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Presidential Documents

Title 3—

The President

Proclamation 5713 of October 1, 1987

National Poison Prevention Week, 1988

By the President of the United States of America

A Proclamation

In the 27 years our Nation has observed National Poison Prevention Week, thousands of children under age five have been saved from accidental poisonings thanks to greater public awareness of poison prevention and the use of child-resistant bottle and container closures. This success story is due to the combined efforts of consumers, health professionals, and government and industry. All these groups are represented on the Poison Prevention Week Council. Through the annual observance of National Poison Prevention Week, parents have been urged to keep household chemicals and medicines out of the reach of young children. Poison control centers have helped save lives by offering emergency advice to consumers who call when a poisoning occurs. The United States Consumer Product Safety Commission (CPSC) has required that potentially hazardous household chemicals and medicines be packaged with effective child-resistant closures.

Data recently compiled by CPSC show that the number of child poisonings has decreased since child-resistant packaging began to be used. In 1972, when the first drugs were required to have child-resistant packaging, 96 children died from accidental drug ingestion. By 1974, the first year in which child-resistant packaging was required for most prescription drugs, there were 57 fatalities. In subsequent years, other products were required to have child-resistant packaging, and the number of deaths due to ingestion of these drugs continued to decline. In 1984, the last full year for which we have received information on drug ingestion fatalities, there were 31 deaths.

Child-resistant packaging has saved many lives, but there is more to do. We must remind new parents and grandparents of the need to keep medicines and household chemicals out of the reach of children. Underlying our poison prevention program is the assumption that virtually all childhood poisonings are preventable.

To encourage the American people to learn more about the dangers of accidental poisonings and to take more preventive measures, the Congress, by a joint resolution approved September 26, 1961 (75 Stat. 681), authorized and requested the President to issue a proclamation designating the third week of March of each year as "National Poison Prevention Week."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby designate the week beginning March 20, 1988, as National Poison Prevention Week. I call upon all Americans to observe this week by participating in appropriate ceremonies and events and by learning how to prevent childhood poisonings.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, 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. 87-23159
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Presidential Documents

Proclamation 5714 of October 1, 1987

National Medical Research Day, 1987

By the President of the United States of America

A Proclamation

Once, childhood diseases such as diphtheria, polio, and tetanus claimed the lives of thousands of American youngsters each year. Now, vaccines developed through biomedical research have virtually eliminated these killers from the United States. In addition to their contributions to the creation of these and many other vaccines, U.S. medical researchers have designed new drugs and surgical techniques and identified environmental and life-style factors that lead to illness. All of these advances have helped to bring American's death rate to an all-time low and its life expectancy rates to all-time highs.

America is an acknowledged world leader in promoting health and preventing disease and disability. Research conducted in this country has contributed enormously to the worldwide control of epidemic diseases such as cholera, smallpox, yellow fever, and bubonic plague. The common goal of better health for all has helped to foster a productive research partnership among government, academia, industry, and voluntary organizations.

America's preeminence in biomedical and behavioral medical research is greatly encouraged by more than a century of continuing commitment by the Government of the United States. For example, this year marks the 100th anniversary of the National Institutes of Health, our Nation's largest biomedical research agency. The returns from the cooperative efforts of the Federal government and the private sector in medical research—in terms of reduced illness and improved individual productivity for many Americans—are immense. More than 90 Americans have been rewarded with international recognition in the form of the award of Nobel Prizes for work in physiology, medicine, and chemistry.

Today, America's medical researchers are studying the basic workings of cells and organisms in ever finer detail. Someday, these inquiries into the fundamental aspects of life may unravel the mysteries of cancer, AIDS, Alzheimer's disease, heart and lung diseases, mental illnesses, and many other diseases that claim or severely impair the lives of Americans. To fulfill the promise of current investigations and to ensure that the caliber of American medical research remains high, it is imperative that the United States continue to foster the training of the scientists of the future.

We all acknowledge with pride the accomplishments of America's medical researchers and look to them for continued progress in relieving human suffering. In recognition of the many successes of the American medical research enterprise, the Congress, by Senate Joint Resolution 142, has designated October 1, 1987, as "National Medical Research Day" and has authorized and requested the President to issue a proclamation in observance of this occasion.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim October 1, 1987, as National Medical Research Day, and I call upon the people of the United States and all Federal, State, and local government officials to observe the day with appropriate events and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, 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. 87-23201
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Presidential Documents

Proclamation 5715 of October 1, 1987

General Pulaski Memorial Day, 1987

By the President of the United States of America

A Proclamation

The American people proudly and gratefully observe every October 11 in memory of General Casimir Pulaski, because on that date in 1779 this young Polish count and cavalry officer, wounded two days before while leading a charge during the siege of Savannah, gave his life for our country.

