL 10256–10295	931–932
AAL 10306–10313	931–932
AAL 10321–10322	931
AAL 10325	931
AAL 10340–10367	931
AAL 10369	932
AAL 10374	932
AAL 10376–10455	931–933
AAL 10463	932
AAL 10475–10476	931
AAL 10528–10567	931–933
AAL 10569–10570	932–933
AAL 10572	933
AAL 10575–10576	933
AAL 10579–10584	933
AAL 10587	933
AAL 10589–10637	932–933
AAL 10639–10691	931–933
AAL 10693–10707	932–933
AAL 10709–10807	931–933
AAL 10809–10814	933
AAL 10816–10905	931–933
AAL 10909	934
AAL 10911–10913	934
AAL 10920	934
AAL 10927–10928	934
AAL 10946	932
AAL 10966	934
AAL 10975	934
AAL 10982	934
AAL 10991	934
AAL 10993	934
AAL 11001	934
AAL 11004	934
AAL 11009	934
AAL 11019	934
AAL 11025	934
AAL 11032	934
AAL 11043	934
AAL 11045–11046	934

APPENDIX A—DOT 3AL CYLINDERS MADE OF HIGH LEAD ALUMINUM ALLOY 6351 WITH TAPERED THREADS—Continued

Serial No.	Cast code
AAL 11048–11050	934
AAL 11053–11056	934
AAL 11060–11061	934
AAL 11070	934
AAL 11072–11073	934
AAL 11076–11080	934
AAL 11082–11097	934
AAL 11100	934
AAL 11102–11113	934
AAL 11119	934
AAL 11121	934
AAL 11128–11131	934
AAL 11133	934
AAL 11135	934
AAL 11141	934
AAL 11143–11146	934
AAL 11170	934
AAL 11184	934
AAL 11187–11188	934
AAL 11190–11191	934
AAL 11193	934
AAL 11197	934
AAL 11199–11200	934
AAL 11204	934
AAL 11208–11209	934
AAL 11214	934
AAL 11217–11219	934
AAL 11228–11229	934
AAL 11255	934
AAL 11278–11280	934
AAL 11282	934
AAL 11286–11289	934
AAL 11291–11297	934
AAL 11299	934
AAL 11305	934
AAL 11308	934
AAL 11310–11314	931–934
AAL 11316–11329	932–934
AAL 11336–11337	934
AAL 11340	934
AAL 11342–11348	934
AAL 11351	934
AAL 11364–11411	129–132
AAL 11413–11420	129–130
AAL 11422–11431	129–130/934
AAL 11433	130
AAL 11435–11470	130/933
AAL 11472–11478	129–130
AAL 11480–11481	130
AAL 11483–11484	130
AAL 11486	932
AAL 11488	130
AAL 11490	130
AAL 11492	130
AAL 11494–11498	129–130
AAL 11502–11504	132/932
AAL 11506	931
AAL 11512–11515	130/931/937
AAL 11517–11541	129/133/932–933
AAL 11543–11545	129
AAL 11549–11553	129
AAL 11558–11583	129–130/132–133/934
AAL 11586–11590	934
AAL 11604–11627	129/131–133/932–933
AAL 11629–11771	129/131–133/169–172
AAL 11774	129
AAL 11780	130
AAL 11787	130
AAL 11790	129
AAL 11792	130
AAL 11795	129
AAL 11802–11881	168–172
AAL 12068–12092	168–172
AAL 12097–12099	170–171
AAL 12106–12119	168–171
SX 16567–16573	931–932
SX 16579	931
SX 16581	931
SX 16584–16587	927/931
SX 16597	931
SX 16607	931
SX 16612	931
SX 16615	932
SX 16617–16618	932
SX 16620	932

APPENDIX A—DOT 3AL CYLINDERS MADE OF HIGH LEAD ALUMINUM ALLOY 6351 WITH TAPERED THREADS—Continued

Serial No.	Cast code
SX 16623	932
SX 16627-16757	129-133/932-932
SX 16759-16841	129-133/931-932
SX 16843-16966	129-130/132/169-172/934
SX 17003	133
SX 17829	898
SX 17831	898
SX 17833-17839	897-898
SX 17841-17845	897-898
CC 30704-30705	931
CC 30708-30709	931
CC 30712-30714	931
CC 30716-30729	931-932
CC 30774-30748	931-932
CC 30750	931
CC 30752-30754	931
CC 30756-30758	931-932
CC 30969	934
CC 31003-31007	934
CC 31032-31033	933-934
CC 31040	934
CC 31048	934
CC 31051	934
CC 31054	934
CC 30158	934
CC 31062	934
CC 31066-31067	934
CC 31070-31072	934
CC 31074-31076	934
CC 31082	934
CC 31084-31090	934
CC 31092	934
CC 31103	934
CC 31107	934
CC 31124-31126	934
CC 31128-31130	934
CC 31132	934
CC 31135	934
CC 31137-31138	934
CC 31142-31144	934
CC 31146	934
CC 31180	934
CC 31182	934
CC 31186	934
CC 31712	934
CC 31715-31717	934
CC 31719	934
CC 31722-31725	933-934
CC 31727-31729	934
CC 31732-31735	934
CC 31846-31857	131-132/932/934
CC 31860-31861	933-934
CC 31863	934
CC 31866	934
CC 31921-31940	129-130/132
CC 31942-32020	129-130/132
CC 32022-32051	130-132/934
CC 32070	129
CC 32899	131
CC 32939	131
CC 36643-36667	169-171
CC 36673-36772	169-172
CC 36774-36780	169-171
CC 36782-36835	169-172
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CC 36842-36847	170-171
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MM 217833-217857	1/4/999
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[FR Doc. 87-15684 Filed 7-9-87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 21

Availability of a Draft Environmental Assessment on Falconry and Raptor Propagation Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This Notice advises the public that a Draft Environmental Assessment on Falconry and Raptor Propagation Regulations is available for public review. Comments and suggestions are requested.

FOR FURTHER INFORMATION: Dr. 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).

ADDRESSES: Copies of the Draft Assessment can be obtained by writing to Director (FWS/MBMO), Room 536 Matomic Bldg., U.S. Fish and Wildlife Service, Washington, DC 20240, or by visiting the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 536 Matomic Building, 1717 H Street NW., Washington, DC 20240. Written comments can be sent to the same address.

DATE: Written comments are requested by September 30, 1987.

SUPPLEMENTARY INFORMATION: The Fish and Wildlife Service (Service) had announced its intention to evaluate the subject on May 22, 1986 (51 FR 18812) in accordance with National Environmental Policy Act procedures. A public meeting was held June 24, 1986, in Washington, DC to obtain comments and suggestions for the scope and content of the evaluation.

The Draft Assessment reviews regulations governing falconry and raptor propagation, discusses the current status of raptor populations and proposes changes to the regulations. Three general areas of contention are addressed: the regulations per se, the provision allowing the sale of captive-produced raptors, and resuming take of arctic peregrine falcons for falconry. The Service's proposed action is to simplify the falconry regulations, to retain the sale provision and to retain the ban on taking arctic peregrine falcons. Seven alternatives to this proposed action are considered.

Dated: July 2, 1987.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 87-15612 Filed 7-9-87; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposal To Determine Amsonia Kearneyana To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to determine that a plant, *Amsonia kearneyana* (Kearney's blue-start), is an endangered species. This plant is known from a single canyon on the western slopes of the Baboquivari Mountains on the Tohono O'odham (formerly Papago) Indian Reservation in Arizona. The entire population consists of eight plants and is currently being threatened by habitat degradation from cattle grazing and possibly by insect predation on the seeds. A final determination that *Amsonia kearneyana* is endangered will implement the protection provided by the Endangered Species Act of 1973 (Act), as amended. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by September 8, 1987. Public hearing requests must be received by August 24, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Service's Regional Office of Endangered Species, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Sue Rutman, Endangered Species Botanist, Albuquerque, New Mexico (See **"ADDRESSES"** above) (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

Amsonia kearneyana is a herbaceous perennial that is endemic to a single west-draining canyon in the Baboquivari Mountains, southern Pima County, Arizona. *Amsonia kearneyana* grows in the riparian vegetation zone lining a dry,

rocky wash. Plants are rooted in alluvial deposits of small boulders and cobbles along the wash. The species grows in full sun or under the partial shade of *Celtis reticulate* (net-leaf hackberry), *Juglans major* (Arizona walnut), *Quercus oblongifolia* (Mexican blue oak), or *Acacia greggii* (catclaw acacia). The vegetation surrounding the riparian zone is typical Sonoran Desert scrub (Turner and Brown 1982). The single population lies entirely within the Tohono O'odham Indian Reservation.

Amsonia kearneyana has up to 50 erect or ascending stems, giving mature plants a hemispherical form. The stems reach a height of 4 to 8 decimeters (16 to 32 inches) and arise from a thickened, somewhat woody root. Lance-shaped leaves with soft hairs are arranged alternately on the stem. White flowers appear in April or May and are borne in clusters on the ends of branches. Fruits are 3 to 10 centimeters (1 to 4 inches) long, and contain corky seeds that are about 8 to 11 millimeters (0.5 inch) long.

Currently the population size is small and declining. Twenty-five plants were found by Phillips and Brian (1982) during their status survey for the plant. Four years later in 1986, Service botanists, Bureau of Indian Affairs (BIA) personnel, and Steve McLaughlin, a local expert on the species, could locate only eight plants.

Two observations suggest that the reproductive success of *Amsonia kearneyana* may be insufficient to maintain the species. First, only one of the 25 plants found in 1982 was a seedling. A greater proportion of seedlings would be expected in a successfully reproducing population. Second, mature reproducing individuals had only a few developing fruits in 1986 and these fruits contained a small number of developing seeds. Possible reasons for the low number of fruits, seeds, and seedlings include: extreme temperature or soil moisture conditions, lack of pollinators or poor pollinator efficiency, lack of seedling establishment sites due to overgrazing, trampling of seedlings by cattle.

The first collections of *Amsonia kearneyana* were made by Mr. F. Thackery from its only known locality on May 24, 1926, and again on April 9, 1928. Mr. R.E. Woodson, Jr. described the species using Thackery's material and a 1927 collection by Peebles, Harrison, and Kearney (Woodson 1928). The species was named in honor of Mr. T.H. Kearney, then of the U.S. Bureau of Plant Industry, who supplied much information about the genus in Arizona to Woodson and other botanists. Although Woodson (1928) originally regarded *Amsonia kearneyana* as a sterile hybrid between two species of the subgenera *Articularlia* and *Sphinctosiphon*, he believed *Amsonia kearneyana* ranked as a distinct species of recent hybrid origin. Subsequently, Woodson (1938) reduced the taxon to synonymy under *Amsonia pameri* in 1938. He justified the reduction by citing its sterile seeks, its floral similarities with *Amsonia palmeri*, and its locality near the range of *Amsonia palmeri*. In a recent revision of the genus, McLaughlin (1982) recognized *Amsonia kearneyana* as a valid taxon. McLaughlin based his conclusion on his observations that 66 percent of seeds were viable and that the taxon has distinct morphological characteristics.

Federal action involving this species began with Section 12 of the Endangered Species Act of 1973, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of this report as a petition within the context of section 4(c)(2), now section 4(b)(3)(A), of the Act and of its intention thereby to review the status of those plants. *Amsonia kearneyana* was included as "endangered" in the July 1, 1975, petition.

On Decmeber 15, 1980 (45 FR 82485), and September 27, 1985 (50 FR 39526), the Service published updated notices reviewing the native plants being considered for classification as threatened or endangered. *Amsonia kearneyana* was included in these notices as a category 1 species. Category 1 comprises taxa for which the Service has sufficient biological data to support proposing them as endangered or threatened.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within one year of their receipt. Section 2(b)(1) of the Act's Amendments of 1982 further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. Because the 1975 Smithsonian report was accepted as a petition, all the taxa contained in the notice, including *Amsonia kearneyana*, were treated as being newly petitioned on October 13, 1982. On October 13, 1983, October 12, 1984, October 11, 1985, and October 10, 1986, the Service made the one-year finding that the petition to list *Amsonia kearneyana* was warranted, but precluded by other listing actions of higher priority. Biological data, supplied by Phillips and Brian (1982), fully support a listing of *Amsonia kearneyana* as endangered. The present proposal is based primarily on Phillips and Brian's biological data, and constitutes the next one-year finding requirement of section 4(b)(3)(B) of the Act for this species.

Summary of Factors Affecting the Species

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 provsions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Amsonia kearneyana* Woodson (Kearney's blue-star) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The historic and present known ranges of *Amsonia kearneyana* are the same; however, the number of plants in the population has declined significantly from 25 in 1982 to 8 in 1986. The habitat of *Amsonia kearneyana* has been severely modified by cattle grazing. Although the plant does not appear to be eaten by cattle, several indirect effects of grazing may have contributed to a decrease in plant numbers. Severe overgrazing causes a decline in plant species diversity, which may be accompanied by a reduction in pollinator numbers and species. Given the small population size of *Amsonia kearneyana*, pollinator availability and maximum pollen transfer may be critical for the maintenance of genetic potential.

Loss of plant cover and the disturbance of topsoil are other effects of cattle grazing. Together, these factors increase the potential for erosion and flooding. *Amsonia kearneyana* is very vulnerable to flooding because of its location along a single drainage that periodically floods. A flash flood may have occurred in this drainage in 1983, a year when widespread flooding occurred in southern Arizona. Such a flood could explain the decline in plant numbers from 25 in 1982 to 8 in 1986.

Cattle grazing may negatively affect the number of successfully established seedlings. Grazing causes topsoil disturbance, which can result in a reduction of the number of seedling establishment sites. Seedlings may be killed by trampling.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

No detrimental uses of this plant are known. However, one purposeful act of vandalism could cause the extinction of this species.

C. Disease or Predation

McLaughlin (1982) suggested that stinkbugs (*Chlorochroa ligata*) could be responsible for the destruction of up to 100 percent of this species' annual seed production. Stinkbugs have been observed damaging seeds of *Amsonia grandiflora*. Although such seed predation has not been documented for *Amsonia kearneyana*, stinkbugs also occur within the range of *Amsonia kearneyana*, and it therefore seems likely that it seeds are also damaged. McLaughlin (1982) speculated that destruction by stinkbugs accounted for Woodson's (1928) report of zero percent seed viability for *Amsonia kearneyana*.

D. The Inadequacy of Existing Regulatory Mechanisms

Currently there is no Federal law protecting *Amsonia kearneyana*. However, *Amsonia kearneyana* is included in section 3–901B of the Arizona Native Plant Law. This law prohibits the collection of this species unless a permit for educational or scientific purposes is granted by the Arizona Commission of Agriculture and Horticulture. The constitution of the Tohono O'odham Tribe grants access to the Reservation and permission to collect plants to tribal members only. However, the Tribal Council may grant access and collection permits to non-members. The Endangered Species Act would provide additional portection for this plant through section 7 (interagency cooperation) requirements and through section 9, which prohibits removal and reduction to possession of plants occurring on Federal lands.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The low numbers and limited distribution of *Amsonia kearneyana* increase the species' vulnerability to natural or man-caused stresses. Further reduction in the number of plants could reduce the reproductive capabilities and genetic potential of the species.

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 propose this rule. Based on this evaluation, the preferred action is to list *Amsonia kearneyana* as endangered without critical habitat. Threatened status would not reflect the extreme vulnerability of this species to extinction, because *Amsonia kearneyana* is in danger of extinction throughout its range owing to degradation of its habitat and poor reproduction. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Amsonia kearneyana* because its limited distribution makes it vulnerable to the threat of vandalism. Publication of critical habitat descriptions and maps would call attention to this species, making it even more vulnerable to vandalism. Therefore, it would not be prudent to determine critical habitat for *Amsonia kearneyana* at this time. The location of the single pupulation of this plant has been brought to the attention of the BIA and other involved parties through regular communication. No net benefit would accrue from designating critical habitat for this species.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Amsonia kearneyana occurs on tribal land on the Tohono O'odham Indian Reservation. The BIA is responsible for issuing livestock grazing permits on tribal lands (25 CFR Part 166) and is currently conducting soil and range condition surveys with the Soil Conservation Service to develop the basis for a permitting system (Heuslein, BIA Phoenix, Pers. comm. 1986). If *Amsonia kearneyana* is listed and BIA funding or authorization is involved, the BIA must enter into consultation with the Service prior to its issuance of a permit or funding. No other Federal activities are currently known or expected that would affect this species.

Sections 9 of the Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. With regard to *Amsonia kearneyana*, it is anticipated that few, if any, trade permits would ever be sought or issued, because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1903).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions regarding any aspect of this proposal are hereby solicited from the public, other concerned governmental agencies, the scientific community, industry, or other interested parties. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Amsonia kearneyana;*

(2) The location of any additional populations of *Amsonia kearneyana* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of *Amsonia kearneyana;* and

(4) Current or planned activities in the subject area and their possible impacts on *Amsonia kearneyana.*

Final promulgation of the regulation on *Amsonia kearneyana* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such reqeusts must be made in writing and addressed to the Regional Director (see **"ADDRESSES"** section).

National Environmental Policy Act

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

References Cited

McLaughlin, S.P. 1982. A revision of the southwestern species of *Amsonia* (Apocynaceae). Annals of the Missouri Botanical Garden 69(2):336–350.

Phillips, B.G. and N. Brian. 1982. Status report on *Amsonia kearneyana.* U.S. Fish and Wildlife Service, Office of Endangered Species, Albuquerque, NM. 12 pp.

Turner, R.M. and D.E. Brown. 1982. Sonoran desert scrub. *In* D.E. Brown (ed.). Biotic Communities of the American Southwest-United States and Mexico. Desert Plants 4:181–221.

Woodson, R.E., Jr. 1928. Studies in the Apocynaceae III. A monograph of the genus *Amsonia.* Annals of the Missouri Botanical Garden 15:379–434.

Woodson, R.E., Jr. 1938. *Amsonia.* North American Flora. 29:126–131.

Author

The primary author of this proposed rule is Sue Rutman, Endangered Species Botanist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972). Status information was provided by Dr. Barbara Phillips and Nancy Brian, Museum of Northern Arizona, Rt. 4, Box 720, Flagstaff, Arizona.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Apocynaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
*	*	*	*	*	*	*
Apocynaceae—Dogbane family:						
Amsonia kearneyana	Kearney's blue-star	U.S.A. (AZ)	E	—	NA	NA
*	*	*	*	*	*	*

Dated: June 19, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–15689 Filed 7–9–87; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Boerhavia Mathisiana (Mathis Spiderling)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine that a plant, *Boerhavia mathisiana* (Mathis spiderling), is an endangered species under the Endangered Species Act of 1973 (Act), as amended. This plant is restricted to privately owned caliche outcrops in Live Oak and San Patricio Counties, Texas. Due to its low numbers and scattered populations, this species is vulnerable to mining, road building, and residential and commercial development. A final determination that *Boerhavia mathisiana* is endangered will implement the protection provided by the Act and will help foster conservation through greater awareness. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by September 8, 1987. Public hearing requests must be received by August 24, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the Service's Regional Office of Endangered Species, 500 Gold Avenue, SW., Room 4000, Albuquerque, New Mexico.

FOR FURTHER INFORMATION CONTACT: Sue Rutman, Endangered Species Botanist, Albuquerque, New Mexico

(see "ADDRESSES" above) (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION:

Background

Boerhavia mathisiana is a small perennial herb restricted to caliche ridges and outcrops of the South Texas Plains. The bright white caliche (calcium carbonate) deposits are exposed in several counties, but *Boerhavia mathisiana* only occurs on caliche in San Patricio and Live Oak Counties. The dominant vegetation in the area is Tamaulipan Scrubland, or Mesquite-Blackbrush Brush (McMahan *et al.* 1984). Some common shrubs associated with *Boerhavia mathisiana* are *Acacia rigidula* (blackbrush), *Leucophyllum frutescens* (purple sage), *Acacia berlandieri* (guajillo), and *Calliandra conferta* (fairy duster). *Boerhavia mathisiana* occupies the understory layer of this thorn-scrubland.

The small flowers of *Boerhavia mathisiana* are bright pink, and are born on slender pedicels on the ends of stems. Plants flower from April through December in response to periodic rainfall. Leaves are dark green, ovate with entire or sinuate margins, and oppositely arranged on the stem. The glabrous fruits distinguish this plant from other perennial species of *Boerhavia* which have pubescent fruits. The woody roots of *Boerhavia mathisiana* enable plants to penetrate the caliche surface and to grow in crevices on the sides of caliche outcrops.

Boerhavia mathisiana was first collected in 1956 by F.B. Jones at a caliche mining pit in San Patricio County, Texas. Jones (1975) published a formal description of the species in the *Flora of the Texas Coastal Bend.* Since 1956, collections have been made near the type locality and on a caliche outcrop in Live Oak County. Collectors have generally noted that plants are widely scattered and uncommon, and that some populations occur in perilous positions on the edges of active caliche mine pits.

In 1986, the two known populations, both of which are on private land, contained fewer than 250 plants (Gardner and O'Brien 1986). The larger population in San Patricio County was probably a continuous population, but is now fragmented by caliche mines into four colonies. The Live Oak County population consists of fewer than 10 plants, and is probably a remnant of a larger population that previously occurred on the hilltop that is now part of a residential development.

Federal action involving this species began on December 15, 1980, when the Service published a notice of review in the **Federal Register** (45 FR 82480) covering plants being considered for classification as endangered or threatened. *Boerhavia mathisiana* was included in category 1 of this notice, indicating that existing data warranted a proposal to list it as threatened or endangered.

Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within one year of their receipt. Section 2(b)(1) of the Act's Amendments of 1982 further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. All taxa contained in the 1980 notice, including *Boerhavia mathisiana*, were treated as being newly petitioned on October 12, 1982. On October 13, 1983, October 12, 1984, and October 11, 1985, the Service made one-year findings that the petitioned action to list *Boerhavia mathisiana* was warranted, but precluded by other listing actions of higher priority. Biological data supplied by Turner (1983) fully support a listing of *Boerhavia mathisiana* as endangered. The present proposal is based primarily on Turner's biological data, and constitutes the next one-year finding requirement of section 4(b)(3)(B) of the Act for this species.

Summary of Factors Affecting the Species

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 set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Boerhavia mathisiana* F.B. Jones (Mathis spiderling) are as follows:

A. Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Mining, road building, and commercial and residential development have removed large areas of habitat within the range of this species. Caliche mining is the greatest source of habitat destruction. Since the demand for caliche gravel can be expected to increase, further destruction of habitat is probable. Residential and commercial development is a threat particulary in Live Oak County, where populations occur on caliche deposits that surround a large lake. Vacation homes, marinas, and access roads have been built on lakefront properties, destroying some *Boerhavia mathisiana* habitat. Caliche outcrops are easily accessible, and this has increased their use as recreation areas, contributing to habitat degradation.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Because *Boerhavia mathisiana* occurs on private land, it would not be protected from taking by the Endangered Species Act. Due to its easy accessibility, this species is vulnerable to the threat of uncontrolled collecting and vandalism.

C. Disease or Predation

No threats are known.

D. The Inadequacy of Existing Regulatory Mechanisms

Boerhavia mathisiana is not currently protected by either Federal or State laws or regulations.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

None known.

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 propose this rule. Based on this evaluation, the preferred action is to list *Boerhavia mathisiana* as endangered without critical habitat. Endangered status is appropriate because populations are scattered and small, and they are restructed to caliche deposits that are threatened by mining, road construction, and residential and commercial development. The reasons for not designating critical habitat are discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat for *Boerhavia mathisiana* is not prudent at this time due to its low numbers and easy accessibility. The Act does not protect endangered plants from taking or vandalism on lands that are not under Federal jurisdiction. This would result in an especially severe problem for *Boerhavia mathisiana* because the

habitat is located on private lands that are easily accessible. Listing of a species, with attendant publicity, highlights its rarity and attractiveness to collectors. Publication of critical habitat descriptions for this species would make it more vulnerable to taking or vandalism. Therefore, it would not be prudent to determine critical habitat for *Boerhavia mathisiana* at this time. The location of populations of this plant will be brought to the attention of appropriate agencies and other involved parties through regular communications. No net benefit would accrue from designating critical habitat for this species.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being disignated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Although, *Boerhavia mathisiana* is not known to occur on Federal lands and no Federal involvement is currently known or expected, the Service expects that this listing will elevate the awareness of this plant's status and foster efforts toward its conservation.

The Act and its implementing regulations forund at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce to possession. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Federal Wildlife Permit Office, U.S. Fish and Wildlife Service, Washington, DC 20240 (703/235–1093).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Boerhavia mathisiana*;

(2) The location of any additional populations of *Boerhavia mathisiana* and the reasons why any habitat should or should not be determined to be critical habitat as provided by Section 4 of the Act;

(3) Additional information concerning the range and distribution of *Boerhavia mathisiana*; and

(4) Current or planned activities in the subject area and their possible impacts on *Boerhavia mathisiana*.

Final promulgation of the regulation on *Boerhavia mathisiana* will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (see **"ADDRESSES"** section).

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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Gardner, S. and R. O'Brien. 1986. Status survey update on *Boerhavia mathisiana*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 9 pp.

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Turner, B.L. 1983. Status Survey on *Boerhavia mathisiana*. U.S. Fish and Wildlife Service, Albuquerque, New Mexico. 9 pp.

Author

The primary author of this proposed rule is Sue Rutman, Endangered Species Botanist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972). The editor is LaVerne Smith, Office of Endangered Species, Washington, DC 20240. Status information was provided by Dr. B.L. Turner, University of Texas at Austin, Texas, and Dr. S. Gardner and R. O'Brien, Corpus Christi Botanical Society, Texas.

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

PART 17—[AMENDED]

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

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

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

2. It is proposed to amend § 17.12(h) by adding the following, in alphabetical order under the family Nyctaginaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Nyctaginaceae—Four-o'clock family.						
Boerhavia mathisiana	Mathis spiderling	U.S.A. (TX)	E		NA	NA

* * * * * * *

Dated: June 19,1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–15690 Filed 7–9–87; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Shasta Crayfish

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Shasta (=placid) crayfish (*Pacifastacus fortis*) to be an endangered species. This species occurs only in Shasta County, California, within the Pit River drainage system, including tributaries of the Hat Creek and Fall River subdrainages. The Shasta crayfish is uncommon, and the overall population could number fewer than 3,000 individuals. A survey conducted in 1985 by the California Department of Fish and Game determined that the Shasta crayfish has been extirpated from approximately one-half of its known range since 1978. Throughout its remaining approximately 2,000 acres of habitat, the Shasta crayfish is endangered by: Competition for food and space with two aggressive, adaptive, exotic crayfish species; agricultural development; and aquatic habitat loss because of water diversion and impoundment. Continued habitat loss and degradation present substantial threats to the existence of this crayfish. Determination of the Shasta crayfish as endangered would implement the protection provided under the Endangered Species Act of 1973, as amended. The Service seeks comments and relevant data from the public on this proposal.

DATES: Comments from all interested parties must be received by September 8, 1987. Public hearing requests must be received by August 24, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE., Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne S. White, Chief, Division of Endangered Species (see ADDRESSES above) (503/231–6131 or FTS 429–6131)

SUPPLEMENTARY INFORMATION:

Background

The Shasta crayfish [*Pacifastacus fortis* (Faxon)] is a decapod crustacean of the family Astacidae. William Faxon (1914) originally described this crayfish as *Astacus nigrescens fortis* from specimens taken from Fall River and Hat Creek near Cassel in 1898. Bott (1950) revised the subfamily Astacinae, creating the new genus *Pacifastacus*, which contained most of the western North American species of the subfamily. Hobbs (1972) explicitly placed *Pacifastacus fortis* in that genus and accorded it full species status. Bouchard (1977a) subdivided the genus *Pacifastacus* into two subgenera, *Pacifastacus* and *Hobbsastacus*, placing *Pacifastacus fortis* in the subgenus *Hobbsastacus*.

Adult Shasta crayfish are small to medium-sized crayfish that reach up to 50 millimeters (2 inches) in length of the carapace (shell covering the back over the walking legs). Their color is variable and ranges from dark brownish-green to dark brown on the topside and bright orange on the underside (Eng and Daniels 1982). Occasional blue-green to light blue individuals are found in isolated populations (McGriff, California Department of Fish and Game (CDFG), personal communication 1986). These blue crayfish have a light salmon color on their undersides. Members of the Fall River population are dark orange-brown on the topside and bright red on the underside, especially on the chelae (pincers) (Eng and Daniels 1982). The distribution of these colors probably provides camouflage for the crayfish among the volcanic rubble substrates of their habitat.

The adults of the Shasta crayfish are sexually dimorphic and can easily be distinguished because the males have narrower abdomens and larger chelae than the females. The first two pair of swimmerets (tiny swimming legs) of the males are hard and modified for sperm transfer to the female during mating. These notable sexual characteristics can be seen in young larvae that are less than 10 millimeters (.4 inches) in total carapace length (Eng and Daniels 1982).

The Shasta crayfish is found only in Shasta County, California, in the Pit River drainage and two tributary systems, the Fall River and Hat Creek subdrainages. In the Hat Creek subdrainage, populations have been found in Lost Creek and in Crystal, Baum, and Rising River lakes. In the Fall River subdrainage, populations occur in Fall River; Big Lake; Spring, Squaw, and Lava creeks; and Crystal and Rainbow springs. An additional population in Sucker Spring Creek, a tributary of the Pit River that lies between the two subdrainages (Bouchard 1978, Eng and Daniels 1982), has been extirpated. The populations in Lake Britton, and Burney, Clark, Kosk, Goose, Lost, and Rock creeks were extirpated prior to 1974 (Bouchard 1977b). Since 1978 the Shasta crayfish has been extirpated from Crystal Lake, from Baum Lake, and from Spring Creek near its confluence with the Pit River (McGriff, personal communication 1986).

Daniels (1980) reportd the relative density of *P. fortis* in Crystal Lake as 6.89 crayfish per square meter versus 0.09 crayfish per square meter for Baum Lake. He also reported an average density of 3.81 crayfish per square meter for the introduced signal crayfish (*Pacifastacus leniusculus*), in Baum

Lake. The signal crayfish is a known competitor of the Shasta crayfish and apparently was responsible for the low density of the native crayfish in Baum Lake.

During 1985, surveys revealed that most Shasta crayfish were found in the Fall River subdrainage (McGriff, personal communication 1986). At the Spring Creek confluence with the Pit River, *P. leniusculus* and a second exotic crayfish species, *Orconectes virilis*, were present, but there were no *P. fortis* in 1985 (McGriff, personal communication 1986). In a few locations the Shasta crayfish occurs sympatrically with both exotic species; however, it is much less common than the exotics at these sites. It is not known if the Shasta crayfish and the two exotic crayfish species can coexist permanently. Cases of apparent sympatry may be the result of Shasta crayfish having washed down from upstream populations and may not reflect coexisting breeding populations. Distributional data indicate that these two exotic species outcompete native species (Bouchard 1977a, Riegel 1959, Schwartz *et al.* 1963).

Shasta crayfish occur in cool, clear, spring-fed lakes, rivers and streams, usually at or near a spring inflow source, where waters show relatively little annual fluctuation in temperature and remain cool during the summer. Most are found in lentic and slowly to moderately flowing waters. Although Shasta crayfish have been observed in groups under large rocks situated on clean, firm sand or gravel substrates (Bouchard 1978, Eng and Daniels 1982), they also have been observed on a fine, probably organic, material, 1–3 centimeters (.4 to ½ inches) thick, on the bottom of Crystal Lake. The Shasta crayfish is most abundant where plants are absent. Another important habitat requirement appears to be the presence of adequate volcanic rock rubble to provide escape cover from predators.

Although the food habits of the Shasta crayfish are not well known, the morphology of the mouthparts suggests that the species relies primarily on predation, browsing on encrusting organisms, and grazing on detritus to obtain food. The Shasta crayfish probably feeds mainly at night (Eng and Daniels 1982).

P. fortis, like most crayfish, is solitary, but may tolerate the proximity of other crayfish if space is limited or during courtship and mating. Similar to its congeners in its mating habits, the Shasta crayfish mates in late September and October after the final molt (loss of previous skin and the growth of a new, larger skin) of the season. Reproductive maturity of the Shasta crayfish occurs in the fifth year of life, while in the two exotic crayfish species that occur within its range, reproductive maturity occurs in the second year. Eggs of the Shasta crayfish are laid during the fall, and hatching occurs in the following spring when the water temperature increases slightly. Each newly mature mated female lays 10–70 eggs, with an average of 40 per female. The two exotic crayfish, *Orconectes virilis* and *Pacifastacus leniusculus*, average 110 and 150 egg, respectively, per female. In general, crayfish fecundity increases with the age of the female; older *P. fortis* females produce an average of 60 eggs per female, whereas the exotic species produce up to 300 eggs per older female. Therefore, the introduced crayfish species have a reproductive advantage over the Shasta crayfish (Eng and Daniels 1982).

Because of its placid behavior, low fecundity, slow maturity, restricted distribution, and specialized habitat requirements, the Shasta crayfish is particularly vulnerable to habitat loss or modification (e.g., changes in the substrates [from rubble to mud bottoms] of its habitat, changes in water quality parameters [increase in temperature, turbidity, hydrogen ions, and nutrients]), water pollution, and displacement by exotic crayfish species. Other threats to the survival of this species include habitat loss through modifications from diking, water diversion projects, hydroelectric projects, agricultural development, water impoundments, and incidental take of the Shasta crayfish by persons fishing for the larger exotic crayfish. A more subtle threat to the Shasta crayfish is the overall increase in human use of the area for outdoor recreatioonal purposes. For example, off-road vehicle trails that cross creeks can cause bank erosion and siltation that degrade the habitat. Fishing with exotic crayfish bait may result in introductions of additional exotic competitors. Damming streams for temporary swimming areas may entrap crayfish, thus increasing the likelihood of predation.

Most of the land in the range of the Shasta crayfish is in private ownership. The U.S. Forest Service and the Bureau of Land Management administer less than 10 acres each.

The Shasta crayfish (under the common name "placid crayfish") was proposed as a threatened species on Janaury 12, 1977, in the **Federal Register** (42 FR 2507). Comments expressing support for the proposal were received from the California Department of Fish and Game and two private organizations. That proposal was withdrawn on December 10, 1979 (44 FR 70796), under a provision of the 1978 amendments to the Endangered Species Act of 1973 that required withdrawal of all pending proposals that had not been made final within two years of the date of the proposal.

The Shasta crayfish was included in category 1 of the Service's Review of Invertebrate Wildlife for Listing as Endangered or Threatened Species (49 FR 21666; May 22, 1984). Category 1 comprises taxa for which the Service has substantial evidence to support the biological appropriateness of proposing endangered or threatened status. In that notice the Service, following the suggestion of Eng and Daniels (1982), used the common name Shasta crayfish rather than placid crayfish, the name used in the earlier proposal of threatened status.

In the summer of 1978, the California Department of Fish and Game and the U.S. Forest Service initiated studies to further determine the distribution of the Shasta crayfish and gather biological and ecological information necessary for its conservation (see Eng and Daniels 1982). The maps of the distribution of the Shasta crayfish generated in 1979 by CDFG were amended from information gained during a 1985 survey of the distribution and population status of the crayfish. These updated maps and additional data constitute significant new information on which to propose endangered status for the Shasta crayfish.

Summary of Factors Affecting the Species

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 set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Shasta crayfish (*Pacifastacus fortis*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The total population of Shasta crayfish when sampled in 1978 by Daniels (1980) was estimated to be less than 6,000 individuals. With the recent confirmed loss of the populations in Crystal and Baum Lakes of the Hat Creek subdrainage since 1978, the total population probably numbers about 3,000 individuals. The species has also been extirpated from a site in the Fall

River subdrainage near its connection to the Pit River. At the present rate of extirpation, with at least 3 out of 15 sites being lost since 1978 and possibly only one site remaining in the Hat Creek subdrainage, it is conceivable that the Shasta Crayfish may soon become restricted only to the Fall River subdrainage.

Water diversion and impoundment projects have adversely affected the Shasta crayfish by modifying its habitat into large quiet lakes with silt and mud bottoms and increased aquatic vegetation. These modifications make the habitat unfit for the Shasta crayfish and more suitable for the two exotic species that have done very well in these areas. Lake Britton, Baum Lake, and Crystal Lake are examples of such habitat modification that has led to the displacement of the Shasta crayfish in recent times.

Numerous hydroelectric projects have been constructed on Hat Creek and the Pit River since the early part of the century. Lake Britton and Baum Lake are manmade reservoirs used for hydroelectric power production, water impoundment, and recreation. These installations have adversely affected the Shasta crayfish by blocking access to and egress from refugia in the remaining spring pools. These refugia formerly served as sources of immigrant individuals for reestablishing populations that had become locally extirpated from suitable habitat as the result of natural events (i.e., flooding, landslides, and log or debris jams). These manmade dam installations isolate and separate Shasta crayfish populations to such an extent aht when habitats become available, the crayfish are unable to recolonize them.

Agricultural development within the range of the Shasta crayfish has increased demands on the water resources, thus lowering the water table and causing seasonal interruptions of spring flow. This has occurred on some of the small unnamed tributaries of Fall River and Hat Creek (R. Brown, CDFG, personal communication 1986). In conjunction with the increase in water usage, an extensive, diverse agricultural industry has increased the use of pesticides in the area. These pesticides when washed into the waterways can kill aquatic invertebrates directly or over a period of time by bioaccumulation.

Livestock grazing near watercourses has increased the turbidity of some of the streams. Turbidity inhibits the penetration of sunlight to lower depths of the spring pools, where it promotes the growth of encrusting organisms on which the Shasta crayfish feeds. Pasture runoff increases the nutrients in the streams, thus increasing planktonic (free-floating) algal and aquatic macrophyte growth. Because Shasta crayfish prefer areas with sparse plant growth, these areas become unfit for the crayfish. Further, such conditions encourage the invasion of exotic crayfish that compete with the Shasta crayfish.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The incidental capture of Shasta crayfish for human consumption occurs through fishing for the large exotic crayfish species. The Shasta crayfish is rarely the target of the catch because of its small size, but is extremely vulnerable to such fishing pressures because of its placid behavior.

C. Disease or Predation

Not applicable.

D. The Inadequacy of Existing Regulatory Mechanisms

In 1980 the California State Fish and Game Commission listed the Shasta crayfish as a Rare species under State law, thus offering protection from take, possession, or sale within the State of California. Other State regulations prohibit the take, possession, or use for bait of any crayfish species at any time of the year within the range of the Shasta crayfish. These regulations were enacted to protect the Shasta crayfish and prevent the spread of exotic crayfish by unintentional introductions. Because of the large size and remoteness of the area, these regulations are difficult to enforce.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The spread of the two exotic species, *Pacifastacus leniusculus* and *Orconectes virilis*, into the range of the Shasta crayfish continues at an alarming rate. Both species are recent introductions to the Pit River drainage (Daniels 1980). These species compete for food, space, and other resources with the Shasta crayfish. Because they are more fecund and mature much more quickly than the Shasta crayfish, and have less specific habitat requirements, the exotic crayfish have been successful in colonizing the modified habitat, probably displacing the Shasta crayfish. Since *O. virilis* is probably able to move overland under conditions of high humidity, it may invade the Fall River as it has Hat Creek. Both exotic species have displaced native species in other regions (Bouchard 1977a and 1976b, Riegel 1959, Schwartz *et al.* 1963). If the habitat of *P. fortis* continues to be degraded and becomes better suited for the exotic species, the Shasta crayfish may be displaced from its remaining habitat in the near future. With the introduction of the exotic crayfish, the populations of Shasta crayfish in Crystal and Baum lakes, Lake Britton, and Clark, Rock, Goose, Kosk, Lost and Spring creeks have been lost, thus significantly reducing the limited range of the native crayfish. These extirpations occurred in less than 10 years.

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 propose this rule. Based on this evaluation, the preferred action is to list the Shasta crayfish as endangered. Its significantly reduced distribution, loss of habitat, and substantial potential for continued habitat modification or loss indicate that the species warrants endangered rather than threatened status. Critical habitat is not being proposed for the species at this time 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 any habitat of a species which is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for this species at this time. As discussed under Factors D and E in the "Summary of Factors Affecting the Species," State laws to protect the Shasta crayfish from taking and from introductions of exotic crayfish species are difficult to enforce. Publication of critical habitat descriptions and maps in the **Federal Register** would make this species easier to locate and thereby make its habitats more vulnerable to possible vandalism and would increase enforcement problems. All involved parties and landowners will be notified of the locations and importance of protecting this species' habitat. Protection of the habitat of the Shasta crayfish will be addressed through the recovery and section 7 consultation process. Therefore, it would not be prudent to determine critical habitat for the Shasta crayfish 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)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Some Federal involvement with the U.S. Army Corps of Engineers and the Federal Energy Regulatory Commission (FERC) permitting processes for hydroelectric facilities is anticipated.

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

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

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director (See ADDRESSES section).

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 rule is Dr. Jeurel Singletion, Sacramento Endangered Species Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–1823, Sacramento, California (916/978–4866 or FTS 460–4866).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "CRUSTACEANS," 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						
CRUSTACEANS							
Crayfish, Shasta (=placid crayfish)	*Pacifastacus fortis*	U.S.A. (CA)	NA	E		NA	NA

* * * * *

Dated: June 19, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–15682 Filed 7–9–87; 8:45 am]

BILLING CODE 4310–55–M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Tipton Kangaroo Rat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*), a small mammal restricted to the Tulare Lake Basin of south-central California. Primarily because of the conversion of its habitat to agricultural production, this mammal currently occupies less than four percent of its historic range. Its survival is jeopardized by the continuing loss of native habitat for agricultural development and other human-induced, land-modifying activities. This proposal, if made final, will implement the protection of the Endangered Species Act of 1973, as amended, for the Tipton kangaroo rat. The Service seeks data and comments from interested parties.

DATES: Comments must be received by September 8, 1987. Public hearing requests must be received by August 24, 1987.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

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

SUPPLEMENTARY INFORMATION:

Background

Kangaroo rats (*Dipodomys*) are small mammals that travel rapidly by hopping on their hind legs, and that transport food in their external cheek pouches. They inhabit mainly dry, open country of western North America, where they construct burrows for shelter and often for storage of food. The Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) was distributed historically in the Tulare Lake Basin of the San Joaquin Valley, encompassing portions of Fresno, Kings, Tulare, and Kern Counties (Willians 1985). Merriam (1894) originally described it as a subspecies of the widely-distributed species *Dipodomys merriami*. Grinnell (1920, 1921) later separated it as a subspecies of the "Fresno" kangaroo rat (*D. nitratoides*). Adults weight is 1.2 to 1.3 ounces (35 to 38 grams), head and body length is 3.9 to 4.3 inches (100 to 110 millimeters), and tail length is 4.8 to 5.1 inches (125 to 130 millimeters). Adaptations for bipedal locomotion include elongated hind limbs, a long tail, a short neck, and a large head. Dorsal pelage is a dark, yellowish tan, while ventral coloration is white. A white stripe also extends laterally across each flank and along the sides of the prominantly tufted tail (Williams 1985).

Valley grassland, and San Joaquin saltbush and sink scrub plant communities provide the habitat for the Tipton kangaroo rat. The dominant shrubs in the sparsely-vegetated scrub consist of iodine bush (*Allenrolfea occidentalis*), saltbush (*Atriplex lentiformis* and *A. spinifera*), Mormon-tea (*Ephedra californica*), red-sage (*kochia californica*), and seep-weed (*Suaeda fruticosa*) (Williams, in press). The kangaroo rat inhabits the soft, friable soils on the floor of the Tulare Lake Basin, which escape seasonal flooding. The subspecies, however, may also occur on surrounding, higher, sites (Williams, in press). It excavates shallow burrow systems, which are often located on slightly-elevated mounds and around the bases of shrubs where wind-deposited soils have accumulated. This behavior apparently reduces the chances of inundation from seasonal flooding (Williams 1985). The Tipton kangaroo rat feeds primarily on seeds, though the animal also eats green vegetation and insects (Eisenberg 1963). The Tipton kangaroo rat plays an integral role in the valley plant communities. It distributes seeds and, thus, influences floral distribution. It also serves as prey for a variety of carnivores, such as the badger (*Taxidea taxus*) and kit fox (*Vulpes macrotis*). Its burrows serve to aerate soils and increase vegetative productivity. Moreover, these burrows are utilized as places of concealment and refuge for a variety of other small wildlife species, including the federally endangered blunt-nosed leopard lizard (*Gambelia silus*).

The geographic range of the Tipton kangaroo rat historically encompassed about 1,716,480 acres (695,174 hectares) within the San Joaquin Valley, extending from Lemoore and Hanford (Kings County) in the north; southeast along State Route 99 from Tipton to Pixley (Tulare County), Delano, Bakersfield, and Arvin (Kern County); westward to the southern, eastern, and northern shores of the former Buena Vista Lake (Kern County); and then northward through the Antelope Plain along a line marked by Buttonwillow, Lost Hills (Kern County), Kettleman City (Kings County), and Westhaven (Fresno County). As of July 1985, only 63,367 acres (25,665 hectares), encompassing 3.7 percent of its historical range, was still occupied (Williams 1985). Approximately 6,434 acres (2,606 hectares) of this remaining habitat is administered by local, State, and Federal governments. These lands contain low to moderate density populations of Tipton kangaroo rats that

are relatively secure from habitat loss (Williams 1985). The principal factor resulting in this reduction in habitat has been conversion of native wildlands for agriculture production.

The Tipton kangaroo rat was included in the Service's Review of Vertebrate Wildlife in the **Federal Register** of September 18, 1985 (50 FR 37958), as a category 2 candidate species. This categorization means that available information indicates that a proposal for listing as endangered or threatened is possibly appropriate, but that conclusive data on biological vulnerability and threat are not currently available to support a proposed rule. Completion of a subsequent status report for this rodent (Williams 1985) provided additional information on which to base this listing proposal.

Summary of Factors Affecting the Species

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 set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Tipton kangaroo rat (*Dipodomys nitratoides nitratoides* Merriam) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

In a recent status survey, Dr. Daniel F. Williams (1985) of California State University, Stanislaus, concluded that habitat loss associated with agricultural development has been the principal factor contributing to the decline of the Tipton kangaroo rat. He attributed other habitat losses to construction of roads, canals, railroads, and structures. Mineral development may also be a problem (Williams, in press). The known historical range of this rodent, which encompassed approximately 1,716,480 acres (695,174 hectares), has been reduced to about 63,367 acres (25,665 hectares). Approximately 6,434 acres (2,606 hectares) of the remaining range harbors relatively secure populations. This area includes federally-administered lands at Pixley National Wildlife Refuge, State of California lands at the Allensworth Ecological Preserve, and lands owned and administered by the Natural Conservancy at the Paine Wildflower Preserve. Private individuals or corporations own the remaining habitats. Although these habitats generally appear to be unsuitable for farming, land conversion of kangroo rat habitat continues to occur.

Williams (1985) observed instances where remainng habitats were being converted to agricultural production, so-called ag-land. He also estimated rates of conversion of remaining habitats by comparing extant unmodified habitats within the Tulare Lake Basin. Approximately 110,031 acres (44,562 hectares) out of the total 2,556,288 acres (1,035,296 hectares) on the floor of the Tulare Lake Basin was undeveloped by late 1983; a subsequent comparison in June 1985 showed that 75,430 acres (30,549 hectares) remained undeveloped. The construction of evaporation ponds for diversion of salt-laden waters from adjacent cultivated fields also threatens extant habitat (Williams 1985). Remaining habitat typically consists of small, highly fragmented parcels on private land, where long-term protection is not assured. Consistent Tipton kangaroo rat populations are small in size, typically surrounded by ag-land, and highly vulnerable to extirpation from single catastrophic events such as flooding, inbreeding, disease, predation, or excessive application of rodenticides.

B. Overutilization for Commercial Recreational, Scientific, or Educational Purposes

Not applicable

C. Disease or Predation

Neither disease nor predation is known to result in significant population declines. However, Williams (1985) noted that the high fragmentation and isolation of many remaining populations makes them increasingly vulnerable to extirpation from epidemics or heavy predation.

D. The Inadequacy of Existing Regulatory Mechanisms

Existing State and Federal regulations do not afford the Tipton kangaroo rat any protection. Agencies involved with permitting or funding ag-land conversion, which continues to reduce the animal's remaining habitat and increase the potetntial for the extirpation of increasingly isolated populations, are not presently required to confer with agencies knowledgeable about the distribution of this rodent. State and Federal governments also do not presently require implementation of protective measures for the species and its habitat during the application of pesticides.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Many of the remaining "pockets" of habitat for this rodent are adjacent to or surrounded by ag-land. The small size and highly isolated nature of these remaining pockets could result in their eventual extirpation due to inbreeding. Williams (1985) estimated that the minimum contiguous block of habitat necessary to sustain a viable population on a long-term basis may be between 823 and 2,806 acres (333 to 1,136 hectares). Because the average size of extant contiguous habitat is less than half this size, probably many remaining tracts are too small to ensure the perpetuation of their constituent Tipton kangaroo rat populations. In addition to inbreeding, application of rodenticides may also kill Tipton kangaroo rats in areas where control of "target" species, such as the California ground squirrel (*Spermphilus beecheyi),* is required. Williams (1985) provided specific recommendations for control of "pest" species while reducing potential for inadvertent mortality of non-target species such as the Tipton kangaroo rat.

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 propose this rule. Based on this evaluation, the preferred action is to list the Tipton kangaroo rat as endangered. Threatened, as opposed to endangered, status would not adequately reflect the drastic decline and continued problems associated with conversion of remaining valley-floor habitats. Critical habitat is not being designated for this species at this time 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 any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat for the Tipton kangaroo rate is not prudent at this time. As discussed under factors "A" and "E" in the "Summary of Factors Affecting the Species," the Tipton kangaroo rat is jeopardized by taking, prohibitions against which are difficult to enforce. Publication of precise critical habitat descriptions could make this species even more vulnerable, and, therefore, place its future in further jeopardy.

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)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

Federal actions that may affect the Tipton kangaroo rat are issuance of leases for agricultural purposes on Bureau of Land Management holdings, development of evaporation ponds for salt-laden agricultural runoff by the Soil Conservation Service, issuance of permits for development of oil and natural gas reserves by the Environmental Protection Agency, and water-development projects for increasing agricultural conversion of remaining pockets of wildland habitats by the Bureau of Reclamation. Actions that may affect the Tipton kangaroo rat in these areas may also affect the federal endangered San Joaquin kit fox and blunt-nosed leopard lizard, which currently are protected under the provisions of the Act. No major conflicts are known or expected at this time. The involved Federal agencies are already consulting with the Service, and additional impacts due to this listing are expected to be minimal.

Section 9 of the Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the subject species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Regional Director as indicated in the above **"ADDRESSES"** section.

National Environmental Policy Act

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

References Cited

Eisenberg, J.F. 1963. The behavior of heteromyid rodents. Univ. California Publ. Zool. 69:1–100.

Grinnell, J. 1920. A new kangaroo rat from the San Joaquin Valley, California. J. Mamm. 1:178–179.

Grinnell, J. 1921. Revised list of the species in the genus *Dipodomys*. J. Mamm. 2:94–97.

Merriam, C.H. 1894. Preliminary description of eleven new kangaroo rats of the genera *Dipodomys* and *Perodipus*. Proc. Biol. Soc. Washington 9:109–116.

Williams, D.F. 1985. A review of the population status of the Tipton kangaroo rat, *Dipodomys nitratoides nitratoides*. Final report prepared for the U.S. Fish and Wildlife Service, Sacramento Endangered Species Office.

Williams, D.F. In press. Mammalian species of special concern in California. Report prepared for the California Dept. of Fish and Game, Nongame Wildlife Investigation.

Author

The primary author of this proposed rule is Mr. Ted Rado, U.S. Fish and Wildlife Service, Sacramento Endangered Species Office, 2800 Cottage Way, Room E–1823, Sacramento, California 95825 (916/978–4866 or FTS 460–4866).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter

I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. It is proposed to amend § 17.11(h) by adding the following, in alphabetical order under "MAMMALS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Rat, Tipton kangaroo	*Dipodomys nitratoides nitratoides*	USA (CA)	Entire	E		NA	NA

Dated: June 22, 1987.

Susan Recce,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–15683 Filed 7–9–87; 8:45 am]

BILLING CODE 4310–55–M

Foreign Proposal To Amend Appendices to the Convention on International Trade In Endangered Species of Wild Fauna and Flora

50 CFR Part 23

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: The Convention on International Trade in endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animals and plants. Species for which trade is controlled are listed in Appendices I, II, and III to the Convention. Any nation that is a Party to the Convention may propose amendments to Appendix I or II for consideration by the other Parties.

This notice announces decisions by the Fish and Wildlife Service (Service) on negotiating positions to be taken by the United States delegation with regard to proposals submitted by Parties other than the United States. The proposals will be considered in July 1987 at the sixth regular meeting of the Conference of the Parties in Ottawa, Canada.

DATE: Proposals mentioned in this notice are scheduled to be discussed along with a preliminary vote by Party nations in committee on the weekdays from July 15, to July 22. A final vote in plenary session in presently scheduled for July 24, without discussion unless one third of the Parties support the reopening of discussion on specific proposals. Any of these proposal that are adopted will enter into effect 90 days afterwards (i.e., on October 22, 1987).

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority; Mail Stop: Room 527, Matomic Building; U.S. Fish and wildlife Service; Department of the Interior; Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in Room 537, 1717 H Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 653–5948.

SUPPLEMENTARY INFORMATION:

Background

The convention regulates import, export, reexport, and introduction from the sea of certain animal and plant species. Species for which trade is controlled are included in three appendices. Appendix I includes species threatened with extinction that are or may be affected by Trade. Appendix II includes species that although not necessarily threatended with extinction may become so unless trade in them is strictly controlled. It also lists species that must be subject to regulation in order that trade in other currently or potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of currently or potentially threatened species from those other species). Appendix III includes species that any Party nation identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of other Parties in controlling Trade.

Any Party nation may propose amendments to Appendices I and II for consideration at meetings of the Conference of the Parties. The text of any proposal must be communicated to the Convention's Secretariat at least 150 days before the meeting. The Secretariat must then consult the other Parties and appropriate intergovernmental agencies, and communicate their responses to all Parties no later than 30 days before the meeting. Amendments are adopted by a two-thirds majority of the Parties present and voting.

Decisions

This notice announces the negotiating positions to be taken by the United States delegation with regard to proposals submitted by Parties other than the United States for consideration at the forthcoming meetings of the Parties. The Service announced the proposals and invited comments on tentative negotiating positions in the May 22, 1987, **Federal Register** (52 FR 19455) with correction June 1, 1987 (52 FR 20433). Proposals submitted by the United States will be published at about the same time as this document. Proposals were previously summarized in the January 5, 1987, **Federal Register** (52 FR 309).

It is neither practical nor in the best interests of the United States to establish inflexible negotiating positions on proposals in advance of the meeting. However, decisions announced in this notice represent formal guidance to the delegation, which will seek to obtain agreement of the Conference of the Parties with these positions. Such positions will only be modified if the U.S. delegation finds it necessary to do so in response to new information presented or obtained during the meeting in Canada.

Comments Received

The Service received 27 written comments from States, organizations, and individuals, and 11 persons (including 7 that did not submit written comments) expressed support or opposition for various proposals at the May 29, 1987, public hearing. These comments along with other information received by the Service were considered in the development of the final U.S. negotiating positions. Several of the

tentative positions were modified or reversed, and positions were taken on those proposals received or translated after the previous **Federal Register** notice. The rationale for these changes, and modifications or positions stated for the first time, have been provided to those that submitted comments and to other interested persons. The development of this separate "Assessment of Comments on Species Listing Proposals" represents a modification of the Service's procedures and allows for more timely and less expensive publication in the **Federal Register.** This "Assessment of Comments on Species Listing Proposals" is available from the Office of Scientific Authority.

Summary of Positions

Additional information has been obtained on several species other than those on which formal comments were received. However, unless commented upon in the "Assessment of Comments on Species Listing Proposals", the position and the rationale for that position remain the same as stated in the May 22, 1987, and June 1, 1987 **Federal Register** notices (52 FR 19455 and 20433).

Negotiating positions of the U.S. delegation on proposals by Parties other than the United States are summarized in the following tables:

Species	Proposed amendment	Proponent	U.S. position [1]
MAMMALS			
Order Marsupialia:			
Burramys parvus (Mountain pygmy possum).	Remove from II	Switzerland	Oppose (1).
Myrmecobius fasciatus (Marsupial anteater).	Add to I	Australia	Oppose (2).
Phalanger lullulae (Woodlark Island cuscus).	...do	Papua New Guinea	Oppose.
Order Insectivora:			
Erinaceus frontalis (African hedgehog)	Remove from II	Switzerland	Support.
Order Lagomorpha:			
Nesolagus netscheri (Sumatran short-eared rabbit).	...do	...do	Oppose (1).
Order Rodentia:			
Dipodomys phillipsii phillipsii (Phillips' kangaroo rat).	...do	...do	Do.
Lariscus hosei (Four-striped or Bornean black-striped ground squirrel).	...do	...do	Do.
Notomys spp. (Hopping mouse)	...do	Australia	Oppose.
Pseudomys fumeus (Smokey mouse)	Remove from I	...do	Oppose (2).
Pseudomys shortridgei (Heath rat, Shortridge's native mouse).	Remove from II	...do	Oppose.
Order Carnivora:			
Cynogale bennettii (Otter civet)	...do	Switzerland	Oppose (1).
Dusicyon gymnocercus (Pampas fox)	Add to II	Uruguay	Support.
Eupleres goudotii (Malagasy mongoose).	Remove from II	Switzerland	Support (1).
Felis yagouaroundi (Jaguarundi)	Inclusion in I (inclusion of the populations of Central and North America in I in lieu of *Felis, yagouaroundi cacomitli, F. y. fossata, F. y. panamensis,* and *F. y. tolteca*).	...do	Support.
Panthera tigris altaica (Siberian tiger	Transfer from II to I	...do	Support.
Order Pinnipedia:			
Odobenus rosmarus (Walrus)	Add to II	Netherlands	Oppose.
Order Sirenia:			
Trichechus senegalensis (West African manatee).	Remove from II or transfer from II to I	Switzerland Switzerland	Oppose.
Order Artiodactyla:			
Catagonus wagneri (Chacoan or giant peccary).	Add to I	Paraguay	Oppose (2).
Pudu mephistophiles (Northern Pudu)	Remove from II	Switzerland	Oppose (1).
Tayassu spp. (Peccary)	Add to II (Similarity of appearance)	Peru	Support (3).
Vicugna vicugna (Vicuna)	Transfer of part of the population of Paranicota Province, Ia. Region of Tarapaca from I to II (under special conditions—export of cloth only).	Chile	Support.
Vicugna vicugna (Vicuna)	Transfer of the populations of Pampa Galeras National Reserve and Nuclear Zone, Pedregal, Oscconta and Sawacocha (Province of Lucanas), Sais Picotani (Province of Azangaro), Sais Tupac Amaru (Province of Junin), and of Salinas Aguada Blanca National Reserve (provinces of Arequipa and Cailloma) from I to II (under specific conditions—export of cloth only?).	Peru	Support (4).

Species	Proposed amendment	Proponent	U.S. position [1]
BIRDS			
Order Ciconiiformes:			
Balaeniceps rex (Whale-headed stork)	Add to I	Netherlands	Oppose (2).
Eudocimus ruber (Scarlet ibis)	Add to I	France	Oppose.
...do...	Add to II	Suriname	Oppose.
Mycteria cinerea (Milky wood stork)	Add to I	Malaysia	Support.
Order Anseriformes:			
Anas bernieri (Madagascan teal)	Remove from II	Switzerland	Oppose (1).
Order Galliformes:			
Francolinus ochropectus (Djibouti francolin).	.....do	.....do	Do.
Francolinus swierstrai (Swierstra's francolin).	.....do	.....do	Do.
Megapodius freycinet abbotti (Abbott's megapode).	.....do	.....do	Do.
Megapodius freycinet nicobariensis (Nicobar megapode).	.....do	.....do	Do.
Tetrao miokosiewiczi (Caucasian black grouse).	.....do	.....do	Support (1).
Rheinartia ocellata (Crested argus pheasant).	Add to I	Malaysia	Oppose (2).
Order Gruiformes:			
Otididae spp. (Bustards)	Add to II (all species not already on appendices).	United Kingdom	Support.
Pedionomus torquatus (Plains wanderer).	Remove from II	Switzerland	Oppose (1).
Order Charadriformes:			
Larus brunnicephalus (Brown-headed gull).	.....do	Switzerland	Support (1).
Numenius minutus (Little whimbrel)	.....do	.....do	Do.
Order Psittaciformes:			
Anodorhynchus hyacinthinus (Hyacinth macaw).	Transfer from II to I	Brazil	Support.
Ara militaris (Military macaw)	.....do	Argentina	Oppose.
Probosciger aterrimus (Palm cockatoo)	.....do	Papua New Guinea	Support.
Order Apodiformes:			
Trochilidae spp. (Hummingbirds)	Add to II	Ecuador	Oppose.
Order Piciformes:			
Picus squamatus flavirostris (Common scaly-bellied woodpecker).	Remove from II	Switzerland	Support (1).
Order Passeriformes:			
Meliphaga (Lichenostomus melanops) cassidix (Helmeted honeyeater).	Remove from I	Australia	Oppose.
Psophodes nigrogularis (Western whipbird).	Remove from II	Australia, Switzerland	Support (1).
Pitta brachyura nympha (Fairy pitta)	.....do	Switzerland	Oppose (1).
Pseudochelidon sirintarae (White-eyed river martin).	.....do	.....do	Support (1).
Niltava ruecki (Rueck's blue flycatcher)	.....do	.....do	Oppose (1).
Carduelis yarrelli (Varrell's siskin)	.....do	.....do	Do.
Emblema oculata (Red-eared firetail finch).	.....do	.....do	Do.
Gubernatrix cristata (Yellow cardinal)	Add to I	Argentina	Oppose (2).
Paroaria capitata (Yellow-billed cardinal).	Add to II	.....do	Support.
Paroaria coronata (Red-crested cardinal).	.....do	.....do	Support.
REPTILIA			
Order Crocodylia:			
Crocodylus cataphractus (African slender-snouted crocodile).	Transfer of the Congolese population from I to II, subject to an annual Export quota of 600 specimens.	Republic of Congo	Oppose (5).
Crocodylus niloticus (Nile crocodile)	Maintenance of the population of Botswana in II, subject to an annual export quota of 2,000 specimens.	Botswana	Oppose (5).
	Maintenance of the Cameroonian population in II, subject to an annual export quota of 100 specimens.	Cameroon	Support (6).
	Maintenance of the Congolese population in II, subject to an annual export quota of 1,000 specimens.	Republic of Congo	Support.

Species	Proposed amendment	Proponent	U.S. position [1]
	Maintenance of the Kenyan population in II, subject to an annual export quota of 5,000 specimes.	Kenya	Support (6).
	Maintenance of the Malagasy population in II, subject to an annual export quota of 5,500 specimens.	Madagascar	Support (6).
	Maintenance of the Malawian population in II, subject to an annual export quota of 800 specimens.	Malawi	Support (6).
	Maintenance of the population of Mozambique in II, subject to an annual export quota of 1,000 specimens.	Mozambique	Support.
	Maintenance of the Sudanese population in II, subject to an annual export quota of 5,000 specimens.	Sudan	Oppose.
	Maintenance of the Tanzanian population in II, subject to an annual export quota of 1,000 specimens.	Tanzania	Support.
	Maintenance of the Zambian population in II, subject to an annual export quota of 2,000 wild specimens and an unspecified quota to be set annually by the Zambian Management Authority of ranched specimens.	Zambia	Support (6).
Crocodylus niloticus (Nile crocodile)	Transfer of the populations of Botswana, Cameroon, Congo, Kenya, Madagascar, Malawi, Mozambique, Sudan, United Republic of Tanzania and Zambia from II to I.	Switzerland	Not applicable for most populations (refer to separate document on Assessment of Comments).
Crocodylus porosus (Saltwater crocodile).	Retention of the Indonesian population in II, without being subject to an annual export quota.	Indonesia	Oppose (7).
	Transfer of the population of Indonesia from II to I.	Switzerland	Not applicable.
Osteolaemus tetraspis (*Dwarf crocodile*).	Transfer of the Congolese population from I to II, subject to an annual export quota of 1,000 specimens.	Republic of Congo	Oppose (5).
Order Testudinata:			
Chelonia mydas (*Green sea turtle*)	Transfer of the populations of Europa and Tromelin Islands from I to II (ranching proposal).	France	Support (8).
	Transfer of the Indonesian population from I to II.	Indonesia	Oppose.
Eretmochelys imbricata (Hawksbill sea turtle).	Transfer of the Indonesian population from I to II.	.....do	Do.
Clemmys muhlenbergii (Bog turtle)	Remove from II	Switzerland	Oppose (1).
Order Squamata:			
Boa constrictor occidentalis (Argentine boa constrictor).	Transfer from II to I	Uruguay	Oppose.
Gallotia aff. simonyi (Hierro giant lizard)	Add to I	Spain	Support.
Paradelma orientalis (Flap-footed legless lizard).	Remove from II	Australia, Switzerland	Suport (1).
Phrynosoma coronatum blainvillei (San Diego horned lizard).	.....do	Switzerland	Oppose (1).
Podarcis lilfordi (Lilford's wall lizard)	Add to II	Spain	Support.
Podarcis pityusensis (Ibiza wall lizard)	.....do	.....do	Support.
Thamnophis couchi hammondi (Two-striped garter snake).	Remove from II	Switzerland	Oppose (1).
Vipera ursinii (Orsini's viper)	Add to I	France, Italy	Oppose (2).
AMPHIBIANS			
Order Caudata:			
Ambystoma lermaense (Lake Lerma salamander).	Remove from II	Switzerland	Oppose (1).
Order Anura:			
Dendrobates altobueyensis (Golden poison-arrow frog).	Add to I	Netherlands	Oppose (2).
Dendrobates spp. (Posion-dart frogs)	Add to II	Suriname	Oppose.
Dyscophus antongili (Tomato frog)	Add to I	Netherlands	Oppose (2).
Mentella aurantiaca (Golden frog)	.....do	.....do	Oppose (2).
Phyllobates spp. (Poison arrow frogs)	Add to II	.....do	Support.

Species	Proposed amendment	Proponent	U.S. position [1]
FISH			
Order Osteoglossiformes:			
Scleropages formosus (Asian bonytongue).	Transfer of the Indonesian population from I to II.	Indonesia	Oppose.
Order Coelacanthiformes:			
Latimeria chalumnae (Coelacanth)	Remove from II	Switzerland	Support (1).
Order Salmoniformes:			
Salmo chrysogaster (Mexican golden trout).	...do	...do	Do.
Stenodus leucichthys leucichthys (White salmon).	...do	...do	Do.
Order Cypriniformes:			
Caecobarbus geertsi (African blind barb fish).	...do	...do	Oppose (1).
Plagopterus argentissimus (Woundfin)	...do	...do	Support (1).
Ptychocheilus lucius (Colorado River Squawfish).	...do	...do	Do.
Order Atheriniformes:			
Cynolebias constanciae (Pearl fishes)	...do	...do	Do.
Cynolebias marmoratus (Pearl fishes)	...do	...do	Do.
Cynolebias minimus (Pearl fishes)	...do	...do	Do.
Cynolebias opalescens (Pearl fishes)	...do	...do	Do.
Cynolebias splendens (Pearl fishes)	...do	...do	Do.
Xiphophorus couchianus (Monterrey platyfish).	...do	...do	Oppose (1).
MOLLUSCS			
Class Pelecypoda (=Bivalvia):			
Choromytilus(=Mytilus)*chorus* (Choro)	...do	...do	Oppose (1).
Cyprogenia aberti (Pearly mussels)	...do	...do	Oppose (1).
Epioblasma torulosa rangiana (Pearly mussels).	...do	...do	Do.
Fusconaia subrotunda (Pearly mussels)	...do	...do	Do.
Lampsilis brevicula (Pearly mussels)	...do	...do	Do.
Lexingtonia dolabelloides (Pearly mussels).	...do	...do	Do.
Pleurobema clava (Pearly mussels)	...do	...do	Do.
Class Gastropoda:			
Achatinella spp. (Oahu tree snails)	Add to I	Netherlands	Support.
Paryphanta spp.	Remove from II	Switzerland	Oppose (1).
Coahuilix hubbsii (Cuatro Cienegas snails).	...do	...do	Oppose (1).
Cochiliopina milleri (Cuatro Cienegas snails).	...do	...do	Do.
Durangonella coahuilae (Cuatro Cienegas snails).	...do	...do	Do.
Mexipyrgus carranzae (Cuatro Cienegas snails).	...do	...do	Do.
Mexipyrgus churinceanus (Cuartro Cienegas snails).	...do	...do	Do.
Mexipyrgus escobedae (*Cuatro Cienegc snails*).	...do	...do	Do.
Mexipyrgus lugoi (*Cuatro Cienegas snails*).	...do	...do	Do.
Mexipyrgus mojarralis (*Cuatro Cienegc snails*).	...do	...do	Do.
Mexipyrgus multilineatus (*Cuatro Cienegc snails*).	...do	...do	Do.
Mexithauma quadripaludium (Cuatro Cienega snails).	...do	...do	Do.
Nymphophilus minckeli (*Cuatro Cienegc snails*).	...do	...do	Do.
Paludiscala caramba (*Cuatro Cienegas snails*).	...do	...do	Do.
INSECTS			
Class Insecta:			
Bhutanitis spp. (Bhutan Glory swallowtails).	Add to II	United Kingdom	Support.
Ornithoptera alexandrae (Queen Alexandra's birdwing butterfly).	Transfer from II to I	...do	Do.
Papilio chikae (Luzon peacock swallowtail).	Add to I	...do	Oppose (2).

Species	Proposed amendment	Proponent	U.S. position [1]
Papilio homerus (Homerus swallowtail)	....do	....do	Support.
Papilio hospiton (Corsican swallowtail)	....do	....do	Oppose (2).
Teinopalpus spp. (Kaiser-I-Hind butterflies).	Add to II	....do	Oppose.
FLAT WORMS			
Order Hirudinea:			
Hirundo medicinalis (Medicinal leech)	....do	....do	Oppose (9).
CORALS			
Class Anthrozoa:			
Corallium rubrum (Precious red coral)	....do	Spain	Oppose (9).
PLANTS			
Family Cactaceae:			
Astrophytum (*-Echinocactus*) *asterias* (Sea urchin or star cactus).	Transfer from II to I	United Kingdom	Support.
Family Compositae (=Asteraceae):			
Saussurea lappa (Costus or Kuth root)	Transfer from I to II	Pakistan	Oppose.
Family Cupressaceae:			
Fitz-Roya cupressoides (Alerce or Fitzroya).	Transfer of the coastal population of Chile from II to I.	Argentina	Oppose.
Family Cycadaceae:			
Cycas beddomei (Beddome cycad)	Transfer from II to I	India	Oppose.
Family Liliaceae:			
Iphigenia stellata (Starry iphigenia)	Add to II	....do	Oppose.
Family Nepenthaceae:			
Nepenthes khasiana (Indian tropical pitcher plant).	Add to I	....do	Support.
Nepenthes spp. (Tropical pitcher plants).	Add to II (all species not already on an appendix).	Malaysia	Support.
Family Orchidaceae:			
Dendrobium pauciflorum (Few-flowered dendrobium).	Transfer from II to I	India	Oppose.
Paphiopedilum druryi (Drury tropical lady's slipper).	....do	....do	Support.
Family Palmae (=Arecaceae):			
Chrysalidocarpus lutescens (Areca palm).	Remove from II	Netherlands	Do.

[1] Clarification of the U.S. position on selected proposals is indicated by the number in the table; if no number is given, no specific clarification of the position is considered necessary:

(1) These proposals submitted by the Government of Switzerland are recommendations based on a 10-year review of the listings. Most of these recommendations propose to remove those species from Appendix II that have not been reported in trade since their listing. However, the lack of reported trade may be due to (1) their rarity, (2) the possibility that their listing in this appendix inhibited the reporting of trade and (3) the lack of proper documentation or reporting of trade. Consequently, the Service considered the degree of vulnerability of the species and the possibility of its being in trade, and opposed the delisting if it appeared that there is a sufficient threat of trade relative to the status of the species to warrant retention on Appendix II. The Service also opposed the removal of the species from Appendix II if the range State(s) oppose the delisting.

(2) While the U.S. position is to oppose either the addition of this species to Appendix I, or the removal of the species from Appendix I, the position is to support its listing on Appendix II.

(3) The U.S. position is to support this proposal, but to encourage the exclusion of the U.S. population of *Tayassu tajacu*.

(4) The U.S. position is to support the transfer of selected populations of vicuna for the purpose of allowing the export of cloth made from vicuna wool. The U.S. delegation will seek to clarify specific portions of the proposal submitted by Peru to ensure that this is the intent of the proposal.

(5) There are indications that population information described in resolution Conf. 5.21 may be provided at the meeting of the Conference of the Parties, but the U.S. position is to oppose the proposal until the information is made available and reviewed.

(6) The proposal requests an increase in the export quota. The U.S. position is to support an increased quota, but a lower export quota than requested by the range State, as discussed in the assessment of comments.

(7) The proposal requests retention of the species on Appendix II without being subject to an export quota. The U.S. position supports the retention of the presently approved export quota.

(8) The U.S. position is to support the proposal if certain clarifications are made, and if some additional conservation enhancement aspects are included in the proposal.

(9) Although the U.S. position is to oppose the proposal in concpet, the U.S. delegation intends to defer to the consensus of the range States.

Negotiating positions given in these tables are based upon the best available biological and trade information, taking into account comments received from the public and the criteria for listing species in the appendices (Resolutions Conf. 1.1 and 1.2 of the Conference of the Parties to the Convention) and other provisions for listing species including Conf. 3.15 on ranching, Conf. 5.14 on uplisting plant species, and Conf. 5.21 on special criteria for the transfer of taxa from Appendix I to Appendix II with concurrent establishment of export quotas. If further information is presented at the meeting in Canada, the U.S. delegation will take it into account in determining whether these positions remain appropriate. As indicated above in the discussion of comments, support or opposition to particular proposals may depend on whether questions about them are satisfactorily answered at the meeting. Furthermore, while the Service

may not fully support a proposal, partial support has been discussed in the "Assessment of Comments on Species Listing Proposals" and noted in the footnotes to the table summarizing the U.S. positions.

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish Imports, Marine mammals, Plants (agriculture), Treaties.

This notice is issued under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*; 87 Stat. 884, as amended). It was prepared by Drs. Charles W. Dane and Bruce MacBryde, Office of Scientific Authority.

Dated: July 6, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–15750 Filed 7–9–87; 8:45 am]

BILLING CODE 4310-55-M

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50 CFR Part 23

Proposed Changes in Appendices to the Endangered Species Convention

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention) regulates international trade in certain animals and plants. Species for which trade is controlled are listed in Appendices I, II, and III to the Convention. The United States as a Party to the Convention may propose amendments to the appendices for consideration by the other Parties.

In this notice, the Fish and Wildlife Service announces the decisions on proposals submitted by the United States to amend Appendices I and II. These proposals will be considered at the Sixth Regular Meeting of the Conference of the Parties. The meeting is scheduled for July 12–24, 1986, in Ottawa, Canada.

DATE: The proposals announced in this notice were received by the Convention's Secretariat on February 12, 1987, in order to be considered at the meeting in Ottawa, Canada.

ADDRESS: Please send correspondence concerning this notice to the Office of Scientific Authority; Mail Stop: Room 527, Matomic Building; U.S. Fish and Widlife Service; Department of the Interior; Washington, DC 20240. Materials received will be available for public inspection from 8:00 a.m. to 4:00 p.m., Monday through Friday, in room 537, 1717 H Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Office of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240, telephone (202) 653–5948.

SUPPLEMENTARY INFORMATION:

Background

In its previous notices on this subject (51 FR 16082, April 30, 1986 and 52 FR 309, January 5, 1987), the U.S. Fish and Wildlife Service (Service) first requested information on plant or animal species that might lead it to prepare draft listing amendments for the Convention, and then described tentative U.S. Proposals and sought additional comments, requesting specific information for each of the tentative proposals.

Public Comments

Decisions about suggested U.S. proposals discussed in the previous notice of January 5, 1987, are as follows:

1. Red-eared slider (*Trachemys [=Pseudemys] scripta elegans*)—Comments were received by the Service during two time periods: The first in response to the April 30, 1986, Federal Register request for information on species that should be considered for listing changes (during this period, individuals and organizations who had been sent copies of the proposal to add the red-eared slider to Appendix II provided comments to the Service), and the second in response to the Service's January 5, 1987, request for additional comments. In order to use all of the information available, the Service considered all comments received on this species, including those provided by its field biologists, in reaching its decision not to submit this proposal.

Written comments were received from 3 State agencies (Louisiana, Tennessee, and Texas), from 10 conservation and animal welfare organizations (including Monitor, on behalf of ten additional organizations) and from 27 individuals, and one letter that was jointly signed by seven persons. Several of those in support of the proposal cited important concerns about the trade in turtles including the impact of escaped exports on foreign aquatic communities, disease transmission, humane treatment, and illegal shipments within the United States. As important as these issues may be, the Service did not consider them to be applicable to the criteria for listing species in the Appendices to the Convention.

The criteria for listing in Appendix II as stated in resolution Conf. 1.1 require some indication that the species may be or may become threatened with extinction and that the species is presently subject to trade or is likely to become subject to trade. The information on the species status should indicate that the population is decreasing, or very limited in size or geographical distribution. Furthermore, the amount of trade should be such that there is evidence of actual or expected trade in such a volume as to constitute a potential threat to the survival of the species.

It should be noted that this species is not restricted to the Mississippi Valley from Illinois to the Gulf of Mexico. In addition, its range extends from the Florida Panhandle to the Pecos and Canadian Rivers in New Mexico, including almost all of Texas and Oklahoma and half of Kansas.

Of those respondents who mentioned population status or trade as part of the reason for their support of the proposal, 3 State agencies opposed the proposal, 5 organizations (including Monitor that represented 10 additional organizations) supported the proposal, 2 opposed, 2 provided information without expressing a clear position on the proposal, 20 individuals supported the proposal, and 3 opposed it. These totals included those that only indicated support for the proposal (thereby suggesting knowledge of population and trade information), without any further clarifying remarks on status or trade.

With regard to comments from those providing apparently independent information on the population status in Louisiana, Monitor stated that the species had become scarce in southern Louisiana. Drs. Robert Mount and Harold Dundee noted a decline in Louisiana. Dr. Richard Franz, perhaps with independent information, concurred with the proposal and statements on population decline in this State. Conversely, the Louisiana Department of Wildlife and Fisheries stated that this species is very common and quite populous in Louisiana. Mr. A. Meior who was contacted by the Service indicated that the species was the most abundant in the State, and he was not aware of population change. The only person providing specific population information was Mr. Clifford Warwick who reported on single surveys. Although he reported seeing only six of these turtles each day during 42 miles of travel in paddle boats in southern Louisiana, he saw in 3 days an average of about 127 turtles in a protected swampland in northern Louisiana.

Differences in habitat, weather, survey methods, and previous population information preclude a complete assessment of this information. However, the Service accepts that the harvest of turtles may have had some impact on the population of this species in southern Louisiana.

With regard to comments received on the general population status, Drs. Richard Franz and Richard Seigel specifically concurred with the population decline statement presented in the proposal apparently without independent population status information. In fact, the proposal did not present a statement for general population decline but cited the surveys by Mr. Clifford Warwick supporting a population decline in southern Louisiana, noted a reference on historical declines, and in the summary referred to population declines without indicating that this referred to anything more than the already mentioned references on populations.

There were others, including Ms. Marion Brown, Ms. Caroline Burke, and Dr. Michael Seidel who referred to the species as the most common turtle in the United States, or said it was widely distributed and abundant. Aside from these generally unsubstantiated comments, there were a few presumably more informed statements about possible declines. Mr. Clifford Warwick did imply a general decline, Mr. Roger Conant mentioned marked reduction in the size of the wild population, and Dr. Robert Mount stated that the species is seen less frequently. None of these individuals provided any specific or quantitative data.

Those familiar with specific areas report no declines. The Tennessee Wildlife Resources Agency noted no impact of collections at Reelfoot Reservoir, and said there was no evidence for restriction on current harvest in Tennessee. The Texas Parks and Wildlife Department stated that the population in Texas had not been impacted by collections and that the species was the most widely distributed and common turtle in Texas. Dr. James Dixon also said the species was common in Texas. Dr. Sherman Minton reported that the species had not declined in Indiana in the last 25 years, and Dr. William Parker said that the species was abundant and successful in Mississippi.

Furthermore, some individuals who supported the proposal nevertheless stipulated (1) That the species was abundant and not immediately endangered (per Dr. Henry Fitch), (2) that it was certainly not threatened (per Dr. Dale Jackson), and (3) that commercial harvest was unlikely to endanger the species (per Dr. William Parker).

Mr. J. Whitfield Gibbons, who supported the proposal, also verbally commented on population declines in isolated areas, but was not aware of declies over large areas or any major impact of collecting on the species. The Environmental Quality Committee of the American Society of Ichthyologists supported the proposal, but noted it was difficult to assess the impact of collecting because of the lack of baseline data.

U.S. Fish and Wildlife Service biologists also did not believe that collecting would threaten the survival of the species over its broad range. Furthermore, Service biologists in the southeast, southwest, and central regions did not identify any population needing special protection.

Therefore, the Service believes that the population of this species over its broad range is not likely to become threatened with extinction as a result of current trade.

Other questions related to population status were expressed by Dr. Samuel Sweet who indicated that the increasing alligator population could negatively impact on the red-eared slider populations, by Dr. Richard Seigel who expressed concern that harvesting adult sliders for farms was disruptive to the age structure of the population with possible delayed consequences, by Dr. George Pisani who believed the listing of the red-eared slider might shift collection pressures to other species with more restrictive distribution or ranges, and by Ms. Mary Anderson who speculated on the impact of lifting the Public Health Service ban on the sale of sliders with carapace less than 4 inches in the United States. No data were provided to indicate the probability of these factors having an impact. If information of any of these factors becomes available and indicates that the magnitude of the effect may threaten the survival of the species, the Service would reconsider the situation and could initiate listing through the postal vote process.

Ms. Mary Anderson and others, especially Monitor and the International Wildlife Coalition, expressed their belief that the export of the species should be better monitored. The Service will consider the need for and means of improving the monitoring of exports of this species.

2. Pacific Island fruit bats, *Pteropus* species—The Service received only one written comment during the public comment period on the proposal to add two species (*Pteropus mariannus* and *P. tokudae*) to Appendix I and seven species (*P. insularis, P. macrotis, P. molossinus, P. phaeocephalus, P. pilosus, P. samoensis,* and *P. tonganus*) to Appendix II. The Animal Welfare Institute expressed its support for the proposal. This proposal was submitted to the Convention's Secretariat. Since that time, the Service has received a few comments clarifying distribution and status information, reporting protective legislation changes (i.e., Samoa banned the export of fruit bats in 1986) and stating general support for the proposal.

3. Trumpet pitcher plants, *Sarracenia* species and hybrids—Six written comments were received by the Service on the proposal to add to Appendix II those species and natural hybrids of the genus *Sarracenia* not already listed in Appendix I. Two of the responses were from State agencies (Wisconsin and Texas), two from individual scientists, one from a conservation organization (Natural Resources Defense Council) and another from a commercial nursery (World Insectivorous Plants). Five of the respondents were supportive of the proposal, and the State of Wisconsin provided information on the status of the genus in the State without stating a position on the proposal.

Dr. George W. Folkerts provided additional information on habitat loss, biology and taking in these species, including examples of commercial collections. World Insectivorous Plants also provided information on collection, market interest, and trade, including information on international trade. The information provided was helpful in reaching a final decision to submit the proposal, and appropriate information from these comments was incorporated into the proposal submitted to the Convention's Secretariat.

Future Actions

In summary, the Service has submitted the following proposals for consideration at the Sixth Meeting of the Conference of the Parties to the Convention, and in the Service's final negotiation is to support these proposals at the meeting in Ottawa.

1. *Pteropus mariannus* and *P. tokudae* (Mariana and little Mariana fruit bat)—add to Appendix I, and *Pteropus insularis, P. macrotis, P. molossinus, P. phaeocephalus, P. pilosus, P. samoensis,* and *P. tonganus*—add to Appendix II.

2. *Sarracenia* species not already listed on Appendix I and natural hybrids—add to Appendix II.

The Service has also published a notice announcing its final negotiating position on proposals that have been submitted by other Parties for consideration at the Sixth Meeting of the Parties (**Federal Register**, July 10, 1987). Copies of all proposals are available from the Office of Scientific Authority (see address above).

This notice was prepared by Dr. Charles W. Dane, Chief, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 through 1543; 87 Stat. 884, as amended).

List of Subjects in 50 CFR Part 23

Endangered and threatened plants, Endangered and threatened wildlife, Exports, Fish, Imports, Marine mammals, Plants (agriculture), Treaties.

Dated: July 8, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-15792 Filed 7-9-87; 8:45 am]

BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

Shrimp Fishery of the Gulf of Mexico

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

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council will hold public hearings on the review of draft Amendment 4 and proposed regulations for the Shrimp Fishery of the Gulf of Mexico Fishery Management Plan. Public comments are invited.

DATES: The hearings will begin at 7:00 p.m., and will adjourn at 10:00 p.m., on Tuesday, July 28, 1987; Wednesday, July 29, 1987; Thursday, July 30, 1987; Tuesday, August 4, 1987; Wednesday, August 5, 1987; and Thursday, August 6, 1987

The public comment period ends August 31, 1987.

ADDRESSES: See **"SUPPLEMENTARY INFORMATION"** for locations of the hearings. Written comments may be sent to Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Florida 33609.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, 813-228-2815.

SUPPLEMENTARY INFORMATION: The hearings will take place as follows:

July 28th—Jury Assembly Room of the Courthouse, 722 Moody, Galveston, TX

July 29th—Justice Court, 525 Lakeshore Drive, Port Authur, TX

July 30th—Cameron Elementary School, Highway 82, Cameron, LA

August 4th—Council Meeting Room of the Courthouse Annex, corner of Goode and School Streets, Houma, LA

August 5th—Firemen's Hall, Highway 45, Lafitte, LA

August 6th—Biloxi Cultural Center, Assembly Room, 217 Lameuse, Biloxi, MS

Dated: July 7, 1987.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 87-15727 Filed 7-7-87; 4:52 pm]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 52, No. 132
Friday, July 10, 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

Federal Grain Inspection Service

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Federal Grain Inspection Service Advisory Committee.

Date: August 4, 1987.

Place: Red Lion Inn, Lloyd Center, 1000 NE. Multnomah, Portland, Oregon 97208.

Time: 8:30 a.m.

Purpose: To provide advice to the Administrator of the Federal Grain Inspection Service on the efficient and economical implementation of the U.S. Grain Standards Act of 1976 and to assure the normal movement of grain in an orderly and timely manner.

The agenda includes: (1) Financial matters; (2) grain quality initiatives such as amendments to the standards and regulations, CuSum, and wheat classification; (3) quality control; and (4) other matters.

The meeting will be open to the public. Public participation will be limited to written statements unless otherwide requested by the Committee Chairman. Persons, other than members, who wish to address the Committee at the meeting or submit written statements before or at the meeting should contact Mr. W. Kirk Miller, Administrator, FGIS, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 382–0219.

John W. Marshall,

Acting Administrator.

[FR Doc. 87–15717 Filed 7–9–87; 8:45 am]

BILLING CODE 3410-EN-M

Soil Conservation Service

Environmental Impact Statement; Wisconsin Ditch Farm Irrigation RC&D Measure, Moffat County, CO

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an Environmental Impact Statement is not being prepared for the Wisconsin Ditch Farm Irrigation RC&D Measure, Moffat County, Colorado.

FOR FURTHER INFORMATION CONTACT: Mr. Sheldon G. Boone, State Conservationist, Soil Conservation Service, 2490 West 26th Avenue, Denver, Colorado 80211, telephone (303) 964–0292.

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federally assisted action indicates that the measure will not cause significant local, regional or national impacts on the environment. As a result of these findings, Mr. Sheldon G. Boone, State Conservationist, has determined that the preparation and review of an Environmental Impact Statement are not needed for this measure.

This farm irrigation measure concerns a plan to improve the irrigation system. The planned works of improvement include installing 170 lf. of concrete siphon underground, replacing the present structure.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available at the above address to fill single-copy requests. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Mr. Sheldon G. Boone. No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901, Resource Conservation and Development, and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Dated: June 30, 1987.

Sheldon G. Boone,

State Conservationist.

[FR Doc. 87–15652 Filed 7–9–87; 8:45 am]

BILLING CODE 3410-16-M

ARMS CONTROL AND DISARMAMENT AGENCY

General Advisory Committee; Closed Meeting

In accordance with the Federal Advisory Committee Act, as amended, the U.S. Arms Control and Disarmament Agency announces the following meeting:

Name: General Advisory Committee on Arm Control and Disarmament.

Date: July 22, 23, 1987.

Time: 9:00 a.m.

Place: State Department Building, Washington, DC

Type of Meeting: Closed.

Contact: Barry Daniel, Executive Director, General Advisory Committee on Arms Control and Disarmament. Room 5927, Washington, DC 20451 (202) 647–5178.

Purpose of Advisory Committee: To advise the Director of the U.S. Arms Control and Disarmament Agency on arms control and disarmament policy and activities, and from time to time to advise the President and the Secretary of State respecting matters affecting arms control, disarmament, and world peace.

Agenda: Will present the following discussions and presentations:

July 22, 23, 1987

Balance of forces in the European Theatre
Verification Issues
Soviet Space Programs
Executive Discussions

Reason for Closing: The GAC will be reviewing and discussing matters specifically required by Executive Order to be kept secret in the interest of national defense and foreign policy.

Authority to Close Meeting: The closing of this meeting is in accordance with a determination by the Director of the Arms Control and Disarmament Agency dated April 1, 1987, made pursuant to the provisions of section

10(d) of the Federal Advisory Committee Act as amended.

William J. Montgomery,

Committee Management Officer.

[FR Doc. 87-15680 Filed 7-9-87; 8:45 am]

BILLING CODE 6820-32-M

DEPARTMENT OF COMMERCE

International Trade Administration

[C-357-404]

Preliminary Results of Countervailing Duty Administrative Review; Certain Apparel from Argentina

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on certain apparel from Argentina. We preliminarily determine the total bounty or grant to be 0.83 percent *ad valorem* for the period December 21, 1984 through December 31, 1984 and *de minimis* for 1985. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: July 10, 1987.

FOR FURTHER INFORMATION CONTACT: Christopher Beach or Bernard Carreau, Office of Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1985, the Department of Commerce ("the Department") published in the **Federal Register** (50 FR 9846) the final affirmative countervailing duty determinations and countervailing duty orders on certain textile mill products and apparel from Argentina. On March 13, 1986, an exporter, Pulloverfin S.A.I.C., and an importer, Che Amigo U.S.A., requested in accordance with 19 CFR 355.10 an administrative review of the order on certain apparel only. We published the initiation on April 18, 1986 (51 FR 13273). The Department did not receive a request for an administrative review of the countervailing duty order on certain textile mill products. The Department has now conducted the administrative review on certain apparel in accordance with section 751 of the Tariff Act of 1930.

Scope of Review

Imports covered by the review are shipments of Argentine apparel, currently classifiable under the following items of the Tariff Schedules of the United States Annotated: 372.7540, 374.2500, 374.3530, 374.6500, 376.2830, 381.0540, 381.0542, 381.0546, 381.4130, 381.4160, 381.4770, 381.5650, 381.6240, 381.8930, 381.9035, 381.9540, 381.9545, 381.9585, 384.0207, 384.0208, 384.0212, 384.0236, 384.0320, 384.0330, 384.0340, 384.0350, 384.0360, 384.0370, 384.0406, 384.0432, 384.0433, 384.0436, 384.0437, 384.0438, 384.0439, 384.0441, 384.0442, 384.0444, 384.0451, 384.0497, 384.0608, 384.0805, 384.0810, 384.0815, 384.0820, 384.0825, 384.0905, 384.0944, 384.1000, 384.1319, 384.1321, 384.1611, 384.1612, 384.1613, 384.1680, 384.1920, 384.2105, 384.2115, 384.2120, 384.2125, 384.2205, 384.2216, 384.2816, 384.2818, 384.2821, 384.2850, 384.2910, 384.2920, 384.2930, 384.2940, 384.2950, 384.3758, 384.3767, 384.3777, 384.4609, 384.4647, 384.4765, 384.4925, 384.5234, 384.5275, 384.5276, 384.5277, 384.5278, 384.5279, 384.5299, 384.5526, 384.5930, 384.6310, 384.6330, 384.6340, 384.6350, 384.6360, 384.6371, 384.6372, 384.6385, 384.7010, 384.7020, 384.7215, 384.7220, 384.7510, 384.7522, 384.7528, 384.7532, 384.7534, 384.7536, 384.7538, 384.7542, 384.7544, 384.7546, 384.7548, 384.7552, 384.7554, 384.7556, 384.7558, 384.7562, 384.7595, 384.8024, 384.8026, 384.8073, 384.8225, 384.8300, 384.9115, 384.9445, and 704.6500.

The review covers the period December 21, 1984 through December 31, 1985 and ten programs.

Analysis of Programs

(1) Reembolso

The reembolso is a tax rebate paid upon export. It is calculated as a percentage of the f.o.b. invoice price. The Tariff Act and the Commerce Regulations allow the rebate of the following: (1) Indirect taxes borne by inputs that are physically incorporated in the exported product (*see* Annex I.1 of Part 355 of the Commerce Regulations); l and (2) indirect taxes levied at the final stage (*see* Annex I.2 of Part 355 of the Commerce Regulations). If the tax rebate upon export exceeds the total amount of allowable indirect taxes, we consider the difference to be an overrebate of indirect taxes and, therefore, a bounty or grant.

In our final determination (50 FR 9846, March 12, 1985), we found that the reembolso was designed to rebate prior-stage taxes, import duties, and final-stage taxes. For textile mill products, we determined that the Argentine government had reasonably calculated the incidence of indirect taxes and import duties on the exported products and inputs into those products. We therefore found the requisite linkage between the reembolso and the total indirect tax incidence on textile mill products. However, for apparel, we received a response from one firm, which accounted for only 44 percent of the apparel industry. During the verification of this firm, we were not able to establish from company records the level of either final-stage taxes or prior-stage taxes. The company attempted to submit additional information after verification, but we could not accept it at that time. Consequently, we determined that the Argentine government had not reasonably calculated or adequately documented the actual tax incidence borne by apparel.

During the current administrative review, the Argentine government submitted, as part of a complete and timely response to our questionnaire, new fiscal incidence studies and cost structures for the apparel industry that covered the entire Argentine apparel industry of 40 firms. The studies were similar to those from which we established the requisite linkage for textile mill products in the original investigation. At verification, the Argentine government was able to show the results of these new studies as well as earlier studies from 1977 and 1981. We therefore now find the requisite linkage for apparel.

We were able to verify through company documents the payment of certain final-stage taxes, including the gross income tax (a sales tax), the municipal tax, the foreign exchange tax, the stamp tax, and the freight insurance tax. However, we were not able to establish from the records of the verified companies the level of prior-stage tax incidence during the period of review. Consequently, we are disallowing the amounts claimed for all prior-stage taxes. Based on our analysis of the final-stage taxes, we find that the amount of allowable indirect taxes rebated to apparel exporters was 3.17 percent *ad valorem* during the review period.

Until June 11, 1985, the reembolso rate for apparel was four percent (Resolution ME 1090, October 29, 1984). Therefore, we preliminarily determine the amount of overrebate in December 1984 to be 0.83 percent *ad valorem*. On June 11, 1985, the Argentine government reduced the reembolso rate from four percent to zero and levied a six percent export tax (Resolution ME 475). On August 3, 1985, the Argentine government eliminated

the export tax and maintained the reembolso rate at zero. Therefore, for 1985, we prorated the 0.83 percent overrebate by the number of days that the four percent reembolso was in effect. On this basis, we preliminarily determine the amount of overrebate in 1985 to be 0.43 percent *ad valorem*.

(2) Post-export Financing

Under OPRAC–1 Chapter 1 section 2.3, the Central Bank of Argentina provides low-interest post-export financing to exporters of certain products, including apparel. Before approving a loan, the Central Bank requires the exporter to show proof of payment from the importer of 20 percent of the f.o.b. invoice value. The exporter then obtains two loans, each representing 40 percent of the f.o.b. invoice value of the export. One loan is due within 180 days of the date of shipment, and the other is due within 360 days of the date of shipment. The actual terms of the loans are generally less than 180 and 360 days because the initial 20 percent payment usually occurs after the date of shipment. The loans are dollar-indexed, but the exporter actually receives australs. Interest is paid at maturity. We consider these post-export loans to be countervailable because they are given at preferential rates only on merchandise destined for export.

We found that one exporter obtained a loan under this program in August 1985 that was repaid in November 1985. Although the OPRAC regulations state that the annual interest rate for these loans is 7.5 percent, we found that the actual rate for this loan was 6.90 percent. To calculate the benefit, we compared the rate of interest charged on this loan with a national average commercial rate. We used as our benchmark the weighted average of the regulated, unregulated, and acceptance rates of comparable short-term austral loans available from Argentine banks during the last half of 1985, as reported in the *Fundacion de Investigaciones Economicas Latinoamericanas*, an Argentine financial publication. (*See* the final affirmative countervailing duty determination and countervailing duty order on oil country tubular goods from Argentina (49 FR 46564, November 27, 1984).) We chose rates from only the last half of 1985 because the austral was not in circulation until July 1985. Since interest on OPRAC loans is paid at maturity, and we have no information on other financial charges associated with these loans or the commercial loan used for our benchmark, we compared the nominal OPRAC dollar-indexed rate with our nominal weighted-average benchmark rate, which was 47.80 pecent. Because the austral/dollar exchange rate was unchanged during the term of this loan, there was no need to adjust the preferential rate by the exchange rate differential. We weight-averaged the exporter's benefit by its share of total exports of apparel to the United States during the review period. On this basis, we preliminarily determine the benefit from this program to be zero in 1984 and 0.03 percent *ad valorem* in 1985.

(3) Other Programs

We also examined the following programs and preliminarily determine that exporters of apparel did not use them during the review period:

(A) Pre-export financing;
(B) Incentives for exports from southern ports;
(C) Tax reductions for investors;
(D) Regional tax incentives;
(E) Tax reductions for locating in industrial parks;
(F) Discounts of foreign currency accounts receivable;
(G) Low-cost loans for projects outside Buenos Aires; and
(H) BANADE loan guarantees.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.83 percent *ad valorem* for the period December 21, 1984 through December 31, 1984 and 0.46 percent *ad valorem* for 1985. The Department considers any rate less than 0.50 percent to be *de minimis*.

The Department intends to instruct the Customs Service to assess countervailing duties of 0.83 percent *ad valorem* of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after December 21, 1984 and exported on or before December 31, 1984, and to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1985 and on or before December 31, 1985.

The Department also intends to instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on all shipments of apparel from Argentina entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This deposit waiver shall remain in effect until publication of the final results of the next administrative review. Interested parties may submit written comments on these preliminary results within 20 days of the date of publication of this notice, and may request disclosure and/or a hearing within 7 days of the date of publication. Any hearing, if requested, will be held 20 days from the date of publication or the next workday following. Any request for an administrative protective order must be made no later than five days after the date publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and § 355.10 of the Commerce Regulations (19 CFR 355.10).

Dated: July 6, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary, Import Administrtion.

[FR Doc. 87–5713 Filed 7–9–87; 8:45 am]

BILLING CODE 3510–DS–M

Minority Business Development Agency

Financial Assistant Application Announcements; Missouri/Illinois

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3-year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $318,118 for the project performance of February 1, 1988 to January 31, 1989. The MBDC will operate in the St. Louis, Missouri—Illinois Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of $270,400 in Federal funds and a minimum of $47,718 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The award number will be 07–10–88003–01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is August 17, 1987. Applications must be postmarked on or before August 17, 1987.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353–0182.

FOR FURTHER INFORMATION: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 87–15643 Filed 7–9–87; 8:45 am]

BILLING CODE 3510–21–M

Financial Assistance Application Announcements; Indiana

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project performance of January 1, 1988 to December 31, 1988. The MBDC will operate in the Gary—Hammond—East Chicago, Indiana Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The award number will be 05–10–88001–01.

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker pubic and private sector resources on behalf of minority individuals and firms; offer them a full range of management and tehnical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judge on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is August 17, 1987. Applications must be postmarked on or before August 17, 1987.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, Suite 1440, Chicago, Illinois 60603, 312/353–0182.

FOR FURTHER INFORMATION: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 87–15644 Filed 7–9–87; 8:45 am]

BILLING CODE 3510–21–M

Financial Assistance Application Announcements; Wisconsin

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: the Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate a MBDC for a 3 year period, subject to available funds. The cost of performance for the first twelve (12) months is estimated at $194,118 for the project performance of February 1, 1988 to January 31, 1989. The MBDC will operate in the Milwaukee, Wisconsin Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of $165,000 in Federal funds and a minimum of $29,118 in Non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services). The award number will be 05–10–88002–01.