Before casting his lot with America, Casimir Pulaski had fought bravely against tyranny and foreign domination in his beloved Poland and had been forced into exile. He and other Polish freedom fighters well understood that humanity's battle for liberty and self-government is indivisible around the world; with the immortal cry, "For Your Freedom and Ours," they went forth to many nations in support of freedom, justice, independence, and individual rights. These ideals are forever part of Poland's heritage; they are dear to the Polish people, and this devotion continues to inspire America and the rest of the world.

The freedoms for which General Pulaski fought and died—the freedoms he helped America win—have not yet been realized in many parts of the globe. The United States of America will always champion religious, political and economic liberty, tolerance, and human rights around the world. Wherever mankind's fight for freedom continues, there stands the spirit of Pulaski and there stands the hope, the commitment, and the help of the United States—"For Your Freedom and Ours."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Sunday, October 11, 1987, as General Pulaski Memorial Day, and I direct the appropriate government officials to display the flag of the United States on all government buildings on that day. In addition, I encourage the people of the United States to commemorate this occasion as appropriate throughout our land.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, 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. 87-23202
Filed 10-2-87; 3:33 pm]
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Presidential Documents

Proclamation 5716 of October 1, 1987

Columbus Day, 1987

By the President of the United States of America

A Proclamation

Every October the people of the United States celebrate the day nearly 500 autumns ago when Christopher Columbus and the crews of the *Nina*, the *Pinta*, and the *Santa Maria* found a New World. That world is our Western Hemisphere, and we in the United States trace the history and development of our country and our culture back to Columbus and his daring exploration, his initiative, his faith, and his courage.

Columbus continues to inspire the United States and the rest of the world for almost half a thousand years because of his great understanding and vision and because of his single-minded determination to let no disappointment, ridicule, or risk keep him from a goal he knew to be sensible, feasible, and of great promise. He viewed the unknown as an opportunity, not as a danger.

The Admiral of the Ocean Seas is remembered as well for challenging the horizons of his time and place, for his spirit of reaching beyond the obvious, for defying the pessimists and expanding the frontiers of knowledge. That spirit animated those who followed him to the New World through the centuries and brought untold energy, boldness, and ingenuity with them. We Americans are risk-takers; like Columbus, we have a vision of the world as it can be, and of the future as an opportunity and a challenge.

Italian Americans have special reason to celebrate Columbus Day with great pride. Columbus was the first of many Italian travelers who have made contributions to the New World. Columbus is one of many links binding the United States and Italy in a special relationship.

This tribute also has special meaning for Americans of Spanish descent. Without Spanish support, Columbus's voyage of discovery would not have been possible. Spain's contribution to the New World and to its cultural and economic heritage went on to be even larger, as the recent visit by Their Majesties King Juan Carlos and Queen Sofia of Spain to the American Southwest reminded us.

The year 1992 will be the 500th anniversary of Columbus's first voyage to the Americas. The Christopher Columbus Quincentenary Jubilee Commission, a distinguished group of Americans aided by representatives from Spain and Italy, prepared a report that I transmitted to the Congress in September of this year, making recommendations for our Nation's observance of the Quincentenary, including themes that embody the broad significance of this anniversary and suggestions for Quincentenary programs that will extend to communities, organizations, and institutions around the United States.

In tribute to Christopher Columbus, the Congress of the United States, by joint resolution approved April 30, 1934 (48 Stat. 657), as modified by the Act of June 28, 1968 (82 Stat. 250), has requested the President to proclaim the second Monday in October of each year as "Columbus Day."

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Monday, October 12, 1987, as Columbus Day. I invite the people of this Nation to observe that day with appropriate ceremonies in honor of this great explorer. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, 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. 87-23203
Filed 10-2-87; 3:34 pmn]
Billing code 3195-01-M

Presidential Documents

Proclamation 5717 of October 1, 1987

United Nations Day, 1987

By the President of the United States of America

A Proclamation

United Nations Day is an opportunity for us to reemphasize the principles upon which the United Nations was founded. The framers of the United Nations Charter envisioned a world where nations live together in freedom, justice, and peace, a world with universal and reciprocal respect for human rights and human dignity.