The funding instrument for the will be a cooperative agreement and competition is open to individuals, nonprofit and for-profit organization, local and state governments, American Indian Tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible

clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDA supports MBDC programs that can: coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and its staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3 year period with preriodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the descretion of MBDA based on such factors as a MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing Date: The closing date for applications is August 17, 1987. Applications must be postmarked on or before August 17, 1987.

ADDRESS: Chicago Regional Office, Minority Business Development Agency, 55 East Monroe Street, suite 1440, Chicago, Illinois 60603, 312/353–0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 87–15645 Filed 7–9–87; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[P8F]

Marine Mammals; Application for Permit; Naval Ocean Systems Center

Notice is hereby given that an Applicant has applied in due form for a Permit to import marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Naval Ocean Systems Center, P.O. Box 997, Kailua, Hawaii 96734, Attn: Dr. Paul Nachtigall.

2. Type of Permit: Scientific Research.

3. Name and Number of Marine Mammals: False killer whale (*Pseudorca crassidens*)—4; Grampus (*Grampus griseus*)—4.

4. Type of Take: The Applicant requests authorization to import marine mammals from Japan.

5. Requested Duration of Permit: 5 yrs.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this Application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this Application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular Application would be appropriate. The holding of such a 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 in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC 20009;

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415; and

Administrator, Western Pacific Program Office, National Marine Fisheries Service, 2570 Dole Street, Room 106, Honolulu, Hawaii 96822–2396.

Dated: July 6, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–15662 Filed 7–9–87; 8:45 am]

BILLING CODE 3510–22–M

[P99C]

Marine Mammals; Application for Permit; Aquarium of Niagara Falls

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 through 1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. Applicant: Aquarium of Niagara Falls 701 Whirlpool Street Niagara Falls, New York 14301.

2. Type of Permit: Public Display.

3. Name and Number of Marine Mammals: Atlantic bottlenose dolphins (*Tursiops truncatus*)—3

4. Type of Take: To take for permanent maintenance.

5. Location of Activity: Gulf of Mexico between Mobile Bay and the Mississippi River.

6. Period of Activity: 3 years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

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 interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue, NW., Room 805, Washington, DC;

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930; and

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: July 7, 1987.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87-15738 Filed 7-9-87; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Clarification of Requirements for Participation in the Caribbean Basin Special Access Program

July 6, 1987.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Clarification of requirements and procedures for participating in the Special Access Program for textiles under the Caribbean Basin Initiative.

SUMMARY: This notice clarifies the reqirements and procedures for participating in the Special Access program (Program), including a description of products qualifying for entry into the United States under a guaranteed access level, a review of the information to be provided on Form ITA-370P, and a review of Customs procedures for the export of cut parts to participating Caribbean countries and the import of assembled products from those countries.

Authority: Sec. 204 of the Agricultural Act of 1956, as amended, (7 U.S.C. sec.1854) and E.O. 11651 (March 3, 1972).

Background

The Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, and the President's February 20, 1986 announcement of a Special Access Program (Program) for textile products assembled in participating Caribbean Basin beneficiary countries from fabric formed and cut in the United States, announced on June 11, 1986 (51 FR 21208) the requirements for participation in the Special Access Program. Under the Program, the United States has established "guaranteed access levels," or "GALs," assuring access to the U.S. market for textile products assembled in participating Caribbean countries from fabric formed and cut in the United States.

The June 11, 1986 **Federal Register** notice announced that firms participating in the program must complete a Special Access Program CBI Export Declaration, Form ITA-370P (available from the Government Printing Office, Washington, DC, telephone 202/783-3238, stock number 003-009-00505-1), for each qualifying shipment. (*See* 52 FR 18414 (May 15, 1987)).

Qualifying shipments were defined as Caribbean-produced textile products assembled from fabric formed and cut in the United States. A limited exception to the requirement that all components be U.S. formed and cut was made for findings, and trimmings, including elastic strips. Such foreign origin findings and trimmings are permissible under the Program provided they do not exceed 25 percent of the cost of the components of the assembled products.

The June 11, 1986 notice also explained the three part Form ITA-370P and the procedures for presenting the form to the U.S. Customs Service (Customs). At the time of exportation to the Caribbean of qualifying fabric parts from the United States, firms intending these goods to be treated under the Program must present to Customs a Form ITA-370P with a completed Shipper's Declaration. At that time, the Customs port (the "port of verification") will verify the form by assigning it a four-digit control number and signing it. The Customs port may inspect the shipment prior to verifying the form. The Customs port will retain the original copy of the form and forward that copy to the central office for the Program, the port of New Orleans. One copy of the form is to accompany the cut parts to the country of assembly. Any number of copies of the form may be made once the Shipper's Declaration portion of the form has been completed and a control number has been assigned by Customs. For each shipment of parts that has been assembled in the participating Caribbean country and is ready to be exported to the United States, the assembler will complete the Assembler's Declaration portion of the form. At the time of entry into the United States of the assembled goods, the U.S. importer must have completed the Importer's Declaration portion of Form ITA-370P and must present it to the Customs port of entry as part of the entry package. The port of entry need not be the same as the port of export. The merchandise will be eligible for entry subject to the following conditions: (1) If the shipper of the cut parts and the importer of the assembled goods are the same firm; (2) the port determines that an original verified form is on file at the Central Office; (3) the port determines that entries may be made against the quantity indicated on the form; (4) the port determines that the participating Caribbean government's certificate meets the established requirements; (5) the provisions of the applicable bilateral agreement are complied with; and (6) the port determines that all other entry requirements are met.

The Program has been in place since September 1, 1986. During this period a number of questions have arisen regarding the definition of "U.S. formed and cut parts" and "elastic strips," the specificity required in completing Form ITA-370P, including whether documents may be attached to the form and whether multiple styles or textile categories may be included on a single form, whether an affidavit regarding U.S. origin is required, whether facsimile signatures may be used, and whether a Customs office other than the ultimate port of export may verify a Form ITA-370P.

Definition of U.S. Formed and Cut Parts

To qualify for the Program, all fabric components, with the exception of findings and trimmings, including elastic strips, not exceeding 25 percent of the cost of the components of the assembled product, must be U.S. formed and cut. Greige goods imported into the United States and then finished in the United States do not qualify under the Program because such fabric is foreign-formed.

Fabric that is woven or knitted in the United States from foreign yarn is considered U.S. formed for the purposes of this Program. The U.S. formed and cut fabric requirement applies to all textile components of the assembled product, including linings and pocketings.

Definition of Elastic Strips

The June 11, 1986 **Federal Register** notice stated that findings and trimmings, including elastic strips, incorporated in products otherwise assembled solely from U.S. formed and cut fabric, may be of foreign origin

provided that they do not exceed 25 percent of the cost of the components of the assembled product. Elastic strips were included in recognition of the existing operations producing brassieres in Caribbean Basin countries. Because the foreign origin exception for elastic strips was intended by CITA to be limited to elastic strips for use as brassiere straps and not to include elastic fabrics such as those used in waistbands, effective October 1, 1987, the foreign origin exception for elastic strips is clarified as limited to narrow elastic fabric less than one inch in width used in the production of brassieres only. Thus, for goods imported into the United States on or after October 1, 1987, findings and trimmings of foreign origin, including narrow elastic fabric of one inch or less for use in the manufacture of brassieres, may be included in products otherwise qualifying under the Program, provided they do not exceed 25 percent of the cost of the components of the assembled product.

Specificity Required in Completing Form ITA–370P

Form ITA–370P instructs the shipper to retain invoices establishing that the fabric components are U.S. formed and cut and to describe the parts being exported, "including the weight and quantity of parts, the fabric, including fabric weight, yarn size, thread count, fiber content, pattern, and color and the U.S. manufacturer(s) of the fabric and the U.S. firm cutting the fabric."

It is the understanding of CITA and of Customs that it may not be possible for all firms to supply all of the detail listed above. CITA and Customs recognize that some information, such as yarn size and thread count, may not be available or necessary in all instances. The purpose of the description requirement is to permit Customs inspectors to conduct a visual inspection of the fabric parts and compare the written description with the parts to determine whether the exported parts are what they purport to be, and upon re-entry into the United States of the assembled product, to determine that the exported fabric was used to produce the final import. Thus, firms should include as much detail as possible, either on the form itself, if there is sufficient space, or by attached invoices, other documentation, or a continuation sheet. Firms need not attach invoices if they sufficiently describe the merchandise on the form, although documentation of U.S. origin, such as invoices, cutting documents, or signed affidavits by suppliers must be retained in firm's files. Signed affidavits by suppliers should be retained if invoices or cutting tickets are not available.

If documents are attached to Form ITA–370P, either to provide additional proof of U.S. origin or because of insufficient space on the form, information should be included on the form identifying and explaining the attachments. These documents should be stapled to the form and either clearly state the four-digit control number assigned by the Customs port and the name of the port assigning the control number or provide some other identification tying them to that particular form.

Firms may provide total weight for all fabric parts for each style, rather than listing the weight for each of the components being exported. It is recommended that firms provide explanatory information in instances where terminology is not generally recognized. For example, instead of listing a color as "primrose," a firm should include a definition of that color, such as "yellow."

Filing of Statement on Foreign-Origin Findings and Trimmings

To establish that foreign origin findings and trimmings, including elastic strips, do not exceed 25 percent of the cost of the components of the assembled product, firms may file with the port of verification a list of the unit cost of each of the components and then certify on the form ITA–370P that the foreign origin findings and trimmings do not exceed 25 percent of the component cost of the assembled product. It is not necessary to include all unit cost information on the form ITA–370P if that information has been filed with the port issuing the control number to the form. On the ITA–370P form it should be stated, however, that the unit cost data is on file with the port of verification.

Signatures on Form ITA–370P

Form ITA–370P has been revised to permit the Shipper's Declaration to be signed by a "Responsible Manager" and to permit the Importer's Declaration to be signed by a "Responsible Manager or Responsible Agent." In each instance, the person signing must be knowledgeable about the shipment and acting on behalf of the firm participating in the Program. Facsimile signatures are acceptable in both instances under the following conditions: A firm wishing to use facsimile signatures for the Shipper's Declaration portion of its forms must submit a letter of intent to the Customs's ports of verification (the port issuing the four-digit control number) and to any anticipated ports of import. A firm wishing to use facsimile signatures for the Importer's Declaration portion of its forms must submit a letter of intent to any anticipated ports of import. The letters should contain both an original and a facsimile signature. Customs will keep the letters on file for reference on all GAL shipments by these firms.

In no instances will a copy of a signature be accepted. A facsimile signature will not be accepted for the Assembler's Declaration portion of the form.

Multiple Styles or Categories

A single Form ITA–370P may be used for multiple styles or multiple categories of assembled products. For example, a single Form ITA–370P may accompany a shipment that includes two or more styles of blouses, or a shipment that includes two or more products or categories, such as a shirt and trousers, or a shipment that includes two or more fabrics. For the purposes of reporting to the central port, it is necessary that the expected total quantity of assembled products for each category be provided. However, the description included in the Shipper's Declaration also should indicate the quantity of each style, product, or different fabrication so that an accurate audit may be conducted if necessary.

Port of Verification May Be Different From Port of Export

CITA and Customs have noted that most shipments qualifying for the Program are being exported to the Caribbean from the Port of Miami. As a result of the volume of Form ITA–370Ps being presented to the Port of Miami, some delays are being experienced. To relieve this situation, Form ITA–370P may be presented for verfication, i.e., assigned a four-digit control number, at a port other than the ultimate port of export. The port of verification will have the option of inspecting the shipment prior to issuing the four-digit control number. When U.S. formed and cut parts qualifying for treatment under the Program are shipped from one port to a second port within the United States prior to export to the participating Caribbean country, e.g., from Charleston to Miami, Form ITA–370P may be presented for verification and assignment of a four-digit control number at either the first port or the port of export, at the option of the exporter.

Additional Information or Clarification

Notice of agreements negotiated under this Program have been published in the **Federal Register** as those agreements were signed.

Notice of new agreements or modifications of agreements will be published in the **Federal Register** as they occur.

Requests for additional information or clarification of the requirements and procedures for participation in the Program should be made in writing to the Chairman of CITA, Department of Commerce, Room H 3100, Washington, DC 20230.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553(a)(1).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-15740 Filed 7-9-87; 8:45 am]

BILLING CODE 3510-DR-M

Exemption of Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

July 6, 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 10, 1987. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

A CITA directive dated April 7, 1987 (52 FR 11723) established, under the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Agreement of February 6, 1987 between the Governments of the United States and India, restraint limits for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, including Categories 369 and 665, produced or manufactured in India and exported to the United States.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to exempt TSUSA numbers 360.7600 and 361.5420 in Category 369 and TSUSA numbers 360.7800 and 361.5426 in Category 665 from import restraint limits established under the terms of the bilateral agreement of February 6, 1987. In addition, import charges made to the restraint limit for Category 369 for TSUSA numbers 360.7600 and 361.5420 are being deducted. There were no charges made to TSUSA numbers 360.7800 and 371.5426 for Category 665.

A description to textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 29, 1986 (51 FR 27068), 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.

Committee for the Implementation of Textile Agreements

July 6, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on April 7, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in India and exported to the United States.

Effective on July 10, 1987, the directive of April 7, 1987, is hereby amendced to exempt TSUSA numbers 360.7600 and 361.5420 in Category 369 and TSUSA numbers 360.7800 and 361.5426 in Category 665 from the restraint limits established for the period which began on January 1, 1987 and extends through December 31, 1987.

Also effective on July 10, 1987, I request that you deduct the following amounts charged to the restraint limits established in the April 7, 1987 directive for Categories 369 and 665. The amounts being deducted are for TSUSA numbers 360.7600 and 361.5420 in Category 369 and TSUSA numbers 360.7800 and 361.5426 in Category 665.

Category	Amount to be deducted
369	27,484 pounds.
665	- 0 -

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87-15741 Filed 7-9-87; 8:45 am]

BILLING CODE 3510-DR-M

Decreasing the Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Korea

July 6, 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 10, 1987. For further information contact Eva Anderson, International Trade Specialist (202) 377-4212. For information on the quota status of this limit, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566-8041. For information on embargoes and quota re-openings, please call (202) 377-3715.

Background

A CITA directive dated December 18, 1985 (50 FR 52356) established a limit for man-made fiber coveralls in Category 659-C, among others, produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1986 and extended through December 31, 1986.

A further directive dated September 10, 1986 (51 FR 32821) increased the limit for Category 659-C by 128,000 pounds pending completion of a data investigation.

As a result of the investigation, the U.S. Customs Service has determined that certain garments were erroneously classified and charged to the 1986 limit for coveralls in Category 659-C. Consequently, in the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements has directed the Commissioner of Customs to reduce the 1986 limit for Category 659-C by 128,000 pounds. In addition, improper charges made to the 1986 limit for Category 659-C, amounting to 256,126 pounds, will be deducted and charged to 659-0.

Imports of 1986 overshipments in Category 659-C, amounting to 35,337 pounds, which were charged to the 1987 import restraint limit, will be deducted and charged to the 1986 limit for Category 659-C.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28 1984 (49 FR 26622), July

16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), 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.

Committee for the Implementation of Textile Agreements

July 6, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229.

Dear Mr. Commissioner: This directive further amends, but does not cancel, the directive issued to you on December 18, 1985, as amended on September 10, 1986, by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of man-made fiber textile products in Category 659–C,[1] among others, produced or manufactured in Korea and exported during the twelve-month period which began on January 1, 1986 and extended through December 31, 1986.

Effective on July 10, 1987, the directive of December 18, 1985, as amended on September 10, 1986, is further amended to decrease the limit for man-made fiber textile products in Category 659–C to 468,654 pounds.[2]

Also effective on July 10, 1987, you are directed to deduct 256,126 pounds from the charges made to the limit established for Category 659–C for the period January 1, 1986 through December 31, 1986 and charge 256,126 pounds to 659–O [3] for the same period.

In addition, you are directed to deduct 35,337 pounds from the charges made to the restraint limit established in the directive of December 23, 1986 for Category 659–C for the period January 1, 1987 through December 31, 1987. This same amount is to be charged to the 1986 limit for Category 659–C.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553.

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–15742 Filed 7–9–87; 8:45 am]

BILLING CODE 3510–DR–M

[1] In Category 659, only TSUSA numbers 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

[2] The limit has not been adjusted to account for any imports exported after December 31, 1985.

[3] In Category 659, all TSUSA numbers except 381.3325, 381.9805, 384.2205, 384.2530, 384.8606, 384.8607 and 384.9310.

Import Restraint Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the Republic of Macau

July 6, 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 10, 1987. For further information contact Diana Solkoff, 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. For information on embargoes and quota reopenings, please call (202) 377–3715.

Background

A CITA directive dated December 23, 1986 (51 FR 47045) established limits for cotton, wool and man-made fiber textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

As a result of consultations held February 9–10, 1987, the Governments of the United States and Macau exchanged diplomatic notes to further amend the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 28, 1983 and January 9, 1984 to extend through December 31, 1991. The agreement includes an aggregate limit, and within the aggregate a limit for Group I, covering all cotton, man-made fiber, silk blend and other vegetable fiber textile and textile products, new specific limits for Categories 333/334/335/833/834/835, 345, 347/348/847, 638/639/838, 641/840, 642/842 and 845/846, and new designated consultation levels for Categories 331/831, 336/836, 350/850, 351/851, 359/859, 652/852 and 670, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

The amended agreement also provides that cotton, wool, man-made fiber, silk blend and other vegetable fiber shipments valued at less than U.S. $250 shall be subject to the terms of the agreement, unless they are valid commercial samples or items for the personal use of the importer.

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of textiles and textile products in the foregoing categories, produced or manufactured in Macau and exported during 1987, in excess of the agreed restraint limits.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), July 14, 1986 (51 FR 25386), July 29, 1986 (51 FR 27068) and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1987).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1986 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on July 10, 1987, the directive of December 23, 1986 is hereby amended to include the following new and amended restraint limits for certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.[1]

Category	12-mo restraint limit
Aggregate: 300–354, 359–369, 400–448, 459–469, 600–654, 659–670, 800, 810,m 831–859 and 863–899, as a group.	81,000,000 sq. yds equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

Category	12-mo restraint limit
Group I:	
300–354, 359–369, 600–654 and 659–670, 800, 810, 831–859 and 863–899, as a group.	78,000,000 sq. yds equivalent
331/831	300,000 doz. pairs
333/334/833/834/835	138,000 doz. of which not more than 75,000 doz. shall be in Category 333/335/833/835
336/836	23,000 doz.
345	30,000 doz.
347/348/847	420,500 doz.
350/850	18,000 doz.
351/851	27,000 doz.
359/859	304,000 doz.
638/639/838	910,000 doz.
641/840	115,000 doz.
642/842	53,000 doz.
652/852	160,000 doz.
670	750,000 pds.
845/846	200,000 doz.

Textile products in Category 670, 800, 810, 831–859 and 863–899 which have been exported to the United States prior to January 1, 1987 shall not be subject to this directive.

Textile products in Categories 670, 800, 810, 831–859 and 863–899 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall be denied entry under this directive.

All import charges already made to the restraint limits previously established for the foregoing categories are to be retained. Charge the following amounts to the limits established in this directive. These charges are for the period January 1, 1987 through April 30, 1987. Additional charges will be supplied as they become available.

Category	Amount to be charged
670	49,101 lbs.
800	0
810	0
831	0
832	0
833	0
834	0
835	315 doz.
836	0
838	1,111 doz.
840	3,278 doz.
842	6,602 doz.
843	0
844	0
845	27,380 doz.
846	0
847	3,279 doz.
850	0
851	0
852	273 doz.
858	0
859	450 lbs.
863	0
870	0
871	0
899	0

Following is a list of conversion factors used in calculating square yards equivalent for the following categories.

Category	Conversion factor
331/831	3.5
333/334/335/833/834/835	41.0
333/335/833/835	41.0
336/836	45.3
347/348/847	17.8
350/850	51.0
351/851	52.0
359/859	4.6
632/832	4.6
633/634/635	41.3
638/639/838	15.5
641/840	14.5
642/842	17.8
645/646	36.8
647/648	17.8
652/852	16.0
845/846	36.8

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–15743 Filed 7–9–87; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool, Man-Made, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Malaysia

July 6, 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 10, 1987. For further information contact Eve Anderson, 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) 682–3071. For information on embargoes and quota re-openings, please call (202) 377–3715.

Background

A CITA directive dated December 22, 1986 (51 FR 47047) established import restraint limits for certain cotton, wool, man-made and other vegetable fiber textiles and textile products, including Categories 333/334/335, 338/339, 340, 341, 347/348, 605–T, 634, 635, 636, 640, 641 and 647/648, produced or manufactured in Malaysia and exported during the period which began on January 1, 1987 and extends through December 31, 1987.

A further directive dated February 3, 1987 (52 FR 3844) established an import restraint limit for wool textile products in Category 442, produced or manufactured in Malaysia and exported during the thirteen-month period which began on December 1, 1986 and extends through December 31, 1987.

During consulations held April 26–28, 1987 between the Governments of the United States and Malaysia, agreement was reached to further amend and extend the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated July 1 and 11, 1985, as amended, for the period Janaury 1, 1987 through December 31, 1991.

The agreement was expanded to include apparel made of silk blends and other vegetable fibers in Categories 833, 835, 836, 840 and 843–859. In addition, the agreement establishes a group for apparel and non-apparel products, including a fabric subgroup, for those products which are subject to specific limits (Group I), and a group for those products which are not subject to specific limits (Group II).

Under the terms of the bilateral agreement, as amended and extended, new restraint limits were established for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in Categories 300/301, 363, 369–W, 435, 442, 636, 647pt. and 648pt., and the newly merged Categories 333/334/335/835, 340/640, 341/641, 605–T/369–W and 634/635, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

The limits previously established for the period January 1, 1987 through December 31, 1987 for Categories 339 and 348, sublimits of Categories 338/339 and 347/348, have been eliminated.

In the letter below, the Chairman of the Committee for the Implementation of Textile Agreements directs to Commissioner of Customs to establish and amend restrain limits for the foregoing categories, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983, (48 FR 55607), December 39, 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).

This letter and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

July 6, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive cancels and supersedes the directive issued to you on February 3, 1987 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports of wool textile products in Category 442, produced or manufactured in Malaysia and exported during the thirteen-month period which began on December 1, 1986 and extends through December 31, 1987.

This directive amends, but does not cancel, the directive of December 22, 1986, concerning imports into the United States of certain cotton, wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on July 10, 1987, the directive of December 22, 1986 is hereby amended to include the following new and amended restraint limits for cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.[1]

Catergory	Twelve-Month Restraint Limit
Group I:	
300/301	3,500,000 pounds.
333/334/335/835.	125,000 dozen of which not more than 62,500 dozen each shall be in Categories 333, 334, 335, 835.
340/640	683,331 dozen.
341/641	925,846 dozen of which not more than 324,046 dozen shall be in Category 341.
363	4,000,000 numbers.
435	12,000 dozen,
442	15,000 dozen.
605-T [1]/369-W [2].	330,000 pounds.
634/635	421,350 dozen of which not more than 185,000 dozen shall be in Category 635.
636	158,100 dozen.
647pt.[3]	629,216 dozen.
648pt.[4]	629,216 dozen.
Group II:	
330,332, 349, 350, 352-354, 359-362, 369-O [5], 400-434, 436, 438-O [6], 440, 443, 444, 447, 448, 459, 464-469, 600-603, 605-O [7], 610-612,. 614-630, 632, 633, 643, 644, 649, 650, 652-654, 659, 665-670, 833, 836, 840 and 843-859, as a group.	27,431,846 square yards equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

[1] In Category 605, only TSUSA number 310.9500.

[2] In Category 369, only TSUSA number 303.2040.

[3] In Category 647, a sublimit of Category 647/648, men's and boys' knit trousers, slacks and shorts in TSUSA numbers 381.2350, 381.2370, 381.2375, 381.2859, 381.6679, 381.8531, 381.8730, 381.8815, 381.8835, 381.8840, 381.9234.

[4] In Category 648, a sublimit of Category 647/648, knit trousers, slacks or shorts in TSUSA numbers 384.1926, 384.1927, 384.1929, 384.1950, 384.2010, 384.2015, 384.2017, 384.2030, 384.2040, 384.2050, 384.2267, 384.2722, 384.5482, 384.7756, 384.8241, 384.8242, 384.8244, 384.8245, 384.8247, 384.8256, 384.8258, 384.8262, 384.8263, 384.8265, 384.8682 and 791.7458.

[5] In Category 369, all TSUSA numbers except 303.2040 and 366.2840.

[6] In Category 438, all TSUSA numbers except 384.1307, 384.1309, 384.2711, 384.5434, 384.5910, 384.6310, 384.7724 and 384.9640.

[7] In Category 605, all TSUSA numbers except 310.9500.

All import charges already made to the restraint limits previously established for the foregoing categories, with the exception of Category 442, are to be retained. Charge the following amounts to the limits established in this directive for the following categories. These charges are for the period January 1- March 31, 1987.

Category	Amount to be charged
300	0
301	0
330	0
332	0
349	0
350	1,166 dozen.
352	31,201 dozen.
353	0
354	0
359	237,923 pounds.
360	0
361	0
362	0
363	282,000 numbers.
369-W [1]	0
369-O [2]	44,246 pounds.
400	0
410	0
411	0
425	0
429	0
431	0
432	0
433	0
434	0
435	0
436	0
438-O [3]	0
440	0
442	18 dozens.
443	0
444	0
447	0
448	0
459	0
464	0
465	0
469	0
600	0
601	0
602	0
603	0
605-O [4]	0
610	0
611	0
612	0
614	0
625	12,658 pounds.
626	0
627	0
630	0
632	0
633	0
643	0
644	1,193 dozen.
649	32,028 dozen.
650	1,437 dozen.
652	794 dozen.
653	0
654	0
659	83,013 pounds.
665	0
666	791 pounds.
669	0
670	39,566 pounds.
831	0
832	0
833	0
835	2,354 dozen.
836	4 dozen.
838	0
840	0
843	0
844	0
845	4,165 dozen.
846	0

Category	Amount to be charged
847	2 dozen.
850	0
851	0
852	0
858	0
859	0

[1] Same as footnote 2 above.
[2] Same as footnote 5 above.
[3] Same as footnote 6 above.
[4] Same as footnote 7 above.

Textile products in the foregoing categories, except Categories 333/334/335, 340, 341, 605–T, 634, 635, 636, 640, 641, and 647/648, which have been exported to the United States prior to January 1, 1987 shall not be subject to this directive.

Textile products in the foregoing categories, except for Categories 333/334/335, 340, 341, 442, 605–T, 634, 635, 636, 640, 641, and 647/648, which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not be denied entry under this directive.

The limits previously established for the period January 1, 1987 through December 31, 1987 for Categories 339 and 348, sublimits of Categories 338/339 and 347/348, have been eliminated.

The charges for Categories 340, 640 and 605-T shall be retained, but not the category limits, which are replaced by the limits for Categories 340/640 and 605–T/369–W.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–15744 Filed 7–9–87; 8:45 am]

BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1987; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1987 a commodity to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: August 10, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On December 29, 1986 and May 1, 1987 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (51 FR 46908 and 52 FR 15974) of additions to Procurement List 1987, November 3, 1986 (51 FR 39945).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77 and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The action will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The action will not have a serious economic impact on any contractors for the commodity and service listed.

c. The action will result in authorizing small entities to provide the commodity and service procured by the Government.

Accordingly, the following commodity and service is hereby added to Procurement List 1987.

Commodity

Mattress, Neoprene, Foam

7210–01–244–9735
7210–01–244–9736

Service

Commissary Warehouse Service
Sheppard Air Force Base, Texas

C.W. Fletcher,

Executive Director.

[FR Doc. 87–15696 Filed 7–9–87; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1987; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1987 commodities and a service produced or provided by workshops for the blind or other severely handicapped.

Comments Must Be Received on or Before: August 10, 1987.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202–3509.

FOR FURTHER INFORMATION CONTACT: C.W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77 and 41 CFR 51–2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities and the service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1987, November 3, 1986 (51 FR 39945).

Commodities

Chest, Five-Drawer

7105–01–011–8397
7105–01–005–8403
7105–01–005–8404
7105–01–007–9797
7105–01–047–3555

Chest, Six-Drawer

7105–01–005–8407
7105–01–005–8405
7105–01–023–4636
7105–01–005–8406
7105–01–049–9587

Chest, Three-Drawer

7105–01–046–8855

Chest, Stereo

7105–01–019–0378
7105–01–005–8474
7105–01–017–6104
7105–01–019–0377
7105–01–047–3575
7105–01–047–3573

Base, Grooming Unit

7105–01–019–0375
7105–01–007–1830
7105–01–019–0376
7105–01–019–0379
7105–00–NSH–0001

Overchest

7105–01–005–8475
7105–01–047–3576

7105–01–047–3574

Bookcase, Open-Shelf

7105–01–007–9798
7105–01–047–3558
7105–01–047–3556

Bookcase, Drop-Lid

7105–01–005–8409
7105–01–005–8408
7105–01–007–1760
7105–01–009–2567
7105–01–047–3559
7105–01–047–3557

Top, Grooming Unit

7105–01–005–8476

Box, Vanity

7105–01–007–1831

Bracket, Overchest Support

7105–00–NSH–0003

Assembly, Support Panel

7105–00–NSH–0004

Cabinet, Storage

7125–00–378–4261

Service

Commissary Warehouse Service
McConnell Air Force Base, Kansas

C.W. Fletcher,

Executive Director.

[FR Doc. 87–15697 Filed 7–9–87; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Ada Board, Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board will be held 29 July from 9:00 a.m. to 5:00 p.m. and 30 July from 9:00 a.m. to 3:00 p.m. at the National Clarion Hotel, 300 Army/Navy Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Armstrong, IIT Research Institute, Suite 300, 4550 Forbes Boulevard, Lanham, MD 20706 (703) 685–1455.

July 7, 1987.

Linda M. Lawson,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

[FR Doc. 87–15729 Filed 7–9–87; 8:45 am]

BILLING CODE 3810–01–M

Ada Board Environmental Panel Meeting

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Ada Board Environment Panel will be held Tuesday, July 28, 1987 from 9:00 a.m. to 5:00 p.m. at the National Clarion Hotel, 300 Army/Navy Drive, Arlington, Virginia. The purpose of the meeting will be to discuss minutes from the previous meeting, to discuss the ARTWG White Paper, and to formulate recommendations to the Ada Board and the Director of the AJPO regarding the subjects discussed in the ARTEWG White Paper.

FOR FURTHER INFORMATION CONTACT: Dr. Erhard Ploedereder, Tartan Laboratories, 461 Melwood Avenue, Pittsburgh, PA 15213 (412) 621–2210.

Dated: July 7, 1987.

Linda M. Lawson,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

[FR Doc. 86–15732 Filed 7–9–87; 8:45 am]

BILLING CODE 3810–01–M

Ada Board Environmental Panel Meeting

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Ada Board Environment Panel will be held 30 July 1987 from 3:15 to 5:00 p.m. at the National Clarion Hotel, 300 Army/Navy Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Armstrong, IIT Research Institution, Suite 300, 4500 Forbes Boulevard., Lanham, MD 20706 (703) 685–1455.

July 7, 1987.

Linda M. Lawson,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

[FR Doc. 87–15733 Filed 7–9–87; 8:45 am]

BILLING CODE 3810–01–M

Ada Board Evaluation and Validation Panel Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board Evaluation and Validation Panel will be held 30 July from 3:15 to 5:00 p.m. at the National Clarion Hotel, 300 Army/Navy Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Armstrong, IIT Research Institute, Suite 300, 4550 Forbes Boulevard, Lanham, MD 20706 (703) 685–1455.

Dated: July 7, 1987.

Linda M. Lawson,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

[FR Doc. 87–15734 Filed 7–9–87; 8:45 am]

BILLING CODE 3810–01–M

Ada Board Language Maintenance Panel Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board Language Maintenance Panel will be held Tuesday, 28 July 1987 from 5:15 p.m. to 6:15 p.m. at the National Clarion Hotel, 300 Army/Navy Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. John Goodenough, Software Engineering Institute, Carnegie-Mellon University, Pittsburgh, PA 15213 (412) 268–6391.

Dated: July 7, 1987.

Linda M. Lawson,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

[FR Doc. 87–15730 Filed 7–9–87; 8:45 am]

BILLING CODE 3810–01–M

Ada Board Language Maintenance Panel Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board Language Maintenance Panel will be held 30 July from 3:15 to 5:00 p.m. at the National Clarion Hotel, 300 Army/Navy Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Armstrong, IT Research Institute, Suite 300, 4550 Forbes Boulevard, Lanham, MD 20706 (703) 685–1455.

Dated: July 7, 1987.

Linda M. Lawson,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

[FR Doc. 87–15731 Filed 7–9–87; 8:45 am]

BILLING CODE 3810–01–M

Ada Board Technology and Standards Panel Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Board Technology and Standards Panel will be held 30 July from 3:15 to 5:00 p.m. at the National Clarion Hotel, 300 Army/Navy Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Armstrong, IIT Research Institute, Suite 300, 4550 Forbes Boulevard, Lanham, MD 20706 (703) 685-1455.

Dated: July 7, 1987.

Linda M. Lawson,

Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

[FR Doc. 87-15735 Filed 7-9-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Intelligence Agency

Scientific Advisory Committee Meeting

AGENCY: Defense Intelligence Agency Scientific Advisory Committee.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of section 10 of Pub. L. 92-463, as amended by section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a panel of the DIA Scientific Advisory Committee has been scheduled as follows:

DATE: Thursday, 27 August 1987, 9:00 a.m. to 5:00 p.m.

ADDRESS: The DIAC, Bolling AFB, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Scientific Advisory Committee, Washington DC 20340-1328 (202-373-4930).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a special study on intelligence support systems.

Dated: July 7, 1987.

Patricia H. Means,

OSD Federal Register Liaison Officer, Department of Defense

[FR Doc. 87-15737 Filed 7-9-87; 8:45 am]

BILLING CODE 3810-01-M

Defense Mapping Agency

Senior Executive Service; Membership; Defense Mapping Agency Performance Review Board

AGENCY: Defense Mapping Agency (DMA), DoD.

ACTION: Notice of change of membership of the Defense Mapping Agency Performance Review Board (DMA PRB).

SUMMARY: The Defense Mapping Agency Performance Review Board as published in the **Federal Register** (Vol 52, No. 121, Page 23712, Wednesday, June 24, 1987), should be amended. The following change is to be made: Mr. Charles D. Hall, Deputy Director for Programs, Production and Operations, Headquarters, MDA should be added and Mr. Lawrence F. Ayers, Deputy Director, Management and Technology, Headquarters, DMA should be removed. In all other respects the original notice remains unchanged.

Dated: July 7, 1987.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87-15736 Filed 7-9-87; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Availability of Environmental Assessment and Finding of No Significant Impact; Remedial Action at the Inactive Riverton Uranium Mill Tailings Site, Riverton, WY

AGENCY: Department of Energy.

ACTION: Notice of availability of Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).

SUMMARY: The U.S. Department of Energy (DOE) has published an Environmental Assessment of Remedial Action at the Riverton Uranium Mill Tailings Site, Riverton, Wyoming (DOE/EA-0254), for the proposed remedial action for residual radioactive materials at the inactive uranium mill site near Riverton, Wyoming. On the basis of the analyses in the EA, the DOE has made a Finding of No Significant Impact.

Background

The Riverton tailings site is in Fremont County, Wyoming, 2 miles southwest of the city of Riverton. The site is on private land within the boundaries of the Wind River Indian Reservation (Arapahoe and Shoshone Indian Tribes). The former Susquehanna-Western mill was operated at the Riverton site from 1958 until 1963. The tailings remaining from this operation cover 70 acres of the 173-acre designated site.

In 1978, the U.S. Congress passed the Uranium Mill Tailings Radiation Control Act (UMTRCA), Pub. L. 95-604. Under Titles I and II of the UMTRCA: Congress found that uranium mill tailings located at inactive (Title I) and active (Title II) mill sites may pose a potential health hazard to the public.

Title I of the UMTRCA authorized the DOE to enter into cooperative agreements with affected states or Indian tribes to clean up those inactive sites contaminated with uranium mill tailings and required the Secretary of the DOE to designate sites to be cleaned up . The inactive (Title I) Riverton tailings site is one of these sites.

Title II of the UMTRCA authorized the U.S. Nuclear Regulatory Commission (NRC) or agreement state to regulate the operation of active uranium mill tailings sites such as those in the Gas Hills Uranium Mining District of Wyoming. Following the cessation of milling, remedial actions at the active mill sites are the responsibilities of the mill owners and operators pursuant to a remedial action plan approved by the NRC or an agreement state.

Remedial actions performed under the UMTRCA must be completed in accordance with the U.S. Environmental Protection Agency (EPA) standards and with the concurrence of the NRC. The NRC has not and does not intend to issue regulations applicable to Title I remedial actions at the inactive uranium mill tailings sites but will issue licenses for the long-term surveillance and maintenance (including monitoring) of the disposal sites after the remedial actions are complete. These licenses may require the DOE or other Federal agency having custody of the sites to perform such surveillance, maintenance, and contingency measures as necessary to ensure that the sites continue to function as designed.

Scope of the EA

The EA evaluates the no action alternative and three alternatives for minimizing the potential public health hazards associated with the Riverton site: (1) Decontamination of the tailings site and relocation of the tailings and other contaminated materials to Gas Hills—the proposed action; (2) stablization of the tailings and other contaminated materials in place at the tailings site; and (3) decontamination of the tailings site and disposal of the tailings and other contaminated materials at the Dry Cheyenne alternate disposal site 15 road miles east of the tailings site. The impacts of these three alternatives are assessed in terms of effects on radiation levels, health effects, air quality, soils, mineral resources, surface-water and ground-water resources, ecosystems, land use, noise levels, scenic and cultural resources, population and employment, housing, social structure, community services, economic structure, transportation networks, energy and

water consumption, and non-radiological accidents.

Availability of the EA and FONSI

Copies of the EA and FONSI have been distributed to Federal, state, and local agencies, organizations and libraries, and to individuals known to be interested in the Riverton remedial action project. Single copies may be obtained from the Project Manager, Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, 5301 Central Avenue, NE., Suite 1720, Albuquerque, New Mexico 87108, (505) 844–3941.

Copies of the EA and FONSI are available for public inspection at the following locations:

Riverton Branch Library, 1330 West Park, Riverton, WY 82501
Wyoming State Library, Supreme Court Building, Cheyenne, WY 82002
Freedom of Information Reading Room, U.S. Department of Energy, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585
Albuquerque Operations Office, U.S. Department of Energy, National Atomic Museum, Kirtland Air Force Base East, Albuquerque, NM 87115
Energy Resource Center, 1333 Broadway, Oakland, CA 94612
Regional Energy/Environment Center, Denver Public Library, 1357 Broadway, Denver, CO 80210
Library, Savannah River Operations Office, U.S. Department of Energy, Aiken, SC 29801
Library, Chicago Operations Office, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60639
Library, Idaho Operations Office, U.S. Department of Energy, 550 Second Street, Idaho Falls, ID 83401
Library, Nevada Operations Office, U.S. Department of Energy, 2753 South Highland Drive, Las Vegas, NV 89114
Library, Oak Ridge Operations Office, U.S. Department of Energy, Oak Ridge, TN 37830
Library, Richland Operations Office, U.S. Department of Energy, Federal Building, Richland, WA 99352

FOR FURTHER INFORMATION CONTACT:

1. James R. Anderson, Project Manager, Uranium Mill Tailings Remedial Action Project Office, U.S. Department of Energy, 5301 Central Avenue NE., Suite 1720, Albuquerque, New Mexico 87108. Phone: (505) 844–3941.

2. Carol Borgstrom, Acting Director, Office of NEPA Project Assistance, Office of the Assistant Secretary for Environment, Safety and Health, Room 3E–080, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Phone: (202) 586–4600.

3. Henry Garson, Esq., Assistant General Counsel for Environment, U.S. Department of Energy, Washington, DC 20585. Phone: (202) 586–6947.

Issued in Washington, DC, June 22, 1987.

William R. Voigt,

Director, Office of Remedial Action Waste Technology.

[FR Doc. 87–15547 Filed 7–9–87; 8:45 am]

BILLING CODE 6450–01–M

Finding of No Significant Impact, Remedial Action at the Riverton Uranium Mill Tailings Site, Riverton, WY

AGENCY: Department of Energy.

ACTION: Finding of no significant impact (FONSI).

SUMMARY: The U.S. Department of Energy (DOE) has prepared an environmental assessment (DOE/EA–0254) on the proposed remedial action at the inactive uranium milling site near Riverton, Wyoming. Based on the analyses in the EA, the DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Therefore, the preparation of an environmental impact statement (EIS) is not required.

Background

On November 8, 1978, the Uranium Mill Tailings Radiation Control Act (UMTRCA), Pub. L. 95–604, was enacted in order to address a Congressional finding that uranium mill tailings located at inactive (Title I) and active (Title II) processing sites may pose a potential health hazard to the public.

Title I of the UMTRCA authorized the DOE to enter into cooperative agreements with affected states or Indian tribes to clean up those inactive sites contaminated with uranium mill tailings and required the Secretary of the DOE to designate sites to be cleaned up. On November 8, 1979, the DOE designated 24 inactive processing sites for remedial action under Title I of the UMTRCA including the inactive mill tailings site near Riverton, Wyoming (44 FR 74892). On December 23, 1983, the DOE and the State of Wyoming entered into a cooperative agreement under Title I of the UMTRCA. The cooperative agreement set forth the terms and conditions for the DOE and Wyoming cooperative remedial action plan (concurred in by the State of Wyoming), the DOE's preparation of an appropriate environmental document, real estate responsibilities, and other concerns.

Title II of the UMTRCA authorized the U.S. Nuclear Regulatory Commission (NRC) or agreement state to regulate the operation of active uranium mill tailings sites. Following the cessation of milling, remedial actions at the active mill sites are the responsibilities of the mill owners and operators pursuant to a remedial action plan approved by the NRC or an agreement state.

The UMTRCA also required the U.S. Environmental Protection Agency (EPA) to promulgate standards for remedial actions at the inactive (Title I) and active (Title II) uranium mill tailings sites. The EPA standards are essentially the same for the inactive (Title I) and active (Title II) uranium mill tailings sites except that the water protection standards for the active sites are, by design, fundamentally different then those for the inactive sites. The EPA water protection standards for active sites are clearly intended to be applied to "regulated units" that are in operations and require specific design features for water protection (e.g., leak prevention and detection features).

On September 3, 1985, the United States Tenth Circuit Court of Appeals set aside the EPA water protection standards for the Title I, Uranium Mill Tailings Remedical Action (UMTRA) Project sites, 40 CFR 192.20(a)(2) through (3). The water protection standards were remanded to the EPA for further consideration in light of the Court's opinion that the water standards promulgated by the EPA on March 7, 1983, were site specific rather than of general application as required by the legislation. The EPA has not identified a date for re-issuance of 40 CFR 192.20(a)(2) through (3), and it is anticipated that such re-issuance will not occur until after remedial action has been initiated at the Riverton, tailings site.

At inactive (Title I) uranium mill tailings sites (e.g., Riverton, Wyoming), the EPA standards require characterization of the hydrogeologic regime at and around each site. These standards state that "judgements on the possible need for remedial or protective actions for groundwater aquifers should be guided by relevant considerations described in the EPA's hazardous waste management system (47 FR 32274, July 26, 1982) and by relevent State and Federal Water Quality Criteria for anticipated or existing uses of water over the term of the stabilization." The DOE has proposed to continue to apply the general standards, and the NRC has concurred in this plan noting that its concurrence is conditioned on further

review against EPA's final groundwater protection standards.

When the EPA issues revisions to the water protection standards, the DOE will re-evaluate the groundwater issues at the Riverton site to assure that the revised standards are met. Performing remedial action at the Riverton site prior to the EPA issuing new standards will not affect the measures that are ultimately required to meet the revised EPA water protection standards. The DOE has characterized the conditions at the Riverton site and does not anticipate that any substantial changes to the remedial action will be required. However, after EPA re-issues the water protection standards, the DOE will determine the need for institutional controls, aquifer restoration, or other controls and take such appropriate action so as to comply with the re-issued standards.

Under the UMTRCA, all remedial actions must be selected and performed with the concurrence of the NRC. The NRC has not and does not intend to issue regulations applicable to the Title I remedial actions at the inactive uranium mill tailings sites but will issue a license applicable to the 24 inactive sites for long-term surveillance and maintenance after the remedial actions are complete. This license may require the DOE or other Federal agency having custody of the sites to perform such surveillance, maintenance, and contingency measures as necessary to ensure that the sites continue to function as designed.

Project Description

The Riverton tailings site is in Fremont County, Wyoming, 2 miles southwest of the city of Riverton. The site is on private land within the boundaries of the Wind River Indian Reservation (Arapahoe and Shoshone Indian Tribes). The former Susquehanna-Western mill was operated at the Riverton site from 1958 until 1963. Remaining at the site are the tailings pile, part of the original mill building, some of the associated mill structures and equipment (e.g., scale and wash houses and process bins), a potable water well with a pump house and metal water tower, and an active sulfuric acid plant. The site is bordered by drainage ditches and irrigation canals. The tailings pile in the southern half of the site covers 70 acres of the 173-acre designated site and contains 1 million cubic yards of tailings. The total amount of contaminated materials, including the tailings, soils beneath and around the tailings, and materials at 25 vicinity properties (off-site locations contaminated with tailings), is estimated to be 1.5 million cubic yards. The shallow groundwater beneath the pile has been contaminated by natural dewatering of the tailings, and lesser contamination continues due to precipitation filtering through the pile and possibly from the rising of the shallow groundwater into the pile.

Proposed Action

The proposed action for the inactive (Title I) Riverton tailings site is relocation to Gas Hills 45 to 60 road miles east of the Riverton site. Gas Hills contains several active (Title II) uranium mill tailings sites in the Gas Hills Uranium Mining District. The tailings and contaminated materials would be moved from the Riverton site and vicinity properties, consolidated with the Title II tailings at the selected active mill site in Gas Hills, and then stabilized. Remedial action at the selected active site would be performed in accordance with a remedial action plan prepared by the active mill owner and operator and to be approved by the NRC.

After decontamination of the Riverton tailings site, the disturbed areas at the site (153 acres) would be backfilled with uncontaminated soil to a level compatible with the surrounding terrain, recontoured to promote surface drainage, and revegetated as necessary. The Riverton site (173 acres) would then be released for use consistent with existing land use controls.

Alternatives to the proposed action were analyzed in the EA. These included no action; stabilization of the tailings and contaminated materials in place at the tailings site; and decontamination of the tailings site and disposal of the tailings and contaminated materials at the Dry Cheyenne alternate disposal site 15 road miles east of the tailings site.

Finding

The DOE has considered the concerns that have been expressed during public meetings and cooperating agency reviews about the environmental and health impacts from the proposed remedial action. In general, concerns relate to the impacts from radiation released during remedial action, impacts on the surface water, impacts from the contaminated groundwater, and air quality impacts.

The EA discusses the environmental impacts resulting from the proposed remedial action and identifies mitigative measures that will be implemented to assure that these effects are insignificant. The impacts identified for relocation to Gas Hills are the impacts of remedial action at the Riverton tailings site and, when appropriate, the impacts along the transportation route to Gas Hills (i.e., impacts on gamma radiation levels, air quality, surface water, wildlife, noise levels, traffic volumes, and traffic accident injuries and fatalities). The remedial action at the selected, active uranium mill tailings site in Gas Hills would be consistent with the EPA standards for active sites (40 CFR Part 192, Subparts D and E) and would be performed in accordance with a remedial action plan prepared by the owner and operator of the selected active site and to be approved by the NRC. The generic impacts of the EPA standards were addressed in an EIS published by the EPA (EPA 520/1–83–008–1 and 2). The short- and long-term impacts of remedial action at the selected active site in Gas Hills would be assessed by the NRC for its compliance with the NEPA (42 U.S.C. 4321, *et seq.*)

The Finding of No Significant Impact for relocation to Gas Hills is based on the following findings which are supported by the information and analyses in the EA:

• Radiation Release—The increased radiation exposure above background levels to the general public at and in the vicinity of the Riverton site during the remedial action will be extremely low. The total estimated excess health effects were projected to be 0.03 additional cancer deaths due to radiation from the tailings during a 31-month remedial action period. With no action, this estimate would increase to 0.05 excess health effects over the same period (0.02 excess health effects per year multiplied by 2.6 years).

The DOE will closely monitor the release of radon and airborne radioactive particulates during the remedial action. The release of radon and airborne radioactive particulates will be reduced by dampening contaminated materials with water or chemical dust suppressants, by limiting the handling of contaminated materials during adverse weather conditions, and by using trucks with tight-fitting tailgates and covers when the materials are moved. Drainage controls and a waste-water retention pond will be constructed to prevent contaminated water from leaving the site.

Human exposure to residual radioactive materials will be reduced further by restricting access, by providing worker training programs, and by the use of necessary monitoring and protective equipment by the remedial action workers.

After the tailings and contaminated materials are relocated to Gas Hills, the exposure of the general public to radon

and radon daughters or gamma radiation at or in the vicinity of the Riverton site would not be above that allowed by the EPA standards (40 CFR Part 192, Subparts A, B, and C). Therefore, the total excess health effects at and in the vicinity of the Riverton site would occur during the remedial action (0.03 excess health effects). The remedial action at the selected, active uranium mill tailings site in Gas Hills would be consistent with the EPA standards for active sites (40 CFR Part 192, Subparts D and E) and would be performed in accordance with a remedial action plan prepared by the owner and operator of the selected active site and to be approved by the NRC. The generic impacts of the EPA standards were addressed in an EIS published by the EPA (EPA 520/1–83–008–1 and 2). The health effects at the selected active site in Gas Hills would be assessed by the NRC for its compliance with the NEPA (42 U.S.C. 4321, *et seq.*). The total excess health effects at and in the vicinity of the Riverton site after 10 and 1,000 years of no action are estimated to be 0.2 and 20, respectively. The calculations for the no action alternative do not consider the dispersal of the tailings by natural erosion or by man; thus, the total excess health effects may be greater.

Control of radon emanation from the Riverton tailings site would be accomplished by relocating all of the tailings and contaminated materials to Gas Hills. Control of radon emanation and the long-term stability of the stabilized tailings pile at the selected active site would be accomplished in accordance with the remedial action plan prepared by the owner and operator of the active site and to be approved by the NRC.

Based on the above, it was determined that the radiation impacts from the proposed action are insignificant.