The United Nations General Assembly took a historic first step last year by adopting reforms aimed at strengthening the organization's effectiveness and efficiency. The ideals of the United Nations are important to the United States. We are committed to working closely with other member states and with the Secretary General to see that the reforms are faithfully implemented and to secure the organization's future.

We are pleased that reform efforts are extending to the specialized and technical agencies of the United Nations. These agencies are not well-known, but do affect us directly and on a daily basis. For instance, the Weather Watch of the World Meteorological Organization helps us know when and where storms will hit American cities. The International Maritime Organization and International Civil Aviation Organization work for safety on the seas and in the skies for American travelers. The Food and Agricultural Organization saves U.S. farmers, foresters, and fishermen countless dollars in damage every year. The International Atomic Energy Agency helps promote international cooperation and safeguards regarding nuclear technology, and the World Health Organization coordinates global efforts against AIDS.

One of the youngest specialized agencies, the International Fund for Agricultural Development (IFAD), was established to mobilize financial resources and make them available for agricultural projects specifically designed to improve food production systems in the poorest food-deficient regions of the world. In just 10 years, IFAD has financed more than 200 projects in developing countries that, when fully implemented, will boost food production by more than 22 million tons a year.

Our world—every nation, every people, every individual—can know the blessings of peace and see the light of freedom and justice in the future if we have the courage to build on the hope of the past—the hope upon which the United Nations was built.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Saturday, October 24, 1987, as United Nations Day. I urge all Americans to acquaint themselves with the activities and accomplishments of the United Nations. I have appointed J. Willard Marriott, Jr., to serve as 1987 United States Chairman for United Nations Day, and I welcome the role of the United Nations Association of the United States of America in working with him to celebrate this special day.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of October, 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. 87-23204
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Presidential Documents

Proclamation 5718 of October 2, 1987

Implementation of an Orderly Marketing Agreement on Ammonium Paratungstate and Tungstic Acid

By the President of the United States of America

A Proclamation

1. On June 5, 1987, the United States International Trade Commission (USITC) reported to the President the results of its investigation under section 406 of the Trade Act of 1974 (19 U.S.C. 2436) (the Trade Act) with respect to imports from the People's Republic of China (the PRC) of ammonium paratungstate (APT) and tungstic acid provided for in items 417.40 and 416.40, respectively, of the Tariff Schedules of the United States (TSUS) (19 U.S.C. 1202). The USITC determined that market disruption within the meaning of section 406 of the Trade Act exists with respect to imports from the PRC of APT and tungstic acid. To remedy this market disruption, the USITC recommended that, for the next 5 years, the combined volume of imports of APT and tungstic acid from the PRC be limited to the larger of 1.116 million pounds of tungsten content per year or 7.5 percent of U.S. consumption.

2. On August 5, 1987, pursuant to sections 406, 202, and 203 of the Act (19 U.S.C. 2436, 2252, and 2253), and after taking into account the considerations specified in section 202(c) of the Trade Act (19 U.S.C. 2252(c)), I determined to provide import relief for the domestic industry in the form of a negotiated orderly marketing agreement. To this end, I directed the United States Trade Representative (the USTR) to negotiate and conclude an orderly marketing agreement with the PRC and to report the results of such negotiations to me within 50 days.

3. Section 406(b)(2) of the Trade Act (19 U.S.C. 2436(b)(2)) requires that if import relief consists of, or includes, an orderly marketing agreement, then such agreement shall be entered into within 60 days after a presidential determination to provide relief.

4. Pursuant to the authority vested in the President by the Constitution and the statutes of the United States, including section 203(a)(4) of the Trade Act (19 U.S.C. 2253(a)(4)), an agreement for orderly trade was signed on September 28, 1987, between the Government of the United States of America and the Government of the People's Republic of China limiting the export from the PRC, and the import into the United States, of APT and tungstic acid provided for in items 417.40 and 416.40, respectively, of the TSUS.

5. Pursuant to section 203(k)(1) of the Trade Act (19 U.S.C. 2253(k)(1)), I have considered the relation of such action to the international obligations of the United States. Since February 1, 1980, the United States and the PRC have had in effect a bilateral trade agreement under which I have determined, pursuant to section 405 of the Trade Act (19 U.S.C. 2435), a satisfactory balance of concessions has been maintained during the life of such agreement, and for which I reconfirm that actual or foreseeable reductions in U.S. tariffs and nontariff barriers to trade resulting from multilateral negotiations are, and continuously have been, satisfactorily reciprocated by the PRC. The present agreement for orderly trade is within the parameters of the safeguard measures envisioned by the bilateral trade agreement.

6. In accordance with section 203(d)(2) of the Trade Act (19 U.S.C. 2253(d)(2)), I have determined that the level of import relief hereinafter proclaimed permits the importation into the United States of a quantity or value of articles that is not less than the average annual quantity or value of such articles imported into the United States from the PRC in the 1982–1984 period, which I have determined to be the most recent representative period for imports of such articles.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, acting under the authority vested in me by the Constitution and the statutes of the United States, including sections 203, 406, and 604 of the Trade Act (19 U.S.C. 2253, 2436, and 2483), section 332 of the Tariff Act of 1930, and section 301 of title 3, United States Code, do proclaim that—

(1) An orderly marketing agreement was entered into on September 28, 1987, between the Government of the United States of America and the Government of the People's Republic of China, with respect to trade in APT and tungstic acid, effective October 1, 1987. The agreement for orderly trade is to be implemented according to its terms and as directed in this Proclamation, including the Annex thereto.

(2) Subpart A, part 2 of the Appendix to the TSUS is modified as set forth in the Annex of this Proclamation.

(3) The President's authority under section 203(e)(3) of the Trade Act (19 U.S.C. 2253(e)(3)) to determine that the agreement is no longer effective is hereby delegated to the USTR. In the event of such a determination, the USTR shall prepare such **Federal Register** notice as may be appropriate to implement import relief authorized by section 203(e)(3) of the Trade Act.

(4) The USTR shall take such actions and perform such functions for the United States as may be necessary concerning the administration, implementation, modification, amendment or termination of the agreement described in paragraph (1) of this Proclamation, and any action that may be subsequently required to implement paragraph (3) of this Proclamation. In carrying out his responsibilities under this paragraph, the USTR is authorized to direct and delegate to appropriate officials or agencies of the United States, authority to perform any functions necessary for the administration and implementation of the agreement, or in the event he determines the agreement to be no longer effective, such further action as he deems necessary and appropriate consistent with this Proclamation. The USTR is authorized to make any changes in part 2 of the Appendix to the TSUS that may be necessary to carry out the agreement or such other action as may be required should he determine the agreement to be no longer effective. Any such changes in the agreement shall be effective after their publication in the **Federal Register.**

(5) The U.S. Customs Service shall take such actions as the USTR shall determine are necessary to carry out the agreement described in paragraph (1) of this Proclamation, or to implement any import relief implemented pursuant to paragraphs (3) and (4) of this Proclamation, or any modification thereof, with respect to the entry, or withdrawal from warehouse for consumption, into the United States of products covered by such agreement or by such other import relief.

(6) The U.S. Customs Service shall collect and assemble such data as are necessary to monitor compliance with the agreement. Such data shall include import statistics with respect to tungsten oxide, provided for in item 422.42, part 2C, schedule 4 of the TSUSA, as well as data for APT and tungstic acid.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of October, 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 87-23205
filed 10-2-87; 3:36 pm]
Billing code 3195-01-M

ANNEX

Subpart A, part 2 of the Appendix to the Tariff Schedules of the United States (19 U.S.C. 1202) is modified—

(a0 by adding in numerical sequence the following new headnote 11:

"11. *Quantitative limitations on certain tungsten articles.*—The provisions of this headnote apply to items 926.30 through 926.34, inclusive, of this subpart. The limitations imposed are in addition to the duties provided for the restrained articles in schedule 4, part 2B and part 2C, respectively, or in schedule 8, where applicable. The quantitative limitations shall include imports entered, or withdrawn from warehouse for consumption, informal entries, temporary imports under bond, and imports under schedule 8 of the TSUS.