• Air Quality—An inventory of emissions due to remedial action indicated that fugitive dust emissions would be much higher than combustion emissions. The nitrogen oxide and carbon monoxide emissions would exceed the EPA significance levels of 40 and 100 tons per year, respectively; however, the prevention of significant deterioration regulations are not applicable for temporary emissions sources such as those from this remedial action.

The fugitive dust emissions were used in a computer simulation model to determine the total suspended particulates (TSP) concentrations downwind from the various work sites. The TSP concentrations at the Riverton tailings site and the Little Wind borrow site would temporarily exceed the Federal secondary and the State of Wyoming 24-hour TSP standards.

The assumptions used in the air quality modelling were conservative, and the resultant concentrations would over-predict air quality impacts. The major factor responsible for the over-prediction of impacts was adding the calculated concentrations from the model to the maximum recorded ambient 24-hour TSP concentration (111 micrograms per cubic meter) in the Riverton area. The annual average TSP concentrations in the Riverton area are much lower (51.7 micrograms per cubic meter). In addition, the assumptions used in the model would also tend to over-predict the air quality impacts. These include: (1) Using fugitive dust emissions factors for the period of maximum construction activity; (2) assuming a constant wind speed from the same direction and 6 consecutive hours; and (3) assuming stable meteorological conditions for the same 6-hour period.

Based on these assumptions, the TSP concentrations would be lower than predicted during most of the remedial action and would probably be below the Federal secondary and State of Wyoming standards. In addition, this impact would be short-term, lasting only for the length of the remedial action process. For these reasons, it was determined that the air quality impacts of the proposed action will be temporary and will not be significant.

• Surface-Water Quality—Impacts from surface-water runoff from the tailings pile during remedial action would be minimal because of waste-water retention facilities and erosion control measures.

Control of surface water and the long-term stability of the stabilized tailings pile at the selected active site would be consistent with the EPA standards for active sites (40 CFR Part 192, Subparts D and E) and would be accomplished in accordance with the remedial action plan prepared by the owner and operator of the active site and to be approved by the NRC. The generic impacts of the EPA standards were addressed in an EIS published by the EPA (EPA 520/1–83–008–1 and 2). On this basis, it was determined that the impacts on surface-water resources would not be significant.

• Groundwater Quality—The shallow groundwater beneath and southeast of the tailings pile has been contaminated primarily by percolating leachate generated by the natural dewatering of the tailings during and immediately after uranium milling. Lesser but continuing contamination is due to precipitation filtering through the tailings pile and possibly to the rising of the shallow groundwater into the pile. Relocation of the tailings and contaminated materials to Gas Hills would remove the source of any future groundwater contamination at the Riverton site, and the natural flow and discharge of the shallow groundwater into the Little Wind River would reduce the existing concentrations of the contaminants to background levels in approximately 45 years.

At this time aquifer restoration would not be a cost-effective means of controlling cleaning up the groundwater contamination. When the EPA issues revisions to the water protection standards that were remanded by the U.S. Tenth Circuit Court of Appeals, the DOE will reevaluate the groundwater issues at the Riverton site to assure that the revised standards are met. Performing remedial action to relocate the tailings prior to the EPA issuing new standards will not affect the measures that are ultimately required to meet the revised EPA water protection standards. The DOE has characterized the conditions at the Riverton site and does not anticipate that any substantial changes to the remedial action will be required. However, after the EPA re-issues the water protection standards, the DOE will determine the need for institutional controls, aquifer restoration, or other controls and will take such appropriate action so as to comply with the re-issued standards.

Groundwater protection at the selected active site would be consistent with the EPA standards for active sites (40 CFR Part 192, Subparts D and E) and would be accomplished in accordance with the remedial action plan prepared by the active site owner and operator and to be approved by the NRC. The generic impacts of the EPA standards were addressed in an EIS published by the EPA (EPA 520/1–83–008–1 and 2).

Based on the above, it was determined that the impacts on groundwater resources would not be significant.

• There are no floodplains, perennial streams, or wetlands in the areas that would be affected by the remedial action. No threatened and endangered species are known to be present at the Riverton tailings site. There is a possibility for the occurrence of prairie dog towns, and hence the presence of the endangered black-footed ferret, at the Little Wind borrow site. Prior to remedial action, a site-specific survey of the Little Wind borrow site would be

conducted to verify the presence or absence of the black-footed ferret.

• There is a potential for impacts to archaeological and historic resources in the areas to be affected by remedial action. A Class III cultural resource survey of the Riverton tailings site identified a concentration of historic homestead materials near the site; additional data are required to determine if this concentration is eligible to the National Register of Historic Places. If the concentration is determined to be eligible and would be affected by remedial action, a data collection program would be developed and implemented. A Class III survey of the Little Wind borrow site was not conducted. Prior to remedial action, a Class III survey of the borrow site to be affected would be conducted to determine the presence or absence of archaeological or historic resources at the sites. If eligible archaeological or historic resources would be affected by remedial action, a data collection program would be developed and implemented.

It was determined that impacts to archaeological and historic resources would not be significant because these impacts would be mitigated by the development and implementation of data collection programs.

In summary, based on the analyses in the EA, the DOE has determined that the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Therefore, the preparation of an EIS is not required.

Single copies of the EA are available from: James R. Anderson, UMTRA Project Manager, U.S. Department of Energy, UMTRA Project Office, 5301 Central Avenue NE., Suite 1720, Albuquerque, New Mexico 87108, (505) 844–3941.

FOR FURTHER INFORMATION CONTACT: Carol Borgstrom, Acting Director, Office of NEPA Project Assistance, Office of the Assistant Secretary for Environment, Safety and Health, Room 3E–080, Forrestal Building, Washington, DC 20585, (202) 586–4600.

Issued at Washington, DC, June 15, 1987.

Delbert F. Bunch,

Acting Environment, Safety, and Health.

[FR Doc. 87–15548 Filed 7–9–87; 8:45 am]

BILLING CODE 6450–01–M

Procurement and Assistance Management Directorate; Restriction of Eligibility for Grant Award; Georgia Tech Research Corp.

AGENCY: Department of Energy (DOE).

ACTION: Notice of award.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b), it intends to make a grant renewal award on a restricted eligibility basis to the Georgia Tech Research Corporation in support of the research and development of the Solid-on-Solid process for applying chemicals to textiles. The grant renewal will be for a 12–month period at a DOE funding level of $367,000 beginning August 1, 1987. This schedule will provide continuity in the research on the Solid-on-Solid processing concept initiated and conducted by Georgia Tech during the preceding 36 months. Industry will cost share an estimated $422,000 in the form of chemicals, textiles for testing, use of equipment and laboratory facilities, analytical tests, and laboratory manpower.

Procurement Request No.: 05–87CE40702.001.

Project Scope: The research will be conducted by faculty of the School of Textile Engineering of the Georgia Institute of Technology as part of the Georgia Tech Research Corporation program. The technology is based on electrification of powdered chemicals, application of the powders by xerography, spray or fluid-bed techniques to the fabric, and rapid thermal fixation. The specific areas to be addressed include: (1) Xerography Printing of Textiles; Proof of Concept for Solid-on-Solid Processing and (2) Solid Shade Coloration and Infrafiber/Reactive Finishing of Textiles Via 100% Solid Liquid Electrostatic Sprays.

The Georgia Tech Research Corporation has assembled a group of research personnel and developed capabilities for research on the Solid-on-Solid processing concept centered in the School of Textile Engineering that is unmatched in the field of textile research. Georgia Tech's assemblage of expertise, facilities, integrated effort and industry support does not exist, so far as we can determine, in any other organization. For this capability to be duplicated would require, in our opinion, upwards of two to three years and more than a duplication of funds expended to date. For these reasons we recommend that eligibility for this grant be restricted to the Georgia Tech Research Corporation.

FOR FURTHER INFORMATION CONTACT: William M. Sonnett, CE–142, Office of Industrial Programs, U.S. Department of Energy, Washington, DC 20585, Telephone No.: 202–586–2389.

Dated: June 26, 1987.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 87–15745 Filed 7–9–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 87–29–NG]

Application To Import Natural Gas From Canada; Vector Energy (U.S.A.) Inc.

AGENCY: Economic Regulatory Administration, DOE.

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 June 12, 1987, of an application from Vector Energy (U.S.A.) Inc. (Vector) for blanket authorization to import, for its own account or for the account of others, Canadian natural gas for short-term and spot market sales to customers in the United States. Authorization is requested to import up to a total 150 Bcf for a two-year period beginning on the date of the first delivery. Vector is a Delaware corporation and a wholly-owned subsidiary of Vector Energy Inc., an Alberta corporation. Vector's principal place of business is in Wilmington, Delaware. Vector 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 industrial end users in the United States. Vector states that it intends to use existing pipeline facilities for the transportation of the proposed imports. Vector 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. Vector 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 intervention and written comments are invited.

DATE: Protests, motions to intervene, or notices of intervention, as applicable,

and written comments are to be filed no later than August 10, 1987.

FOR FURTHER INFORMATION CONTACT:

Stanley C. Vass, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9482

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, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m., e.d.t., August 10, 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 hearing mut show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Vector'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, July 2, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87–15668 Filed 7–9–87; 8:45 am]

BILLING CODE 6450–01–M

[Docket Nos. OFU 022 and 023]

Order Granting Rescission of Certain Prohibition Orders Issued to the Nebraska Public Power District Pursuant to the Energy Supply and Environmental Coordination Act of 1974

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Order Granting Rescission.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) [1] hereby gives notice that acting under the authority granted to it in section 2(f) of the Energy Supply and Environmental Coordination Act of 1974 (ESECA) as amended 15 U.S.C. 792(f) and implemented by 10 CFR 303.130(b), it is granting a request by the Nebraska Public Power District (NPPD) to rescind the prohibition orders issued on June 30, 1975 to the following powerplants.

Owner	Docket No.	Generating station	Unit No.	Location
Nebraska Public Power	OFU–022 OFU–023	Sheldon do	1 2	Hallam, NE Do.

This action is taken in accordance with the provisions of 10 CFR Part 303, Subpart J ("Modification on Rescission of Prohibition Orders and Construction Orders") of the ESCA reguations. The basis for ERA's action is provided in the **SUPPLEMENTARY INFORMATION** section below.

EFFECTIVE DATE: July 10, 1987 in accordance with 10 CFR 303.10(a).

FOR FURTHER INFORMATION CONTACT:

John Boyd, Office of Fuels Programs, Economic Regulatory Administration, 1000 Independence Avenue, SW, Room GA–093, Washington, DC 20585, Telephone (202) 586–4523

Steven E. Ferguson, Esq., Office of Energy Counsel, Department of Energy, 1000 Independence Avenue, SW, Room GA–113, Washington, DC 20585, Telephone (202) 586–6947

The Public file containing a copy of this Order and other documents and supporting materials on this processing is available upon request from DOE, Freedom of Information Reading Room, 1000 Independence Avenue, SW., Room 1E–190, Washington, DC 20585, Monday through Friday, 9:00 a.m. to 4:00 p.m.

SUPPLEMENTARY INFORMATION: On February 13, 1987, NPPD submitted an Application for Rescission of Prohibition Order to ERA regarding the above enumerated generating station units. The net capacity factor for Unit 1 has been below 15 percent each year since 1984 and the net capacity factor for Unit 2 has been below 15 percent since 1982. The reduced utilization of the Sheldon units is projected to continue in 1987 and 1988. Switching from coal to natural gas as a primary energy source will

[1] Effective October 1, 1977, the responsibility for implementing ESECA was transferred by Executive Order No. 12009 from the Federal Energy Administration (FEA) to the Department of Energy pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*)

extend the economic useful life of the Sheldon units by substantially reducing the maintenance requirements on the system. NPPD estimates a savings of $2.78/Net MWH in plant maintenance and operation of equipment associated with burning coal at the Sheldon units. NPPD submits that the Sheldon units, as part of the overall NPPD system, can be operated more effectively, efficiently, practicably and reliably as peaking and load control units by using natural gas, rather than coal, as a primary energy source. If natural gas is utilized as a primary energy source in the Sheldon units, NPPD projects that only 2 percent of its system power sales requirements would be supplied by oil and natural gas.

In accordance with the procedural requirements of 10 CFR 303.134(a), ERA published its Notice of Acceptance of a request by NPPD to rescind certain prohibition orders issued to it pursuant to the ESECA in the **Federal Register** on March 26, 1987 (52 FR 9698), commencing a 45-day public comment period. During that period interested persons were also afforded an opportunity to request a public hearing. The period for submitting comments and for requesting a public hearing closed May 11, 1987. No comments were received and no hearing was requested.

Decision and Order

Accordingly, based upon information received from NPPD and the entire record of this proceeding, ERA has determined that as a result of significantly changed circumstances with respect to the prohibition orders issued to NPPD's Sheldon 1 and 2 generating units as set forth in 10 CFR 303.136(b), that these powerplants can be operated more effectively, efficiently, practically and reliably as peaking and load control units by using natural gas, rather than coal as a primary energy source. Pursuant to § 303.137(a) ERA hereby grants the rescission request of NPPD and hereby orders that the prohibition orders to these units be rescinded.

Pursuant to 10 CFR 303.100(a) and (b), any person aggrieved by this order has not exhausted his administrative remedies until an appeal has been filed with DOE's Office of Hearing and Appeals and an order granting or denying the appeal has been issued. Such appeal must be filed within 10 days of the publication of this order in the **Federal Register** in accordance with the requirements of § 303.102.

Issued in Washington, DC, on July 2, 1987.

Robert L. Davies,

Director, Office of Fuels Programs Economic Regulatory Administration.

[FR Doc. 87-15747 Filed 7-9-87; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E 87-56; Certification Notice—1]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplant and Industrial Fuel Use Act, as Amended

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. Thirteen owners or operators of proposed new electric base load powerplants have filed self certifications in accordance with section (d). Further information is provided in the **"SUPPLEMENTARY INFORMATION"** section below.

SUPPLEMENTARY INFORMATION:

The following companies filed self certifications:

Name	Date received	Type facility	Megawatt capacity	Location
Nevada Power Co., Las Vegas, NV	6-1-87	Combined Cycle	210	Las Vegas, NV.
Chalk Cliff Cogen, Inc., Houston, TX	6-1-87	Combined Cycle	44	Kern County, CA.
Badger Creek Cogen, Inc., Houston, TX	6-1-87	Combined Cycle	44	Kern County, CA.
Bear Mountain Cogen, Inc., Houston, TX	6-1-87	Combined Cycle	45	Kern County, CA.
Granite Road Cogen, Inc., Houston, TX	6-1-87	Combined Cycle	44	Kern County, CA.
Live Oak Cogen, Inc., Houston, TX	6-1-87	Combined Cycle	45	Kern County, CA.
McKittrick Cogen, Inc., Houston, TX	6-1-87	Combined Cycle	44	Kern County, CA.
Prime Energy Limited Partnership, Morristown, NJ	6-11-87	Combined Cycle	65	Elmwood Park, NJ.
O'Brien Energy Systems, Philadelphia, PA	6-12-87	Combined Cycle	48	Antioch, CA.
O'Brien Energy Systems, Philadelphia, PA	6-12-87	Combined Cycle	97	Parlin, NJ.
O'Brien Energy Systems, Philadelphia, PA	6-12-87	Combined Cycle	46	Newark, NJ.
Decker Energy International, Winter Park, FL	6-17-87	Combined Cycle	27	Grayling, MI.
E.F. Kenilworth, Inc., San Diego, CA	6-30-87	Combined Cycle	25	Kenilworth, NJ.

Amendments to FUA on May 22, 1987 (Pub. L. 100–42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure. Pertinent provisions are restated in the appendix to this notice.

Issued in Washington, DC, on July 1, 1987.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

Appendix

Sec. 201. Coal Capability of New Electric Powerplants: Certification of Compliance

(a) General Prohibitions

Except to such extent as may be authorized under Subtitle B, no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source.

(b) Capability To Use Coal or Alternate Fuel

An electric powerplant has the capability to use coal or another alternate fuel for purpose of this section if such electric powerplant—

(1) Has sufficient inherent design characteristics to permit the addition of equipment (including all necessary pollution devices) necessary to render such electric powerplant capable of using coal or another alternate fuel as its primary energy source; and

(2) Is not physically, structurally, or technologically precluded from using coal or another alternate fuel as its primary energy source.

Capability to use coal or another alternate fuel shall not be interpreted to require any such powerplant to be immediately able to use coal or another alternate fuel as its primary energy source on its initial day of operation.

(c) Applicability To Base Load Powerplants

(1) This section shall apply only to base load powerplants, and shall not apply to peakload powerplants or intermediate load powerplants.

(2) For the purposes of this section, hours of electrical generation pursuant to emergency situations, as defined by the Secretary and reported to the Secretary, shall not be included in a determination of whether a powerplant is being operated as a base load powerplant.

(d) Self-Certification

(1) In order to meet the requirement of subsection (a), the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary prior to construction or prior to operation as a base load powerplant in the case of a new electric powerplant operated as a peakload powerplant or intermediate load powerplant, that such powerplant has capability to use coal or another alternate fuel, within the meaning of subsection (b).

Such certification shall be effective to establish compliance with the requirement of subsection (a) as the date it is filed with the Secretary. Within 15 days after receipt of a certification submitted pursuant to this paragraph, the Secretary shall publish in the **Federal Register** a notice reciting that the certification has been filed.

(2) The Secretary within 60 days after the filing of a certification under paragraph (1) may require the owner or operator of such powerplant to provide such supporting documents as may be necessary to verify the certfication.

[FR Doc. 87–15746 Filed 7–9–87; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER87–511–000 et al.]

Electric Rate and Corporate Regulation Filings, Duke Power Co. et al.

July 2, 1987.

Take notice that the following filings have been made with the Commission:

1. Duke Power Co.

[Docket No. ER87–511–000]

July 2, 1987.

Take notice that on June 25, 1987, Duke Power Company (Duke Power or the Company) tendered for filing a supplement to the Company's Electric Power Contract with the Town of Forest City. Duke Power states that this contract is on file with the Commission and has been designated Duke Company Rate Schedule FERC No. 237.

Duke Power further states that the Company's contract supplement, made at the request of the customer and with agreement obtained from the customer, provides for the following increase in contract demand: Delivery Point No. 3 from 6,800 kW to 10,000 kW.

Duke Power indicates that this suplement also includes an estimate of sales and revenue for twelve months immediately preceding and for the twelve months immediately succeeding the effective date. Duke Power proposes an effective date of August 21, 1987.

According to Duke Power, copies of this filing were mailed to the Town of Forest City and the North Carolina Utilities Commission.

Comment date: July 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

2. Iowa Power and Light

[Docket No. ER87–326–000]

Take notice that on June 26, 1987, Iowa Power and Light Company (Iowa Power), of Des Moines, Iowa tendered for filing an amendment to its March 17, 1987 filing in this docket concerning a Generation Service Agreement (GSA) and a Special Agency Agreement (SAA) between Iowa Power and Union Electric Company, (Union Electric) of St. Louis, Missoouri each dated as of March 13, 1987, with schedules reflecting charges for Iowa Power providing a generation service and coal transportation and handling services to Union Electric.

The amendment consists of an explanation of the GSA and the SAA and an explanation of how the charges for generation service under the GSA (Exhibit B to the GSA) and for coal transportation and handling under the SAA (Exhibit A to SAA) were determined.

The GSA and the SAA are proposed effective March 18, 1987. Waiver of the Commission's notice requirements has been requested by Iowa Power.

Iowa Power states a complete copy of the filing has been mailed to Union Electric, and the Iowa State Utilities Board, the Illinois Commerce Commission, and the Missouri Public Service Commission.

Comment date: July 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Public Service Co.

[Docket No. ER87–373–000]

Take notice that on April 9, 1987, Iowa Public Service Company (IPS) tendered for filing an executed Firm Power Interchange Service Agreement dated November 15, 1985, and the First Amendment to Firm Power Interchange Service agreement dated November 21, 1986, whereby Iowa Public Service Company will supply the LaPorte City Municipal Utilities, LaPorte City, Iowa with firm electric capacity, commencing December 23, 1985 and continuing through December 31, 2000. IPS also field an executed Agreement for LaPorte City Connection dated December 19, 1985 by which Iowa Electric Light and Power Company will provide transmission service to implement the Firm Power Agreement.

Comment date: July 15, 1987, in accordance with Standard Paragraph E at the end of this notice.

4. Union Electric Co.

[Docket No. ER86–450–001]

Take notice that on June 24, 1987, Union Electric Company tendered for filing a compliance report concerning the determination of refund and interest to the City of Malden, Missouri, also included were various worksheets which show how the refund and interest were determined, pursuant to § 35.19a of the Commission's regulations. (18 CFR 35.19a (1987)).

Copies of the filing have been sent to all involved parties and the Missouri Public Service Commission.

Comment date: July 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

5. Vermont Yankee Nuclear Power Corp.

[Docket No. ER85-300-000]

Take notice that on June 25, 1987, Vermont Yankee Nuclear Power Corporation (Vermont Yankee) filed a revised schedule of decommissioning collections that effectuates the terms of an Offer of Settlement approved by the Commission on September 18, 1985.

Vermont Yankee states that the compliance filing revises the schedule of decommissioning collections to reflect the reduction in the Federal corporate income tax rate effective July 1, 1987 and the limitation on net operating loss carrybacks enacted by the Vermont legislature.

Comment date: July 16, 1987, in accordance with Standard Paragraph E at the end of this notice.

6. The Detroit Edison Co.

[Docket No. ES87-34-000]

July 6, 1987.

Take notice that on July 26, 1987, the Detroit Edison Company filed an Application pursuant to section 204 of the Federal Power Act, seeking authorization to issue from time to time, on or before September 30, 1989, in a aggregate principal amount not to exceed $1.2 billion at any one time outstanding, short-term debt securities and promissory notes bearing final maturities not to exceed two years.

Comment date: July 27, 1987, in accordance with Standard Paragraph E at the end of this notice.

7. El Paso Electric Co.

[Docket No. ES87-35-000]

July 6, 1987.

Take notice that on June 29, 1987, El Paso Electric Company ("EPEC") filed, pursuant to section 204 of the Federal Power Act an Application for Authorization of the Issuance of Securities and Assumption of Obligations and Liabilities. In its Application, EPEC seeks authorization from the Commission to issue securities and assume obligations and liabilities in connection with proposed sales and leasebacks of all or a portion of EPEC's undivided ownership interest in Unit 3 at the Palo Verde Nuclear Generating Station ("PVNGS") and a proportionate share of a 5.2667% undivided ownership interest in certain common facilities at PVNGS (collectively, the "PVNGS Unit 3 Facilities"). Certain real property interests will also be included in the proposed sale and leasebacks.

Unit 3 is expected to be synchronized with EPEC's main transmission grid on or about August 28, 1987. The purchase price for the PVNGS Unit 3 Facilities is estimated to be between approximately $700,000,000 to $750,000,000. EPEC requests that the Commission issue its orders and authorizations in this proceeding on or before August 1, 1987 in order for the proposed transactions to be closed beginning in early to mid September 1987.

Comment date: July 24, 1987, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15669 Filed 7-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA87-2-61-000]

Bayou Interstate Pipeline System; Filing

July 6, 1987.

Take notice that Bayou Interstate Pipeline System (Bayou), on June 29, 1987, tendered for filing Sixth Revised Sheet No. 4A and Fifth Revised Sheet No. 5 of its FERC Gas Tariff, Original Volume No. 1. The tariff sheets were filed pursuant to the Purchased Gas Cost Adjustment provisions contained in sections 15 and 16 of Bayou's tariff. Copies of the filing were served upon Bayou's jurisdictional customer and interested State regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intevene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before July 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary

[FR Doc. 87-15701 Filed 7-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI87-729-000]

Phillips Gas Marketing Co.; Application

July 6, 1987.

Take notice that on June 29, 1987, Phillips Gas Marketing Company (Phillips GMC) of 800 Plaza Office Building, Bartlesville, Oklahoma 74004, filed an application under sections 4 and 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing Phillips GMC to make sales for resale in interstate commerce, without supply or market restrictions, of any gas subject to Natural Gas Act jurisdiction, with pregranted abandonment of any such sale.

Phillips GMC requests such authorization to purchase and resell gas released under other LTA authorizations, gas released pursuant to the Order No. 451 series, and any other natural gas subject to the Commission's Natural Gas Act jurisdiction which has been freed from requirements for continued deliveries by the previously certificated producer.

Phillips GMC requests that the Commission waive Part 154 of its regulations as to the establishment and maintenance of rate schedules. Phillips GMC also requests permission to automatically collect the appropriate monthly adjustments under the Commission's wellhead ceiling price regulations without the filing of blanket affidavits pursuant to § 154.94(h). In addition, Phillips GMC requests that, to the extent it qualifies for collection for any applicable allowances under section 110 of the Natural Gas Policy Act of 1978 and Subpart K, Part 271 of the Commission's regulations, it is permitted to collect such allowance without the filing of affidavits pursuant to § 154.94(k) of the Commission's regulations.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 21, 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 in any proceeding herein 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 Applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15702 Filed 7-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-79-000]

Raton Gas Transmission Co., Change in Rates

July 6, 1987.

Take notice that on June 30, 1987, Raton Gas Transmission Company (Raton) tendered for filing Eighth Revised Sheet No. 4 to its FERC Gas Tariff, Orginal Volume No. 1.

Raton states that this filing is a general rate filing in accordance with § 154.63(a)(3) of the Commission's regulations to incorporate changes in gas supply costs and tariff conditions as filed by Colorado Interstate Gas Company (CIG) in Docket No. RP87-30-000.

Raton requests that the Commission grant such waivers of its regulations as it deems necessary to enable this filing to become effective July 14, 1987.

Copies of Raton's filing were mailed to Midwest Energy Corp., Raton Natural Gas Company and the Public Service Commission of New Mexico.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before July 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15704 Filed 7-9-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA 87-3-18-000]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff Sheets

July 6, 1987.

Take notice that on June 30, 1987, Texas Gas Transmission Corporation (Texas Gas) tendered for filing Eighth Revised Sheets Nos. 10 and 10A, and Fifth Revised Sheet No. 14 to its FERC Gas Tariff, Orginal Volume No. 1.

These tariff sheets reflect an increase of purchased gas costs pursuant to the Purchased Gas Adjustment clause of Texas Gas's FERC Gas Tariff and are proposed to be effective August 1, 1987.

Copies of the filing were served upon Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 2.11 and 2.14 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before July 13, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87-15703 Filed 7-9-87; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed; Week of June 5 Through 12, 1987

During the Week of June 5 through June 12, 1987, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

George B. Breznay,

Director, Office of Hearings and Appeals.

June 30, 1987.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 5 through 12, 1987]

Date	Name and location of applicant	Case No.	Type of submission
June 4, 1987	Coline & Charter/Florida, Tallahassee, FL	RM3-66, RM23-67	Request for modification/rescission in the Coline & Charter second stage refund proceedings. If Granted: The Mar. 6, 1986 decision and order (Case Nos. RQ23-270 & RQ23-271) issued to Florida would be modified regarding the state's applications for refund submitted in the Coline & Charter second stage refund proceedings.
June 5, 1987	Aminoil/Behm Family Corp., Washington, DC.	RR139-10	Request for modification/rescission in the Aminoil refund proceeding. If Granted: The Mar. 19, 1987 decision and order (Case No. RF139-67) issued to Behm Family Corp. would be modified regarding the firm's application for refund submitted in the Aminoil, USA, Inc. refund proceeding.
Do	The Crude Co., Washington, DC.	KRD-0440	Motion for discovery. If Granted: Discovery would be granted to The Crude Co. in connection with the statement of objections submitted in response to the Jan. 9, 1987 proposed remedial order (Case No. KRO-0440) issued to The Crude Co.
June 8, 1987	Arent, Fox, Kintner, Plotkin & Kahn, Vienna, VA.	KFA-0102	Appeal of an information request denial. If Granted: The May 14, 1987 freedom of information request denial issued by the Idaho Operations Office would be rescinded, and Arent, Fox, Kintner, Plotkin & Kahn would receive access to documents relating to the report by EG&G Idaho, Inc. on centel business systems.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 5 through 12, 1987]

Date	Name and location of applicant	Case No.	Type of submission
Do	Deaton Oil Co., Murfreesboro, AK	KEE-0142	Exception to the reporting requirements. If Granted: Deaton Oil Co. would not be required to file Form EIA-821, "Annual Fuel Oil & Kerosene Sales Report."
Do	Economic Regulatory Administration, Washington, DC.	KRZ-0061	Motion to strike. If Granted: Certain portions of the Feb. 19, 1987 statement of objections submitted by Reinauer Petroleum Company (Case No. KRZ-0045) would be stricken from the record.
Do	Reinauer Petroleum Co., Washington, DC	KRR-0027	Request for modification/rescission. If Granted: The Sept. 4, 1984 decision and order issued to Reinauer Petroleum Co. (Case No. HRO-0105) would be modified regarding the interest assessment.
June 9, 1987	Concord Petroleum Corp. & Paul C. Elliott, Washington, DC.	KRD-0420 & KRH-0420	Motion for discovery & request for evidentiary hearing. If Granted: Discovery would be granted and an evidentiary hearing would be convened in connection with the statement of objections submitted by Concord Petroleum Corp. in response to the Oct. 21, 1986 proposed remedial order (Case No. KRO-0420) issued to Concord Petroleum Corp. & Paul C. Elliott.
Do	Tribal Organizations of South Dakota, Rosebud, SD.	KEG-0011	Petition for special redress. If Granted: The Office of Hearings and Appeals will investigate allegations that the State of South Dakota is not negotiating in good faith to provide an equitable share of its refunds to which the tribal organizations of South Dakota are entitled in Amoco, Exxon & stripper well exemption litigation proceedings.
June 10, 1987	Murphy Oil Corp., Washington, DC	KEF-0095	Implementation of special refund procedures. If Granted: The Office of Hearings and Appeals would implement special refund procedures pursuant to 10 CFR, Part 205, Subpart V, in connection with the Feb. 9, 1987 consent order entered into with the Department of Energy.
Do	Southwestern Refining Co., Washington, DC.	KRD-0490	Motion for discovery. If Granted: Discovery would be granted to Southwestern Refining Co. in connection with its statement of objections submitted in response to the proposed remedial order (Case No. KRO-0490) issued to Southwestern Refining Co.
Do	Steptoe & Johnson, Washington, DC.	KFA-0103	Appeal of an information request denial. If Granted: The May 4, 1987 freedom of information request denial issued by the ERA's office of management and information systems would be rescinded, and Steptoe & Johnson would receive access to the purchase and exchange listings compiled from transfer pricing reports.
June 11, 1987	Glenn E. Wagoner Oil Co., Darlington, PA	KEE-0143	Exception to the reporting requirements. If Granted: Glen E. Wagoner Oil Co. would not be required to file form EIA-782B, "Resellers/Retailers Monthly Petroleum Products Sales Report."
Do	The Crude Co., Washington, DC.	KRD-0491	Motion for discovery. If Granted: Discovery would be granted to The Crude Co. in connection with its statement of objections submitted in response to a proposed remedial order (Case No. KRO-0490).
June 12, 1987	Kentucky, Frankfort, KY	KEG-0012	Petition for special redress. If Granted: The Office of Hearings & Appeals would review the proposed expenditures for stripper well funds which were disapproved by the Assistant Secretary for Conservation and Renewable Energy.

Date received	Name of refund proceeding/name of refund applicant	Case No.
6/5/87	Amoco/Kentucky	RQ21-369
Do	Amoco/Idaho	RQ21-370
6/11/87	Vickers, Amoco, OKC Corp. and Coline/Iowa.	RQ1-371, RQ251-372, RQ13-373, RQ2-374
6/5/87-6/12/87	Getty Oil Refund Applications Received.	RF265-1602-RF265-1652
Do	Cranston Oil Refund Applications Received.	RF276-285-RF276-288
Do	Crude Oil Refund Applications Received.	RF272-499-RF272-512
6/8/87	Lear Siegler, Inc.	RF277-44
Do	Nathan Parker	RF225-10828
Do	Hukill Oil Co., Inc.	RF263-35
4/29/86	Gengnagel Corp.	RF225-10829
5/05/86	Sinclair Marketing, Inc..	RF225-10830
Do	Carpenter Oil and Propane.	RF225-10831
5/02/86	Halloran Oil Co.	RF225-10832
5/01/86	Noonan Bros. Oil Co., Inc..	RF225-10833
7/22/86	Hix Oil Co.	RF225-10834
Do	Piedmont Oil Co.	RF225-10835
5/05/86	Bissell Distributing Co..	RF225-10836
Do	Smith's Service Station.	RF225-10837
Do	Bergen Fuel Oil Co., Inc..	RF225-10838
5/05/86	Bergen Fuel Oil Co., Inc..	RF225-10839
5/15/87	Hartung Oil Co.	RF225-10840
6/11/87	Southern Bell Telephone.	RF270-2481
Do	Celanese Chemical Co., Inc..	RF253-14

[FR Doc. 87-15653 Filed 7-9-87; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51571B; FRL-3231-4]

Certain Chemical Premanufacture Notice; Extension of Review Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is extending the review period for an additional 90-days for premanufacture notice (PMN) P-85-901, under the authority of section 5(c) of the Toxic Substances Control Act (TSCA). The review period will now expire on September 20, 1987.

FOR FURTHER INFORMATION CONTACT: Jim Alwood, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Environmental Protection Agency, Room E-611E, 401 M Street, SW., Washington, DC 20460, (202-382-3374).

SUPPLEMENTARY INFORMATION: On May 3, 1985, EPA received PMN 85-901 for a polyamine polymer. The submitter claimed specific chemical identity, production volume, and process information to be confidential business information. Notice of receipt was published in the **Federal Register** of May 17, 1985 (50 FR 20597). The original 90-day review period for PMN P-85-901, including voluntary suspensions, was scheduled to expire on June 18, 1987.

Based on its analysis, EPA finds that there is a possibility that the substance submitted for review in this PMN may be regulated under TSCA. The Agency requires an extension of the review period, as authorized by section 5(c) of TSCA, to investigate further potential risk, to examine its regulatory options, and to prepare the necessary documents should regulatory action be required. Therefore, EPA has determined that good cause exists to extend the review period for an additional 90 days, to September 20, 1987.

PMNs are available for public inspection in Room NE-G004, at the EPA headquarters, address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Dated: June 15, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87-15679 Filed 7-9-87; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3230-3]

Environmental Impact Statements; Availability of Environmental Impact Statements; Filed June 29, 1987 Through July 3, 1987

Responsible Agency: EPA Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

EIS No. 870232, Final, MMS, AK, 1988 Beaufort Sea Outer Continental Shelf

(OCS) Oil and Gas Sale No. 97, Lease Offering, Beaufort and Chukchi Seas, Due: August 10, 1987, Contact: Richard Roberts (907) 261–4662.

EIS No. 870233, Draft, EPA, OH, Cleveland Hilltop Facility Planning Area, Interceptor Sewer Project, Construction Grant, Cuyahoga and Lake Counties, Due: August 24, 1987, Contact: Bill Spaulding (312) 886–0215.

EIS No. 870234, FSuppl, NOA, REG, MXG, ATL, Green, Loggerhead and Pacific Ridley Sea Turtles, Listing and Protection under the Endangered Species Act of 1973, Incidental Capture and Mortality Reduction, Use of Turtle Excluder Devices by Shrimp Fishermen, Contact: Charles Oravetz (813) 893–3366—Pursuant to § 1502.9(c)(4), alternative NEPA procedures have been approved thereby waiving the prescribed 30-day period.

EIS No. 870235, Draft, BIA, WA, Swinomish Marina and Associated Facilities Development, Lease Approval, Swinomish Channel, Skagit County, Due: September 5, 1987, Contact: Robert Taylor (503) 231–2208.

Amended Notices

EIS No. 870176, Final, FWS, NJ, Great Swamp National Wildlife Refuge Master Plan, Morris County, Due: August 1, 1987, Published FR 5–29–87—Review period extended.

EIS No. 870188, Final, COE, FL, Palm Beach County Beach Erosion Control Project, Palm Beach County, Due: July 16, 1987, Published FR 6–5–87—Review period extended.

Dated: July 7, 1987.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 87–15748 Filed 7–8–87; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–3230–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 22, 1987 through June 26, 1987 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act (CAA) and section 102(2)(c) of the National Environmental Policy Act (NEPA) as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076/73. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 24, 1987 (52 FR 13749).

Draft EISs

ERP No. DA–COE–E32064–00, Rating EC1, Alabama-Coosa Rivers Navigation Channel, Operation and Maintenance, Navigation Maintenance Plan, sections 10 and 404 Permit, AL and GA. SUMMARY: EPA is concerned about the loss of the bottomland habitat associated with this action. EPA realizes, however, these losses have been lessened to a reasonable extent.

ERP No. D–COE–E35081–FL, Rating EO1, Port Everglades Expansion, Construction and Fill Placement in US and Contiguous Wetlands, sections 10 and 404 Permits, FL.

SUMMARY: EPA has determined that direct wetland losses and associated water quality impacts associated with the applicant's preferred alternative are such that the agency has significant objections to permit issuance. EPA does not object to the option of relocating the turning notch to the southern terminus of the port. The environmental impacts associated with this option are acceptable.

ERP No. DS–COE–E36013–MS, Rating LO, Yazoo River Basin Flood Control Plan, Yalobusha River Channel Enlargement, Yazoo Headwater Area, MS. SUMMARY: EPA believes that the Vicksburg District's decision to delete the channel excavation on the subject segment of the Yalobusha River was prudent, in light of significant adverse environmental consequences which would result from the action. If at some future point there is a re-evaluation which determines that increased flood control is warranted in the project area, EPA reserves the right to review and comment relative to its responsibilities under NEPA and section 404 of the Clean Water Act.

ERP No. D–COE–G35016–LA, Rating EC2, Lake Pontchartrain and Lake Maurepas Clam Shell Dredging, 10-year Permit Renewal, sections 10 and 404 Permit, LA. SUMMARY: EPA is concerned that information provided in the draft EIS is insufficient for appropriate alternatives analysis. EPA further recommended that the document should include a thorough discussion of project impacts as they pertain to the section 404(b)(1) guidelines, mitigation, and management plans.

ERP No. D–COE–G35017–LA, Rating EC2, Atchafalaya, East Cote Blanche and Four League Bays, Oyster Shell Dredging Operation, sections 10 and 404 Permit, LA. SUMMARY: EPA is concerned that information provided in the draft EIS is insufficient for appropriate alternatives analysis. EPA further recommended that the document should include a thorough discussion of project impacts as they pertain to the section 404(b)(1) guidelines, mitigation, management plans, permit time extension, and past permit violations.

ERP No. D–DOE–E26001–SC, Rating EC2, Savannah River Plant Hazardous/Low-Level Radioactive and Mixed Waste Management for Groundwater Protection, Modifications, SC. SUMMARY: EPA found the DOE preferred "Combination Strategy" to be a useful starting point for determining the site-specific remedial action at the 77 waste sites considered in the draft EIS (pending site-specific regulatory review). Other alternatives to the proposed continued use of the purge-water basins should be pursued because of the potential for groundwater contamination. Clarification should be provided in the final EIS on a number of areas of concern including the NEPA and regulatory interface, use of nonregulatory standards and criteria, and the impact of the Byproduct Ruling. EPA also requests further information on the siting methodology and criteria for new waste sites.

ERP No. DS–FHW–D40211–MD, Rating EC2, Calvert Road Closure, US–1 to MD–201, Construction of Metro Line, Right-of-Way Acquisition, MD. SUMMARY: EPA reviewed the supplemental draft EIS and found that each of the alternatives considered continues to present significant environmental concerns.

ERP No. D–FHW–F40290–WI, Rating LO, WI–TH–83 Improvement, I–94 to Cardinal Lang/WI–TH–16, 404 Permit, WI. SUMMARY: EPA's review resulted in no objections to the proposed project.

ERP No. D–FHW–K40160–CA, Rating EO2, CA–52 East Construction, Santo Rd, in City of San Diego to CA–67 in City of Santee, 404 Permit, CA. SUMMARY: EPA has environmental objections based on potential adverse impacts to wetlands/riparian areas and endangered species. EPA requested a more complete discussion of alternatives with reduced impacts to sensitive wetland habitats and species in order to determine compliance with section 404 of the Clean Water Act, and also further analysis of air quality impacts.

ERP No. D–FHW–K40161–CA, Rating LO, CA–118 through Saticoy Realignment and Widening, CA–126/Santa Paula Freeway to CA–232/Vineyard Ave., Including the Santa Clara R. Bridge Replacement, 404 Permit, CA. SUMMARY: EPA has no objections to the proposed project, but recommends that the FHWA and the California DOT contact the Corps of Engineers to determine if the project needs a CWA

section 404 dredge-and-fill permit. If such a permit is required, EPA requests that the final EIS discuss its requirements.

ERP No. D–UAF–A10055–00, Rating LO, Ground Wave Emergency Network (GWEN) Deployment and Land Acquisiton, Final Operational Capability, US. SUMMARY: EPA's review of this project has not shown any significant impacts that cannot be mitigated in a satisfactory manner.

ERP No. DA–USA–G11010–00, Rating LO, Binary Chemical Munition Program, QL and DC Production Facilities, Site Selection, Construction and Operation, IN, AL, AR, and LA. SUMMARY: EPA has no objections to the proposed project. FINAL EISs

ERP No. F–AFS–G65045–TX, East Texas Nat'l Forests and Caddo and LBJ Nat'l Grasslands, Land and Resource Mgmt. Plan, TX, SUMMARY: The final EIS adequately responded to EPA's comments on the draft EIS.

ERP No. F–AFS–J82007–MT, Gallatin Nat'l Forest, Noxious Weed Control, Mgmt. and Treatment, MT. SUMMARY: EPA made no formal comments. EPA has no objections to the selection of an integrated control program.

ERP No. F–AFS–J82008–MT. 1987 Deerlodge Nat'l Forest Noxious Weed Control Program, MT. SUMMARY: EPA made no formal comments. EPA has no objections to the selection of an integrated control program.

ERP No. F–AFS–J82009–MT, Flathead Nat'l Forest, Individual Lodgepole Pine Trees Protection From Mtn, Pine Beetle Attacks, Tally Lake and Abbott Bay Recreational Sites, MT. SUMMARY: EPA made no formal comments. EPA has no objections to the selection of Integrated Pest Mangement as the preferred alternative.

ERP No. FS–FHW–K40031–CA, CA–15 Reconstruction, I–805 to I–8, New Preferred Alternative, CA. SUMMARY: EPA commends FHWA for the development of an effective air quality mitigation plan for this project and requests that the Record of Decision clearly show how air modeling will be implemented.

ERP No. F–NOA–L91006–00, Japanese Salmon Fishery, 1987 through 1991 Incidental Take of Dall's Porpoise, Permit, Economic Coastal Zone, US. SUMMARY: In light of the uncertainties, data gaps, and lack of specifics for each subalternative, EPA believes the environmentally preferable alternative is a combination of subalternatives two and four. Subalternative two, lower incidental take quotas, would represent a conservative approach when the quality and quantity of the baseline information is taken into consideration. Subalternative four, increased observer coverage and new research requirements, would be instrumental in filling the data gaps and minimizing the uncertainties associated with the data.

Regulation

ERP No. R–MMS–A67019–00, 30 CFR Part 280, Prelease Prospecting For Marine Mining Minerals Other Than Oil and Gas (52 FR 9758). SUMMARY: EPA noted that all of its substantive comments made in response to review of an advance copy of this proposed regulation had been incorporated into the regulation. EPA also noted that discharges from vessels engaged in prelease exploration activities would be subject to NPDES permit requirements.

Barbara Bassuener,

Acting Deputy Director, Office of Federal Activities.

July 8, 1987.

[FR Doc. 87–15781 Filed 7–9–87; 8:45 am]

BILLING CODE 6560–50–M

[OPP–36134A; FRL–3231–2]

Pesticide Programs: Data Call-In Notice for Subchronic and Chronic Toxicological Data for Antimicrobial Pesticide Active Ingredients; Extension of the 90-Day Deadline for Responding to the Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Extension of the Deadline for Responding to EPA's Antimicrobial Data Call-In Notice dated March 4, 1987.

SUMMARY: This Notice extends to September 1, 1987 the time period in which registrants subject to EPA's Antimicrobial Data Call-In Notice dated March 4, 1987 must respond.

DATE: New response period extends to and includes September 1, 1987.

FOR FURTHER INFORMATION CONTACT:

By Mail: James Wilson, Registration Division (TS–767C), Office of Pesticide Programs, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Room 711, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–7109).

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 7, 1987 (52 FR 595), EPA announced its strategy for obtaining toxicology data for active ingredient (AI) chemicals used in antimicrobial pesticide formulations. Under the authority of section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA mailed, beginning on March 4, 1987 and continuing through March 20, 1987, a data call-in Notice to 2,100 registrants of 8,575 antimicrobial pesticide products containing more than 300 active ingredient chemicals requiring that they submit the required toxicology and exposure data to the Environmental Protection Agency in accordance with a time schedule outlined in the 3(c)(2)(B) Notice. The 3(c)(2)(B) Notice also required registrants to notify EPA within ninety days after receipt of the Notice that they were taking appropriate steps to secure the additional data required by the Notice. To do so, registrants were required to submit to EPA, for each of their registered products, a completed copy of a "Data Call-In Summary Sheet" that EPA included as Attachment D with the Notice. On the Data Call-In Summary Sheet, EPA provided registrants with five options from which they could choose to comply with the notification requirement. One of the five options permitted registrants to enter into joint agreements with each other to collaboratively develop the exposure and toxicology data.

Over the past several weeks, antimicrobial registrants have informed EPA that because of the large number of products and active ingredients involved in this comprehensive call-in, they have not had sufficient time to complete an assessment of their products and testing categories in order to finalize joint tests agreements for generating the data required by the Notice. Registrants, therefore, have requested, through their trade associations, a 90-day extension request of the original deadline. Based on the information provided to EPA by the registrants, EPA believes that the antimicrobial pesticide industry has acted promptly and made a good faith effort to meet the requirements of the March 4, 1987 Antimicrobial Data-Call-In Notice. Accordingly, EPA is extending the response period to and including September 1, 1987.

Dated: July 1, 1987.

Victor J. Kimm,

Acting Assistant Adminsitrator for Pesticides and Toxic Substances.

[FR Doc. 87–15675 Filed 7–9–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–59243A; FRL–3230–7]

Toxic and Hazardous Substances Control; Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of applications for test marketing exemptions (TME) under section 5(h)(6) of the Toxic Substances Control Act (TSCA), TME–87–16 and TME–87–17. The test marketing conditions are described below.

EFFECTIVE DATE: July 1, 1987.

FOR FURTHER INFORMATION CONTACT: Robert Wright, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street SW., Washington, DC 20460, (202–382–7800).

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME–87–16 and TME–87–17. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, and for the time period and restrictions specified below, will not present any unreasonable risk of injury to health or the environment. The production volumes must not exceed those specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met.

The following additional restrictions apply to TME–87–16 and TME–87–17. A bill of lading accompanying each shipment must state that the uses of the substances are restricted to that approved in the TMEs. In addition, the Company shall maintain the following records until five years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. The applicant must maintain records of the quantities of the TME substances produced.

2. The applicant must maintain records of the dates of shipment to each customer and the quantities supplied in each shipment.

3. The applicant must maintain copies of the bills of lading that accompany each shipment of the TME substances.

T87–16

Date of Receipt: May 22, 1987.

Notice of Receipt: June 5, 1987 52 FR 21367.

Applicant: Confidential.

Chemical: (G) An epoxy resin ingredient.

Use: (G) Industrial applications

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Manufacturing: Minimal dermal exposure to a total of 9 persons up to 98 days. Processing: Minimal dermal exposure to a total of 5 persons up to 40 days.

Test Marketing Period: One year.

Commencing on: Date of Manufacture.

Risk Assessment: EPA has identified potential health concerns for carcinogenicity and mutagenicity. However, EPA has determined that the estimated exposures to the test market substances will not be significant. Therefore, the test market substances will not present any unreasonable risk of injury to health. EPA identified no environmental releases. Therefore, the test market substances will not present any unreasonable risk of injury to the environment.

T87–17

Date of Receipt: May 22, 1987.

Notice of Receipt: June 5, 1987, 52 FR 21367.

Applicant: Confidential.

Chemical: (G) An epoxy resin ingredient.

Use: (G) Industrial applications.

Production Volume: Confidential.

Number of Customers: Confidential.

Worker Exposure: Manufacturing: Minimal dermal exposure to a total of 9 persons up to 98 days. Processing: Minimal dermal exposure to a total of 5 persons up to 40 days.

Test Marketing Period: One year.

Commencing on: Date of Manufacture.

Risk Assessment: EPA has identified potential health concerns for carcinogenicity and mutagenicity. However, EPA has determined that the estimated exposures to the test market substances will not be significant. Therefore, the test market substances will not present any unreasonable risk of injury to health. EPA identified no environmental releases. Therefore, the test market substances will not present any unreasonable risk of injury to the environment.

Public Comments: None.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to heath or the environment.

Dated: July 1, 1987.

Charles L. Elkins,

Director, Office of Toxic Substances.

[FR Doc. 87–15676 Filed 7–9–87; 8:45 am]

BILLING CODE 6560–50–M

[OPTS–51683; FRL–3230–9]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) permanufacture notices are discussed in the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of twenty-three such PMNs and provides a summary of each.

DATES: Close of Review Period:

P 87–1331, 87–1332, 87–1333 and 87–1334—September 23, 1987.

P 87–1335, 87–1336, 87–1337, 87–1338, 87–1339, 87–1340, 87–1341, 87–1342, 87–1343 and 87–1344—September 26, 1987.

P 87–1345, 87–1346, 87–1347, 87–1348, 87–1349 and 87–1350—September 27, 1987.

P 87–1351, 87–1352 and 87–1353—September 28, 1987.

Written comments by:

P 87–1331, 87–1332, 87–1333 and 87–1334—August 24, 1987.

P 87–1335, 87–1336, 87–1337, 87–1338, 87–1339, 87–1340, 87–1341, 87–342, 87–1343 and 87–1344—August 27, 1987.

P 87–1345, 87–1346, 87–1347, 87–1348, 87–1349 and 87–1350—August 28, 1987.

P 87–1351, 87–1352 and 87–1353—August 29, 1987.

ADDRESS: Written comments, identified by the document control number "[OPTS–51683]" and the specific PMN number should be sent to: Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room L–100, 401 M

Street, SW., Washington, DC 20460, (202) 554–1305.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS–794), Office of Toxic Substances, Environmental Protection Agency, Room E–611, 401 M Street, SW., Washington, DC 20460, (202) 382–3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the PMNs received by EPA. The complete non-confidential PMNs are available in the Public Reading Room NE–G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

P 87–1331

Importer. Pacific Anchor Chemical Corporation.
Chemical. (G) Polymer from reactants including tert-butylphenol and isophorone diamine.
Use/Import. (S) Curing agent for epoxy resin coating systems, putties, floor screeds and concrete repair compounds. Import range: Confidential.