(a) *Definitions.*—For purposes of this subpart—

(i) the term "tungsten articles" means ammonium paratungstate provided for in item 417.40 in schedule 4, part 2C and tungstic acid provided for in item 416.40, schedule 4, part 2B;

(b) *Export certificate.*—Effective January 1, 1988, none of the tungsten articles provided for herein that are exported from the People's Republic of China (the PRC) shall be entered, or withdrawn from warehouse for consumption, unless such tungsten articles are accompanied by a validated export certificate issued by the competent authority of the Government of the People's Republic of China;

(c) *Carryover.*—Whenever the specified limit of imports has not be entered during a period, an amount not to exceed 5 percent (except that the United States Trade Representative may by prior determination permit a carryover of greater than 5 percent) of the limit specified in the period in which the shortfall occurred may be entered in the subsequent period.

(d) *Exceeding restraint levels.*—The USTR may by **Federal Register** notice authorize an increase in the specified limits of imports by not more than 10 percent during any period, except that the USTR may by prior determination permit an increase of greater than 10 percent. If a specified limit of imports is exceeded during a period, there shall be a downward adjustment of the specified limit for the next period in the amount the preceding specified limit was exceeded. To the extent that imports of the tungsten articles provided for herein exceed 1.7 million pounds tungsten content for calendar year 1987, the specified limits for subsequent periods will be reduced according to the following schedule: the 1988 calendar year specified limit shall be reduced by 50 percent of the excess; the specified limit of 1989 shall each be reduced by 30 percent of the excess; and the specified limit of 1990 shall be reduced by 20 percent of the excess.

(e) *United States International Trade Commission (USITC) surveys.*—The USITC shall conduct annual surveys (pursuant to section 332 of the Tariff Act of 1930) to obtain data on ammonium paratungstate, tungstic acid and tungsten oxide (provided for in item 422.42, part 2C, schedule 4 of the TSUSA) from the producers in the United States by calendar quarter on shipments, profits, capacity and capacity utilization, and annual data on capital expenditures and research and development expenditures; and to obtain data on such products from importers by calendar quarter on prices, orders, and inventories. The initial survey shall cover calendar year 1987 and shall be published by March 31, 1988, and the results of subsequent annual surveys shall be published on March 31 of each year thereafter as long as the agreement is in effect.

(f) *Administration of import limitations.*—Imports accounting for no more than 65 percent of each annual specified limit may be entered in any two consecutive quarters in that year unless authorized by a determination of the USTR."

(b) by inserting in numerical sequence the following new provisions:

"Item	Articles	Specified Limit (in million pounds tungsten content)
	Whenever the respective aggregate quantity of articles, the product of the People's Republic of China, has been entered in any period specified in any item below (whether, for tariff purposes, in schedule 4 or in schedule 8), no article in such items may be entered during the remainder of such period, except as provided in headnote 11:	
	Tungstic acid provided for in item 416.40, part 2B, schedule 4, and ammonium paratungstate provided for in item 417.40, part 2C, schedule 4:	

"Item	Articles	Specified Limit (in million pounds tungsten content)
926.30	If entered during the period from October 1, 1987, through December 31, 1987, inclusive.	0.425
926.31	If entered during the period from January 1, 1988, through December 31, 1988, inclusive.	1.81
926.32	If entered during the period from January 1, 1989, through December 31, 1989, inclusive.	1.94
926.33	If entered during the period from January 1, 1990, through December 31, 1990, inclusive.	2.05
926.34	If entered during the period from January 1, 1991, through September 30, 1991, inclusive.	1.50"

Presidential Documents

Proclamation 5719 of October 2, 1987

German-American Day, 1987

By the President of the United States of America

A Proclamation

More Americans trace their heritage back to German ancestry than to any other nationality. More than seven million Germans have come to our shores through the years, and today some 60 million Americans—one in four—are of German descent. Few people have blended so completely into the multicultural tapestry of American society and yet have made such singular economic, political, social, scientific, and cultural contributions to the growth and success of these United States as have Americans of German extraction.

The United States has embraced a vast array of German traditions, institutions, and influences. Many of these have become so accepted as parts of our way of life that their ethnic origin has been obscured. For instance, Christmas trees and Broadway musicals are familiar features of American society. Our kindergartens, graduate schools, the social security system, and labor unions are all based on models derived from Germany.

German teachers, musicians, and enthusiastic amateurs have left an indelible imprint on classical music, hymns, choral singing, and marching bands in our country. In architecture and design, German contributions include the modern suspension bridge, Bauhaus, and Jugendstil. German-American scientists have helped make the United States the world's pioneer in research and technology. The American work ethic, a major factor in the rapid rise of the United States to preeminence in agriculture and industry, owes much to German-Americans' commitment to excellence.