P 87–1332

Importer. Ciba-Geigy Corporation.
Chemical. (G) Substituted azo triazine naphthalenedisulfonic acid.
Use/Import. (G) Textile dye. Import range: Confidential.
Toxicity Data. Acute oral: > 5,000 mg/kg; Acute dermal: > 2,000 mg/kg; Irritation: Skin—Non-irritant; Eye—Non-irritant; Ames test: Negative; Skin sensitization: Non-sensitizer.

P 87–1333

Importer. Biddle Sawyer Corporation.
Chemical. (S) Tetrasodium 7,7'-[[6-(4-morpholinyl)-1,3,5-triazine-2,4-diyl]diimino] bis[4-hydroxy-3-[(4-methoxy-3-sulfophenyl)azo]-2-naphthalenesulfonate.
Use/Import. (S) Direct dye for textile. Import range: 40,000 kg/yr.

P 87–1334

Importer. Confidential.
Chemical. (G) Aliphatic polyester.
Use/Import. (G) Open, non-dispersive use. Import ragne: Confidential.

P 87–1335

Importer. EMS American Grilon, Incorporated.
Chemical. (S) Reaction product of 2 Mol isophoronediamine and 1 Mol bisphenol A-epoxy resin.
Use/Import. (S) Industrial and commercial component of hardener for epoxy resins. Import range: 5,000 to 100,000 kg/yr.

P 87–1336

Manufacturer. Confidential.
Chemical. (G) Styrenated copolymer alkyd resin.
Use/Production. (S) Protective and decorative coatings. Prod. range: Confidential.

P 87–1337

Importer. Orient Chemical Corporation.
Chemical. (G) Di-sulfonic acid amine salt.
Use/Import. (S) Commercial dye for oil-base ink. Import range: 600 to 5,000 kg/yr.

P 87–1338

Importer. EMS American Grilon, Incorporated.
Chemical. (G) Polyarylamide.
Use/Import. (G) Technical plastic parts in different applications. Import range: Confidential.

P 87–1339

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Bisurea.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1340

Importer. Orient Chemical Corporation.
Chemical. (G) Xanthene dye.
Use/Import. (S) Commercial oil base ink and electraphotographic toner. Import range: 5,000 to 6,000 kg/yr.

P 87–1341

Manufacturer. Amoco Corporation.
Chemical. (G) Divalent metal salt of an acid.
Use/Production. (G) Open, non-dispersive use. Prod. range: Confidential.

P 87–1342

Manufacture. Velsicol Chemical Corporation.
Chemical. (G) Mixture of cyclodiene hydrocarbons.
Use/Production. (G) Monomer mixture. Prod. range: Confidential.

P 87–1343

Manufacture. Confidential.
Chemical. (G) Substituted benzoxazine.
Use/Production. (G) Formulation adjuvant. Prod. range: Confidential.

P 87–1344

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Ethylene interpolymer.
Use/Production. (G) Molded parts and extruded. Prod. range: Confidential

P 87–1345

Manufacturer. Confidential.
Chemical. (G) Cationic ether and nonionic ester of starch.
Use/Production. (G) Aqueous adhesive component. Prod. range: Confidential.

P 87–1346

Importer. Confidential.
Chemical. (G) Polyethylene polyamine/bisphenol A phenol-formaldehyde epichlorohydrin resin/dimer fatty acid condensate mixture with phenylglycidylether.
Use/Import. (G) Hardener for epoxy resins. Import range: Confidential.

P 87–1347

Manufacturer. Confidential.
Chemical. (G) Dicyclohexylmethane, 4,4'-diisosyanate prepolymer with ethoxylated polyoxypropylene glycol.
Use/Production. (S) Isocyanate resin for room temperature curing polyurethane casting elastomers and polyurethane surface cost. Prod. range. Confidential.

P 87–1348

Manufacturer. E.I. du Pont de Nemours and Company, Inc.
Chemical. (G) Zirconium (4^+) hydroxyalkylaminoacid complex.
Use/Production. (G) Industrial additive consumed in the energy production industry; non-dispersive destructive end use. Prod. range: Confidential.
Toxicity Data. Irritation: Skin—Moderate, Eye—Mild.

P 87–1349

Importer. Confidential.
Chemical. (G) Poly(meth)acrylate.
Use/Import. (S) Production of paints and finishes. Import range: Confidential.

P 87–1350

Manufacturer. Confidential.
Chemical. (G) Alkenyl alkanoate.
Use/Production. (S) Site-limited intermediate. Prod. range: Confidential.

P 87–1351

Importer. Ciba-Geigy Corporation.
Chemical. (S) Tert-decanoic acid, zinc salt.
Use/Import. (G) Stabilizer for polymers. Import range: Confidential.
Toxicity Data. Acute oral: 4,640 mg/kg; Irritation: Skin—Moderate, Eye—Minimal.

P 87–1352

Manufacturer. Confidential.

Chemical. (G) Sodium fluorosilanolate.

Use/Production. (S) Catalyst for manufacture of fluorosilicone polymers. Prod. range: Confidential.

P 87-1353

Manufacturer. Confidential.

Chemical. (G) Substituted alkyl phosphonic acid.

Use/Production. (G) Destructive use. Prod. range: Confidential.

Dated: July 2, 1987.

Linda K. Smith,

Acting Division Director, Information Management Division.

[FR Doc. 87-15677 Filed 7-9-87; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59823; FRL-3230-8]

Toxic and Hazardous Substances Control; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of six such PMNs and provides a summary of each.

DATES: Close of Review Period:

Y 87-176—July 16, 1987.

Y 87-177, 87-178 and 87-179—July 19, 1987.

Y 87-180 and 87-181—July 20, 1987.

FOR FURTHER INFORMATION CONTACT: Stephanie Roan, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-611, 401 M Street, SW., Washington, DC 20460, (202) 382-3725.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemption received by EPA. The complete non-confidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 87-176

Manufacturer. Confidential.

Chemical. (G) Silane-modified polyurethane polyvinyl alcohol copolymer.

Use/Production. (G) Open, non-dispersive use as a component in an industrially produced article. Prod. range: 7,200 to 40,000 kg/yr.

Y 87-177

Manufacturer. Confidential.

Chemical. (G) Acrylic resin.

Use/Production. (G) Resin for paint manufacture. Prod. range: Confidential.

Y 87-178

Manufacturer. Confidential.

Chemical. (G) Water reducible alkyd resin.

Use/Production. (G) Manufacture of clear and pigmented water reducible metal coatings. Prod. range: Confidential.

Y 87-179

Manufacturer. Confidential.

Chemical. (G) Poly-alpha-alkenes.

Use/Production. (G) Grease, fuel, explosive and pipeline additive. Prod. range: Confidential.

Y 87-180

Importer. Unitika America Corporation.

Chemical. (G) Co-polyester.

Use/Import. (G) Resin for powder coating. Import range: 30,000 to 50,000 kg/yr.

Y 87-181

Importer. Unitika America Corporation.

Chemical. (G) Co-polyester.

Use/Import. (G) Resin for powder coating. Import range: 30,000 to 50,000 kg/yr.

Dated: July 2, 1987.

Linda K. Smith,

Acting Division Director, Information Management Division.

[FR Doc. 87-15678 Filed 7-9-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. AC-638]

The Gravois Home Savings and Loan Association St. Louis, MO; Final Action; Approval of Conversion Application

Dated: June 30, 1987.

Notice is hereby given that on June 25, 1987, the General Counsel and the Director of the Office of Regulatory Policy, Oversight and Supervision, or their respective designees, acting pursuant to delegated authority, approved the application of the Gravois Home Savings and Loan Association, St. Louis, Missouri ("Gravois"), for permission to convert to the stock form of organization pursuant to a voluntary supervisory conversion and the application of Love Savings Holding Company, St. Louis, Missouri to acquire Gravois by merger with Economy Federal Savings and Loan Association of St. Louis, Missouri ("Economy").

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-15714 Filed 7-9-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Marine Terminals Corporation et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-004140-004.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland

Marine Terminals Corporation

Synopsis: The proposed agreement permits Marine Terminals Corporation to extend its handling of combination steel and container vessels off assigned premises due to physical operational limitations. It also extends the application of the basic agreement's compensation factors to the handling of such cargo and vessels at other port terminal facilities to September 30, 1987.

Agreement No.: 224–010974–002.

Title: Port of Oakland Marine Terminal Agreement.

Parties:

City of Oakland

International Transportation Services, Inc.

Synopsis: The proposed agreement amends the basic Agreement to reduce the office building and maintenance and repair facility rental. The agreement also gives the Port the right to sublease to others unused space in said office building and maintenance and repair facility.

Agreement No.: 224–004008–005.

Title: Port of Oakland Terminal Agreement.

Parties:

Port of Oakland

Marine Terminals Corporation

Synopsis: The proposed agreement extends the original term of the basic agreement to September 30, 1987, and provides for Marine Terminals Corporation to hold over on a month-to-month basis.

Agreement No.: 224–004177–005.

Title: Port of Seattle Terminal Agreement.

Parties:

Port of Seattle

Stevedoring Services of America DBA Seattle International Terminal, Inc.

Synopsis: The proposed agreement amendment: reduces from seven to six the number of preferentially assigned container cranes and adjusts annual crane hour guarantee; reduces from two to one the number of preferentially assigned whirley cranes; adds two rubber tired gantry cranes to the preferentially assigned equipment at a flat rent of $4458.92 per unit per month maintenance and fuel; and postpones the next renegotiation.

Dated: July 6, 1987.

Tony P. Kominoth,

Assistant Secretary

[FR Doc. 87–15663 Filed 7–9–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

July 6, 1987.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collections of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following forms, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received on or before July 27, 1987.

ADDRESS: Comments, which should refer to the OMB Docket number (or Agency form number in the case of a new information collection that has not yet been assigned an OMB number), should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B–2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B–1122 between 8:45 a.m. and 5:15 p.m., except as provided in 261.6(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Robert Fishman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form, the request for clearance (SF 83), supporting statement, instructions, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nancy Steele—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3822)

Proposal To Approve Under OMB Delegated Authority the Extension, With Revision, of the Following Reports

1. Report title: Report of Bank Holding Company Intercompany Transactions and Balances:

Agency form number: FR Y–8

OMB Docket number: 7100–0126

Frequency: semiannual

Reporters: Bank holding companies

Annual reporting hours: 8,550

Small businesses are not affected

General description of the report: This report collects data on the movement of funds between a domestic bank holding company and its subsidiaries, in order to identify broad categories of funds flows, internal transactions and balances that may have an adverse impact on the financial condition of the subsidiary bank(s). The proposed revisions will delete certain items, increase the size criteria for reporting of certain transactions, and revise terminology.

This report is required by law (12 U.S.C. 1844), and is given confidential treatment (5 U.S.C. 552(b)(8)).

2. Report title: Consolidated Bank Holding Company Financial Statements:

Agency form number: FR Y–9C

OMB Docket number: OMB No. 7100–0128

Frequency: Quarterly

Reporters: bank holding companies

Annual reporting hours: 113,392

Small businesses are not affected

General description of report:

This report is a primary source of information for the Federal Reserve System's bank holding company (BHC) surveillance and is important in monitoring the financial condition of these institutions. The proposed revisions would add or delete certain items to reflect changes in the Board's capital adequacy guidelines and changes required by the 1986 Tax Reform Act, and to maintain comparability with the call report for insured banks in reflecting changes in reporting requirements for banks adopted by the Federal Financial Institutions Examination Council.

The information collection is required by law (12 U.S.C. 1844 5(C)).

Proposal To Approve Under OMB Delegated Authority the Discontinuance of the Following Report

1. Report title: Dealer Monthly Report
Agency form number: FR 2079
OMB Docket number: 7100–0185
Frequency: monthly
Reporters: Non-primary dealers in U.S. Government securities
Annual reporting hours: 1,248
Small business are not affected

General description of the report:

This report provides basic information on positions, financing and volume of transactions, as well as financial statements, from non-primary dealers in U.S. government securities dealers. The report was implemented to aid the Federal Reserve's understanding of the market and of trading by these dealers, in view of a series of dealer failures in 1982. The need for the report has been reduced substantially by the passage of the Government Securities Act of 1986, which created a formal regulatory and reporting framework for all brokers and dealers in U.S. government securities.

This information collection is authorized by law (12 U.S.C. 248(a)(2) and 353–359(a)), and is given confidential treatment (5 U.S.C. 552(b)(8)).

Proposal To Approve, Under OMB Delegated Authority, The Extension, Without Revision, of the Following Report

1. Report title: Daily Report of When-Issued Commitments Outstanding:
Agency form number: FR 2080
OMB Docket number: 7100–0184
Frequency: daily
Reporters: Primary dealers in U.S. Government securities
Annual reporting hours: 4,320
Small businesses are not affected.

General description of the report:

This report collects information on significant "when-issued" commitments of the primary dealers that deal in U.S. government securities with the Federal Reserve Bank of New York. "When-issued" trading (forward delivery trading in U.S. Treasury securities between announcement of the sale and settlement) is monitored by the Federal Reserve in view of substantial credit and market risks involved.

This report is authorized by law (12 U.S.C. 248(a)(2) and 353–359(a)). Individual respondent date is exempt from disclosure (5 U.S.C. 552(b)(4)).

Board of Governors of the Federal Reserve System, July 6, 1987.

William W. Wiles,

Secretary of the Board.

[FR Doc. 87–15647 Filed 7–9–87; 8:45 am]

BILLING CODE 6210–01–M

Acquisitions of Shares of Banks or Bank Holding Companies; Change in Bank Control; Federal Reserve Bank of Atlanta

The notificants listed below have 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 the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 3, 1987.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *T. E. Lee,* Enterprise, Alabama; to acquire an additional 5.25 percent of the voting shares of State Bancshares, Inc., Enterprise, Alabama; and thereby indirectly acquire Coffee County Bank Enterprise, Alabama.

B. **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.

2. *Steven Walker,* Encino, California; to acquire 20 percent of the voting shares of Charter National Bancorp, Encino, California; and thereby indirectly acquire Charter National Bank, Encino, California.

Board of Governors of the Federal Reserve System, July 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–15648 Filed 7–9–87; 8:45 am]

BILLING CODE 6210–01–M

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Co.; Manufacturers National Corp.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these 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 office of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 30, 1987.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Manufacturers National Corporation,* Detroit, Michigan; to acquire 100 percent of the voting shares of Affiliated Banc Group, Inc., Morton Grove, Illinois; and thereby indirectly acquire Affiliated Bank/DuPage, Addison, Illinois; Affiliated Bank/North Shore National, Chicago, Illinois; Affiliated Bank/Western National, Cicero, Illinois; Affiliated Bank/Franklin Park, Franklin, Ilinois; Affiliated Bank/Morton Grove, Morton Grove, Illinois.

In connection with this application, MNC Shares, Inc., Chicago, Illinois, has

applied to become a bank holding company by acquiring 100 percent of the voting shares of Affiliated Banc Group, Inc., Morton Grove, Illinois.

Manufacturers National Corporation, Detroit, Michigan; and MNC Shares, Inc., Chicago, Illinois; have also applied to acquire Affiliated Asset-Based Lending Services, Inc., Morton Grove, Illinois, and NSCC Leasing Corp., Chicago, Illinois; and thereby engage in lending activities, such as would be made by a commercial finance or factoring company, pursuant to § 225.25(b)(1) of the Board's Regulation Y and leasing real and personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, July 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–15649 Filed 7–9–87; 8:45 am]

BILLING CODE 6210-01-M

Application to Engage de Novo in Permissible Nonbanking Activities; NBD Bancorp, Inc.

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 § 225.212(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 office 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 August 3, 1987.

A. Federal Reserve Bank of Chicago (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *NBD Bancorp, Inc.*, Detroit, Michigan; to engage *de novo* through its subsidiary, NBD Trust Company of Illinois, Park Ridge, Illinois; in offering a range of personal, employee benefit and institutional trust services to the general public at each office of the banking affiliates and at such other place or places as may be selected from time to time within Illinois and if deemed advisable elsewhere throughout the United States.

Board of Governors of the Federal Reserve System, July 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–15650 Filed 7–9–87; 8:45 am]

BILLING CODE 6210-01-M

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Pacific National 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 30, 1987.

A. Federal Reserve Bank of Boston (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Pactific National Corporation*, Nantucket, Massachusetts; to become a bank holding company by acquiring 80 percent of the voting shares of Pacific National Bank of Nantucket, Nantucket, Massachusetts.

B. Federal Reserve Bank of Cleveland (Martin E. Abrams, Assistant Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *FNB Financial Corporation*, Shelby, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Shelby, Shelby, Ohio. Comment on this application must be received by August 3, 1987.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Capitol Bankcorp, Ltd.*, Lansing, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Capitol National Bank, Lansing, Michigan.

D. Federal Reserve Bank of Minneapolis (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Houghton Financial, Inc.*, Houghton, Michigan; to acquire 99.6 percent of the voting shares of Commercial National Bank, L'Anse, Michigan.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Rocky Mountain Bancorporation, Inc.*, Aspen, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Aspen, Aspen, Colorado.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Valley National Corporation*, Phoenix Arizona; to acquire 100 percent of the voting shares of California Valley Bank, Fresno, California.

Board of Governors of the Federal Reserve System, July 6, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–15651 Filed 7–9–87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on July 3, 1987.

Health Care Financing Administration

1. The Home and Community-Based Services Waivers Manual Instructions—NEW—State to offer, under a Secretarial waiver, a wide array of home and community-based services to individuals who would otherwise be institutionalized. States requesting a waiver must describe covered services in writing. Respondents: State or local governments; Number of Respondents: 50; Frequency of Response: Occasionally; Estimated Annual Burden: 10,000 hours.

2. Early Periodic Screening Diagnosis and Treatment Report (EPSDT)—0938–0291—Congress and HCFA are interested in the EPSDT program's effectiveness in improving the health of Medicaid eligibility children. The HCFA 420, submitted by all 54 Medicaid jurisdictions, supplies data for accurate monitoring of EPSDT activities. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Quarterly; Estimated Annual Burden: 1,944 hours.

3. Information Collection Requirements in SOM-Section 2280 and ROM-Section 5223—NEW—The information collected by this requirement is necessary to evaluate whether dialysis at home service provided by the facility conforms with minimum health and safety standards. The information is used by HCFA to make compliance determinations. Respondents: Businesses or other for-profit. Number of Respondents: 100; Frequency of Response: Single-time; Estimated Annual Burden 336 hours.

OMB Desk Officer: Allison Herron.

Social Security Administration

(Call Reports Clearance Officer on 301–594–5706 for copies of package)

1. Statement of Living Arrangements, In-Kind Support and Maintenance—0960–0174—This form is used by SSA to collect information about an SSI applicant's/recipient's unearned income in order to determine whether that individual is eligible to receive SSI payments. Respondents: Individuals or households. Number of Respondents: 775,000; Frequency of Response: Occasionally; Estimated Annual Burden: 90,417 hours.

2. Statement of Household Expenses and Contributions—NEW—Information collected by use of the form SSA–8011 is needed and will be used to determine the existence and amount of in-kind support and maintenance received by an applicant/recipient of supplemental security in one in order to determine the individual's eligibility and payment amount under this program. The affected public is comprised of household members of an SSI applicant's/recipient household. Respondents: Individuals or households. Number of Respondents: 600,000; Frequency of Response: Occasionally; Estimated Annual Burden: 60,000 hours.

OMB Desk Officer: Elaina Norden.

Office of the Secretary

(Call Reports Clearance Officer on 202–245–6511 for copies of package)

45 CFR 95.624 State Requests for HHS Approval of Federal Financial Participation for ADP—Emergency Situations—0990–0160—HHS has established a special procedure by which States in "emergency situations" may submit written requests to the Department to proceed with ADP acquisitions immediately. Respondents: State or local governments. Number of Respondents: 27; Frequency of Response: Occasionally; Estimated Annual Burden 27 hours.

OMB Desk Officer: Elaina Norden.

Family Support Administration

(Call Reports Clearance Officer on 202–245–0652 for copies of package)

1. State Agency Statement of Financial Plan for Aid to Families with Dependent Children—0970–0010—Information gathered by this form is used to establish budget estimates, to reassess and monitor budget progress and to serve as the States' estimate to current year requirements for a quarterly report to Congress. Respondents: State or local governments. Number of Respondents: 54; Frequency of Response: Quarterly; Estimated Annual Burden: 216 hours.

OMB Desk Officer: Elaina Norden.

Public Health Service

(Call Reports Clearance Officer on 202–245–2100 for copies of package)

A. Alcohol, Drug Abuse and Mental Health Administration

National Drug and Alcohol Treatment Unit Survey (NDATUS)—0930–0106—NDATUS collects information on the location, types of services, clients in treatment, and funding resources for all known alcohol and drug abuse treatment and prevention programs in the United States, both public and private. Data are used by States, the Federal Government, Congress, and researchers. Respondents: State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations. Number of Respondents: 11,000; Frequency of Response: Biennial; Estimated Annual Burden: 5,048 hours.

B. Office of the Assistant Secretary for Health

Evaluation of Coverage of Health Facilities in the National Master Facility Inventory—NEW—Methods will be evaluated to expand coverage of the National Master Facility Inventory beyond inpatient facilities. Facility listings will be obtained from regulatory agencies and private associations. Criteria for delineating Surgicenters from office-based surgical practices will also be tested. Respondents: State or local governments, Small businesses or organizations. Number of Responsents: 440; Frequency of Response: Single-time; Estimated Annual Burden: 335 hours.

OMB Desk Officer: Shana Koss-McCallum.

As mentioned above, copies of the information collection clearance packages can be obtained by calling the Reports Clearance Officer, on one of the following numbers:

PHS: 202–245–2100
HCFA: 301–594–8650
FSA: 202–245–0652
SSA: 301–594–5706
OS: 202–245–6511

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch
NEw Executive Office Building, Room 3208
Washington, DC 20503

ATTN: (name of OMB Desk Officer).

Dated: July 1, 1987.

James F. Trickett,

Deputy Assistant Secretary, Administration and Management Services.

[FR Doc. 87-15579 Filed 7-9-87; 8:45 am]

BILLING CODE 4150-04-M

Alcohol, Drug Abuse, and Mental Health Administration

Cognition, Emotion, and Personality Research Review Committee; Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776) and the Anti-Drug Abuse Act of 1986, (Pub. L. 99-570, section 501(j)), the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA), announces the reestablishment, effective July 1, 1987, of the Cognition, Emotion, and Personality Research Review Committee.

Donald Ian Macdonald,

Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

July 7, 1987.

[FR Doc. 87-15691 Filed 7-9-87; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 87M-0192]

IGEL Optics International; Premarket Approval of IGEL™ 67 (Xylofilcon A) Soft (Hydrophilic) Contact Lens

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Igel Optics International, Bedfordshire, England, for premarket approval, under the Medical Device Amendments of 1976, of the spherical IGEL™ 67 (xylofilcon A) Soft (Hydrophilic) Contact Lens for daily wear. After reviewing the recommendation of the Ophthalmic Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant of the approval of the application.

DATE: Petitions for administrative review by August 10, 1987.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: David M. Whipple, Center for Devices and Radiological Health (HFZ-460), Food and Drug Administration, 8757 Georgia Avenue, Silver Spring, MD 20910, 301-427-7940.

SUPPLEMENTARY INFORMATION: On March 17, 1986, Igel Optics International, Bedfordshire, England, submitted to CDRH an application for premarket approval of the IGEL™ 67 (xylofilcon A) Soft (Hydrophilic) Contact Lens. The IGEL™ 67 (xylofilcon A) Soft (Hydrophilic) Contact Lens is indicated for daily wear for the correction of visual acuity in not-aphakic persons with nondiseased eyes that are myopic or hyperopic. The lens may be worn by persons who may exhibit astigmatism of 1.50 diopters (D) or less that does not interfere with visual acuity. The lens ranges in powers from −10.00 D to +10.00 D and is to be disinfected using either a heat or chemical lens care system.

On October 21, 1986, the Ophthalmic Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On May 15, 1987, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approved labeling is available for public inspection at CDRH—contact David M. Whipple (HFZ-460), address above.

The labeling of the approved contact lens states that the lens is to be used only with certain solutions for disinfection and other purposes. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. The restrictive labeling needs to be updated periodically, however, to refer to new lens solutions that CDRH approves for use with approved contact lenses made of polymers other than polymethylmethacrylate, to comply with the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 301 *et seq.*), and regulations thereunder, and with the Federal Trade Commission Act (15 U.S.C. 41 through 58), as amended. Accordingly, whenever CDRH publishes a notice in the **Federal Register** of approval of a new solution for use with an approval lens, each contact lens manufacturer or PMA holder shall correct its labeling to refer to the new solution at the next printing or at any other time CDRH prescribes by letter to the applicant.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register.** If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before August 10, 1987, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) 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 5.53).

Dated: June 30, 1987.

John C. Villforth,

Director, Center for Devices and Radiological Health.

[FR Doc. 87-15655 Filed 7-9-87; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87N-0169]

Studies of Reported Adverse Effects of Marketed Drugs; Availability of Grants; Request for Applications

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Drugs and Biologics, is announcing the anticipated availability of approximately $1,500,000 yearly beginning in fiscal year 1988 for cooperative agreements to support studies of the reported adverse effects of marketed drugs. FDA anticipates making six to eight awards in the range of $100,000 to $350,000. Funds are not currently available for these studies. The government's obligation is contingent upon the availability of appropriated funds from which the cooperative agreements will be funded. The purpose of these agreements is to provide financial assistance to support pharmacoepidemiological research using existing data bases and to provide a mechanism for collaborative research designed to test hypotheses, particularly those arising form adverse reactions reported to FDA. These data bases must be capable of supporting studies of multiple drugs/multiple outcomes, must be able to identify adverse events that occur at a rate of 0.1 percent or less, and must be able to provide information within a few months. New chemical entities that have been on the market less than 3 years have the highest priority within FDA. The adverse events of most interest are those that are not currently found in a drug's official labeling and are serious or life-threatening. Latent and teratogenic effects are also of interest.

DATES: Applications must be received by 5 p.m. on September 8, 1987. The earliest date for award is February 1, 1988.

ADDRESSES: Application kits are available from and completed applications should be mailed to Dianne Washington, Grants and Assistance Agreements Section (HFA-522), Food and Drug Administration, Park Bldg., Room 3-20, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6170.

Note.—Applications delivered via commercial courier should be addressed to Park Bldg., Rm. 3-20, 14210 Parklawn Dr., Rockville, MD 20857. Do not send applications to Division of Research Grants, National Institutes of Health.

FOR FURTHER INFORMATION CONTACT: Dianne L. Kennedy, Center for Drugs and Biologics (HFN-737), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6044.

SUPPLEMENTARY INFORMATION: FDA's authority to fund research projects is under section 301 of the Public Health Service Act (42 U.S.C. 241). Cooperative agreements are authorized under Pub. L. 95- 224. FDA's research program is described in the Catalog of Federal domestic Assistance No. 13.103. Applications submitted under this program are not subject to the requirements of executive Order 12372.

I. Background

New drugs are required to undergo pharmaceutical, toxicological, and clinical testing before marketing. With the submission of adequate date on a drug's safety and effectiveness, FDA approves a new drug application (NDA), which permits a manufacturer to market its drug product in the United States. Although the information provided before marketing is sufficient to decide whether to approve the drug, it is not adequate to anticipate all effects of a drug once it comes into general use.

As new drugs enter the market, FDA monitors their use closely for at least 3 years. As part of this process, it is necessary for FDA to have rapid access to several different data sources capable of providing answers to questions about possible adverse effects. To increase the number, variety, and quality of epidemiologic data bases available to FDA, it is necessary to provide financial assistance to support pharmacoepidemiologic research.

This request for applications (RFA) is intended to encourage research projects in the area of drug-induced illness and to provide a mechanism for collaborative research designed to test hypotheses from signals originating from spontaneous reports of adverse reactions sent to FDA directly from the practicing physician, from the manufacturer, or reported in the literature.

II. Research Goals and Objectives

The goals for these cooperative agreements will be to provide financial assistance to investigators conducting epidemiologic research on the effects of marketed drugs and to provide FDA with immediate access to data sources capable of responding to relevant questions. Specific objectives are listed below in priority order.

A. To assess suspected associations between specific drug exposures and specific diagnoses. Such investigations shall attempt to take into account alternative explanations for findings (e.g., nondrug etiology and confounding factors).

B. To investigate and quantitate the occurrence of previously known or suspected drug-associated risk in defined populations using cost-effective methods (e.g., computer linkage or specially designed medical records). These investigations shall attempt to take into account alternative explanations for potentially important findings (e.g., nondrug etiology and confounding factors). Analyses may include:

1. Estimates of adverse reaction rates or relative risks for specific drugs.

2. Estimates of the contribution of various risk factors to adverse reaction rates (e.g., age, sex, dose, coexisting disease, concomitant medication, etc.).

3. Determination of individual drug profiles for adverse reactions with classes of drugs (e.g., nonsteroidal anti-inflammatory drugs).

C. To detect previously unsuspected serious adverse effects of drug exposures, particularly with new chemical entities that have been marketed less than 3 years. These might include agranulocytosis, anaphylaxis, and other outcomes associated with exposure to drugs. Studies of associations of chronically used drugs with specific conditions such as cancer or birth defects where drugs may be the cause of the conditions will be considered.

In addition, FDA is interested in data bases capable of innovative approaches to studying drug-event associations in specific populations (e.g., in pregnant, pediatric, and geriatric populations).

FDA anticipates that most studies will be nonexperimental studies using case-control or cohort study designs. A case-control study is one in which patients are selected with a particular condition suspected to be associated with the drug (e.g., thromboembolism) and one or more control patient groups are obtained. The information studied concerns prior drug exposure and other etiological factors. Of special interest to FDA would be the ability to conduct case-control studies related to delayed effects, such as cancer or birth defects.

The cohort study, in which patients both exposed and not exposed to a drug of interest are identified, measures the rate of occurrence of untoward events (e.g., death from liver disease) in both groups. cohort studies may also compare risks associated with different drug treatments for the same medical condition.

Drug exposure information could relate to either hospital or outpatient

exposure, and events of interest could relate to acute or chronic effects.

For both case-control and cohort studies, the size of the study in relation to its ability to detect specific risks is critical and dependent upon such limits as population size and composition, extent of exposure to study drugs, and rate of occurrence of the event in the population. It has been FDA's experience that experimental studies do not provide useful postmarketing information because of sample size limitations. For a data base to be useful, it must be capable of identifying adverse drug reactions that occur at rates of about 0.1 percent. FDA expects any submitted application to recognize these limits with respect to usefulness and validity of data to be obtained. Proposals should include an in-depth description of the data base and provide descriptive information on the quantity of diagnoses and drug exposures in the population and the quality and validity of these data.

In order to assess the applicant's ability to meet these goals and objectives, FDA expects each application to include several proposals for specific studies, even though, if award is made, the actual drugs/events to be studied could change following negotiation through the terms of the collaborative agreement.

III. Reporting Requirements

Program progress reports and financial status reports will be required quarterly, based on date of award. These reports will be due within 30 days after the last day of each quarter. A final program progress report and financial status report will be due 90 days after expiration of the budget period of the cooperative agreement.

IV. Mechanism of Support

A. Award Instrument

Support for this program will be in the form of cooperative agreements. These awards will be subject to all policies and requirements that govern the research grant programs of the Public Health Service (PHS), including the provisions of 42 CFR Part 52, 45 CFR Part 74, and PHS grants policy statement.

B. Eligibility

These cooperative agreements are available to any public or private nonprofit organizations (including State and local units of government) and for-profit organizations (excluding fees or profit).

C. Length of Support

The length of support will depend upon the nature of the study and may extend beyond 1 year but may not exceed 3 years. For studies where the expected date of completion is more than 1 year, noncompetitive continuation of support, beyond the first year, will be based upon review of performance during the preceding year and the availability of Federal fiscal year appropriations.

D. Funding Plan

The number of cooperative agreements funded will depend on the quality of the applications received and the availability of funds.

V. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in the cooperative agreement award. Accordingly, FDA will have substantial involvement in the program activities of all the projects funded under this RFA. Involvement may be modified to fit the unique characteristics of each application. Substantive involvement includes, but is not limited to, the following:

A. FDA will appoint a project officer or co-project officers who will actively monitor the FDA-supported program under each award.

B. FDA will establish a project advisory group for each cooperative agreement that will provide guidance and direction on the drugs and events to be investigated. The drug exposures and medical events to be studied will be jointly agreed upon by the investigator and FDA.

C. In some cases, FDA scientists will collaborate with grantees in determining the methodological approaches to be used. Collaboration will also include data analysis, interpretation of findings, and, where appropriate, coauthorship of publications.

VI. Review Procedure and Criteria

A. Review Procedure

Applications must be responsive to the RFA. Those applications judged not to be responsive will not be considered for funding under this RFA and will be returned to the applicant.

Applications will undergo dual peer review. An external review committee of experts in the field of drug epidemiology will review and evaluate each application based on its scientific merit. A second level review will be conducted by the National Advisory Environmental Health Science Council.

B. Review Criteria

Applications will be reviewed according to the following criteria:

1. Responsiveness to the RFA.

2. Scientific merit of the research proposal. This will include:

a. The size and appropriateness of the study populations to conduct either case-control or cohort studies with the ability to detect adverse events that occur at a rate of 0.1 percent or less. Ability to detect even lower rates is desirable.

b. The proposed methods of approach to specific problems, including considerations of data validation and data accuracy (e.g., completeness of automated data and training of data collectors).

c. The explicit recognition and description of criteria for selection of drugs and events proposed for study and the quality of the rationale used. The evaluation will be facilitated by the applicant's provision of a tabulation of the top 50 diagnoses and drug exposures in the study population with definition of these tabulations and groupings (e.g., terminology classification such as ICD–9–CM).

3. Reasonableness of the proposed budget. Special consideration will be given to methodology which is cost effective (e.g., well-structured medical records and/or record linkage), if otherwise scientifically acceptable.

4. Demonstrated ability to initiate and conduct epidemiology studies in a timely fashion.

5. The plans for complying with regulations for protection of human subjects as applicable to the proposed study project.

6. The research experiences, training, and competence of the principal investigator and the support staff and the resources available to them. Special consideration will be given investigators with knowledge and previous experience in postmarketing surveillance and drug epidemiology, but applicants with strong acute and chronic disease epidemiologic background are encouraged to apply.

VII. Method of Application

A. Format for Application

Application must be submitted on Form PHS–398, Application for Public Health Service Grant. The face page of the application must reflect the RFA number, RFA–FDA–CDB–XX–X. To ensure confidentiality of individual salary information, applicants may choose to include that information on the original application only. In that case, all copies of the application should

reflect only a total amount for salaries and fringe benefits. No action will be taken by the funding agency to delete confidential information. Data included in the application, if restricted with the legend specified below, may be entitled to confidential treatment as trade secret or confidential commercial information within the meaning of the Freedom of Information Act (5 U.S.C. 552(b)(4)) and the regulations of the Food and Drug Administration implementing that Act (21 CFR 20.61).

The collection of information requested on Form PHS–398 and the instructions have been submitted by the Public Health Service to the Office of Management and Budget (OMB), and were approved and assigned OMB control number 0925–0001.

B. Legend

Unless disclosure is required by the Freedom of Information Act, as amended (5 U.S.C. 552), as determined by the freedom of information officials of the Department of Health and Human Services, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc., by the applicant as containing restricted information shall not be used or disclosed except for evaluation purposes.

C. Application Submission

The original and six copies of the completed application should be sent or delivered to Dianne Washington (address above).

Prospective applicants should label the outside of the mailing package and the top of the application face page with "Response to RFA–FDA–CDB–XX–X."

Applications must be received by 5 p.m. on September 8, 1987. Applications received after the time will be considered only if they are postmarked 3 days prior to the due date. Applications received not meeting these criteria will be returned to the applicant.

Dated: June 9, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–15694 Filed 7–9–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87F–0197]

Polysar Limited; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Polysar Limited has filed a petition proposing that the food additive regulations be amended to provide for the safe use of brominated isobutylene-isoprene copolymer as a component of articles in contact with food.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348 (b)(5))), notice is given that a petition (FAP 7B4000) has been filed by Polysar Limited, c/o 1150 17th St. NW., Washington, DC 20036, proposing that § 177.1420 *Isobutylene polymers* (21 CFR 177.1420) be amended to provide for the safe use of brominated isobutylene-isoprene copolymer as a component of articles in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 1, 1987.

Sanford A. Miller,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87–15692 Filed 7–9–87; 8:45 am]

BILLING CODE 4160–01–M

Health Care Financing Administration

[BERC–406–NR]

Medicare Program; Payments Under Medicare and Awards Under the Federal Tort Claims Act

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of HCFA ruling.

SUMMARY: This notice announces a Ruling that modifies HCFA policy regarding Medicare payment for services with respect to which payment has been or could reasonably be expected to be made under the Federal Tort Claims Act. This Ruling rescinds prior Ruling 79–4 in part.

EFFECTIVE DATE: This ruling is effective June 18, 1987.

FOR FURTHER INFORMATION CONTACT: Israel Brauner, (301) 597–5139.

SUPPLEMENTARY INFORMATION: We compile and publish all HCFA Rulings and index them for citation purposes. Since July 1986, Rulings are distributed by HCFA in loose leaf format directly to Federal and State employees who administer or are involved in appeals under Medicare or Medicaid, and to the contractors who implement the programs. In addition, as provided by 42 CFR 401.108, HCFA Rulings may be published in the **Federal Register** as notices. This Ruling has been designated as HCFAR 87–5. The text of the Ruling is as follows:

Payments Under Medicare and Awards Under the Federal Tort Claims Act

Purpose

This Ruling modifies HCFA policy regarding Medicare payment for services with respect to which payment has been or could reasonably be expected to be made under the Federal Tort Claims Act.

This Ruling rescinds HCFAR 79–4 in part. For reader comprehension HCFAR 79–4 is included as an appendix.

Citations

Sections 1862(a)(3) and 1862(b)(1) of the Social Security Act (42 U.S.C. 1395y(a)(3) and 1395y(b)(1)); 42 CFR 401.108; 42 CFR 405.312, 405.322 and 405.324.

Pertinent History

A beneficiary entitled to hospital insurance benefits under Part A of Title XVIII of the Social Security Act (the Act) was admitted to a hospital for the treatment of injuries received as the result of the negligence of a driver of a U.S. mail truck. The hospital and medical services were covered under Part A, and HCFA therefore reimbursed the hospital under Title XVIII of the Act. Afterwards, the U.S. Postal Service approved an award for damages suffered by the beneficiary under the terms of the Federal Tort Claims Act (FTCA). This award included an amount to reimburse the beneficiary for hospital and medical expenses.

The question raised by this case is whether the payments awarded under the FTCA represent payment by a governmental entity and are of the type excluded under section 1862(a)(3) of the Act or whether they represent payment under a liability insurance policy or plan (including a self-insured plan) and are of the type excluded under section 1862(b)(1). (Generally, those sections mandate that no Medicare payment be made for supplies or services that are paid for by a governmental entity or under a liability insurance policy or

plan.) We originally addressed the issue of FTCA payments in 1969 as a Social Security Ruling (SSR 69–8). It was later published as a HCFA Ruling, HCFAR 79–4.

Where payment has been made to an individual under the FTCA for expenses incurred for medical and hospital services that are also covered under Title XVIII of the Act, HCFAR 79–4 states that the services are not considered to have been "paid for directly or indirectly by a governmental entity" for purposes of the exclusion in section 1862(a)(3) of the Act. (Services for which payment is excluded under section 1862(a)(3) of the Act include services furnished to prisoners and to veterans for whom a State furnishes free care in a State-run home.) That portion of HCFAR 79–4 is affirmed, as there has been no subsequent change in the statute or regulations that would prompt a different conclusion. The implementing regulations of section 1862(a)(3) of the Act appear at 42 CFR 405.312.

The second part of HCFAR 79–4 states that the Act does not preclude payment under both the Medicare program and the FTCA. HCFA Ruling HCFAR 79–4 contains the following statement: "* * * there is nothing inconsistent with simultaneous reimbursement under the program and from other sources (with the sole exception of the priority of workmen's compensation payments), since title XVIII is in the nature of social insurance." Consequently, the position taken in HCFAR 79–4 was that tort liability payments under the FTCA were to satisfy the injured party's claim for losses, and that, even though part of a payment might be to cover medical expenses that Medicare had paid or would pay, the injured party (Medicare beneficiary) could keep the entire FTCA payment. We are revising this portion of HCFAR 79–4 because such duplicate payments are inconsistent with the purpose of section 1862(b)(1) as amended since publication of HCFAR 79–4.

Because of HCFAR's past policy that Medicare would pay for services without regard to FTCA payments, Medicare's payment has not been disputed. However, courts have considered whether FTCA payments should be paid without regard to the amount of any Medicare payments, applying a tort law equitable doctrine applicable in some States, called the "collateral source rule". The rule permits an injured party to recover medical expenses from a tortfeasor, despite reimbursement of those expenses to the injured party, if the reimbursement is from a "collateral source" and not from a tortfeasor. Generally, Medicare payments have been considered a collateral source and not been applied to reduce FTCA payments. *See e.g., Berg v. United States,* 806 F. 2d 978, 984–86 (10th Cir. 1986). Our changed policy, required by the legislative changes discussed below, will mean that Medicare payment will not be made, or if made, will be a conditional payment subject to recovery out of any FTCA award. *See e.g., Buckner v. Heckler,* 804 F. 2d 258, 259 (4th Circ. 1986). Thus, cases such as *Berg v. United States, supra,* will no longer occur.

In recent years, Congress has amended Title XVIII of the Act to preclude payment by Medicare when certain other types of insurance, including tort liability insurance, should be paying for the services. Title XVII now recognizes a priority of other insurance coverage, including tort liability insurance, by providing in section 1862(b)(1) that:

> Payment under this title may not be made with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made promptly (as determined in accordance with regulations), with respect to such item or service, under a workmen's compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance. Any payment under this title * * * shall be conditioned or reimbursement to the appropriate Trust Fund * * * when notice or other information is received that payment * * * has been or could be made under such a law, policy, plan, or insurance. In order to recover payment made under this title * * * the United States may bring an action against any entity which would be responsible for payment * * * or against any entity (including any physician or provider) which has been paid * * * under such law, policy, plan, or insurance, and may join or intervene in any action related to the events that gave rise to the need for such items or service. The United States shall be subrogated * * * to any right of an individual or any other entity to payment * * * to any right of an individual or any other entity to payment * * * under such a law, policy, plan, or insurance.

Under the regulations implementing the amended statute (42 CFR 405.322), payments under the FTCA are not explicitly mentioned as a form of tort liability insurance.[1] However, they are clearly the type of duplicate payments that Congress wants to end. Reimbursement under both the Medicare program and the FTCA is inconsistent with the purpose.

Furthermore, under current Medicare rules, amounts payable because of a tort liability by self-insured entities such as state and local governments are taken into account before Medicare may make any payment for medical expenses stemming from the tort, except when the amounts are payable under the FTCA. Thus, in situation that are identical except for the fact that the tortfeasor in one instance is the Federal government and in the other is not, Medicare is the first payer in one (in the case involving the Federal government) but is second payer in the other (in the case involving any entity *except* the Federal government). Such as result is clearly at odds with the provision of amended section 1862(b)(1) of the Act limiting payment for expenses payable by liability insurance. Moreover, Congress has not expressed any intention to make an exception to § 1862(b)(1) for FTCA payments.

This ruling also reverses the holding in HCFAR 79–4 that title XVIII provides neither subrogation rights nor any other right of reimbursement from third-party tortfeasors. Such rights were established by the amendments made to section 1862(b)(1) in 1980 by Pub. L. 96–499 and expressly clarified in 1984 by Pub. L. 98–369.

Ruling

It is held that reimbursement under the Medicare program when payment has been made or could reasonably be expected to be made promptly under the Federal Tort Claims Act is precluded to the extent of such payment by section 1862(b)(1) of the Social Security Act, which prohibits payment under Medicare for services for which payment has been made or can reasonably be expected to be made promptly under a liability insurance policy or plan (including a self-insured plan). It is further held that if Medicare has already made a payment for services for which liability exists under the FTCA, Medicare may recover its payments directly from the Federal entity responsible for such service. This Ruling supersedes HCFAR 79–4 except for its conclusion that payments under the FTCA do not constitute payments by

[1] On July 17, 1985, HCFA published a notice in the **Federal Register** (50 FR 28988) regarding HCFA's interpretation of certain changes made by the Deficit Reduction Act of 1984 (Pub. L. 98–369). The notice stated that those changes were self-implementing and notified the public that conflicting regulations would no longer apply pending clarification and revision to conform to the statutory changes. As applied until now to payment under the FTCA, 42 CFR 405.322 is not consistent with the provision of the law which limits Medicare payment when payment is also made under liability insurance. HCFA will modify the regulation to eliminate that inconsistency.

a "governmental entity" for purposes of the exclusion in 1862(a)(3) of the Act.

Appendix: HCFAR 79–4.

Dated: June 18, 1987.

Willian L. Roper,

Administrator, Health Care Financing Administration.

Appendix to HCFAR 87–5

Section 1803, 1862(a)(3) and 1862(b).—Covered Hospital Services—Simultaneous Reimbursement Under Title XVIII of Social Security Act and as Part of Award Under Federal Tort Claims Act

HCFAR–79–4

Where an award under the Federal Tort Claims Act for damages suffered by a Part A beneficiary included amounts to reimburse him for hospital and medical expenses also covered under Title XVIII of the Social Security Act, held, (1) payments under the Federal Tort Claims Act do not constitute payments by a "governmental entity" for purposes of the exclusion in section 1862(a)(3) of the Social Security Act; (2) the Health Care Financing Administration is given no right to recover such amounts (i.e., the right of subrogation) or any other form of reimbursement from third-party tortfeasors by Title XVIII of the Act; and (3) the beneficiary is permitted reimbursement under both Title XVIII and the Federal Tort Claims Act, since there is nothing inconsistent with simultaneous reimbursement under the program and from other sources (with the sole exception of the priority of workmen's compensation payments), since Title XVIII is in the nature of social insurance.

A beneficiary entitled to hospital insurance benefits under Part A of Title XVIII of the Social Security Act was admitted to a hospital for the treatment of injuries received as the result of the negligence of a driver of a U.S. mail truck. The hospital and medical services were found covered under Part A, and reimbursement therefore was made to the provider-hospital pursuant to the provisions of Title XVIII of the Social Security Act. Thereafter, an award for damages suffered by the beneficiary was approved by the Post Office Department under the terms of the Federal Tort Claims Act. This award included an amount to reimburse the beneficiary for hospital and medical expenses. However, the Post Office Department is withholding a portion of the award from the beneficiary, equal to the amount paid the hospital under Title XVIII, pending advice as to its disposition.

Two questions are raised by the instant case: (1) Whether the health care payments awarded under the Federal Tort Claims Act represent payment by a government entity and are therefore excluded from coverage under section 1862(a)(3) of the Social Security Act; and (2) whether Title XVIII of the Social Security Act gives the health insurance program the right to recover from the third-party tortfeasor (Post Office Department) that portion of the tort claim award intended to reimburse the beneficiary for hospital and medical expenses incurred.

Where payment has been made to an individual under the Federal Tort Claims Act for expenses incurred for medical and hospital services which are also covered under Title XVIII of the Social Security Act, such services are not considered to have been "paid for directly or indirectly by a governmental entity" for purposes of the exclusion in section 1862(a)(3) of the Social Security Act. Rather, such payments constitute payment of damages by a third-party tortfeasor for which reimbursement may also be made under Title XVIII.

The right of the United States to recover from third-part tortfeasors financial expenditures made by it pursuant to legal requirement in connection with the medical care of an injured individual must devolve from an act of Congress. (*United States* v. *Standard Oil*, 67 S. Ct. 1604 (1947)). As a consequence of the opinion of the Supreme Court in the *Standard Oil* case, there was enacted the Federal Medical Care Recovery Act, 42 U.S.C. 2651 *et seq.*, which establishes a right in the United States to seek recovery from third-person tortfeasors for the reasonable value of medical services furnished directly by the Federal Government to an individual who suffered injury as a result of the action of such third persons. However, there are no provisions in Title XVIII of the Social Security Act establishing subrogation rights in the Secretary of Health, Education, and Welfare or otherwise authorizing him to accept reimbursement out of awards under the Federal Tort Claims Act for health insurance payments he made for services covered under Medicare.

In this regard, it may also be noted that only in respect to workmen's compensation does Title XVIII of the Social Security Act recognize a priority of other insurance coverage by providing in section 1862(b) that:

> Payment * * * may not be made with respect to any item or service to the extent that paytment has been made, or can reasonably be expected to be made * * * with respect to such item or service, under a workmen's compensation law or plan of the United States or a State. Any payment under this title with respect to any item or service shall be conditioned on reimbursement to the appropriate Trust Fund established by this title when * * * payment for such item or service has been made under such a law or plan.

Furthermore, the nature of Title XVIII reimbursement as social insurance—in contrast to those "government payments" specified by the Federal Medical Care Recovery Act—is emphasized by the provision of section 1803 of the Social Security Act that:

> Nothing contained in this title shall be construed to preclude any State from providing or any individual from purchasing or otherwise securing, protection against the cost of any health services.

Thus, it is specifically recognized that there is nothing inconsistent with simultaneous reimbursement to the beneficiary from sources other than Title XVIII—with the sole exception of the above-quoted provision excluding Title XVIII payment in the event of workmen's compensation coverage.

Accordingly, it is *held* that payments under the Federal Tort Claims Act do not constitute payments by a "governmental entity" for purposes of the exclusion in section 1862(a)(3) of the Social Security Act; Title XVIII of the Social Security Act provides no right of subrogation or any other form of reimbursement from third-party tortfeasors; and, with the sole exception of the priority of workmen's compensation payments, there is nothing inconsistent with simultaneous reimbursement under the Medicare program and from other sources since Title XVIII is in the nature of social insurance.

(X-refer to SSR 69–8)

[FR Doc. 87–15581 Filed 7–9–87; 8:45 am]

BILLING CODE 4120–03–M

Health Resources and Services Administration

National Advisory Council on Nurse Training; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of August 1987:

Name: National Advisory Council on Nurse Training.

Date and Time: August 18–19, 1987, 9:00 a.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Edcuation Amendments of 1985 (Pub. L. 99–92). The Council also performs final review of grants applications for Federal Assistance, and

makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting with announcements; considerations of minutes of previously meeting; report by the Director, Bureau of Health Profession, the Director, Division of Nursing and staff reports. The meeting will be closed to the public on August 18, at 12:30 p.m. for the ramainder of the meeting for the review of grant applications for Advance Nurse Education applications, Nurse Practitioner/Nurse Midwifery applications, and Speical Project Grants applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92-463.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, National Advisory Council on Nurse Training, Room 5C-14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443-6193.

Agenda Items are subject to change as priorities dictate.

Dated: July 7, 1987.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA

[FR Doc. 87-15695 Filed 7-9-87; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Request for Establishment of Collaborative Agreement for the Preclinical and Clinical Development of 3'-Cyano-2',3'-Dideoxythymidine as an Antiretroviral Agent Useful in the Treatment of Acquired Immunodeficiency Syndrome (AIDS)

AGENCY: Department of Health and Human Services, Public Health Service.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services solicits respondees to establish a collaborative agreement with an industrial sponsor for the preclinical and clinical development of 3'-cyano-2',3'-dideoxythymidine as a possible drug for the treatment of Acquired Immunodeficiency Syndrome and its related diseases. Scientists from the National Cancer Institute have established that this compound is effective in inhibiting *in vitro* growth of HTLV-III (HIV), the etiologic agent of AIDS. This compound has anti-retroviral activity and is stable at low pH. No preclinical toxicology is available and only limited quantities have been synthesized. In exchange for the successful participation in this collaborative agreement, the Government will grant the industrial sponsor exclusive royalty-bearing license under U.S. Patent Application Serial No. 07/043,827. The Government may elect to seek "orphan drug" status for this drug. The Government seeks a sponsor who, in accordance with the requirements of the regulations governing the licensing of Government-owned inventions (37 CFR 404.8), presents the most meritorious plan for the development of this drug to New Drug Application (NDA) status with the best terms for the Government.

Specifically, respondees are sought who will be able to:

(1) Synthesize bulk pharmaceutical product necessary for preclinical studies and the treatment of 500-1,000 patients with HIV infection in Phase I, Phase II, and Phase III developmental studies.

(2) Perform the preclininal biological, chemical, pharmacological and toxicology studies necessary to file an INDA with the Food and Drug Administration.

(3) Develop formulations for oral and intravenous use, as well as vialing, quality control testing, bioavailability testing, and distribution of drug for Phase I and Phase II and, if appropriate, Phase III clinical trials both in the intramural program of the National Cancer Institute and extramural AIDS Treatment Evaluation Units recently established by the National Institutes of Allergy and Infectious Diseases. These clinical trials may be performed under the sponsorship of an Investigational New Drug Application to be held by the National Cancer Institute or the NIAID. Prior to being released for commercial distribution, the drug would have to be granted a product license by the Food and Drug Administration.

(4) The successful applicant will be expected to perform clinical studies. In addition, the National Institute of Allergy and Infectious Diseases may conduct studies of 3'-cyano-2',3'-dideoxythymidine in the AIDS Treatment Evaluation Units. The drug company will be expected to provide drug free of charge to the NIH for studies conducted in the AIDS Treatment Evaluation Units and in the NCI intramural program.

(5) Provide data management support for both intramural and extramural studies of 3'-cyano-2',3'-dideoxythymidine necessary for submission of a New Drug Application to the Food and Drug Administration.

(6) Cost share in intramural and extramural clinical monitoring studies (pharmacokinetics, patient immune profiles and viral outgrowth studies) necessary for the demonstration of clinical efficacy of 3'-cyano-2',3'-dideoxythymidine in the treatment of AIDS.

(7) The United States Government will receive reasonable royalties once the drug is marketed for general use.

ADDRESS: Twenty copies of your response should be sent to: Dr. Lowell T. Harmison, Deputy Assistant Secretary for Health, Office of the Assistant Secretary for Health, 200 Independence Avenue SW., Washington, DC 20201.

For further information (including copy of the patent application) contact: Dr. Marcia Browne, Special Assistant for Clinical Science, DCT—National Cancer Institute, Building 31, Room 3A49, Bethesda, MD 20892.

DATE: In view of the important priority of developing new drugs for the treatment of AIDS, interested parties should submit responses to the Assistant Secretary for Health within 45 days of the date of this notice.

Late responses will not be considered. Respondees may be provided an additional opportunity to provide additional information, to present an oral statement and to answer questions, if the Department determines that to be necessary.

SUPPLEMENTARY INFORMATION: Responses will be reviewed by senior scientists from the National Cancer Institute, National Institute of Allergy and Infectious Diseases, other agencies of the Public Health Service, and the Office of the Assistant Secretary for Health. Criteria for choosing the industrial partner in this collaborative agreement will include:

(1) Experience in preclinical and clinical drug development with special emphasis on the development of antiviral compounds.

(2) Prior manufacturing capabilities for nucleoside analogs and demonstrated experience with such for broad distribution; demonstrated experience in medicinal chemistry is an important criterion.

(3) Ability to package, market, and distribute antiviral pharmaceutical products in a nationwide marketing system at a reasonable price.

(4) Demonstrated competence in oral formulation and sustained-release oral formulations.

(5) Experience in the evaluation, monitoring, and interpretation of data from investigational biologic and virologic assays under an Investigational New Drug Application.

(6) Experience in the evaluation, monitoring and interpretation of data from Phase I and Phase II clinical studies under an Investigational New Drug Application.

(7) Willingness to cooperate with the Public Health Service in collection, evaluation, publication and maintenance of data from clinical trials and tests of investigational biologic assays.

(8) Willingness to cost share in AIDS drug development is outlined above (i.e., bulk drug synthesis, data management, etc.).

(9) Agreement to be bound by DHHS rules involving human/animal subjects.

(10) Demonstrated expertise in monitoring drug levels using state of the art methods for measuring nucleoside drugs in blood, urine, and cerebrospinal fluid.

(11) The ability to produce kilogram quantities of drug and/or its immediate precursors.

Dated: June 29, 1987.

Robert E. Windom,

Assistant Secretary for Health.

[FR Doc. 87-15187 Filed 7-9-87; 8:45 am]

BILLING CODE 4160-17-M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Colorado River Floodway Task Force; Meeting

SUMMARY: The Colorado River Floodway Protection Act, Pub. L. 99-450, requires the Secretary of the Interior to establish a federally declared floodway along the Colorado River below Davis Dam on the Arizona/Nevada border and the southerly international border between the United States and Mexico. The Act requires that a task force be established to assist in the development of the floodway boundaries.

The first meeting of the Colorado River Floodway Task Force was held on June 30, 1987, in Lake Havasu City, Arizona. At that meeting a steering committee was organized and subcommittees were identified to resolve major issues required by the Act. The steering committee consists of the three State representatives, one representative from each county located along the river, one Tribal member, and the representative from the Corps of Engineers and the Bureau of Reclamation.

The second meeting is scheduled for July 27, 1987, at Lake Havasu City, Arizona. At this meeting the memberships of the five subcommittees will be identified. A sixth subcommittee consists of the Tribal representatives. The members of each subcommittee are to select a chairperson and be prepared to discuss the identified task assigned to the group.

The Bureau of Reclamation will also present an overview of the history, Law of the River, and the operating procedures for the lower Colorado River.

Open meetings will be held as described below:

DATE: July 27, 1987.

TIME: 10 a.m.

ADDRESS: Holiday Inn, 245 London Bridge Road, Lake Havasu City, Arizona 86403, (602) 855-4071.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brose, Bureau of Reclamation, Nevada Highway and Park Street, P.O. Box 427, Boulder City, Nevada 89005, (702) 293-8520.

Dated: July 6, 1987.

C. Dale Duvall,

Commissioner.

[FR Doc. 87-15666 Filed 7-9-87; 8:45 am]

BILLING CODE 4310-09-M

Fish and Wildlife Service

[File No. PRT-715460]

Receipt of Application for Permit; Adventure World

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satifify requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*, the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and the regulations governing marine mammals and endangered species (50 CFR Parts 17 and 18).

File no. PRT-715460

Applicant Name: Adventure World, Wakayama Prefecture Japan

Type of Permit: Public Display

Name Of Animals: Two Alaskan sea otter (*Enhydra lutris lutris*)

Summary of Activity to be Authorized: The applicant proposes to take these animals and export them to Adventure World, Wakayama Prefecture, Japan for public display.

Source of Marine Mammals for Display: State of Alaska, Prince William Sound, Green Island, or as designated by the Alaska Department of Fish and Game.

Period of Activity: August 15, 1987 to Novermber 15, 1987.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virgina.

Dated: July 7, 1987.

R.K. Robinson,

Chief, Branch of Permits Federal Wildlife Permit Office.

[FR Doc. 87-15705 Filed 7-9-87; 8:45 am]

BILLING CODE 4310-55-M

[File No. PRT-719521]

Receipt of Application for Permit; National Park Service,

The public is invited to comment on the following application for permits to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 through 1407), and the regulations governing marine mammals (50 CFR Part 18).

File No. PRT-719521

Applicant Name: National Park Service, Bering Land Bridge, National Preserve, P.O. Box 220, Home, AK 99762

Type of Permit: Scientific Research

Name Of Animals: On Pacific walrus (*Odobenus rosmarus*) one Polar bear (*Ursus maritimus*)

Summary of Activity to be Authorized: The applicant proposes to take (salvage) one dead voucher specimen of both a polar bear and walrus.

Source of Marine Mammals for Research: Bering Land Bridge, National Preserve, Nome, AK.

Period of Activity: Walrus collection-summer 1987 polar bear-unknown.

Concurrent with the publication of this notice in the **Federal Register**, the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Written data or comments requests for copies of the complete application, or requests for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (FWPO), 1000 North Glebe Road, Room 611, Arlington, Virginia 22201, within 30 days of the publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be

appropriate. The holding of such hearing is at the discretion of the Director.

Documents submitted in connections with the above application(s) are available for review during normal business hours (7:45 am to 4:15 pm) in Room 601 N. Glebe Road, Arlington, Virginia.

Dated: July 7, 1987.

R.K. Robinson,

Chief, Branch of Permits, Federal Wildlife Permit Office.

[FR Doc. 87-15706 Filed 7-9-87; 8:45 am]

BILLING CODE 4310-55-M

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Sixth Regular Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice sets forth summaries of the U.S. negotiating positions for the sixth regular meeting of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

FOR FURTHER INFORMATION CONTACT: Arthur Lazarowitz, Federal Wildlife Permit Office, 1000 N. Glebe Road, Room 621, Arlington, Virginia 22201, telephone 703/235-1937

SUPPLEMENTARY INFORMATION:

Background

In accordance with § 23.25 of 50 CFR Part 23, Subpart D, of the Service's rules providing for public participation in the development of negotiating positions for meetings of the Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (hereinafter referred to as CITES or the Convention), the Service publishes summaries of the United States' negotiating positions for the sixth regular meeting of the Conference of the Parties to CITES ("the meeting") to be held in Ottawa, Canada, July 12 through July 24, 1987.

The Service published summaries of proposed negotiating positions for most of the matters to be addressed at the meeting in the **Federal Register** of May 22, 1987 (52 FR 19448 et seq). That notice also set forth proposed negotiating positions for five additional issues that were added to the provisional agenda of the meeting subsequent to the pulbication of the first in this series of notices **Federal Register** of January 13, 1987 (52 FR 1387)). The public had an opportunity to submit oral or written information and comments on all agenda items at/or subsequent to a public meeting conducted by the Service on May 29, 1987. Pursuant to § 23.38(a) of the rules, and due to the lack of time necessary to develop proposed negotiating positions on the additional issues in accordance with the rules, the Director, by this notice, suspends the applicability of the rules as they relate to these new agenda items.

What follows is a summary of U.S. negotiating positions on the items on the provisional agenda of the meeting and the additional issues, a summary of written information and comments received in response to the **Federal Register** notices or related meetings and summaries of the rationale for the negotiating positions which include, if necessary and appropriate, responses to information and comments received. The words "change" and "no change" are used before the summary of the Negotiating Position and the Rationale to indicate whether the Service has substantially deviated from its summary proposed negotiating position and/or rationale as published in the May 22, 1987 **Federal Register** notice. Numbers and titles in this notice correspond with those used in the May 22 and January 13, 1987, notices.

Negotiating Positions (Summaries)

I. Opening Ceremony by the Authorities of Canada

Negotiating Position: (No change) No position necessary.

Information and Comments: None received.

Rationale: Not necessary.

II. Welcoming Addresses

Negotiating Position: (No change) No position necessary.

Information and Comments: None received.

Rationale: Not necessary.

III. Adoption of Rules of Procedure

1. Rule 5—Election of Chairman and Vice-Chairman

Negotiating Position: (Change) Support the proposed rule that would provide that candidates for these positions are to be nominated by the bureau in consultation with the host government.

Information and Comments: None received.

Rationale: (No change) Adoption of this new provisional rule should help assure the selection of a chairman and vice-chairman capable of impartially expediting the business of the meeting while continuing the role of the host government in the selection process.

2. Rule 7—Bureau

Negotiating Position: (No change) Support specifying in the rules of procedure that the Bureau (composed of the Standing Committee, the Presiding Officer of the meeting, the sessional committee chairmen and the Secretariat) be given specific authority to forward certain aspects of the business of the meeting including altering the timetable or structure of the meeting and, as a last resort, limiting the time for debate.

Information and Comments: None received.

Rationale: (No change) This proposed rule change would make express that which was implied in the old rule, that is, that the Bureau has the authority to take measures to expedite the business of the meeting.

3. Rule 23—Establishment of Sessional Committees and Working Groups

Negotiating Position: (No change) Do not oppose establishment of sessional committees (Committee I as a "science committee" and Committee II as a kind of "management committee"). Seek assurance that effective coordination of matters considered by both committees is provided for.

Information and Comments: Two commenters expressed concern that under-representation of a substantial number of Parties could reduce the effectiveness of the two sessional committee plan. One commenter urged that the United States strongly support the establishment of two sessional committees to ensure proper consideration of proposals and screening out of inadequate or improper species proposals or recommendations.

Rationale: (No change) Past meetings normally have worked on the basis of two major committees feeding recommendations to the Plenary session for decision. A point of concern about this proposed rule change is that the new Committee I would address some of the same issues that Committee II would be addressing. Close coordination would be required to prevent confusion and duplication of effort. It is not clear how that coordination would be provided. While simultaneous sessional committee meetings would be a problem for understaffed delegations, a Plenary session in which there was ample opportunity for discussion and debate would cure this problem.

4. Rule 13—Arrangements for Debates

Negotiating Position: (No change) Seek amendment of this new provisional

rule in order to make it easier to open recommendations of the sessional committees to additional debate in Plenary.

Information and Comments: One commenter favored making it easier to open up debate in Plenary than the simple majority required in the provisional rules.

Rationale: (No change) The United States is not opposed, in principle, to debating important or controversial issues twice, once in committee and once in Plenary. The United States does favor measures that would forward the business of the meeting if they don't result in undesirable curtailment of debate that could result in defective decisions or substantial restriction of the rights of delegates or observers to participate effectively. A recent Secretariat proposal advocates that one-third of the voting delegates should win a motion to open debate in Plenary. Voting would be done by a show of hands.

5. Rule 15—Majority

Negotiating Position: (Change) Support changing the present simple majority rule to requiring a two-thirds majority for approval of most substantive proposals that do not involve amendments to the Appendices.

Information and Comments: One commenter advocated strong support rather than no opposition would be preferable as a U.S. position on this issue.

Rationale: (No change) Since most decisions of the meeting are nonbinding recommendations to the Parties, a two-thirds majority requirement might help ensure wider implementation of CITES.

6. Rule 14-Method of Voting

Negotiating Position: (Change) do not oppose the adoption of the provisional rule that would limit the use of the secret ballot by requiring a simple majority in order to have a secret ballot.

Information and Comments: Several commenters opposed use of the secret ballot for the following reasons: (1) It could be used by delegates to vote contrary to their instructions, (2) it is not used in the U.S. legislative and U.N. systems, and (3) its elimination would ensure compliance with the Endangered Species Act requirements that the Secretary of State report to Congress if the United States votes against a species listing in Appendix I or II and does not enter a reservation. One commenter stated that if one is for democracy one could not be against the secret ballot. Several others supported the retention of the secret ballot as proposed in the provisional rules of the meeting (secret ballot allowed if a simple majority calls for it).

Rationale: (Change) The United States has never called for a secret ballot and in general, wants others to know how it votes. However it recognizes that some countries may have legitimate purposes for using the secret ballot.

7. Rule 9—Seating, Quorum

Negotiating Position: (Change) Support requiring an observer to first receive an invitation from a delegate before entering the area reserved to delegations while a meeting is in session. Favor a 50 percent quorum for Plenary and Committee I and Committee II sessions.

Information and comments: Five commenters supported the provisional rule that would require an observe to receive an invitation from a delegation. Two commenters called for a 2/3 quorum requirement rather than a simple majority stating that recommendations adopted by a greater number of Parties would ensure greater acceptance and implementation. Another commenter favord a simple majority especially for the sessional committees which could be deprived of meeting a 2/3 quorum requirements if there were a substantial number of small delegations.

Rationale: (Change) the ability of approved observers to participate (except for voting) in the meeting is provided for in Article XI. The United States historically has strongly defended this right since much of the expertise needed to make CITES effective is found among specialized organizations that attend as observers. Interchanges between delegates and such specialists should be encouraged and made as simple as possible. However, it is recognized that some order should be maintained and the requirement for an observer to receive an invitation before entering the area occupied by delegations, while a meeting is in session, is a reasonable compromise. (Change starts here) Requirement for a 2/3 quorum could slow down the conduct of business at the meeting by making a quorum difficult to obtain. A simple majority would make it more likely that sessions would start on time. Normally, delegates return to sessions in a staggered fashion. The Secretariat has proposed that the provisional rules be changed form requiring a 25 Party quorum to a simple majority.

8. Negotiating Position: (Change)

As to the rules in general, indicate that if the rules adopted at the meeting are not successful inproducing a more effective and efficient meeting, the United States will review the rules and aggressively seek necessary changes for the next meeting.

Information and Comments: None received.

Rationale: (Change) The provisional rules for the meeting represent a major departure from the rules that have been used at previous meetings and should be carefully monitored to determine if they accomplished what they were intended to do.

IV. Election of Chairmen and Vice-Chairmen of the Meeting and of Chairmen of Committees I and II

Negotiating Position: Support the election of chairmen who can further the business of the meeting while allowing for a full and fair airing of the issues.

Information and Comments: Two commenters were specifically in favor of the provisional rules to give the Bureau a strong role in the selection of COP6 chairmen.

Rationale: Experience has shown that the success of COP meetings is in no small part dependent on the quality of the chairmen. The United States is a member of the Standing Committee. As such, it will play a role in the selection of COP6 chairmen.

V. Adoption of the Agenda and Working Programme

Negotiating Position: (No change) Support adoption of the provisional agenda (Doc. 6.12 (Rev. 2)).

Information and Comments: None received

Rationale: (No change) Usually, adoption to the Agenda and Working Programme is *pro forma*. The order that agenda items are addressed is contained in the Working Programme.

VI. Establishement of the Credentials and Sessional Committees I and II

Negotiating Position: (No change)

—*Credentials Committee:* The United States establishment of this committee.

Committees I and II: The United States should not oppose establishment of these two sessional committees provided: that all Parites participating in the meeting have been able to send at least two delegates; or that the rule governing the debate of sessional committee recommendations in the Plenary has been relaxed sufficiently to ensure that any delegation that was unable to have a participant in committee deliberations will have the opportunity to debate such recommendations exhaustively in Plenary before a decision is made.

Information and Comments: Two commenters supported the proposed U.S. position, both citing the need for full debate. (See also comments associated with item III.3, above.)

Rationale: (No change)

—*Credentials Committee:* Establishment of this Committee simply would satisfy a perceived need and help further the business of the Conference.

—*Committees I and II:* It is envisioned that most of the substantive discussion of issues presented to the COP will take place in these committees which will meet concurrently. Recommendations from the Committees are envisioned as being subject to little if any subsequent debate in Plenary. Since the Committees will meet concurrently, Parties able to field only small (sometimes a single person) delegations or those with limited technical expertise on their delegation (such as those represented by staff of their embassy) would find it difficult to effectively participate in the meeting unless they are provided an opportunity to open an issue for further debate in Plenary. Observers who send small delegations also would be similary restricted.

In light of this dilemma, the U.S. will tailor its position to see that maximum increases in effeciency result from increases in cost.

VII. Report of the Credentials Committee

Negotiating Position: (No change) Support adoption of the report of the Credentials Committee if it does not recommend the exclusion of legitimate representatives of countries party to CITES. Representatives whose credentials are not in order should be afforded observer status under Article XI.7(a). If credentials have been delayed, representatives should be allowed to vote on a provisional basis. A liberal interpretation of the rules of procedure on credentials should be adhered to in order to permit clearly legtiimate representatives to participate.

Information and Comments: None received.

Rationale: (No change) Adoption of the report usually is *pro forma.* Exclusion of representatives whose credentials are in order could undermine cooperation among parties which is essential to the effective implementation of CITES.

VIII. Admission of Observers

Negotiating Position: (No change) The United States supports the admission as observers of all representatives of agencies or bodies who meet the technical requirements specified in the CITES and are qualified in protection, conservation or management of wild fauna and flora.

Information and Comments: None received.

Rationale: (No change) Participation by qualified nongovernmental organizations at COP's is specifically provided by Article XI. The United States historically has supported the opportunity of all technically qualified observers to participate to the maximum extent. Such participation has proven beneficial.

IX. Matters Related to the Standing Committee

1. Report by the Chairman

Negotiating Position: (No change) None necessary.

Information and Comments: None received.

Rationale: (No change) None necessary.

2. Election of new members of the Standing Committee

Negotiating Position: (No change) Consider supporting re-election of any of the retiring Standing Committee members who are willing to be re-appointed.

Information and Comments: Two commenters suggested that the Standing Committee could benefit from new membership that would allow it to play a more representative role. One of them stated that it would promote a review of the role of the Standing Committee and its relationship to the Secretariat.

Rationale: (Change) Retiring members have been effective, but their continuing effectiveness would depend in part on the continued participation of the persons who have filled the membership roles. There has been some indication that this may not be the case. One advantage of rotating membership is getting fresh input into the committee.

X. Report of the Secretariat.

Negotaiting Position: (No change) None possible.

Information and Comments: None received.

Rationale: (No change) None necessary.

XI. Permanent CITES Committees.

Negotiating Position: (Change) partial support and partial opposition to the proposal as submitted. Oppose establishment of the proposed Scientific Committee. Seek establishment of a smaller "Screening Committee" comprised of representatives of national Scientific Authorities in lieu thereof. The function of such a committee would be to screen proposals to modify the Appendices to CITES. Support use of existing, technically qualified organizations, on contractual basis or otherwise, to monitor data relating to the conservation status of species of interest to CITES and to summarize those data into a form usable by the Screening Committee. Support modifications to what is now the Standing Committee provided a responsibility for the Committee's preparation of a biennial report to the Executive Director of the United Nations Environment Programme concerning the effectiveness of the Secretariat is clearly stated. (Change starts here) Support modifications to the composition of the Technical Committee that would make it smaller and less costly.

Information and Comments: One commenter supported the establishment of a Scientific Committee which would meet between Conferences instead of a Screening Committee as proposed in the May 22, 1987, notice which would, it was alleged, become the tool of preservationist nongovernmental organizations. Five commenters favored the U.S proposal of a Screening Committee on grounds that it contained the necessary expertise, and would take economical advanage of expertise of existing technically qualified scientific organizations. They opposed the Scientific Committee as being too expensive, too large and as having the potential of separating scientific and administrative experts such that they could not deal together with issues requiring scientific and administrative/technical expertise. One favored no committee, large or small.

Two commenters favored a small Technical Committee and greater oversight of the Secretariat by the Standing Committee.

Rationale: (Change) The existing proposal would establish a very large committee structure with a large mumber of associated meetings. The costs would be significant and the commensurate benefits are not apparant.

Scientific Committee: It is not realistic to expect a Scientific Committee, as proposed, to be able to monitor the conservation status of the multitude of floral and faunal taxa of interest to the cites. However there do exist scientific organizations which do have such capability. It is realistic to expect a

small group of representatives of national scientific authorities be able to review summaries of data prepared by such organizations, measure their findings against CITES approved criteria and recommend for or against proposals to amend Appendices.

Standing Committee: There presently is no mechanism whereby the Parties can express to the UNEP (the organization charged by the CITES with providing Secretariat services) their view concerning the manner in which this charge is being carried out. This seems a logical function for the Standing Committee or its successor.

Technical Committee: A small Technical Committee would be less expensive and more effective in dealing with Technical problems than the current "committee of the whole" structure. It could be composed of regional representatives and the chairmen of the other committees subcommittees and working groups.

XII. Financing and Budgeting of the Secretariat

Negotiating Position: (Change) Oppose any substantial increase in the Secretariat's budget that would substantially increase U.S. contributions; recommend that the Sercretariat work with the Conference of the Standing Committee to impose economies. If necessary, make it clear that the newly effective financial amendment allows Parties to characterize their contributions as mandatory or voluntary. Support a direction to the Secretariat requiring a detailed report on "external funding" on an annual basis. (Change begins here) Oppose any increase in Conference or other registration fees not related directly to identifiable costs of servicing observers.

Information and Comments: One commenter viewed the Secretariat's proposed budget increase as a result of the change in U.S. — Swiss exchange rates. Two other commenters recommended budget reductions while two others felt budget priorities had to be rearranged giving more attention to administrative matters such as annual reports, implementing legislation and communication facilities. One of the latter two commenters suggested the Secretariat should get out of organizing or conducting surveys on specific species. That commenter and another opposed increasing the meeting registration fee from $100 to $500. One commenter suggested greater control of Secretarist expenditures by the Standing Committee or other means and that the Secretariat should focus expenditues on supporting Parties' implementation of CITES.

Rationale: (Change) The Secretariat's proposed budget for 1988–89 represents a very substantial increase over 1986–1987. The Secretariat has had to rely upon reserves to meet 1986 obligations and has requested similar authority for 1987. The Standing Committee refused approval of the 1987 increase. The impetus for the adoption of the Article XI financial amendment was to accommodate some Parties' domestic law to enable them to make financial contributions. External funding has become a significant part of the Secretariat's budget and no effective mechanism to provide overview of the solicitation or utilization of such funding exists. (Here begins change) Raising the registration fee to $500 as proposed could prevent some technically qualified organizations from attending meetings.

XIII. Committee Reports and Recommendations

1. Technical Committee Report

Proposed Negotiating Position: (No Change) None.

Information and Comments: None received.

Rationale: None necessary.

2. Identification Manual Committee

Negotiating Position: (No Change) Foster development of the identification manual so that it is geared for use by port and border field enforcement officials. Try to get feedback on its usefulness.

Information and Comments: On commenter favored continued development of the manual and translation into French and Spanish.

Rationale: (No change) Enough of the identification manual has been produced and distributed to enable an assessment of its usefulness.

3. Nomenclature Committee

Negotiating Position: (No change) Support the continuation of work by the Nomenclature Committee.

Information and Comments: None received.

Rationale: (No change) The COP established the Nomenclature Committee to develop a standardized list of scientific names for species in order to improve the implementation of CITES. The United States originally called for the establishment of this committee and subsequently supported its work on checklists. Thus far the Parties have approved checklists for mammals and amphibians. Turtles and crocodiles will be next.

XIV. Interpretation and Implementation of the Convention

1. Report on National Reports (for issues concerning the European Economic Community's annual reports see "Additional Issues")

Negotiating Position: (No change) Support measures to encourage and require Parties to submit their annual reports.

Information and Comments: Several comments were made about the quality and timeliness of annual reports, including the United States' annual report.

Rationale: (No change) Currently, only approximately one half of the Parties submit their annual reports. Annual report data are necessary to gauge the impact of international trade on the species and can be a useful enforcement tool.

2. Review of Alleged Infractions

Negotiating Position: (Change) Support necessary and appropriate measures designed to obtain wider compliance with the terms of the Convention. Recommend that the Secretariat be directed to report to the Standing Committee the results of its actions taken to cure infractions as recommended by the meeting.

Information and Comments: One commenter suggested that the COP5 resolution that receommended a ban on trade with Bolivia if the Bolivian authorities could not demonstrate adequate implementation of the Convention to the Standing Committee, might serve as a model for some of the countries cited in the Secretariat's infractions report. Another suggested that the Secretariat report to the Standing Committee the results of actions it takes as directed by the meeting. Another warned against targeting one country as an offender when its neighbors might be equally or more guilty and stated that to the extent feasible, target countries should be given 90 days pre-meeting notice of an alleged infraction.

Rationale: (Change) The Service has received information from the Secretariat indicating which countries will be included in its report on infractions. Article XIII provides for COP review of alleged infractions. The COP may make whatever recommendations it deems appropriate. Over 50 countries are named in the Secretariat's report. These countries should have an opportunity to refute any charges made against them.

3. Implementation of the Convention in Certain Countries

Negotiating Position: (Change) Support continuation of the ban on trade with Bolivia until such time as Bolivia demonstrates to the COP or the Standing Committee that it has adopted all necessary measures to adequately implement the Convention. Consider carefully any similar measures with regard to the United Arab Emirates. Support a call for better import controls on trade from French Guiana and Paraguay.

Information and Comments: One commenter vigorously supported continuation of sanctions against countries that violate the spirit of the Convention and fail to adequately implement it while warning against imposition of implementation standards that can not be met by poor or underdeveloped countries. Another cautioned against using stronger sanctions against exporting countries than importing countries.

Rationale: Since around 1982, the Secretariat has held discussions with the Bolivian authorities about Bolivia's inadequate implementation of CITES. A hotly debated COP5 resolution called on Bolivia to demonstrate to the Standing Committee that it has adopted necessary measures to adequately implement the Convention. The resolution provided that if such demonstration was not made to the Standing Committee within 90 days, the Parties should refuse to accept all shipments of CITES specimens accompanied by Bolivian documents or originating in Bolivia.

The 14th meeting of the Standing Committee (Ottawa, October 1986) agreed that Bolivia had not demonstrated that the necessary measures had been adopted. The Standing Committee recommended that any export of CITES specimens be refused.

The Secretariat's report under this agenda item will also address problems with:

a. The United Arab Emirates
b. French Guiana
c. Paraguay

4. Trade in Ivory from African Elephant

Negotiating Position: (Change) Draw attention of the Parties to the growing concern about the current biological and trade status of the African elephant. Recommend that Parties that produce substantial amounts of worked ivory institute strong programs for internal control of the ivory trade, and that imports from such Parties be allowed only if they demonstrate to the Secretariat or to the importing party that effective internal controls have been established. Indicate that if effective ivory trade controls are not satisfactorily implemented, the United States will consider taking stricter domestic measures with regard to such trade.

Information and Comments: One commenter urged the United States to support and help improve the Secretariat's ivory trade control system by eliminating the potential loophole that allows a country with a quota to trade unlimited amounts of confiscated raw ivory without diminishing its annual quota. Two others urged U.S. support of the system rather than exacerbate the problem by imposing unilateral controls. Still another characterized the proposed negotiating position of May 22, 1987, as illustrative of a reluctance to acknowledge wildlife trade as legitimate. Several other commenters opposed amnesty for illegally taken or traded ivory.

Rationale: (Change) Article XIV of the CITES allows any Party to take stricter domestic measures regarding the conditions for trade, taking, possession or transport of specimens of species on the CITES appendices including the complete prohibition thereof. Marking and tracking systems for ivory developed by the CITES Secretariat appear to be over ambitious and very vulnerable. Recent data on the conservation status of the African elephant in the wild indicates a drastic decline to fewer than a million animals in the wild—much lower than previous estimates. The ivory trade controls should be carefully examined for effectiveness and the current status of the elephant in the wild should be reviewed. Accepting re-export certificates for worked ivory that do not contain country of origin information would be a reasonable response to the problem of tracking worked ivory if the re-exporting country had strict internal controls on the ivory trade.

5. Trade in Rhinoceros Products

Negotiating Position: (Change) Urge the Parties to take strict measures to stop illegal trade in rhino horn and other parts, to use synthetic and natural substitutes, and to institute public information programs on preservation of the rhino and the ineffectiveness of the horn as a medicine.

Information and Comments: None received.

Rationale: (No change) Recent U.S. Congressional hearings have highlighted the continuing problem of illegal trade in rhinoceros horn which has been seriously depleting already endangered species of rhinoceros. All species are listed as endangered under the U.S. Endangered Species Act.

Despite a domestic ban on the import of rhino horn (used primarily for ceremonial knife handles), North Yemen continues to be the world's largest consumer of rhino horn. Singapore, the largest importer of Asian rhino horn, recently became a Party to the CITES and has pledged to end its trade in the horn. The People's Republic of China, a CITES Party, continues to import rhino horn and reexport it as medicinal products.

6. Trade in Leopard Skins

Negotiating Position: (No change) Advocate stricter controls, as necessary, to prevent quota violations. Oppose any furhter increases in quotas without supporting data that includes well documented studies based on sound scientific principles.

Information and Comments: One commenter urged a change in the proposed negotiating position on trade in leopard skins to recognize a recently distributed Secretariat study of the status of the leopard and stated that trophies were excluded. Another commenter characterized the proposed negotiating position as protectionist. Another stated that there was evidence of confusion over whether trophies were included in quotas.

Rationale: (No change) There is some question as to whether the quota for each country includes or is in addition to exported sport hunted trophies and some indications that quotas may have been exceeded.

7. Trade in Plant Specimens

Negotiating Position: (No change) Support a technical resolution that would assure that *future* listings of Appendix II and III plants do not include pollen (including pollinia), flasked seedling cultures and certain other parts and derivatives unless specifically included in the listing proposal. Favor some method of facilitating trade in hybrids artifically propagated for commercial purposes which have an Appendix I species in their ancestry. Support a resolution requesting the Nomenclature Committee to prepare a standardized nomenclatural reference for Cactaceae to the extent possible to the level of species, subspecies and botanical variety, with full synonymy and the countries of distribution.

Information and Comments: None received.

Rationale: (No change) COP5 decided, with certain categorical exceptions, to regulate most parts and derivatives of

plants then on Appendix II. This proposal would apply those exceptions to future Appendix II and III plant listings. Some way needs to be found to make the mechanics of trade easier for traders of plant hybrids artifically propagated for commercial purposes that contain an Appendix I specimen somewhere in their ancestry. Current practice requires traders to obtain an export permit under Article IV which limits their permits to single shipments.

The Cactaceae family contains many species and is heavily traded. There currently is no credible nomenclatural reference for the Family. To improve controls and statistical reporting and to provide a better picture of how trade is impacting the species, the Nomenclature Committee will recommend that a standardized nomenclatural reference be produced.

8. Controls on Trade in Ranched, Captive-Bred, Lookalike and Quota Species

Negotiating Position: (No change) Support proposals that would ensure that Appendix I specimens traded as Appendix II under certain exceptions will not diminish protection of other Appendix I species.

Information and Comments: Two commenters questioned whether the Secretariat should oversee ranching operations. A third suggested it be done under the auspices of the Standing Committee.

Rationale: (Change) A working group of the Technical Committee has produced three draft resolutions. The first would require marking procedures for registered captive breeding operations; the second would provide for Secretariat oversight of ranching operations and the third would require a tagging system for saltwater and Nile crocodiles transferred from Appendix I to Appendix II under an annual quota. These proposals would help ensure that specimens of similar Appendix I species are not allowed in international commerce. (Change starts here) The resolution on raching operations calls for Secretariat consultation with the Standing Committee and the Party concerned in performing its oversight of ranching operations.

9. Significant Trade in Appendix II Species

Negotiating Position: (Change) Seek to have the so-called "C2" species studies expeditiously completed. Consider taking interim measures if expeditious completion is not anticipated. Support use of the best available criteria, methods and data in the continued study of Appendix II species in which possibly excessive trade exists. Explore the possibilities of having some competent organization conduct the C2 studies.

Information and Comments: One commenter suggested that the Technical Committee or a working group develop quotas for C2 species until better species status data are obtained. Two commenters suggested that studies should include consultation with range states and traders and opposed any interim controls (such as the aforementioned quotas) without scientific data to justify them. Another commenter supported continued study of significantly traded species recommending that certain information be included in the sudies. This commenter and another supported the concept of interim quotas. Another commenter suggested that the C2 studies might better be done by IUCN or some other scientifically competent group.

Rationale: (Change) The C2 species are being traded commercially and there is serious question whether they can stand current levels of trade. This lends urgency to the C2 studies. C2 species are, by definition, species for which there is insufficient information available to determine the impact of trade. Coordination of C2 studies is a substantial time and money burden on the Secretariat.

10. Retrospective Issuance of CITES Documentation

Negotating Position: (No change) Support agreement on a common policy of whether and under what circumstances Parties should issue or accept CITES documents after trade has occurred. Oppose general increase in number of situations in which retrospective issuance would be permissible.

Information and Comments: Two commenters recommend support of a flexible rather than a rigid policy. Another supported the previously published proposed negotiating position on this issue, but called for both flexibility and detailed criteria for when retrospective documents can or cannot be issued.

Rationale: (Change) A standard, common policy would be better understood and more easily implemented and enforced. However, a general acceptance of retrospective issuance could lead to serious weakening of the CITES and thereby pose additional threat to species on the Appendices. Detailed paramenters on issuance and non issuance criteria may be possible after experience has been gained in implementing a common policy.

11. Travelling Fur Trade Shows

Negotiating Position: (No change) Support principles in Canadian proposal that would allow use by travelling shows of export permits as re-export certificates if they are validated properly by the reexporting country. Seek simpler solution.

Information and Comments: Two commenters questioned whether there was a simpler solution. Another two questioned whether use of export permits as re-export certificates might make smuggling of furs easier.

Rationale: (Change) Reuse of the export permit for reexport would provide travelling shows with more assurance that they could observe reexport requirements and arrive at their next appointment in a timely fashion. Advance issuance of reexport certificates is another possible way of meeting a show's time requirements. The United States should remain open to less costly and simpler solutions.

12. Interpretation of Article XIV, Paragraph i, of the CITES

Negotiating Position: (Change) Support the concept of reasonable consultation with range States before implementing stricter domestic measures. Encourage reasonable consultation, at the request of range States, concerning stricter domestic measures already promulgated. Oppose proposals to make such consultations a prequisite to adoption of stricter domestic measures.

Information and Comments: Two commenters urged strong support of the concept of consultation with regard to stricter domestic measures. This commenter stated that consultation on request is often too late to alter or influence the process of developing stricter measures.

Rationale: (Change) The concept of consultation was the result of a compromise to a proposal by certain African Parties to restrict the right of a Party to take stricter domestic measures with regard to CITES-controlled species. The U.S. Endangered Species Act already requires United States to consult with Range States before adding species to lists. However that Act does not require the concurrence of Range States. (Change starts here) Consultation on request only applies to measures already on the books of another Party.

13. Transport of Live Specimens

Negotiating Position: (No change) Support the following TEC2 recommendations:

1. As a condition of issuance of an export permit, permittees should be required to prepare and ship live specimens in accordance with the International Air Transport Association (IATA) Live Animals Regulations as a minimum.

2. A crating, health and welfare checklist (now in draft form) should accompany permits and be used to check a shipment of live animals immediately prior to and after shipment.

3. Parties should be encouraged to provide animal holding facilities at designated ports of exist and entry.

4. New acclimatization periods before shipment for certain groups of species should be developed by the Working Group in conjunction with the Live Animals Board.

5. Air carriers normally should not accept for shipment wild animals that are evidently pregnant, or females with young who are not yet weaned or are otherwise incapable of feeding themselves or such young travelling alone.

6. IATA should develop for its regulations a list of airports with animal facilities and a statement that airline carriers should route live animal shipments via such airports whenever possible.

7. Containers for live animals must provide facilites for appropriate feeding and watering the animals.

Also, support efforts to obtain useful information regarding transit mortality.

Advocate that airlines allow government officials and other qualified persons to inspect animal holding areas.

Information and Comments: One commenter challenged the statement in the May 22 notice that mortality among wild animals is high. Another approved the proposed U.S. position.

Rationale: (Change) Large numbers of wild animals die, are injured or otherwise are traumatized during transit. Since many individuals are killed or die for each individual that survives to the point at which it enters transit, each in-transit death may represent many wild individuals and any action that reduces in-transit mortality has a favorable impact on wild populations. The TEC2 proposals, if implemented, would improve the conditions of transport for live animals in international trade and thereby reduce mortality. Inspection of airline animal holding facilities would help improve the conditions of transport by making airline personnel aware of transport norms and holding requirements and also reduce mortality.

14. Designation of Scientific Authorities

Negotiating Position: Advocate adoption of a U.S. proposal urging Parties that have not yet notified the Secretariat of their designated Scientific Authority to do so within 180 days after COPG.

Information and Comments: Three commenters opposed the U.S. proposal because it would lead to a prohibition of trade from countries that do not have designated Scientific Authorities. One commenter would have the resolution state that trade bans are not to be implemented. Two commenters stated that trade should cease if Parties did not clarify whether they have designated Scientific Authorities since finding of "nondetriment to the survival of the species" by a scientific authority is a prerequisite to the issuance of a valid CITES permit.

Two questioned whether the same entity could operate as both Management and Scientific Authority.

Rationale: (Change) Listings for 28 Parties in the Secretariat's Directory do not indicate the identity or existence of a designated Scientific Authority. The CITES text requires the designation of a Scientific Authority, but not notification of its existence. This proposal would encourage those Parties that have not designated Scientific Authorities to do so. The proposal does not automatically lead to a ban on exports of a non-notifying Party. But if subsequent information leads to the conclusion that a Scientific Authority has not been designated, then export permits would be subject to challenge by the country of import as not meeting the requirements of Article III and IV of the Convention.

The United States will make vigorous efforts to determine whether Parties that do not respond within the 180-day period have designated scientific authorities. The intent of this proposal is to ensure that trade in species on the CITES is conducted in accordance with the requirements of the CITES.

XV. Consideration of Proposals for Amendment of Appendices I and II

This item is not a substantive subject of this notice. The Service has or soon will publish separate **Federal Register** notices concerning proposed positions on proposals to amend Appendices I and II.

XVI. Conclusion of the Meeting

1. Determination of the Time and Venue of the Next Regular Meeting of the Conferences of the Parties.

Negotiating Position: (Change) No position.

Information and Comments: None received.

Rationale: (Change) Several Parties have indicated a desire to host COP 7. The U.S. will support the site that appears most able to ensure an efficient, economical Conference.

2. Closing Remarks (No Change)

Negotiating Position: None necessary.

Information and Comments: None received.

Rationale: (No change) Normally, this agenda item consists of summing up statements and expressions of appreciation directed at the host government.

XVII. Additional Issues

1. Trade in Crocodilian Quota Species

The proposed negotiating position set forth in the May 22, 1987. **Federal Register** notice was based on incorrect information received from the Secretariat. Subsequent information indicates that this issue concerns renewal of quotas established for certain countries allowing a limited number of Nile crocodile skins to be traded. Some Parties have requested maintenance of and others increases in their quotas. Positions on these requests have been and will be addressed in **Federal Register** notices issued by the Service's Office of the Scientific Authority.

2. The Biological and Trade Status of Chelonia Mydas and Eretmochelys Imbricata

Negotiating Position: (No change) Carefully examine a biological and trade study of the green and hawksbill sea turtles to be considered at COP6 and evaluate its methods and data.

Information and Comments: One commenter stated that the Secretariat's efforts should be devoted to implementing the Convention rather than finding ways to increase trade. Another urged thorough analysis of the study before using it as a basis for trade decisions.

Rationale. (No change) This study could influence the outcome of the French (Reunion Island) sea turtle ranching proposal. That proposal is discussed in the separate **Federal Register** publication prepared by the Service's Office of the Scientific Authority and which deals with proposals to amend the CITES Appendices.

3. Status of Captive Bred Populations of the Chinchilla (Chinchilla spp.) Occurring Outside of South America

Negotiating Position: (No change) Support Canadian proposal in principle providing it is changed so that part of the language ("* * * Population of South America. Populations outside South America are not included in the Appendices") is placed in the "Interpretation" section of the Appendices rather than adjacent to the species entry in the Appendices themselves.

It should be stressed that the chinchilla is a very unique situation and that there is no intent that this deferential treatment of captive populations outside their normal range be considered a precedent or used with other taxa.

Information and Comments: One commenter supported the proposed negotiating position in the May 22, 1987, notice.

Rationale: (No change) In February 1977, the entire genus "Chinchilla" was placed on Appendix I. Prior to that date only the questionable subspecies *C. brevicaudata boliviana* was on that Appendix. The 1977 action specified that only South American populations were intended to be placed on Appendix I. Thus, domesticated populations of chinchilla in other countries would not be considered Appendix I species but those in the wild in South America would receive the full Appendix I protection. Persons who had established closed system, self-sustaining captive populations of chinchilla in South America could utilize the exemption provided for in Article VII (which was developed with the South American chinchilla industry in mind) and still be able to export specimens of their animals for commercial purposes under certificates as provided for in Article VII. This complex situation has not been fully understood by all Partries and the Canadian proposal is intended to clarify that situation.

Placement of the proposed Canadian language in the "Interpretation" section rather than in the Appendix itself is the standard procedure that has been followed and prevents the already complex Appendices from becoming further cluttered.

4. Implementation of the Convention With Regard to Personal and Household Effects

Negotiating Position: (No change) Oppose proposals that would encourage Parties to remove their "stricter domestic measures" with regard to the personal and household effects exemptions. Oppose proposals that would allow the exemption of unaccompanied shipments such as occasional, non-commercial mailed items under the "personal and household effects" exemption. Oppose proposals that would extend the personal and household effects exemptions to living Appendix III specimens.

Information and Comments: None received.

Rationale: (No change) The proposal to expand the scope of the personal and household effects exemptions would be a reversal of the spirit and intent of Resolution Conf. 4.12 which encouraged elimination of the personal and household effects exemptions for heavily traded species thereby allowing the acquisition of data on the impact of trade. This proposal also would be an impingement of the rights of Parties to take stricter domestic measures—a contradiction of Article XIV. Providing personal or household exemptions for nonaccompanied items (eg: mailed packages, etc.) would significantly increase enforcement problems and reduce effectiveness of the CITES.

5. Relationship Between CITES and the European Economic Community

Negotiating Position: (Change) The United States should continue to press vigorously for country by country reporting of CITES-related trade. Alternate proposals that could provide trade statistics without requiring border checks should be carefully considered and, if the end result is the same, supported. The United States should also seek a firm statement as to the EEC's legal competency under CITES and urge EEC measures to harmonize enforcement within the EEC.

Information and Comments: One commenter provided extensive advice on the feasibility of country-by-country reporting and supported such reporting by the EEC. Another expressed concern that trade entering France from some of its overseas territories stimulates demand in other EEC countries and escapes CITES controls altogether.

Rationale: (Change) Article VIII, paragraph 7 requires each Party to prepare and transmit to the Secretariat annual reports setting forth specified information concerning its implementation of the CITES. The EEC has refused to permit EEC members who are Party to the CITES to submit such reports arguing that to do so would be in contravention of the Treaty of Rome. Instead, EEC has prepared and submitted a single, consolidated report intended to cover all trade in which EEC members are involved. Whether allowing individual national reports as required by the CITES is, in fact, in conflict with the Treaty of Rome is a matter of dispute among qualified legal experts. However, the submission of a single report covering all EEC members make the data in that report much less useable to those who need them and diminishes the possibility of effective enforcement of the CITES in one of the major consuming areas of the world. It is recognized that the "disappearance of the frontier" as the EEC matures will make reporting based upon within the EEC, cross border commerce impossible. However, CITES specimens that move intra-EEC are accompanied by so-called "blue certificates" and there should be some acceptable method of monitoring and reporting upon those specimens, based upon the issuance and ultimate disposition of these certificates, which would provide the needed data without being an actual or perceived violation of the Treaty of Rome.

The EEC has not clarified its area of legal competence to act on behalf of its member states. Information indicates that enforcement of CITES varies substantially within the EEC.

This notice was prepared by Arthur Lazarowitz of the Federal Wildlife Permit Office under the authority of the Endangered Species Act of 1973, 16 U.S.C. 1531–1543.

Dated: July 8, 1987.

Frank Dunkle,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 87–15800 Filed 7–9–87; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Cape Cod National Seashore Advisory Commission, South Wellfleet, MA; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1 section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held Friday, July 31, 1987.

The Commission was reestablished pursuant to Pub. L. 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The meeting will convene at Park Headquarters, Marconi Station, South

Wellfleet, Massachusetts at 1:30 p.m. for the following reasons:

1. Swearing-in of the ten newly appointed members.
2. Election of Officers.
3. Review of responsibilities of the Commission as outlined in the new Charter.
4. Status of the Environmental Assessment for a Park-Wide Bicycle Trail.

The meeting is open to the public. It is expected that 50 persons will be attend the session in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission or file written statements. Such requests should be made to the official listed below at least seven days prior to the meeting. Further information concerning this meeting may be obtained from the Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663.

Dated: July 6, 1987.

Herbert Cables,

Regional Director.

[FR Doc. 87-15658 Filed 7-9-87; 8:45 am]

BILLING CODE 4310-70-M

Potential 1988 U.S. World Heritage Nomination

AGENCY: National Park Service, U.S. Department of the Interior.

ACTION: Notice and request for public comment.

SUMMARY: On February 19, 1987, the Department of the Interior, through the National Park Service, set forth in a public notice the process and schedule that will be used in calendar year 1987 to identify and prepare U.S. nominations to the World Heritage List (52 FR 5198). In addition, the February 19 notice identified the criteria and requirements that U.S. properties must satisfy before nomination for World Heritage status, and solicited public comments and suggestions regarding cultural and natural properties that should be considered as potential U.S. nominations this year. This notice announces and invites comments on potential 1988 U.S. World Heritage Nomination as described below.

DATES: Written comments or recommendations regarding the property listed herein as a potential 1988 U.S. World Heritage Nomination must be received on or before August 19, 1987, to ensure full consideration. A decision on proposed 1988 nominations will be made based on public comments, and will be published in the **Federal Register**. A draft nomination document will be prepared for any property selected as a proposed nomination. In November 1987, the Federal Interagency Panel for World Heritiage will review the accuracy, completeness, and suitability of the draft 1988 nominations' documentation and will make recommendations to the Assistant Secretary of the Interior for Fish and Wildlife and Parks. The Assistant Secretary will subsequently transmit any approved nomination on behalf of the United States to the World Heritage Committee Secretariat, through the Department of State, by December 15 for evaluation by the World Heritage Committee in a process that could lead to inscription of the World Heritage List by fall 1988. Notice of transmittal of U.S. nominations will be published in the **Federal Register**.