For more than 3 centuries, Germans have helped build, invigorate, and strengthen this country. But the United States has given as well as received. Just a generation ago, America conceived of and swiftly implemented the Marshall Plan, which helped the new German democracy rise from the rubble of war to become a beacon of democracy in Central Europe. The Berlin Airlift demonstrated the American commitment to the defense of freedom when, still recovering from war, Berlin was threatened by strangulation from the Soviets.

Today, the Federal Republic of Germany is a bulwark of democracy in the heart of a divided Europe. Germans and Americans are rightfully proud of our common values as well as our shared heritage. For more than 3 decades the German-American partnership has been a linchpin in the Western Alliance. Thanks to it, a whole generation of Americans and Europeans has grown up free to enjoy the fruits of liberty.

Our histories are thus intertwined. We now contribute to each other's trade, enjoy each other's cultures, and learn from each other's experiences. The German-American Friendship Garden, which will be dedicated in the District of Columbia in the near future, is symbolic of the close and amicable relations between West Germany and the United States.

The Congress, by Public Law 100–104, has designated October 6, 1987, the 304th anniversary of the arrival of the first German immigrants in Philadelphia, as "German-American Day" and has authorized and requested the President to issue a proclamation in observance of that day.

NOW, THEREFORE, I, RONALD REAGAN, President of the United States of America, do hereby proclaim Tuesday, October 6, 1987, as German-American Day. I urge all Americans to learn more about the contributions of German immigrants to the life and culture of the United States and to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of Oct., 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. 87-23258
Filed 10-5-87; 10:12 am]
Billing code 3195-01-M

Editorial note: For the President's remarks of October 2 on signing Proclamation 5719, see the *Weekly Compilation of Presidential Documents* (vol. 23, p. 1118).

Rules and Regulations

Federal Register
Vol. 52, No. 193
Tuesday, October 6, 1987

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 87-107]

Import Permits for Birds, Poultry, or Pigeons Transiting the Port of Anchorage, AK

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations to provide that importers can obtain and use—under certain circumstances—a single import permit for more than one shipment of birds, poultry, or pigeons transiting the port of Anchorage, Alaska. This will help reduce paperwork and resulting expenditures.

EFFECTIVE DATE: November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Wade Ritchie, Import-Export Operations Staff, VS, APHIS, USDA, Room 766, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8172.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92 contain provisions concerning the importation of certain animals, birds, poultry, and pigeons.

On March 27, 1987, we published in the Federal Register (52 FR 9871-9873, Docket No. 85-084) a document proposing to allow importers to obtain and use—under certain circumstances—a single import permit or more than one shipment of birds, poultry, or pigeons transiting the port of Anchorage, Alaska.

We proposed that the permit be valid only during the calendar year in which it was issued. We also proposed to prohibit the off-loading of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, under a permit issued for multiple shipments.

Our proposal invited the submission of written comments on or before May 26, 1987. We did not receive any comments. Based on the rationale set forth in the proposal, we are adopting the proposed rule as a final rule.

Miscellaneous

As stated above, we proposed that an import permit issued for multiple shipments of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, be valid only during the calendar year in which it was issued. We discussed this provision in the supplementary information to the proposed rule but inadvertently left it out of the proposed regulatory text. We have added this provision to § 92.4(e) in the regulatory text of the final rule.

We have made a nonsubstantive change to the proposed rule to correct a typographical error.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect 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.

We anticipate that fewer than one percent of shipments of birds, poultry, or pigeons transiting the United States will be affected by this rule, as compared with the number of all shipments of birds, poultry, or pigeons transiting or entering the United States through all ports of entry.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

Information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control numbers 0579-0040 and 0579-0060.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (see 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 is amended to read as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 92.4, in the first sentence of paragraph (a)(1) "§§ 92.2(b) and (c), 92.19, 92.27, and 92.31" is revised to read "§§ 92.2(b) and (c), 92.4(e), 92.19, 92.27, and 92.31".

3. In § 92.4, a new paragraph (e) is added to read as follows:

§ 92.4 Import permits for ruminants, swine, horses from countries affected with CEM, poultry, poultry semen, animal semen, birds and for animal specimens for diagnostic purposes;[1] and reservation fees for space at quarantine facilities maintained by Veterinary Services.