Decisions with regard to possible additions to the U.S. Indicative Inventory will be based upon comments received and upon further study and will be announced in the final **Federal Register** notice, as outlined above, of this year's procedures.

ADDRESS: Written comments or recommendations should be sent to the Director, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127. Attention: World Heritage Convention-023.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Milne, Chief, Office of International Affairs, National Park Service, U.S. Department of the Interior, P.O. Box 37127, Washington, DC 20013-7127, Telephone: (202) 343-7063.

SUPPLEMENTARY INFORMATION: The Convention Concerning Protection of the World Cultural and Natural Heritage, now ratified by the United States and 91 other countries, has established a system of international cooperation through which cultural and natural properties of outstanding universal value to mankind may be recognized and protected. The Convention seeks to put into place an orderly approach for coordinated and consistent heritage resource protection and enhancement throughout the world.

Participating Nations identify and nominate their sites for inclusion on the World Heritage List, which currently includes 247 cultural and natural properties. The World Heritage Committee judges all nominations against established criteria.

Under the Convention, each participating Nation assumes responsibility for taking appropriate legal, scientific, technical, administrative, and financial measures necessary for the identification, protection, conservation, and rehabilitation of World Heritage properties situated within its borders.

In the United States, the Department of the Interior is responsible for directing and coordinating U.S. participation in the World Heritage Convention. The Department implements its responsibilities under the Convention in accordance with the statutory mandate contained in Title IV of the National Historic Preservation Act Amendments of 1980 (Pub. L. 96-515; 16 U.S.C. 470a-1, a-2). On May 27, 1982, the Interior Department published in the **Federal Register** the policies and procedures which it uses to carry out this legislative mandate (47 FR 23392). The rules contain additional information on the Convention and its implementation in the United States, and identify the specific requirements that U.S. properties must satisfy before they can be nominated for World Heritage status, i.e., the property must have previously been determined to be of national significance, its owner must concur in writing to its nomination, and its nomination must include evidence of such legal protections as may be necessary to ensure preservation of the property and its environment.

The Federal Interagency Panel for World Heritage assists the Department in implementing the Convention by making recommendations on U.S.World Heritage policy, procedures, and nominations. The Panel is chaired by the Assistant Secretary for Fish and Wildlife and Parks, and includes representatives from the Office of the Assistant Secretary for Fish and Wildlife and Parks, the National Park Service, the Bureau of Land Management, and U.S Fish and Wildlife Service within the Department of the Interior; the President's Council on Environmental Quality; the Smithsonian Institution; the Advisory Council on Historic Preservation; National Oceanic and Atmospheric Administration, Department of Commerce; Forest Service; Department of Agriculture; the U.S. Information Agency; and the Department of State.

Potential 1988 U.S. World Heritage Nomination

The Department of the Interior, through the National Park Service, has identified the following property as a potential 1988 U.S. nomination to the World Heritage List. A brief description is provided for this potential nomination, along with the World Heritage criteria that it appears to satisfy. A decision on proposed 1988 U.S. nominations to the World Heritage

List will be made based on the potential nomination listed herein. Identification of a property as a potential 1988 nomination does not confer World Heritage status on it. A draft nomination document will be prepared for any property that is ultimately selected as a proposed 1988 nomination. The Department encourages all interested parties to comment and make recommendations on the potential nomination, as these comments and additional evaluation will serve as the basis for identifying proposed 1988 nominations.

The following has been identified as a potential 1988 U.S. World Heritage nomination:

I. Cultural Property

Post-Contact Aboriginal

Taos Pueblo, New Mexico (36°25'N 105°40'W). A center of Indian culture since the 17th century, the Pueblo of Taos, still active today, symbolizes Indian resistance to external rule. The mission of San Geronimo, one of the earliest in New Mexico, was built near Taos Pueblo in the early 17th century. Criteria: (v) An outstanding example of a traditional human settlement which is representative of a culture and which has become vulnerable under the impact of irreversible change.

Dated: July 2, 1987.

Susan Recce,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-15659 Filed 7-9-87; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31040]

Railroad Operations; Union Pacific Railroad Co. Merger Exemption; Pacific Subsidiary, Inc., the Western Pacific Railroad Co., Tidewater Southern Railway Co. and Sacramento Northern Railway.

Union Pacific Railroad Company (Union Pacific) and its wholly-owned subsidiaries Pacific Subsidiary, Inc. (PACS), The Western Pacific Railroad Company (Western Pacific),[1] Tidewater Southern Railway Company (Tidewater Southern), and Sacramento Northern Railway (Sacramento Northern) have filed a notice of exemption to merger: (1) Sacramento Northern into Western Pacific, (2) Tidewater Southern into Western Pacific, (3) Western Pacific into PACS, and (4) PACS into Union Pacific. The sequential mergers were to occur on or about June 15–16, 1987. Union Pacific will be the surviving corporate entity. The proposed transaction is intended to simplify Union Pacific's corporate structure, and results in various efficiencies and economies.

The sequential mergers involve a transaction within a corporate family of the type specifically exempted from prior approval under 49 CFR 1180.2(d)(3). This transaction will not result in any adverse changes in the level of service to shippers, or significant operational changes. Nor will it have any impact on the competitive balance with carriers outside the corporate family.

To ensure that all employees who may be affected by the transaction are given the minimum protection afforded under sections 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.-Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979), will be imposed.[2]

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. Pleadings must be filed with the Commission and served on: Robert B. Batchelder, General Commerce Counsel, 1416 Dodge Street, Omaha, NE 68179.

Decided: July 2, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-15665 Filed 7-9-87; 8:45 am]

BILLING CODE 7035-01-M

[1] Western Pacific is a wholly-owned subsidiary of PACS, a noncarrier, which in turn, is a wholly-owned subsidiary of Union Pacific.

[2] The Railway Labor Executives' Association (RLEA) and the United Transportation Union filed requests for labor protection. Since this transaction involves an exemption from 49 U.S.C. 11343, the imposition of the labor protective condition is mandatory and it has been imposed above.

[Docket No. AB-12 (Sub-No. 115X]

Railroad Services; Southern Pacific Transportation Co.; Exemption; Abandonment in Contra Costa County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C 10903, *et seq.*, the abandonment by Southern Pacific Transportation Company of 2.10 miles of rail line in Contra Costa, CA, subject to: (1) Standard labor protective conditions; and (2) a public use condition under 49 U.S.C. 10906.

DATES: This exemption will be effective on August 9, 1987. Petitions to stay must be filed by July 27, 1987, and petitions for reconsideration must be filed by August 5, 1987.

ADDRESSES: Send pleadings referring to Docket No. AB-12 (Sub-No. 115X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Gary A. Laakso, One Market Plaza, San Francisco, CA 94105

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information if contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289-4357.

Decided: July 1, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-15664 Filed 7-9-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-1 (Sub-No. 205X)]

Exemption; Chicago and North Western Transportation Company; Abandonment Exemption in Mason City, IA

The Chicago and North Western Transportation Company has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 3-mile line of railroad between milepost 152.5 and milepost 155.5 near Mason City, Cerro Gordo County, IA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line or may be rerouted and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

Applicant has filed an environmental report which shows that no significant environmental or energy impacts are likely to result from this abandonment.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective 30 days from service of this decision (unless stayed pending reconsideration). Petitions to stay must be filed by July 20, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by July 30, 1987 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Myles L. Tobin, Esq., Chicago and North Western Tranportation Company, One North Western Center, Chicago, IL 60606.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: July 8, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–15823 Filed 7–9–87; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notifications; National Cooperative Research Act of 1984; Portland Cement Association

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 et seq. ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, PCA advised that Ash Grove Foreman Cement Company, a subsidiary of Ask Grove Cement Company, will no longer be listed as a separate member of PCA.

Accordingly, at present the members of the PCA are those companies listed below:

United States

Aetna Cement Corp.
Alaska Basic Industries
Ash Grove Cement Co.
Ash Grove Cement West, Inc.
Blue Circle Atlantic, Inc.
Blue Circle, Inc.
Blue Circle West, Inc.
Calaveras Cement Co.
CalMat Co.
Capitol Aggregates, Inc.
Capitol Cement Corp.
Continental Cement Co.
Davenport Cement Co.
Dragon Products Co.
Dundee Cement Co.
General Portland Inc.
Hawaiian Cement
Ideal Basic Industries, Inc.
Independence Cement Corp.
Lehigh Portland Cement Co.
Lone Star-Falcon
Lone Star Industries, Inc.
Medusa Cement Corp.
Missouri Portland Cement Co.
The Monarch Cement Co.
Moore-McCormack Cement, Inc.
Northwestern States Portland Cement Co.
Rinker Materials Corp.
Rochester Portland Cement Corp.
St. Marys Peerless Cement Co.
St. Marys Wisconsin Inc.
The South Dakota Cement Plant
Southwestern Portland Cement Co.
Tarmac-LoneStar, Inc.
Tilbury Cement Co.

Canada

Canada Cement Lafarge Ltd.
Federal White Cement Ltd.
Inland Cement Ltd.
Lake Ontario Cement Ltd.
North Star Cement Ltd.
St. Lawrence Cement Inc.
St. Marys Cement Corp.
Tilbury Cement Ltd.

In addition, the following equipment suppliers are involved as "Participating Associates," together with PCA members, in the activities of the Manufacturing Process Subcommittee of PCA's General Technical Committee:

Baker-Dolomite (DBCA)
C-E Raymond
Holderbank Consulting Ltd.
Humboldt Wedag Co.
Centennial Engineering, Inc.
Allis-Chalmers Corp.
F.L. Smidth and Co.
Claudius Peters, Inc.
Polysius Corp.
The Fuller Co.

On January 7, 1985, PCA filed its original notification pursuant to section 6(a) of the Act. The Department of Justice (the "Department") published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015. On March 14, 1985, August 13, 1985, January 3, 1986, February 14, 1986, May 30, 1986, July 10, 1986, December 31, 1986, February 3, 1987, and April 17, 1987, PCA filed additional written notifications. The Department published notices in the **Federal Register** in response to these additional notifications on April 10, 1985 (50 FR 14175), September 16, 1985 (50 FR 37594), February 4, 1986 (51 FR 4440), March 12, 1986 (51 FR 8573), June 27, 1986 (51 FR 23479), August 14, 1986 (51 FR 29173), February 3, 1987 (52 FR 3356), March 4, 1987 (52 FR 6635), May 14, 1987 (52 FR 18295), respectively.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 87–15728 Filed 7–9–87; 8:45 am]

BILLING CODE 4410–01–M

Office of Juvenile Justice and Delinquency Prevention

Attorney General's Advisory Board on Missing Children; Meeting

The Attorney General's Advisory Board on Missing Children will convene to conduct a business meeting on July 30–31, 1987. The meeting will be held at The New Otani Hotel and Garden, 120 S. Los Angeles Street, Los Angeles, California, in Ballroom Two.

For further information, please contact Michelle Easton, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724–7655.

Dated: June 19, 1987.

Verne L. Speirs,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 87–15667 Filed 7–9–87; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

Volume III

Nevada:
NV87-5 ..... pp.276a-276t.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT87-1 (January 2, 1987)..... pp.70-71, p.74.
New York:
NY87-10 (January 2, 1987).... p.770.
Pennsylvania:
PA87-8 (January 2, 1987)..... pp.916,918.
PA87-9 (January 2, 1987)..... pp.926-928, p.932.
PA87-10 (January 2, 1987).... p.934.
PA87-11 (January 2, 1987).... p.940.
PA87-12 (January 2, 1987).... pp.942-943.
PA87-16 (January 2, 1987).... p.962.
PA87-17 (January 2, 1987).... pp.964-965.
PA87-22 (January 2, 1987).... pp.994,997.
PA87-24 (January 2, 1987).... pp.1012-1013, p.1015.

Volume II Iowa:

IA87-2 (January 2, 1987)..... p.28. Illinois:
IL87-14 (January 2, 1987)..... p.187. Ohio:
OH87-2 (January 2, 1987)..... pp.734-736, p.738. pp.740-741.
OH87-3 (January 2, 1987)..... pp.756-757.
OH87-29 (January 2, 1987)... pp.818-823. pp.825-832, p.856.

Volume III

Nevada:
NV87-1 (January 2, 1987)..... pp.235-256.
Listing by Location (index).. pp.xxvii-xxviii.
Listing by Decision (index).. p.xxxiv.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the Country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, This 1st day of July 1987.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 87-15402 Filed 7-9-87; 8:45 am]

BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-87-143-C]

Petition for Modification of Application of Mandatory Safety Standard; Buchanan Coal Co., Inc.

Buchanan Coal Company, Inc., Route 1 Box 325, Woodbine, Kentucky 40771 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-14286) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on any electric face cutting equipment, continuous monitor, longwall face equipment and loading machine and shall be kept operative and properly maintained and frequently tested.

2. Petitioner states that no methane has been detected in the mine. The three wheel tractors are permissible DC powered machines, with no hydraulics. The bucket is a drag type, where approximately 30-40% of the coal is hand loaded. Approximately 20% of the time that the tractor is in use, it is used as a man trip and supply vehicle.

3. As an alternate method, petitioner proposes to use hand held continuous oxygen and methane monitors in lieu of continuous methane monitors on three wheel tractors. In further support of this request, petitioner states that:

(a) Each three wheel tractor will be equipped with a hand held continuous monitoring methane and oxygen detector and all persons will be trained in the use of the detector;

(b) A gas test will be performed, prior to allowing the coal loading tractor in the face area, to determine the methane concentration in the atmosphere. The air quality will be monitored continuously after each trip, provided the elapse time between trips does not exceed 20 minutes. This will provide continuous monitoring of the mine atmosphere for methane to assure any undetected methane buildup between trips;

(c) If one percent of methane is detected, the operator will manually deenergize his/her battery tractor immediately. Production will cease and will not resume until the methane level is lower than one percent;

(d) A spare continuous monitor will be available to assure that all coal hauling tractors will be equipped with a continuous monitor;

(e) Each monitor will be removed from the mine at the end of the shift, and will be inspected and charged by a qualified person. The monitor will also be calibrated monthly; and

(f) No alterations or modifications will be made in addition to the manufacturer's specifications.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 10, 1987. Copies of the petition are available for inspection at that address.

Dated: June 30, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-15711 Filed 7-9-87; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-87-10-M]

Petition for Modification of Application of Mandatory Safety Standard; Ziegler Chemical and Mineral Corp.

Ziegler Chemical and Mineral Corporation, 100 Jericho Quadrangle, Jericho, New York 11753 has filed a petition to modify the application of 30 CFR 57.4560 (mine entrances) to its Bonanza No. 11 and 12 Mine (I.D. No. 42-01716), its Independent No. 4 and 5 Mine (I.D. No. 42-01743), its Bonanza No. 3 Mine (I.D. No. 42-01446), its Little Emma No. 7 Mine (I.D. No. 42-01712), and its Cottonwood No. 1 Mine (I.D. No. 42-01770), all located in Uintah County, Utah. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that for at least 200 feet inside the mine portal or collar timber used for ground support in intake openings and in exhaust openings that are designated as escapeways shall be provided with a fire suppression system, other than fire extinguishers and water hoses, capable of controlling a fire in its early stages; or covered with shotcrete, gunite, or other material with equivalent fire protection characteristics; or coated with a free-retardant paint or other material to reduce its flame spread rating to 25 or less and maintained in that condition.

2. Petitioner states that the rock walls are used for ground support in its gilsonite mines. The mines have a cement collar at the entrance. Any timbers that are used within 200 feet of the mine portals are spaced at least (5) feet apart and are soaking wet from ground water; therefore, there is no need for a fire suppression system for timbers.

3. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before August 10, 1987. Copies of the petition are available for inspection at that address.

Dated: June 30, 1987.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

[FR Doc. 87-15712 Filed 7-9-87; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 87-59]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's, supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by July 20, 1987. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Ray S. Mayfield, NASA Agency Clearance Officer, Code NM, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: Radioactive Material Transfer Receipt.
OMB Number: 2700–0007.
Type of Request: Extension.
Frequency of Report: As required.
Type of Respondent: Businesses or other for-profit, Federal agencies or employees or organizations.
Annual Responses: 250
Annual Burden Hours: 290
Abstract-Need/Uses: The Nuclear Regulatory Commission has authorized NASA to use radioactive material at temporary job sites throughout the U.S. for research and development purposes as well as launching of space vehicles. This report furnishes NASA with the necessary records on the possession, location and use of radioactive materials.

Ray S. Mayfield,
Director, Management Analysis Office.
July 1, 1987.

[FR Doc. 87–15687 Filed 7–9–87; 8:45 am]
BILLING CODE 7510–01–M

[Notice 87–60]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's, supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer). Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

DATE: Comments must be received in writing by July 20, 1987. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Clearance Officer of your intent as early as possible.

ADDRESS: Ray S. Mayfield, NASA Agency Clearance Officer, Code NM, NASA Headquarters, Washington, DC 20546; Bruce McConnell, Office of Information and Regulatory Affairs, OMB, Room 3235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (202) 453–1090.

Reports

Title: Patent Waiver Report.
OMB Number: 2700–0050.
Type of Request: Extension.
Frequency of Report: Annually.
Type of Respondent: Businesses or other for-profit.
Annual Responses: 400.
Annual Burden Hours: 820.
Abstract-Need/Uses: The NASA Patent Waiver form which is completed by NASA contractors is designed to elicit information that is deemed necessary for the NASA Inventions and Contributions Board to evaluate the progress of development and commercialization for waived inventions. The NASA Patent Waiver Regulations require the waiver recipient to report on the utilization of waived inventions.

Ray S. Mayfield,
Director, Management Analysis Office.
July 1, 1987.

[FR Doc. 87–15688 Filed 7–9–87; 8:45 am]
BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 55–60755; ASLBP No. 87–551–02–SP]

Hearings; Senior Operator License for Beaver Valley Power Station, Unit 1; Designation of Presiding Officer, Alfred J. Morabito

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972) and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, a presiding officer is designated in the following proceeding:

Alfred J. Morabito

Senior Operator License for Beaver Valley Power Station, Unit 1

By letter dated August 27, 1986, Alfred J. Morabito, an applicant for a senior operator license for the Beaver Valley Nuclear Power Station, Unit 1, was informed by NRC's Region I office that he had failed the written and simulator examinations administered on July 22 and 23, 1986, respectively and that his license application was thus denied. In accordance with directions contained in the letter of denial dated September 11, 1986, Mr. Morabito requested a hearing on the denial.

The presiding officer is being designated pursuant to the provisions of an Order issued by the Commission on July 1, 1987 granting a request for a hearing filed by Mr. Morabito with the Director, Operator Licensing Branch, Division of Human Factors Technology, Office of Nuclear Reactor Regulation.

The presiding officer in this proceeding is Administrative Judge Charles Bechhoefer.

All correspondence, documents and other materials shall be filed with Judge Bechhoefer in accordance with 10 CFR 2.701. His address is: Administrative Judge Charles Bechhoefer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 2nd day of July 1987.

B. Paul Cotter, Jr.,
Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 87–15739 Filed 7–9–87; 8:45 am]
BILLING CODE 7590–01–M

[Docket No. 50–530A]

Finding of No Significant Antitrust Changes and Time for Filing Requests for Reevaluation; Arizona Public Service Co., et al.

The Director of the Office of Nuclear Reactor Regulation has made a finding in accordance with Section 105c(2) of the Atomic Energy Act of 1954, as amended, that no significant (antitrust) changes in the licensees' activities or proposed activities have occurred subsequent to the construction permit review of Units 1 and 2 of the Palo Verde Nuclear Generating Station by the Attorney General and the Commission. The finding is as follows:

Section 105c(2) of the Atomic Energy Act of 1954, as amended, provides for an antitrust review of an application for an operating license if the Commission determines that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous construction permit review. The Commission has delegated the authority to make the 'significant change' determination to the Director, Office of Nuclear Reactor Regulation. Based upon an examination of the events since the issuance of the Palo Verde construction permits to Arizona Public Service Company, et al., the staff of the Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation and the Office of the Geneal Counsel, hereafter referred to as 'staff', have jointly concluded, after consultation with the Department of Justice, that the changes that have occurred since the construction permit review are not of the nature to require a second antitrust review at the operating license stage of the application.

In reaching this conclusion, the staff considered the structure of the electric utility industry in the Southwest, the events relevant to the Palo Verde construction permit and operating license reviews, and the events that have occurred subsequent to thse reviews.

The conclusion of the staff's analysis is as follows:

Staff has identified several groups of changes in the licensees' activities since the previous antitrust review associated with the Palo Verde Nuclear Generating Station. These changes have been largely procompetitive or competition neutral.

In the process of conducting its antitrust operating license review of the Palo Verde Unit 3, staff was apprised of a dispute between one of the co-licensees and a competing power supplier pursuant to transmission access in the desert Southwest. After extensive negotiations, the parties in the dispute entered into a binding Settlement Agreement on June 5, 1987 which provided for both transmission planning and ownership of new transmission capacity for the power system that had allegedly been denied these power supply options.

With the recent signing of this Agreement, coupled with evidence that procompetitive market transactions have become increasingly more prevalent in the Southwestern bulk power services market, staff believes that the competitive process is at play in the desert Southwest and recommends that the Director of the Office of Nuclear Reactor Regulation make a finding of no significant change pursuant to the Palo Verde Nuclear Generating Station, Unit 3 antitrust operating license review.

Based upon the staff's analysis, it is my finding that there have been no 'significant changes' in the licensees' activities or proposed activities since the completion of the previous antitrust review in connection with the construction permit.

Signed on July 6, 1987, by Thomas E. Murley, Director of the Office of Nuclear Reactor Regulation.

Any person whose interest may be affected by this finding, may file, with full particulars, a request for reevaluation with the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555 within 30 days of the initial publication of this notice in the **Federal Register.**

Requests for a reevaluation of the no significant changes determination shall be accepted after the date when the Director's finding becomes final, but before the issuance of the OL, only if they contain new information, such as information about facts or events of antitrust significance that have occurred since that date, or information that could not reasonably have been submitted prior to that date.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief, Policy Development and Technical Support Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 87-15708 Filed 7-10-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 71-5942]

Issuance of Director's Decison; General Electric Co. Puncture Analysis of Model GE-700 Shipping Cask

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguard, has taken action with regard to a Petition for action under 10 CFR 2.206 (DD87-12) received from Mr. Lindsay Audin, dated January 10, 1987. The Petitioner requested that the NRC review the Safety Analysis Report for the GE-700 container in order to reevaluate the puncture test analysis for this cask and that the cask be used only in its non-extended mode until it can be shown that the extended mode complies with all the requirements of 10 CFR Part 71. The Petition alleged that the puncture analysis was based on the testing of a much smaller cask, the GE-100, and that this resulted in a deficient analysis of the GE-700 cask with its extension.

The Director of the Office of Nuclear Material Safety and Safeguards has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision under 10 CFR 2.206," (DD-87-12) which is available for public inspection in the Commission's Public Document Room 1717 H Street, NW., Washington, DC 20555. A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission on its own motion institutes a review of the decision within that time.

Dated at Silver Spring, Maryland, this 6th day of July, 1987.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 87-15707 Filed 7-9-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-456]

Issuance of Facility Operating License; Commonwealth Edison Co., Braidwood Station, Unit No. 1

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF-72 to Commonwealth Edison Company (the licensee) which authorizes operation of Braidwood Station, Unit No. 1 (the facility) at reactor core power levels not in excess of 3411 megawatts thermal (100 percent rated power).

Braidwood Station, Unit No. 1 is a pressurized water reactor located in Will County, Illinois, about 20 miles south-southwest of Joliet, Illinois, in Reed Township. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the **Federal Register** in December 15, 1978 (43 FR 58659).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement and the Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the Braidwood Station, Units 1 and 2 (dated June 1984) since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF–72, with Technical Specifications and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated February 11, 1985; (3) the Commission's Safety Evaluation Report, dated November 1983, (NUREG–1002), and Supplements 1 through 4; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; (6) and the Final Environmental Statement, dated June 1984, (NUREG–1026).

These items are available for inspection at the Commission's Public Document Room located at 1717 H Street, NW., Washington, DC 20555 and in the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481. A copy of Facility Operting License NPF–72 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects. Copies of the Safety Evaluation Report and Supplements 1 through 4 (NUREG–1002) and the Final Environmental Statement (NUREG–1026) may be purchased at current rates from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, and through the NRC GPO sales program by writing to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

Dated at Bethesda, Maryland, this 2nd day of July 1987.

For the Nuclear Regulatory Commission.

Janice A. Stevens,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III. IV, V and Special Projects.

[FR Doc. 87–15709 Filed 7–9–87; 8:45 am]

BILLING CODE 7590–91–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272–2142.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549.

Extension

[Rule 17f–4; File No. 270–232]

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission has submitted for extension of OMB approval Rule 17f–4 under the Investment Company Act of 1940.

Rule 17f–4 regulates the process by which investment companies or their custodians deposit portfolio securities with securities depositories for central handling.

The rule affects approximately 100 custodians, who send a total of 200 reports per year. Each report takes approximately one half hour to prepare.

Comments should be submitted to OMB Desk Officer: Robert Neal, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503.

Shirley E. Hollis,

Assistant Secretary.

July 2, 1987.

[FR Doc. 87–15718 Filed 7–9–87; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–24669; Filed No. SR–AMEX–87–13]

Self-Regulatory Organizations; Proposed Rule Change; American Stock Exchange, Inc.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on June 1, 1987, the American Stock Exchange, Incorporated ("Amex" 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

The Exchange proposes to amend Rule 904 as set forth below. Italics indicate material proposed to be added; brackets indicate material proposed to be deleted.

Rule 904 Position Limits

Except with the prior written approval of the Exchange in each instance, no member or member organization shall effect, for any account in which such member or member organization has an interest or for the account of any partner, officer, director or employee thereof or for the account of any customer, an opening transaction (whether on the Exchange or on another Participating Exchange) in an option contract of any class of options dealt in on the Exchange if the member or member organization has reason to believe that as a result of such transaction the member or member organization or partner, officer, director or employee thereof or customer would, acting alone or in concert with others, directly or indirectly, control an aggregate position in option contracts (whether long or short) of the put class and the call class on the same side of the market covering any underlying security in excess of:

(i) 3,000, 5,000 or 8,000 contracts covering an underlying stock, which limit is determined in accordance with Commentar[y]*ies .07 and .09*; or (ii)—(vi) No change.

Commentary

.01–.08 No change.

.09 for purposes of position limits for stock options only, the following positions, where each option contract is "hedged" by 100 shares of stock, may be exempted from established position limits:

(i) Long Stock and Short Call.
(ii) Long Stock and Long Put.
(iii) Short stock and Long Call.
(iv) Short Stock and Short Put.

In no event however, may position limits for any class of stock options exceed twice the established position limits for such class.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of

these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A) (B), and (C) below, of the most significant aspects of such statements.[1]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, position limits circumscribe the amount of options on the same side of the market (i.e. short calls and long puts or long calls and short puts) that an investor may control. Position limits for equity options are determined in accordance with a three-tiered system (i.e., 3,000, 5,000 or 8,000 contracts) based on the underlying stock's trading volume and/or the number of outstanding shares.

The proposed amendment is designed to allow an automatic exemption from equity option position and exercise limits for accounts that have established one of the four hedged positions described below. The Amex states that it will not be necessary to approve such positions in advance since they will combine stock and options on a limited 1-for-1 basis (i.e., 100 shares of stock for 1 option contract). The proposal contemplates that exercise limits will correspond to position limits. Therefore, accounts will be allowed to exercise, during any five consecutive business days, the same number of contracts set forth as the position limit for that option, including those that are hedged.

The four hedged positions, which combine stock and options on a 1-for-1 basis, are as follows:

Long Stock and Short Call
Long Stock and Long Put
Short Stock and Long Call
Short Stock and Short Put

In no event, however, would the maximum position limit (including the allowed exemption) exceed twice the present position limit.

In part, the proposed amendment will respond to requests by institutional investors for the ability to hedge greater amounts of stock holdings than at present. For example, a holder of 750,000 shares of XYZ stock wishing to engage in covered call writing (where XYZ option position limits are 3,000 contracts) is now limited to selling 3,000 calls; thus, hedging only 300,000 shares. Under the proposal, such holder could hedge up to 600,000 shares by selling 6,000 calls. Conversely, the holder could buy up to 6,000 puts as part of a strategy to protect portfolio holdings.

Essentially, the proposed exemptions give investors the ability to protect or hedge twice as many shares of stock (i.e., up to 600,000 shares as in the above example). Similarly, the hedged exemptions for short stock positions will permit investors to offset such positions with either long calls or short puts. In either case, should the options positions be exercised, the additional shares of stock acquired pursuant to the exercise can be used to eliminate the short stock position, and, therefore, not add to the investor's total position in the underlying stock.

The proposed amendment is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Exchange since the amendment will add liquidity to the market by allowing investors with stock portfolios to hedge their risk, without increasing the possibility of market manipulation in the underlying security. Therefore, 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

The AMEX believes that the proposed rule change will not impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Options Committee, a committee on the AMEX Board of Governors comprised of members and representatives of members firms, has endorsed the proposed rule change.

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory orgnization consents, the Commission will:

(A) By order approve such proposed rule change, or;

(B) Insititute proceedings to determine whether the Proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 31, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 1, 1987.

Shirley E. Hollis,

Assistant Secretary

[FR Doc. 87-15719 Filed 7-9-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24675(SR-NASD-29]

Self-Regulatory Organizations; Proposed Rule Change; National Association of Securities Dealers, Inc., NASDAQ Workstation Service on a Pilot Basis

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 July 1, 1987, the National Association of Securities Dealers, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and II 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.

[1] The Amex has supplemented the discussion of the proposed rule change contained in this filing by a letter dated June 23, 1987 from Claire P. McGrath, Staff Attorney, Options Division, Amex, to Joseph Furey, Esq., Branch of Options Regulation, Securities and Exchange Commission.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The National Association of Securities Dealers, Inc. and NASDAQ, Inc. (collectively "NASD") hereby file a proposed rule change, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act") and Rule 19b–4 thereunder, to obtain Commission approval to provide the new NASDAQ Workstation service on a pilot basis. This service will be offered directly to firms that function as NASDAQ market makers. *i.e.*, Level 3 subscribers. The NASDAQ Workstation service will allow subscribing firms to substitute personal computer ("PC") terminals for existing equipment that is owned by the NASD. In this regard, the NASD has established equipment specifications that will allow subscribers to utilize certain computer equipment available today through three manufacturers. The selected terminal, utilizing NASD-licensed software and a designated communications co-processor board, will enable market makers to perform all functions currently possible with the NASDAQ Harris standard terminal. Additionally, the software provides new market monitoring features including a market minding/limit alert and dynamic updating of bid/ask quotations.

The NASD proposes to provide the NASDAQ Workstatoin service on a pilot basis from July 31, to October 1, 1987. Approximately 90 member firms have committed to participate in this pilot. The NASD plans to phase in these participants over the pilot period. Based on the experience gained from using a single "pilot" terminal, each firm will have an objective basis to decide whether to continue the NASDAQ Workstation service at the conclusion of the pilot program. Because of the experimental nature of the pilot, its purpose is twofold: (1) To allow firms to familiarize themselves with the service and (2) to allow the NASD to evaluate the service's effectiveness and prepare enhancements where necessary. The NASD will assess no charge for the NASDAQ Workstation service during the term of the pilot program.

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 purposes of and basis for the proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this rule change proposal is to obtain Commission approval for initiation of the NASDAQ Workstation service, on a pilot basis, to selected member firms that function as NASDAQ market makers. The pilot program is scheduled to operate from July 31, to October 1, 1987. During the interval, the NASD will not assess the pilot firms a fee for this service.

The proposed service represents an NASD initiative to update terminals used in the NASDAQ marketplace by providing a state-of-the-art workstation for NASDAQ market makers. At the center of this station will be a PC terminal incorporating many enhancements which were unavailable only a few years ago. In this regard, technological advances in PCs now permit them to emulate and expand upon the functions of the Harris standard terminal which was designed by the NASD and which has been utilized since about 1980. Introduction of NASDAQ Workstation service will accommodate those Level 3 subscribers who may wish to purchase certain specific PC terminals to supplement or replace existing terminals owned by the NASD. Subscribers opting for NASDAQ Workstation service will benefit from the application current technology to their usage of basic market information consisting of NASDAQ market makers' quotes and NASDAQ/NMS last sale data. Further, it is contemplated that the creation of local data files by subscribers in their PCs (containing NASDAQ market makers' quotes and last sale reports that are dynamically updated) will drastically reduce the volume of query traffic to the NASD's mainframe computers and expedite providing information responses to subscribers of the new service. Immediate response time is critical in providing market makers with accurate price and volume data.

From a systems standpoint, the NASDAQ Workstation service required three major design components: (i) Modification of the NASDAQ system to continuously create and gurantee the integrity of data distributed to subscribers' PC workstations; (iii) a broadcaster that will transmit data to the network processors and support routine data integity functions [1] and (iii) specialized software that will reside in each PC workstation.

An important facet of the Association's self-regulatory responsibilities is the introduction of new data processing and communications techniques that improve the efficiency of its marketplace. Enhancing the automation capabilities of market makers produces operational efficiencies that foster greater competitiveness and liquidity in the NASD's marketplace. The NASDAQ Workstation service is designed to achieve such efficiencies by advancing the data management capabilities of market makers at a reasonable cost. For example, the new software permits innovative, customized screen displays to satisfy the particular needs of a subscriber. This is accomplished through movable partitions which the subscriber can redefine for different market data functions. As a result, a subscriber will be able to access more data at any given time than is now possible with the standard Harris terminal. To illustrate, the new software will allow a single screen to display the price quotations of eighteen market makers versus a maximum of four on the existing equipment. Another feature, automated alerts for limit breaks, will keep market makers informed when quotes or last sales reach their indicated ranges. Finally, the market minder feature will enhance a market maker's capacity for on-line tracking of relevant activity not only as to price and volume, but also as to other market makers' activities. In sum, the NASDAQ Workstation service will improve the efficiency of the NASDAQ market by providing advanced data management capabilities that will enable market makers to be more competitive and thus contribute to the market's liquidity.

The NASD will have no proprietary interest in the PC terminals used in connection with the NASDAQ Workstation service. Nonetheless, the NASD's statutory responsibilities encompass the collection, processing, validation, and dissemination of current market information entered by its market makers. These functions are integral to the integrity of the NASDAQ system and the marketplace that it represents. The operation of that market

[1] Essentially, the broadcaster sends a continuous stream of data containing NASDAQ market makers' quotes and last sale data to the PC workstation where the data is stored to respond to the subscriber's queries. This local data base is continuously updated throughout the trading day as the NASDAQ system processes market makers' quote changes and last sale data.

depends upon the continuous and trouble-free operation of terminals used by market makers to enter quotations. Accordingly, the NASD is committed to assuring timely and effective maintenance service for the PCs used in conjunction with the NASDAQ Workstation service. In view of the potential for obtaining volume discounts based upon the number of market makers requiring maintenance, the NASD has been negotiating with certain equipment vendors to provide maintenance to subscribers at a lower cost than would be available to them in their individual capacity. The pass-through charge for such maintenance as well as the charge for NASDAQ workstation service will be filed for Commission approval shortly after initiation of the pilot program.

The NASD cites sections 11A and 15A of the Securities Exchange Act of 1934 (the "Act") as providing the statutory bases for this rule change proposal. In particular, the NASD cites subsections (A)-(D) of section 11A(a)(1) containing the following Congressional findings:

(A) The securities markets are an important national asset which must be preserved and strengthened.

(B) New data processing and communications techniques create the opportunity for more efficient and effective market operations.

(C) It is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure—

(i) Economically efficient execution of securities transactions;

(ii) Fair competition among brokers and dealers . . .;

(iii) The availability to brokers, dealers and investors of information with respect to quotations for transactions in securities;

(D) The linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers [and] dealers and contribute to the best execution of [investors'] orders.

The Association also cites section 15A(b)(6) of the Act as support for this proposal. That provision requires, *inter alia*, that the Association's rules promote just and equitable principles of trade, facilitate transactions in securities, perfect the mechanism of a free and open market and a national market system, and generally protect investors and the public interest.

As noted earlier, the NASDAQ Workstation service is primarily designed to deliver advanced data management capabilities to market-maker firms that function as dealers in NASDAQ securities. Collectively, the many features of the proposed service will enhance the operational efficiency of subscribing market makers, increase their competitiveness, and contribute to the liquidity of the NASD's marketplace. Improving the operational efficiency of market makers produces a more efficient marketplace to accommodate the orders of all investors. Achieving greater marketplace efficiency through automation is the quintessence of subsections (A) through (D) of section 11A(a)(1) of the Act. Similarly, implementing technological advances for more efficient market operations comports with the public interest goals reflected in section 15A(b)(6). Accordingly, the NASD posits that introduction of the NASDAQ Workstation service is fully consistent with the above-mentioned provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The instant proposal does not portend the imposition of any competitive burden. This conclusion is supported by several factors. First, subscription to the NASDAQ Workstation service will be voluntary. At the conclusion of the proposed pilot program, a subscriber's decision to elect this service will be based upon an assessment of its costs and benefits relative to accessing Level 3 service via an existing Harris standard terminal. By that time, the NASD will have filed the corresponding service and maintenance charges for Commission approval. Hence, potential subscribers will have specific data on the proposed fees to factor into the decision-making process. Second, the NASD will continue to provide access to Level 3 service via terminal equipment that is owned and maintained by its subsidiary NASDAQ, Inc. The NASD anticipates that many firms opting for NASDAQ Workstation service will continue to use some of their existing Harris terminals. Third, provision of the service on a pilot basis does not create a competitive burden *via-a-vis* vendors of securities market information. Conceptually, the proposed service embodies an advanced workstation that incorporates an alternative means of delivering available maarket data to NASDAQ Level 3 subscribers. The new service will not impair any vendor's ability to access NASDAQ market makers quotes (*i.e.*, the NQDS service) or NASDAQ/NMS last sale report via high speed data feeds. Fourth, provision of the NASDAQ Workstation service is analogous to an exchange's upgrading of systems that support market making on a physical trading floor. This analogy applies because the proposed service is primarily designed to improve the efficiency of market markers' routine activities and by so doing, improve the quality of the NASDAQ marketplace. Hence, the pilot program for the NASDAQ Workstation service does not present a competitive impact upon vendors offering market data services to a much broader range of end users.

Based upon the foregoing, it is believed that no competitive burden will result from the Commission's approval of this rule proposal.

C. Self-Regulator, Organization's Statement on Comment on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or,

B. Institute proceedings to determine whether the proposed rule change should be disapproved.[2]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at

[2] The NASD has requested that the Commission approve the proposal prior to 30 days after publication of the proposal in the **Federal Register** because the NASD and the 90 firms planning to participate in the pilot have made preparation to commence the pilot on July 31, 1987.

the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and be submitted by July 24, 1987.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 2, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15718 Filed 7-9-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24670; File No. SR-PSE-87-01]

Self-Regulatory Organizations; Proposed Rule Change; Pacific Stock Exchange, Inc.; Summary Sanctions for Position Limit Violations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) ("Act"), notice is hereby given that on January 27, 1987, the Pacific Stock Exchange, Inc. ("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.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from intersted persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b-4 of the Act, proposes to amend Rule VI, section 5 of the Rules of the Board of Governors, regarding summary sanctions for position limit violations. The text of the complete rule change, as amended, follows. (Brackets indicate language to be deleted; italics indicate new language).

Rule VI

Position Limits

Sec. 5. No change to existing text.

Upon discovery of a violation of a position limit, the appropriate Committee that reviews the violations may make a summary determination that the position limits were exceeded and that it was a violation of Rule VI, Section 5. Prior to any Committee review, the party believed to have violated the position limit shall be informed, by letter, or the Exchange's intent to bring the matter before the appropriate Committee. The party shall also be given an opportunity to produce a written response, to be read by the Committee in conjunction with the Exchange findings. If the Committee finds that a violation has occurred, it may issue an apopropriate sanction. A party aggrieved by a decision or sanction imposed by the Committee may appeal the decision or sanction pursuant to Section 11 of Rule XX.

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. Thje self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to reduce the inordinate amount of time that is spent on formal disciplinary actions for position limit violations. The manner in which this efficiency of time will be utilized is through the implementation of summary sanctions by the Committee that reviews the violation.

At present, when the Committee determines that a member, firm or customer has violated section 5 of Rule VI of the Rules of the Board of Governors of the Pacific Stock Exchange (the position limit rule), it must authorize the issuance of a Complaint, wait for an Answer to the Complaint, then either hold a hearing on the matter or settle the matter after receipt of an Offer of Settlement. In most position limit cases, the Respondent either does not answer the Complaint, wherein a default is issued, or else the Respondent asks the Committee for appropriate settlement guidelines, but only after the matter has proceeded as a formal disciplinary action. Rarely has the Respondent ever contested the allegations of violating position limit rules.

Because the Committees that review the position limit violations feel that an inordinate amount of time is spent on formal disciplinary action for position limit violations, especially in light of the typical outcome of the action, the Exchange has determined that it could save a substantial amount of time by summarily issuing a sanction against a party. The proposed summary procedure will be implemented in the following way.

Upon discovery by the Exchange staff of a possible position limit violation, the party believed to be in violation will be contacted by the Exchange, told that the matter will be brought to the attention of the appropriate Committee, and afforded an opportunity to submit a response to the Committee. The member's response will be read by the Committee at the same time the Committee first reviews the staff report and prior to any Committee determination. The Exchange states that this procedure is substantially similar to the floor citation procedure wherein a member who receives a citation is afforded the opportunity to sumit a response to the Committee at the same time that the Committee first reviews the citation, but prior to the Committee's determination of the matter.

If the Committee determines that a violation of section 5 has occurred, it may issue an appropriate sanction. The party that receives the sanction has the right to appeal the decision of the Committee or the fine and request a hearing or review pursuant to Section 11 of Rule XX (hearings and Review of Actions Other than Disciplinary Actions or Arbitrations). The summary position limit violation procedure is intended to deal with those violations that are considered to be either of an incidental nature, or do not involve members with recurring position limit violations. If the appropriate Committee felt that the violation did not meet those requirements such that a summary sanction would not be sufficient, or if other circumstances made the violation more complicated, the Committee would still retain the right to proceed with a formal disciplinary action rather than issuing a sanction.

Because the violator will have the right to a hearing and due process, this measure to create a more efficient regulatory procedure will help to remove impediments to and perfect the mechanism of the national market

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[1] The Exchange amended the proposed rule change twice subsequent to its original filing. Amendment No. 1, submitted on April 2, 1987, amended the text of the rule change to clarify the intent of the proposed rule change, and provided sanction guidelines that the appropriate reviewing Committee will use when issuing the summary sanctions. Amendment No. 2, submitted on June 15, 1987, explained the process that will be used after a violation has been found by the Exchange but prior to review by the appropriate Committee.

[2] The PSE has supplemented the discussion of the proposed rule change contained in this filing by a letter dated June 12, 1987 from John C. Katovich, Assistant General Counsel, PSE, to Mary Revell, Esq., Division of Market Regulation, Securities and Exchange Commission.

system. The basis for the rule is therefore found in section 6 (b)(5) of the Act.

(B) Self-Regulatory Organization's Statement on 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

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the **Federal Register** or within such longer period: (1) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission 450 fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be witheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self regulatory organization. All submissions should refer to the file number in the caption above and should be submitted July 31, 1987.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: July 2, 1987.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15721 Filed 7-9-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-15863; 812-6649]

Application for Exemption; PNPP Funding Corp.

July 2, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicant: PNPP Funding Corporation.

Relevant 1940 Act Section: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: Applicant seeks an order to permit it to assit Ohio Edison Company in the financing and refinancing of property through leveraged lease financing transactions in which Ohio Edison will be the lessee.

Filing date: The application was filed on March 13, 1987 and amended on June 18, and June 23, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on their 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 27, 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.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 1209 Orange Street, Wilmington, Delaware 19801.

FOR FURTHER INFORMATION CONTACT: Fran M. Pollack, Staff Attorney (202) 272-3024 or Karen L. Skidmore, Special Counsel (202) 272-3023 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Delaware corporation and all of its shares of common stock are expected to be owned by Corporate Trinity Company ("CTC"), a company controlled by The Corporation Trust Company ("CT"). There has been, and in the future there will be, no public offering of Applicant's common stock or of any other equity security. There is, and in the future will be, no class of equity securities of Applicant other than its common stock. Applicant has been created to participate as lender in one or more leveraged lease transactions (Lease Transactions), in which Ohio Edison Company, an Ohio corporation (Ohio Edison), is the lessee (Lessee). Ohio Edison will make an initial determination as to whether or not the debt portion of such leveraged lease transactions will be funded through the Applicant's sale of one or more series of its debt securities with differeing maturities (the Lease Obligation Bonds).

2. Applicant' sole purpose is to assist Ohio Edison in the financing and refinancing, in whole or in part, of Ohio Edison's 30.0% undivided ownership interest in the Perry Nuclear Power Plant Unit No. 1 (Perry 1) and Unit No. 2 (Perry 2, and collectively with Perry 1, PNPP). PNPP is located near Cleveland, Ohio. Perry 1 consists primarily of a 1,205 megawatt electric generating unit containing a boiling water nuclear steam supply system and certain related common facilities. Construction work on Perry 2, which is of similar design and rating as Perry 1, has been halted pending review of the alternatives available to the participating companies. Pursuant to an Operating Agreement relating to Perry 1 among Ohio Edison, Cleveland Electric Illuminating Company (CEI), The Toledo Edison Company, Duquesne Light Company and Pennsylvania Power Company, CEI, an Ohio utility, is authorized to act as agent for the other companies entitled to capacity and energy from Perry 1, and has responsibility and control over construction, operating and maintenance of Perry 1. Ohio Edison's rights under this Operating Agreement with respect to the portion of its undivided interest being financed and refinanced will be assigned to each of the lessors referred to below and reassigned for the benefit of the holders of lessor notes (as hereinafter defined). Applicant is subject to regulation by the Public Utilities Commission of Ohio and the Federal Energy Regulation Commission.

3. Applicant's participation as lender in the Lease Transactions will be limited to making loans pursuant to a Loan and Security Agreement or a Trust Indenture and Security Agreement (in either case, a Lease Indenture) to certain lessors (Lessors) under the leases forming a part thereof (Leases) which will be payable primarily from rentals and other payments by the Lessee. Initially the Lessor under each Lease will be The First National Bank of Boston acting as trustee for one or more beneficiaries pursuant to a trust agreement formed exclusively for the purpose of the lease financing and that under such trust agreement any successor trustee must be a bank or trust company. A portion of the purchase price of the property owned by the Lessors and leased to the Lessee (Leased Property) will be paid by the beneficiaries of the grantor trust that acts as Lessor and that amount will constitute their equity investment in the Leased Property. It is expected that such Lessors will be grantor trusts formed exclusively for the purpose of the lease financing. The original beneficiaries of such a grantor trust may be a single sophisticated institutional investor or, under limited circumstances, a single direct or indirect subsidiary of Ohio Edison, acting in its individual capacity or, possibly, a limited partnership composed of one or more partners, each of whom will be a sophisticated investor. All such beneficial interests and partnership interests will be offered and sold in transactions not involved in any public offering within the meaning of section 4(2) of the Securities Act of 1933, as amended (the Securities Act). Subsequent transfer of such beneficial interests may only be made to a transferee which is a financial institution, a corporation or a partnership, a majority in interest of which is composed of one or more financial institutions or corporations, and in no event shall such transfer violate the Securities Act. The loans by Applicant will be without recourse to the general credit of the Lessors or their respective beneficiaries, and will be evidenced by non-recourse obligations of the respective Lessors (Lessor Notes).

4. Prior to the issuance of the Lease Obligation Bonds, it is possible that interim borrowings of the balance of the purchase price will be made directly from one or more banks. It is expected that such direct borrowings will be refunded in full by borrowings from the Applicant simultaneous with the issuance of the relevant Lease Obligation Bonds. To the extent that market conditions do not permit a 100% refinancing of such bank debt, however, no bank will have any greater rights under the respective Lease Indentures than a holder of Lease Obligation Bonds. In all cases, the timely payment of the principal of, and premium, if any, and interest on, the Lessor Notes pledged solely for the benefit of the holders of the Lease Obligation Bonds will be sufficient to timely pay the debt service on such Lease Obligation Bonds.

5. Under each Lease, the Lessee will be obligated to make rental payments sufficient to pay principal of and premium, if any, and interest on the Lessor Notes issued in connection therewith. Such obligations of the Lessee will be required to be absolute and unconditional, without right of counterclaim, setoff, deduction or defense. CTC and CT have entered into an agreement with Ohio Edison pursuant to which CTC and CT have agreed to cause Applicant to make loans to one or more Lessors designated by Ohio Edison from time to time.

6. The Lease Obligation Bonds will be secured on a parity basis by a first lien on, and a security interest in, all of the assets of Applicant, consisting primarily of the Lesser Notes so acquired and previously acquired and which may include a lien on or security interest in the Leased Property. Lessor Notes held by Applicant will consist only of Lessor Notes issued in connection with any Leases to which Ohio Edison is a party, as Lessee, in conjunction with its ownership interest in PNPP.

7. All Lease Obligation Bonds will be issued under a common indenture and a separate supplemental indenture for each series other than the initial series (collectively, the Collateral Trust Indenture) which will establish the terms of the Lease Obligation Bonds of that series. It is expected that the trustee under the Collateral Trust Indenture (Trustee) will be a bank or trust company not affiliated with any of the Lessors and will not be a trustee under any indenture of Ohio Edison or its subsidiaries. At each Lease closing the Lessor Notes will be pledged and assigned directly to the Trustee. Applicant expects that the Lessor Notes will be issued under circumstances making such transactions exempt from the registration requirements under the Securities Act.

8. The Lease Indentures will set forth the terms and conditions under which the Lessor Notes will be issued. Each Lease Indenture will require the Lessor to grant to the Applicant (if the Lease Indenture is a Loan and Security Agreement) or a trustee under the Lease Indenture (Lease Indenture Trustee) (if the Lease Indenture is a Trust Indentrue and Security Agreement), an assignment of rents, including basic rentals and certain other payments, to be made by the Lessee under the applicable Lease. The lease Indenture Trustee or the Applicant may have a lien on or security interest in the Leased Property. The Lessor will covenant that, so long as any Lessor Note is outstanding, it will not incur any other debt not consituting Lessor Notes or otherwise in connection with the Leased Property, and except for certain limited permitted liens, it will not create any lien or seucrity interest in such property. Thus, these two covenants combined ensure that if a Lessor defaults on a Lessor Note, the Leased Property will be available to satisfy the claims of the trustee, acting for the benefit of Lease Obligation Bondholders. Applicant will be precluded from purchasing any Lesser Note unless (i) such Lessor Note is issued in respect of Leased Property having a fair market sales value at the time of purchase at least equal to 110% of the original principal amount of such Lessor Note or, (ii) such Lesser Note and all other Lessor Notes (if any) issued by the relevant Lessor are issued in respect of Leased Property having an aggregate fair market value (measured, in each case, as of the date such Leased property was first financed under the Lease) at least equal to 110% of the original principal amount of such Lesser Note and such other Lessor Notes. Further, each Lease Indenture will include as events of default, without limitation: (a) Payment defaults on the Lessor Notes issued thereunder, and (b) events of default under the related Lease.

9. The various series of Lease Obligation Bonds will have terms which may differ as to interest rates, sinking fund obligations of Applicant, the right of Applicant to redeem such Lease Obligation Bonds and other matters. The interest rates, maturities and principal amounts of each series of Lease Obligation Bonds will be established based on prevailing market conditions, thereby giving Applicant flexibility to take advantage of changing market conditions. If the maturity dates and cash flow of the Lessor Notes exceed the cash requirements of Applicant's obligations under the Lease Obligation Bonds, the resulting funds ("Temporary Funds") will be invested by Applicant in certain investments ("Permitted Investments"), in each case maturing at such time as necessary to pay Applicant's obligations under the lease Obligation Bonds. The Lease Obligation Bonds, which may include commercial paper and intermediate-term and long-

term obligations, will be issued in private placements pursuant to section 4(2) of, or in underwritten public offerings registered under, the Securities Act, or in underwritten public offerings registered under, the Securities Act, or possibly in distributions exempt from registration because they will come to rest outside the United States (provided that the Lease Obligation Bonds are offered and sold outside the United States and to non-U.S. persons without registration under the Securities Act in reliance upon an opinion of U.S. counsel that registration is not required and that no single offering of Lease Obligation Bonds both within and outside the United States will be made without registration of all such Lease Obligation Bonds under the Securities Act without obtaining a no-action letter permitting such offering or othewise complying with applicable standards then governing such offerings). In all cases, Applicant will adopt agreements and procedures reasonably designed to prevent such Lease Obligation Bonds from being offered or sold in the United States or to U.S. persons (except at U.S. counsel may then advise is permissible).

10. The initial issuance of Lease Obligation Bonds will be through an underwritten public offering of one or more series having an aggregate principal amount of approximately $1.28 billion (assuming a total sales price for Ohio Edison's 30.0% interest in Perry 1 of $1.6 billion). Although Ohio Edison will not be the actual issuer of the Lease Obligation Bonds, it will be considered the "issuer" thereof for purposes of the Securities Act. Any registration statement filed under the Securities Act relating to the Lease Obligation Bonds will name Ohio Edison as the sole registrant and will be signed on behalf of Ohio Edison as the sole registrant by such officers and directors of Ohio Edison as may be required under the Securities Act and the rules, regulations and forms of the Commission thereunder. Accordingly, the provisions of Section 11 of the Securities Act will apply to Ohio Edison.

11. Applicant will assign and pledge to the Trustee under the Collateral Trust Indenture, as security for the payment of the principal of and premium, if any, and interest on all Lease Obligation Bonds, the Lessor Notes and other assets held by the Applicant. Each such Lessor Note will in turn be secured by the assigned rentials and other assigned payments under such Lease and may be secured by the Leased Property. The Trustee will give immediate notice to the Lease Obligation Bondholders of any rights granted by the Collateral Trust Indenture to it, which will include the right to exercise voting powers in respect of the Lessor Notes, to give any consents or waivers with respect thereto or to exercise any rights and remedies in respect thereof. The Collateral Trust Indenture will authorize the Lease Obligation Bondholders to direct by notice to the Trustee within a specific period of time, that it take any action or cast any vote in its capacity as a holder of the Lessor Notes. As a result of this pass-through voting mechanism, the rights and remedies of Lessor Noteholders will be exercisable directly by the Lease Obligation Bondholders through their fiduciary, the Trustee. The principal amount of Lessor Notes directing any action or being voted for or against any proposal will be the principal amount of the Lease Obligation Bondholders taking the corresponding position. To the extent the Trustee does not receive instruction, it will take such action with respect to the Lessor Notes as a prudent man would in the care of his own property.

12. In the event Ohio Edison defaults in the payment of that portion of rent necessary to pay all amounts due and payable in respect of the Lessor Notes, the Applicant or the Lease Indenture Trustee, as the case may be, would have the right to exercise, concurrently with the Lessor under the applicable Lease of any remedies available to it under such Lease, all of the rights and remedies against Ohio Edison provided in the related Lease. The exercise of such rights and remedies would be at the direction of the Lease Obligation Bondholders through the Trustee's instruction to the Lease Indenture Trustee or as pledgee of the Applicant's interest in such Lease Indenture.

13. Among the rights and remedies of a holder of Lessor Notes included under the Lease Indenture is the right to demand, after a specified grace period, that Ohio Edison pay all unpaid basic rent plus a stipulated amount which, in all cases, will be sufficient to pay the principal of and premium, if any, and interest on the related Lessor Notes. Amounts payable by Ohio Edison under the Leases, to the extent of the amount of the principal of and premium, if any, and interest on the relevant Lessor Notes, will be paid directly to the Trustee for distribution to the Lease Obligation Bondholders. Therefore, the Lease Obligation Bondholders will have access under the Collateral Trust Indenture and the Lease Indentures to the credit of Ohio Edison. Moreover, the Lease Obligation Bondholders will be entitled to realize on the security afforded by the security interest created by the Lease Indenture in an amount up to the aggregate unpaid amount of the relevant Lessor Notes secured by such security interest. The combination of the Lessor Notes and the obligation of Ohio Edison under the Leases, grants holders of Lease Obligation Bonds access to the general credit of Ohio Edision and is thus the functional equivalent of a guaranty by Ohio Edison. The Lessor Notes and the Lease Indenture will provide that, upon the occurrence of certain casualty events, termination events, deemed loss events and special loss events and certain other events which require the collapsing of the lease transaction, either (i) Ohio Edison shall assume the obligations represented by the Lessor Notes, or (ii) Ohio Edison shall purchase from the beneficiaries of the trusts issuing the Lessor Notes the beneficial interest in such trusts and the Lessors will grant a lien and security interest in the Leased Property to secure the Lessor Notes. The assumption or purchase described in the preceding sentence will be in partial satisfaction of Ohio Edison's obligation to make payments required of it upon early termination of the Leases in consequence of any such event. The preservation of a right for Ohio Edison to assume the Lessor Notes in certain circumstances assures that Ohio Edison will not be faced with an accelerated obligation to prepay the Lessor Notes under provisions of the Leases.

14. The issue, sale and delivery of a particular series of Lease Obligation Bonds may be effected, at maximum, two months prior to the date for the consummation of the Leases (Lease Closing Date) applicable to the leased Property financed with the Lease Obligation Bond proceeds. Pending the Lease Closing Date, the net proceeds of the Lease Obligation Bonds will be held by the Trustee, pursuant to the terms of the Collateral Trust Indenture. The Trustee may invest proceeds in Permitted Investments, which include direct obligations of the United States or obligations fully guaranteed by the United States, certificates of deposit issued by or bankers' acceptances of, or time deposits with, banks organized under United States law and limited to amounts of less than $15 million in principal at any one time and from any one bank, or commercial paper of companies incorporated in or doing business under the laws of the United States or one State, in an amount not exceeding $15 million in principal amount at any one time from any one company. The commercial paper will also have the highest rating by a nationally recognized rating

organization. Permitted Investments also include repurchase agreements, fully collateralized by the Permitted Investments, pursuant to which a United States bank, trust company or national banking association having a net worth of at least $200 million is obligated to repurchase the obligation not later than 90 days after its purchase.

15. Except to the extent payable from the proceeds of refunding the Lease Obligations Bonds, or the proceeds of the initial issuance of the Lease Obligation Bonds, where the relevant Lease Closing Date does not occur simultaneously, due to the nonrecourse nature of Lessor Notes and the limited scope of Applicant's activities, payment of the principal of and premium, if any, and interest on the Lease Obligation Bonds will be made exclusively from amounts paid by the Lessee under the Leases.

Applicant's Legal Conclusions

Applicant's proposed activities are appropriate in the public interest because the proposed issuance of Lease Obligation Bonds would provide a convenient mechanism for Ohio Edison to obtain access to segments of the debt capital market other than the institutional private placement market. An exemption would be consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act because, among other things, investors will be protected under the proposed arrangements to the same extent as under equivalent arrangements where the Act is inapplicable.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87-15722 Filed 7-9-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-24420]

Filings Under the Public Utility Holding Company Act of 1935 ("Act"); National Fuel Gas Co., et al.

July 2, 1987.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested person wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 27, 1987 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the addresses specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas Company, et al. (70-7177)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, New York, New York 10112, a registered holding company, and its subsidiaries, National Fuel Gas Distribution Corporation, National Fuel Gas Supply Corporation, Penn-York Energy Corporation, Empire Exploration, Inc., each located at 10 Lafayette Square, Buffalo, New York 14203, Seneca Resources Corporation, Capital Bank Plaza, 333 Clay Street, Suite 4150, Houston, Texas 77002, and Utility Constructors, Inc. ("UCI"), Linesville, Pennsylvania (collectively, "Subsidiary Companies"), have filed a post-effective amendment to the application-declaration filed by the Subsidiaries Companies, with the exception of UCI, pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and Rules 42(b)(2), 43, 45, 50(a)(2) and 50(a)(5) thereunder. UCI now joins in the filing of the post-effective amendment.

By order dated December 20, 1985 (HCAR No. 23958), National and its Subsidiary Companies, with the exception of UCI, were authorized to participate in the National system money pool ("Money Pool") through December 31, 1987. Authorization is now sought for UCI to participate in the Money Pool and to establish an unsecured borrowing limit of up to $1 million through December 31, 1987.

Ohio Power Company, et al. (70-7247)

Ohio Power Company ("Ohio Power"), an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, and Ohio Power's coal-mining subsidiaries, Central Ohio Coal Company, Southern Ohio Coal Company and Windsor Power House Coal Company (together, "Subsidiaries"), 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment to their application-declaration subject to sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder.

By order dated June 6, 1986 (HCAR No. 24120), the Subsidiaries were authorized through June 30, 1987 to enter into leasing arrangements concerning mining equipment with an aggregate acquisition cost not exceeding $16.5 million from a nonassociated company and Ohio Power was authorized to guarantee the payments of one of the Subsidiaries. By supplemental order dated April 9, 1987 (HCAR No. 24367), the Commission authorized a total aggregate acquisition cost not exceeding $25 million. Ohio Power and the Subsidiaries now proposed to extend the leasing arrangements through October 1, 1987 in order to place under lease equipment for which delivery is expected after June 30, owing to manufacturing and other delays.

System Energy Resources, Inc. (70-7317)

System Energy Resources, Inc. ("SERI"), P.O. Box 23070, Jackson, Mississippi 39225, a subsidiary of Middle South Utilities, Inc. ("MSU"), a registered holding company, has filed a post-effective amendment to its declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

On April 30, 1987, SERI issued and sold $158 million of its unsecured notes ("Notes") pursuant to the exception from regulation contained in the first sentence of section 6(b) of the Act. SERI wants to maintain this credit availability, and therefore proposes that it be permitted to alter the composition of its present authority to make short-term borrowings from the MSU System Money Pool so that the authorized amount which, when aggregated with the principal amount of the Notes outstanding, will not exceed at any one time its overall short-term borrowing limitation of 10% of the sum of (a) the total principal amount of all bonds or other securities representing secured indebtedness issued or assumed by SERI and then outstanding and (b) captial and surplus (HCAR No. 24266; December 17, 1986).

System Energy Resources, Inc., et al. (70-7382)

System Energy Resources, Inc. ("SERI"), P.O. Box 23070, Jackson,

Mississippi 39225–3070, Arkansas Power & Light Company ("AP&L"), P.O. Box 551, Little Rock, Arkansas 72203, Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39205, Louisiana Power & Light Company ("LP&L"), 142 Delaronde Street, New Orleans, Lousiana 70174, New Orleans Public Service, Inc. ("NOPSI"), 317 Baronne Street, New Orleans, Lousiana 70112, and their parent, Middle South Utilities, Inc. ("MSU"), P.O. Box 61104, New Orleans, Louisiana 70161, a registered holding company, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 12(c) of the Act and Rules 42, 45 and 50(a)(5) thereunder.

SERI proposes to issue and sell in one or more series, through March 31, 1989, up to $300 million aggregate principal amount of First Mortgage Bonds ("Bonds"), pursuant to an exception from competitive bidding. SERI may proceed to negotiate the terms of the issuance and sale of the Bonds.

The Bonds are to be issued under SERI's Mortgage and Deed of Trust. As additional security, SERI may enter into assignment(s), for the benefit of the holders of the Bonds, of its rights under the Availability Agreement, as amended ("Availability Agreement"), and the Capital Funds Agreement, ("Capital Funds Agreement") both dated June 21, 1974. AP&L, LI&L, MP&L and NOPSI, parties to the Availability Agreement, and MSU, a party to the Capital Funds Agreement, may, respectively, be required to consent to and join in any such assignments.

The proceeds of the sale of the Bonds will first be used to provide for the funding of SERI's capital requirements, including the repayment of bank debt and unsecured notes. To the extent that SERI does not require the proceeds to provide for such funds, such proceeds may be used to acquire and retire by tender offer, or otherwise by negotiation or transactions on the open market, one more series of SERI's nonredeemable, outstanding First Mortgage Bonds, including up to $300 million principal amount of SERI's 16% Series and up to $100 million of its 15–⅝% Series, both due 2000.

Middle South Utilities, Inc., et al. (70–7413)

Middle South Utilities, Inc. ("MSU"), P.O. Box 61005, New Orleans, Louisiana 70112, a registered holding company, and its electric utility subsidiaries, Mississippi Power & Light Company ("MPL&L"), P.O. Box 1640, Jackson, Mississippi 39205, and System Energy Resources, Inc. ("SERI"), P.O. Box 23070, Jackson, Mississippi 39225 have filed with this Commission a declaration pursuant to sections 12(b) and 12(f) and Rule 45 of the Act.

On February 25, 1987, the Mississippi Supreme Court issued a decision reversing and remanding a final order ("Final Order on Rehearing") of the Mississippi Public Service Commission ("MPSC") granting MP&L phase-in recovery, through rates, of MP&L's costs in connection with the Grand Gulf Nuclear Generating Station No. 1 ("Grand Gulf 1"). Subsequently, MP&L filed a notice of appeal and application for a stay of final judgment of the state court decision with the United States Supreme Court. In its Form 8–K filed with this Commission on March 13, 1987, MSU stated that "even if MP&L ultimately prevails on appeal to the United States Supreme Court, if a stay is not obtained during the appeal, and if MP&L is not able to continue to collect current Grand Gulf 1 revenues and/or defer Grand Gulf 1 revenues as provided in the MPSC's Final Order on Rehearing during the appeal, it is likely that because of the length of time involved in such an appeal, MP&L's earnings, liquidity and financial condition and ability to meet its obligations would have been severely impaired and MP&L could have been rendered insolvent during the pendency of the appeal." On June 1, 1987, the United States Supreme Court granted MP&L's application for stay pending the timely filing and disposition of the appeal. The Court's order was conditioned upon the posting of a good and sufficient bond, in manner and amount to be determined by the Mississippi Supreme Court.

On June 10, 1987, the Mississippi Supreme Court entered an Order Setting Bond. This order of the Mississippi Supreme Court provides, among other things, that:

(1) MP&L shall execute an unconditional corporate undertaking to "self-insure" any refunds to its retail customers that may ultimately be required in respect of Grand Gulf 1 costs previously collected by MP&L through the date bondings arrangements are finalized (these amounts accrued through June 10, 1987 having been stated by the Mississippi Supreme Court to approximate $206,376,000, which amount included interest). This undertaking shall include MP&L as a principal and shall be fully and unconditionally co-guaranteed by the corporate undertakings of both MSU and SERI.

(2) In addition, amounts which accrue from and after the Mississippi Supreme Court's approval of the bonding arrangements and during the pendency of the appeal to the United States Supreme Court shall be secured by SERI placing in cash escrow, on a monthly basis, an amount equal to all relevant future revenue collected by MP&L. This shall be specifically accomplishd by SERI depositing on the first of each month an amount sufficient to secure refund of all Grand Gulf 1 revenues to be collected by MP&L during that month.

Therefore, it is proposed that:

A. With regard to past collections:

(1) MP&L will file with the Mississippi Supreme Court a Corporate Undertaking relating to past collections, in the amount of $206,379,000, for the use and benefit of all interested customers of MP&L for the payment of any sums required of MP&L of the amount of the excess collected by MP&L for the period September 20, 1985, through June 30, 1987, should final judicial determination of the Final Order on Rehearing result in a schedule of rates less than what the MSPC allowed in the Final Order on Rehearing, and MP&L is required to refund the amount of the excess collected from its customers for such period.

(2) MSU will file with the Mississippi Supreme Court a Corporate Guarantee of the collection, in full, by MP&L's customers of any such refunds.

(3) SERI will file with the Mississippi Supreme Court a Corporate Gurantee of the payment of such refunds.

B. With regard to future collections:

(1) MP&L will file with the Mississippi Supreme Court a Corporate Undertaking for Future Collections for the use and benefit of all interested customers of MP&L for the payment of any sums required of MP&L of the amount of the excess collected by MP&L after May 31, 1987, should final judicial determination of the Final Order of Rehearing result in a schedule of rates less than what the MPSC allowed in the Final Order on Rehearing, and MP&L is required to refund the amount of the excess collected from its customers for such period.

(2) In support of MP&L's Corporate Undertaking for Future Collections, SERI will also file with the Mississippi Supreme Court a Corporate Undertaking for Future Collections.

(3) SERI and MP&L will also file with the Mississippi Supreme Court a Trust Agreement covering the placing by SERI in trust, on a monthly basis, of Grand Gulf 1 revenues collected and to be collected by MP&L from and after May 31, 1987.

MSU has obtained the consent of its bank lenders under a Credit Agreement dated as of December 31, 1986 to its Corporate Guarantee and requires no other creditor approval relating thereto. Prior to entering into any of the proposed transactions, SERI will obtain any necessary consents of its creditors.

It is stated that following receipt of the Commission's order in this file, the documents and instruments approved herein will be executed and submitted to the Mississippi Supreme Court for approval, as provided in the June 10 order described above. It is further stated that MP&L has been advised by the MPSC, the Mississippi Attorney General and the Mississippi Legal Services Coalition that the forms of such

documents and instruments are acceptable to them.

Louisiana Power & Light Company (70–7416)

Louisiana Power & Light Company ("Louisiana"), 142 Delaronde Street, New Orleans, Louisiana 70174, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed an application pursuant to sections 9(a) and 10 of the Act.

Louisiana has, pursuant to prior Commission authorization, entered into a lease ("Fuel Lease") with Bayou Fuel Company ("Bayou"), a Delaware corporation, dated as of June 1, 1978, under which Louisiana leases from Bayou the nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), which is used to satisfy the fuel requirements of Louisiana's Waterford No. 3 nuclear generating unit ("Waterford No. 3") (HCAR Nos. 20564 and 22553; May 31, 1978 and June 28, 1982, respectively).

Under the terms of the Fuel Lease, Bayou makes payments to suppliers, processors and manufacturers, necessary to carry out the terms of Louisiana's contracts for Nuclear Fuel for Waterford No. 3 or Louisiana makes such payments and is reimbursed by Bayou. The current maximum obligation of Bayou to make payments for Nuclear Fuel is $126,104,000 at any one time outstanding. Bayou has financed these obligations under a Credit Agreement, dated as of June 1, 1978, as amended ("Credit Agreement"), between Bayou and Security Pacific National Bank ("Bank"). The term of the Credit Agreement is currently through August 31, 1987 ("Termination Date").

In order to extend the Termination Date until February 29, 1988 and to amend certain terms of the Credit Agreement, Bayou and the Bank propose to enter into an amended and restated Credit Agreement ("Amended Credit Agreement"). As required by the lease, Louisiana would consent to the amendment to the Credit Agreement, which provides, among other things, that Bayou may issue and sell its commercial paper to or make revolving credit borrowings from the Bank, which together will not exceed, $126,104,000.

The Bank has also received an assignment of the rents and certain other obligations under the Fuel Lease under an Assignment Agreement, dated as of June 1, 1978, as amended, as security for Bayou's obligations under the Credit Agreement. The Bank has also received a security interest in the Nuclear Fuel under a Security Agreement, dated as of June 1, 1978, as amended. Louisiana may terminate the Lease at any time and Bayou may terminate the Lease under certain circumstances.

Mississippi Power & Light Company (70–7419)

Mississippi Power & Light Company ("MP&L"), P.O. Box 1640, Jackson, Mississippi 39215–1640, a subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a declaration pursuant to sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

MP&L proposes to issue and sell pursuant to negotiated public offering(s) or private placement(s) with an institutional investor(s), not to exceed $75 million aggregate principal amount of its first mortgage Bonds in one or more series at one time or from time to time not later than December 31, 1988 ("New Bonds"). The interest rate to be borne by each series of the New Bonds and the price, exclusive of accrued interest, to be paid to MP&L for each series of the New Bonds (not less than 95% nor more than 105% of the principal amount thereof) will be determined at the time of sale of such series of the New Bonds.

Each series of the New Bonds will mature within five to thirty years. One or more series of the New Bonds may include provisions for optional redemption prior to maturity at various percentages of the principal amount and may include various restrictions on optional redemption for a given number of years. In addition, one or more series of New bonds may include provisions for the retirement of all or varying percentages of such series prior to maturity.

MP&L requests an exception from the competitive bidding requirements of Rule 50 pursuant to subparagraph (a)(5) so that MP&L can negotiate the terms of issuance and sale of the New Bonds. MP&L may proceed to negotiate the terms of the New Bonds.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 87–15723 Filed 7–9–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Minority Small Business and Capital Ownership Development; Management and Technical Assistance Application Announcement

Summary: The Small Business Administration, Office of Minority Small Business and Capitol Ownership Development (MSB&COD) announces that it is accepting applications/unsolicited proposals under its 7(j) program to provide management and technical assistance services to eligible small business concerns/individuals who are SBA clients. Services are to be provided to eligible SBA clients residing within the geographical area of the State in which the service provider firm is located. Projects are to start in FY 88, subject to the availability of funds.

The announcement number is MSB–88–003–01.

Funding Instrument: The funding instruments, as defined by the Federal Grants and Cooperative Agreements Act of 1977 (31 U.S.C. 6304/6305) will be cooperative agreements.

Program Description: The SBA provides management and technical assistance services to eligible small businesspersons with the goal of developing socially and economically disadvantaged small businesses in order that they may become competitively viable. In general, management and technical assistance includes, but is not limited to, those services which are provided to eligible businesses in the areas of planning and research, identification and development of new business opportunities, furnishing centralized services with regard to public services and Federal Government programs, business counseling, management training, legal and related services, loan packaging, financial counseling, and marketing assistance.

The announcement for proposals is designed to assist SBA's Office of MSB&COD in its goal of providing management and technical assistance to individuals or enterprises eligible for assistance under sections (7)(i) and 8(a) of the Small Business Act, as amended. These services will be especially geared to small business concerns located in urban and rural areas of high concentration of unemployed or low-income individuals and to 8(a) transitioning firms who have two years or less remaining on their Fixed Program Participation Term (FPPT). Priority will be given to the following types of services:

7(j)(1) through (9)

1. Accounting Services
2. Production, Engineering and Technical Assistance
3. Feasibility Studies, Market Analyses, and Advertising
4. Government Contracts Assistance
5. Specialized Services
6. Construction Management Assistance
7. Financial Counseling
8. Loan Packaging

7(j)(10)

1. Business Plan Assistance
2. Loan Packaging
3. Financial Counseling
4. Surety Bond Assistance
5. Construction Management Assistance
6. Specialized Assistance
7. Computer Programming Services
8. Data Processing Services

Closing Date: Applicants must submit their application/proposal on or before August 10, 1987, 3:00 p.m., local time, at the appropriate Regional Office, U.S. Small Business Administration, in the designated official depository office.

Eligible Applicants: This announcement is a total 100% small business set-aside.

Application Materials: Applications will be forwarded to interested participants upon telephone request, contact Ms. Bernita Kane at (202) 653–5689 or Ms. Abigail Britt at (202) 653–6851 or upon written request to the U.S. Small Business Administration, Office of Minority Small Business and Capital Ownership Development, Office of Private Industry Programs, 1441 L Street, NW., Room 602, Washington, DC 20416. All awards will be announced in the **Federal Register.**

Evaluation and Award Process: All proposals received as a result of this announcement will be evaluated by an SBA Regional Review Panel. The awarding of MSB&COD Cooperative Agreements is discretionary. Generally, projects are supported in order of merit to the extent permitted by available funds.

Disposition of Proposals: Notification of awards will be made by the Grants Management Officer. Organizations whose proposals are unsuccessful will be sent an awards list advising them of the successful awardees. Nothing in this announcement shall be construed as committing MSB&COD to divide available funds among all qualified applicants.

(59.007 Management and Technical Assistance to Disadvantaged Businesspersons)

Dated: July 7, 1987.

James Abdnor,

Administrator.

[FR Doc. 87–15724 Filed 7–9–87; 8:45 am]

BILLING CODE 8025–01–M

VETERANS ADMINISTRATION

Scientific Review and Evaluation Board for Rehabilitation Research and Development; Meeting

In accordance with Public Law 92–463, the Veterans Administration gives notice of a meeting of the Scientific Review and Evaluation Board for Rehabilitation Research and Development. This meeting will convene at the Vista International Hotel, 1400 "M" Street NW., Washington, DC 20005, July 14 through July 17, 1987 beginning at 6:30 p.m. on Tuesday. The purpose of the meeting is to review rehabilitation research and development applications for scientific and technical merit and make recommendations to the Director, Rehabilitation Research and Development Service regarding their funding.

The meeting will be open to the public (to the seating capacity of the room) at the start of the July 14th session for approximately one-two hours to cover administrative matters and to discuss the general status of the program and the administrative details of the review process. During the closed session, the Board will be reviewing research and development applications. This review involves oral comments, discussion of site visits, staff and consultant critiques of research protocols, and similar analytical documents that necessitate the consideration of the personal qualifications, performance and competence of individual research investigators. Disclosure of such information would constitute a clearly unwarranted invasion of personal privacy.

Proprietary data from contractors and private firms will also be presented and this information should not be disclosed in a public session. Premature disclosure of Board recommendations would be likely to significantly frustrate implementation of final proposed actions. Thus, the closing is in accordance with section 552b, subsections (c)(4), (c)(6), and (c)(9)(B), Title 5, United States Code and the determination of the Administrator of Veterans Affairs under section 10(d) of Pub. L. 92–463 as amended by Section 5(c) of Pub. L. 94–409.

Due to the limited seating capacity of the room those who plan to attend the open session should contact Mr. Jon S. Peters, Program Manager, Rehabilitation Research and Development Service, Veterans Administration Central Office, 810 Vermont Avenue NW., Washington, DC 20420 (Phone: (202) 233–5177) at least 5 days before the meeting.

This meeting notice provides for less than 15 days notice. It is not possible in the near future to convene the group of scientists who are planning to attend. The meetings must be held at the scheduled times in order to avoid adverse effects on rehabilitation research for the benefit of disabled veterans.

Dated: July 8, 1987.

Robert W. Schultz,

Associate Deputy Administrator for Public Affairs.

[FR Doc. 87–15846 Filed 7–9–87; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 132
Friday, July 10, 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).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (eastern time) Monday, July 20, 1987.

PLACE: Clarence M. Mitchell, Jr., Conference Room No. 200–C on the 2nd Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Closed to the public.

MATTERS TO BE CONSIDERED:

Closed

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 634–6748 at all times for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Cynthia C. Matthews, Executive Officer at (202) 634–6748.

Dated: July 8, 1987.

Cynthia C. Matthews,

Executive Officer, Executive Secretariat.

This Notice Issued July 8, 1987.

[FR Doc. 87–15809 Filed 7–8–87; 3:17 pm]

BILLING CODE 6570–06–M

POSTAL SERVICE

Notice of Vote To Close Meeting

At its meeting on July 6, 1987, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for August 3, 1987, in Denver, Colorado. The meeting will concern consideration of matters associated with the collective bargaining process.

The meeting is expected to be attended by the following persons: Governors Griesemer, McConnell, Nevin, Pace, Peters, Ryan and Setrakian; Postmaster General Tisch; Deputy Postmaster General Coughlin; Secretary to the Board Harris; and General Counsel Cox.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and § 7.3(c) of Title 39, Code of Federal Regulations, discussion of this matter is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)], because it is likely to disclose information in connection with the negotiation of collective bargaining agreements under Chapter 12 of Title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of Title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly possible Postal Service action. Finally, the Board has determined that the public has an interest in the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (9)(B) of Title 5 and section 410(c)(3) of Title 39, United States Code, and § 7.3 (c) and (i) of Title 39, Code of Federal Regulations.

David F. Harris,

Secretary.

Paul J. Kemp,

Alternate Liaison Officer for the U.S. Postal Service.

[FR Doc. 87–15774 Filed 7–8–87; 12:03 pm]

BILLING CODE 7710–12–M

Corrections

Federal Register
Vol. 52, No. 131
Friday, July 10, 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 AGRICULTURE

Food and Nutrition Service

Child Care Food Program; National Average Payment Rates, Day Care Home Food Service Payment Rates and Administrative Reimbursement Rates for Sponsors of Day Care Homes for the Period July 1, 1987-June 30, 1988

Correction

In notice document 87-15116 beginning on page 25044 in the issue of Thursday, July 2, 1987, make the following corrections:

1. On page 25045, in the first column, in the second complete paragraph, in the first line, "subject" was misspelled.

2. On the same page, in the third column, under the heading "Hawaii", in the sixth line, "99.75" should read "88.75".

3. On page 25046, in the first column, in the first complete paragraph, in the first line, "payment" should read "payments".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51674; FRL 3204-2]

Certain Chemicals Premanufacture Notices

Correction

In notice document 87-11491 beginning on page 18948 in the issue of Wednesday, May 20, 1987, make the following corrections:

1. On page 18948, in the third column, in the first line, "July 26" should read "June 26".

2. On page 18949, in the first column, under **P 87-1029**, in the fifth line, "wheel" was misspelled.

3. On the same page, in the third column, under **P 87-1043**, in the fifth line, "trichlorophenysilane" was misspelled.

4. On the same page, in the same column, under **P 87-1047**, in the fourth line, remove the second bracket after "yl", and in the fifth line, "axo" should read "azo".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87N-0213]

International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; Certain Agonist/Antagonist Drugs; Certain Stimulant/Hallucinogenic Drugs and Certain Nonbarbiturate Sedative Drugs

Correction

In notice document 87-14874 beginning on page 24344 in the issue of Tuesday, June 30, 1987, make the following corrections:

1. On page 24344, in the second column, in the last paragraph, in the first line, "draw" should read "drawn"; in the third line, "is" should be removed; and in the last line, "by" should read "on".

2. On page 14346, in the first column, in the last paragraph, in the second line, the date should read "July 30, 1987".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 627, 628, 629, 630, and 631

Job Training Partnership Act; Implementation of Job Training Partnership Act Amendments of 1986; Technical Corrections

Correction

In proposed rule document 87-14235 beginning on page 23681 in the issue of Wednesday, June 24, 1987, make the following corrections:

1. On page 23681, in the third column, in the first complete paragraph, in the third line, between "more" and "performance-based" insert "substantive rulemaking at a later date, most notably".

§ 631.30 [Corrected]

2. On page 23685, in the first column, in § 631.30(b)(2)(vi), in the third line, "far" should read "farm".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

29 CFR Part 516

Fair Labor Standards Act; Records To Be Kept by Employers

Correction

In the rule document beginning on page 24894 in the issue of Wednesday, July 1, 1987, make the following corrections:

1. On page 24895, in the third columns, in the twenty-ninth line from the bottom, Roman numeral "II" should read Arabic numeral "11".

2. On page 24897, in the first column, in the sixteenth line, "pr" should read "or".

3. On page 24903, in the third column, in the second line from the bottom, the document number should read, "87-14936".

BILLING CODE 1505-01

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 95

[CGD 84-044]

Hazardous Materials Used as Ships' Stores on Board Vessels

Correction

In proposed rule document 87-15400 beginning on page 25409 in the issue of Tuesday, July 7, 1987, make the following correction:

On page 25412, in the third column, in amendatory instruction 16, "§ 95.25-20" should read "§ 95.15-20".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE-143-86]

Income Tax; Continuation Coverage Requirements of Group Health Plans

Correction

In proposed rule document 87–13366 beginning on page 22716 in the issue of Monday, June 15, 1987, make the following corrections:

§ 1.162-26 [Corrected]

1. On page 22718, in § 1.162-26, in the second column, in *Answer 1*, in the 11th line, the closed quotes after "COBRA" should be removed.

2. On page 22720, in the first column, in the same section, in *Answer 4, Example 2*, in the 13th line, "coverage" was misspelled, and in the 16th line, after "1988", add "and".

3. On page 22721, in the same section, in the second column, in *Question 9*, in the first line, "small employer" should read "small-employer".

4. On page 22724, in the same section, in the third column, in *Answer 17, Example 5*, in the eighth line, "of" should read "or".

5. On page 22725, in the same section, in the first column, in *Answer 18*, paragraph (b), in the 17th line, "commonlaw" should read "common-law".

6. On page 22730, in the same section, in the second column, in *Answer 39*, in the third line from the bottom, "proving" should read "providing".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Grants for Residency Training in the General Practice of Dentistry

Correction

In rule document 87–11390 beginning on page 19144 in the issue of Thursday, May 21, 1987, make the following correction:

On page 19145, in the second column, following amendatory instruction 2, the subpart heading for "Subpart L" should read:

"Subpart L—Grants for Residency Training and Advanced Education in the General Practice of Dentistry".

BILLING CODE 1505-01-D

federal register

Friday
July 10, 1987

Part II

Department of Energy

Office of Fossil Energy

Invitation for Public Views and Comments on the Conduct of the Innovative Clean Coal Technology Solicitation; Notice of Meetings

DEPARTMENT OF ENERGY

Office of Fossil Energy

Invitation for Public Views and Comments on the Conduct of the Innovative Clean Coal Technology Solicitation; Meetings

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of meetings to invite public views and comments on the conduct of the Innovative Clean Coal Technology solicitation.

Introduction

On March 18, 1987, President Reagan announced his decision to seek $2.5 billion to fund the demonstration of innovative clean coal technologies (ICCT) over a five-year period, provided that appropriate projects are proposed that meet, among other things, cost-sharing requirements similar to those provided in the February 17, 1986, Clean Coal Technology (CCT) solicitation. Consistent with this decision, the Administration has amended the FY 1988 budget request and supporting outyear estimates for the CCT Program, such that the Administration is requesting the remaining $350 million from the Clean Coal Technology Reserve in FY 1988 and advanced appropriations of $500 million each year for Fiscal Years 1989 through 1992 for demonstration projects. The cost-sharing requirements would ensure that industry will invest an equal or greater amount over this period to stimulate deployment of ICCT.

The Secretary of Energy announced, on March 23, 1987, that the 1988 and 1989 funding ($350 million and $500 million) would be combined into a single $850 million solicitation to be issued, subject to the provision of appropriations, prior to the end of calendar year 1987. It is this proposed $850 million ICCT solicitation that is the subject of this Notice.

In addition to the announcement of the intention to seek funding, President Reagan also stated that he is directing the Secretary of Energy to establish an advisory panel, known as the Innovative Control Technology Advisory Panel (ICTAP), to "advise the Secretary of Energy on funding and selection of innovative control technologies projects. Projects will be selected, as fully as practicable, using the criteria recommended by the [Special Envoys on Acid Rain, Drew Lewis of the United States, and William Davis of Canada]."

Purpose of the Meetings

In general, the goal of the anticipated ICCT solicitation will be to implement the President's decision to provide financial assistance for the demonstration of clean coal technologies that are applicable to existing coal burning facilities, and that are consistent with the recommendations of the Special Envoys on Acid Rain.

The President's initiative will yield significant benefits to the United States, not only in terms of cleaner air and the increased use of coal, our most abundant energy resource, but also by:

- Greatly enhancing U.S. technological leadership and international competitiveness,
- Benefitting both eastern and western states by making available more cost-effective, fuel-flexible power systems capable of using the full spectrum of U.S. coals,
- Improving our position in international trade by providing advanced technology that would make American coal more attractive to foreign markets, and by reducing the cost of producing energy-intensive U.S. goods,
- Helping to ensure that the U.S. enters the 21st Century with a broad array of sophisticated, cleaner, and more economical coal-based energy technologies, rather than being limited to the more costly, less effective, environmental control options available today, and
- Enhancing the long-term energy security of the United States.

However, the Department of Energy (DOE) is interested in exploring alternatives that may be available with regard to how the ICCT solicitation is structured in general, and in terms of how several specific issues and concerns, described below, are resolved. As noted above, ICTAP will be an important source of guidance for the ICCT solicitation. ICTAP will represent a broad spectrum of interests, including various Federal agencies, the Government of Canada, States that produce coal and that use coal, electric utilities, industrial boiler owners, trade associations, and public interest groups.

The purpose of the meetings is to provide a conduit from the public, both to DOE and to ICTAP, which will be important recipients of the results of the public meetings. Accordingly, DOE is issuing this Notice in order to invite the public to attend any one of several meetings, and to share with DOE their views, comments, and recommendations with regard to the forthcoming solicitation.

Proposed Outline of the Anticipated Solicitation

In order to establish a context or framework for reference in which to consider the issues and concerns that are identified in the following section, it is useful to outline generally the structure of the anticipated ICCT solicitation. DOE stresses, however, that the funds for this endeavor have not yet been appropriated, that congressional guidance on the nature or conduct of this solicitation remains the subject of active, ongoing debate, and that nothing in this Notice should be considered as definite, final, or binding on DOE, with regard to either the nature and/or content of the solicitation and whether any solicitation is issued at all at any future date. The public is further advised that DOE cannot reimburse those who attend the public meetings or otherwise submit views to DOE for any expenses that they may incur in responding to this Notice.

DOE anticipates that the ICCT solicitation will be for the purpose of providing financial assistance awards and, accordingly, would be governed by DOE's Assistance Regulations as provided at 10 CFR Part 600. The Regulations provide two types of instruments that could be employed for financial assistance awards, grants and cooperative agreements. DOE adopted the cooperative agreement instrument for the February 17, 1986, Program Opportunity Notice (PON), and cooperative agreements are being considered for the ICCT solicitation as well. Cooperative agreements are employed when substantial involvement is anticipated between the government and the proposer during performance of the contemplated activity. These agreements are intended to ensure that federal funds are expended only on allowable project costs and that patent rights, licensing arrangements, and other project details are properly executed in a manner that serves the best interests of both the government and the project sponsors.

Project sponsors would be required to share the costs of the projects, such that DOE would not finance more than 50 percent of the total project cost as of the date of award, and the solicitation may require, as was the case previously, that the cost-sharing by the offeror be at least 50 percent in each of the project phases (usually design, construction, and operation). Also, costs probably would be shared between DOE and the offeror on an "as expended," dollar-for-dollar, basis.

DOE also believes that a provision for repayment by the project sponsors, for up to the government's share of the financial assistance, remains appropriate. In the event that the demonstration project or technology

becomes a commercial success, repayment provides a fair return to the taxpayer, who has shared the risks of the original project. However, DOE recognizes that repayment provisions must be sufficiently flexible to not discourage prospective participants from responding to the solicitation. Additionally, DOE is aware that provisions for repayment should be sufficiently flexible to accommodate the constraints of different market sectors, and should consider, for example, the regulated nature of the business environment for electric utilities. In the previous PON, offerors were advised that recovery of the government's investment would "be derived from the sum of the following potential revenue sources: (1) Operations of the demonstration project beyond the operating phase of the cooperative agreement. The net revenue from the operation (after operating costs) will be shared in proportion to the overall cost-share for the project, and (2) the commercial sale, lease, manufacture, licensing, or use of the technology demonstrated under the CCT Program."

The solicitation also may include Preliminary Evaluation requirements, and provide that failure to meet any one, or more than one, of these requirements would result in rejection of the proposal and the cessation of its consideration for financial assistance. Preliminary Evaluation requirements in the past have included, among other things, stipulations that the offeror must show that the proposed project or facility will be located in the United States, that the project will be designed for, and operated with, coal(s) from United States mines, that the technology will comply with the Clean Air Act, that the proposer either owns and will make available the demonstration site, or that the proposer has been granted the right to use the site for the duration of the proposed project, and that the cost-sharing requirements will be satisfied.

Once a determination is made that a proposal meets the Preliminary Evaluation requirements, it would then enter the comprehensive evaluation phase, where the proposal would be evaluated in accordance with the criteria stated in the solicitation. The solicitation would explicitly state the different criteria, and appropriately describe the relative weights assigned to the technical, business and management, and cost aspects of the proposal. Consistent and compatible with these criteria, the solicitation would provide guidance and instructions to prospective offerors on how to prepare and submit the proposal.

Evaluation criteria will be developed, as fully as practicable, using the recommendations contained in the Joint Report of the Special Envoys on Acid Rain and taking into account the advice and recommendations of ICTAP to the Secretary of Energy. DOE will consider the following factors, drawn from the Envoys' Report, in developing specific evaluation criteria:

(a) The extent to which the proposed technology will expand the menu of air pollution control options available to existing coal-fired power plants, and

(b) The extent to which the demonstration project and/or the commercialized version of the technology could contribute to reductions in transboundary air pollution, especially (i) the efficiency of sulfur dioxide and/or oxides of nitrogen emissions reductions, (ii) the cost-effectiveness of the technology in terms of dollars per ton of sulfur dioxide and/or oxides of nitrogen emissions reduced, and (iii) those retrofit (including repowering) technologies applicable to the largest number of existing sources that, because of their size, location, and present fuel quality, contribute to transboundary air pollution.

DOE believes it is also important in developing criteria not to exclude consideration of promising control options that may be demonstrated outside the eastern region of the United States. As long as such projects demonstrate a relevant technology, i.e., a technology applicable to existing, high-sulfur coal burning plants, they should be eligible candidates for ICCT financial assistance

DOE also may consider, as additional factors to be used in developing criteria, the degree to which the technology reduces other forms of pollution from coal combustion, the potential for the technology to reduce the cost of producing additional electric power (thereby stimulating the potential for deployment of the technology), and the extent to which a state that would host an ICCT project has adopted regulatory policies that would stimulate the commercial replication and deployment of innovative clean coal technologies.

The final consideration with regard to the selection of a proposal is the application, by the DOE Source Selection Official, of Program Policy Factors (PPF). These are factors that have been deemed as relevant and essential to the process of choosing which of the proposals received will, taken together, best achieve the program objectives. In the 1986 PON, the PPF were: "(a) The desirability of selecting for support a group of projects that represent a diversity of methods, technical approaches, or applications, (b) the desirability of selecting for support a group of projects that would ensure that a broad cross section of the U.S. coal resource base is utilized, both now and in the future, and (c) the desirability of selecting for support a group of projects that represent a balance between the goals of expanding the use of coal and minimizing environmental impacts."

Subjects of Particular Interest

DOE wishes to receive public views, comments, and recommendations on any and all aspects of the forthcoming anticipated ICCT solicitation, in the interest of assisting DOE in the preparation of a solicitation that optimally balances the needs of the prospective proposal offerors and the goals and objectives of the CCT Program. In that regard, there are a number of specific issues and concerns that DOE is particularly interested in receiving public comments on, as listed and described below. Please note, however, that this is not an all-inclusive list of subjects of interest, and new or different topics may be introduced or added at the public meetings themselves, either by the public attendees or by DOE.

1. Qualification Criteria and Preliminary Evaluation Requirements

The issue here is whether more stringent preliminary evaluation requirements and qualification criteria would further the goals of the ICCT solicitation by discouraging the submission of applications to fund projects that, under the stated qualification criteria, are deemed to be less than fully prepared and ready to proceed toward project implementation if award were made. DOE considers that it would be to the advantage of both DOE and the public to screen out and remove from further consideration such proposals early in the competition. More stringent qualification criteria could facilitate the evaluation process by limiting the number of proposals that DOE would undertake to evaluate.

For example, should the solicitation contain the stringent requirement that, "If a teaming arrangement is proposed, the offeror must provide a notarized copy of the teaming agreement, including all documents that legally establish the entity," or the less demanding stipulation that, "If a teaming arrangement is proposed, the offeror must provide a letter of intent or executed teaming agreement from all

parties sufficiently binding to ensure the formation of the proposed legal entity?"

2. Proposal Evaluation Criteria and Program Policy Factors

Ideally, evaluation criteria should ensure that submitters provide information in their proposals that is adequate for the purposes of a complete and accurate evaluation of the merits of the proposed project, while simultaneously minimizing the burden on the submitters by refraining from requesting unnecessary or redundant information or documentation. Evaluation criteria for the selection of projects for awards of financial assistance might include, among other things, the projected economic and technical competitiveness of the proposed technology, market penetration potential of the technology, and applicability of the technology to high-sulfur content coal-fired boilers. Additionally, as a PPF, consideration might be given to the extent to which a state has adopted regulatory incentives for clean coal projects.

3. Proposal Preparation Time

In the case of the 1986 PON, offerors were afforded sixty days from the date of issuance of the solicitation to submit their proposals. The question here is whether sixty days is a reasonable preparation interval, or whether an interval of say, ninety days, would yield a better selection of promising proposals. However, a longer preparation interval could delay the date of award and, ultimately, commencement of projects.

4. National Environmental Policy Act (NEPA) Strategy

DOE is considering forms of NEPA strategy that build on the experience of the 1986 PON, and is interested in public views of how that strategy may be improved. The NEPA strategy in the past included both programmatic and project-specific environmental impact considerations, both during and subsequent to the selection process. Offerors were requested to submit both programmatic and project-specific environmental data as discrete parts of their proposals, and DOE then independently evaluated these data and analyses, and also developed certain supplemental information deemed necessary for reasoned decision making. The key elements of that NEPA strategy included a pre-selection programmatic environmental impact analysis, which was provided to the Source Selection Official, a pre-selection project-specific environmental review, which also was provided to the Source Selection Official, and the documentation of the consideration given to environmental factors in a publicly available selection statement.

Finally, upon award of financial assistance, offerors were required to submit additional, detailed, environmental information which was used as the basis for the preparation by DOE of site-specific NEPA documents for each selected project. These documents were to be prepared, considered, and published in advance of go/no-go decisions to proceed beyond preliminary design. In addition to the above, each cooperative agreement requires an environmental monitoring plan to ensure that significant site- and technology-specific environmental data would be collected and disseminated.

5. Repayment of the Government's Cost-Share

DOE is interested in obtaining public comments on possible approaches to repayment of the government's cost-share, including terms that are mutually agreeable to both the government and to the private sponsor.

Meetings, Locations, and Dates

There will be four public meetings, at the locations and dates listed below:

1. Ramada Hotel Classic, 6815 Menaul Boulevard NE., Albuquerque, New Mexico (Tel 505–881–0000), at 9:00 a.m., on Thursday, August 13, 1987.

2. Holiday Inn Riverfront, 4th and Pine Streets, St. Louis, Missouri (Tel. 314 621–8200), at 9:00 a.m., on Thursday, September 3, 1987.

3. Pittsburgh Hilton Hotel, Gateway Center, Pittsburgh, Pennsylvania (Tel. 412–391–4600), at 9:00 a.m., on Thursday, September 10, 1987.

4. Sheraton Washington Hotel, 2660 Woodley Road (at Connecticut Ave.), Washington, DC (Tel. 202–328–2000), at 9:00 a.m., on Tuesday, September 22, 1987.

Format of the Meetings

All four of the meetings will follow the same format, as described below. Each meeting will commence with a brief plenary session, which will include introductory remarks and program overviews by DOE officials. At about mid-morning, there will be a short recess, and the audience will be asked to reconvene in several Discussion Workshops, the number of which will be determined at a later date, based upon the expected level of attendance by the public. The format of concurrent Workshops is intended to facilitate animated discussion in small groups and to best use the time available. Attendees are requested to limit their representation to a single Workshop. Each Workshop will contain a panel of DOE officials, and they will all be similar in form and substance.

There will be no further formal presentations or statements in the Workshops. Instead, attendees will be asked to engage in informal, unstructured, discussion with the panelists on the subjects described earlier in this Notice, and on such other subjects as may be introduced by members of the audience or by the panelists.

Finally, attendees will meet in a closing plenary session. Panel chairpeople will review and summarize the highlights and recommendations of each of their Workshops, and the meeting will end.

Expectations are that the meetings will not adjourn until late in the afternoon, and attendees might wish to take this into account when making travel arrangements.

Public Participation

Individuals may attend the meetings without notification in advance to DOE, and there is no registration fee or other charge for attendance. However, attendees should note that all travel and accommodations arrangements are the responsibility of the individuals, and that DOE will provide no meals or other refreshments. However, there are specific requirements for attendees who wish to submit written comments, as described below:

Written Comments:

Written comments should be submitted (in triplicate if possible) to arrive at the address noted below not later than July 29, 1987, in order to ensure their consideration by DOE in planning the agendas for the meetings. Also, individuals who are unable to attend the public meetings may submit written comments, which will be considered in developing the ICCT solicitation.

Address for Comments:

All written comments should be submitted to: Mr. Jack S. Siegel, Deputy Assistant Secretary for Coal Technology, Fossil Energy, FE–20, GTN, U.S. Department of Energy, Washington, DC 20545, (301) 353–3991.

Issued in Washington, DC, July 2, 1987.

J. Allen Wampler,

Assistant Secretary, Fossil Energy.

[FR Doc. 87–15632 Filed 7–9–87; 8:45 am]

BILLING CODE 6450–01–M

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Friday, July 10, 1987

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Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

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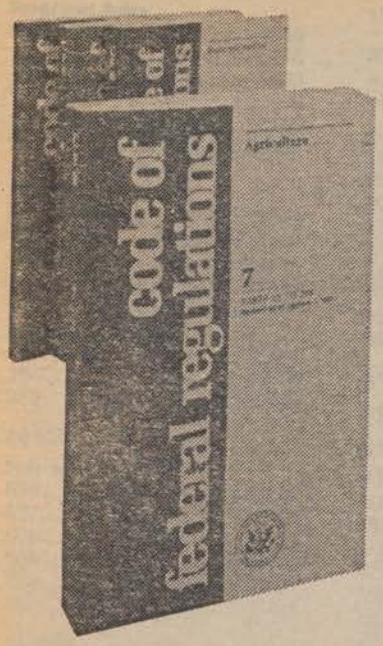

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