* * * * *

[1] For other permit requirements for birds, the regulations issued by the U.S. Department of the Interior (Part 17, Title 50, Code of Federal Regulations) and the regulations issued by the U.S. Department of Health and Human Services (Subpart J-1 of Part 71, Title 42, Code of Federal Regulations) should be consulted.

(e) Notwithstanding any other provisions in this part, importers are not required to obtain in import permit and provide the shipper with an original import permit for each individual shipment of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, if the following conditions are met:

(1) The importer applies for and obtains an import permit for multiple shipments of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, in accordance with the provisions of this section and related requirements concerning application for the permit. However, the following information is not required on the application:

(i) The species, breed, and number of birds, poultry, or pigeons to be imported;

(ii) The individual animal identification;

(iii) The country of origin;

(iv) The name and address of the exporter;

(v) The port of embarkation in the foreign country;

(vi) The mode of transportation and the route of travel;

(vii) The proposed date of arrival of the birds, poultry, or pigeons; and

(viii) The name and address of the person to whom the birds, poultry, or pigeons will be delivered.

(2) The importer completes a copy of the import permit obtained under paragraph (e)(1) of this section for each separate shipment of birds, poultry, or pigeons intended to transit the port of Anchorage, Alaska, by inserting the following information on a copy of the permit:

(i) The species, breed, and number of birds, poultry, or pigeons to be imported;

(ii) The individual animal identification (except poultry);

(iii) The country of origin;

(iv) The name and address of the exporter;

(v) The port of embarkation in the foreign country;

(vi) The mode of transportation and the route of travel;

(vii) The proposed date of arrival of the birds, poultry, or pigeons; and

(viii) The name and address of the person to whom the birds, poultry, or pigeons will be delivered.

(3) The importer, not less than 2 weeks prior to the anticipated date of arrival of each separate intransit shipment of birds, poultry, or pigeons at the port of Anchorage, Alaska, provides the port veterinarian with a copy of the completed import permit;

(4) A copy of the completed import permit accompanies each separate intransit shipment of birds, poultry, or pigeons to the port of Anchorage, Alaska;

(5) Import permits issued for multiple shipments of birds, poultry, or pigeons transiting the port of Anchorage, Alaska, will be valid only during the calendar year in which they are issued.

§ 92.2 [Amended]

4. In § 92.2, the first sentence in paragraph (d)(1)(ii) is amended by adding the following phrase before "They are unloaded, . . ." to read "Except for birds, poultry, or pigeons in transit through Anchorage, Alaska, under § 92.4(e) of this part, which are not allowed to be unloaded . . ."

Done at Washington, DC, this 1st day of October, 1987.

B.G. Johnson,

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

[FR Doc. 87-23107 Filed 10-5-87; 8:45 am]

BILLING CODE 3410-34-M

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9 CFR Part 166

[Docket No. 87-121]

Swine Health Protection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Swine Health Protection regulations by adding Minnesota to the list of states that have primary enforcement responsibility under the Swine Health Protection Act (Act). Minnesota now meets the requirements for enforcing laws and regulations concerning the treatment of garbage to be fed to swine and the feeding of that garbage to swine. Only in certain emergencies would the Secretary of Agriculture enforce in Minnesota the provisions of the Act and the Federal regulations.

EFFECTIVE DATE: November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Dr. Dale C. Gigstad, Senior Staff Veterinarian, Domestic Programs Support Staff, Veterinary Services, APHIS, USDA, Room 850, Federal Building, Hyattsville, MD 20782, 301-436-8715.

SUPPLEMENTARY INFORMATION:

Background

The "Swine Health Protection" regulations (contained in 9 CFR Part 166 and referred to below as the regulations) were established under the Swine Health Protection Act (contained in 7 U.S.C. 3801 *et seq.*, and referred to below as the Act). The Act and the regulations contain provisions concerning the treatment of garbage to be fed to swine and the feeding of that garbage to swine. These provisions operate as safeguards against the spread of certain swine diseases in the United States.

On July 21, 1987, we published in the **Federal Register** (52 FR 27413-27414, Docket Number 87-048) a document proposing to amend the regulations by adding Minnesota to the list of states that have primary enforcement responsibility under the Act, and by removing it from the list of states that do not have this responsibility. We did not receive any comments, which were required to be postmarked or received on or before August 20, 1987. Based on the rationale set forth in the proposal, we are adopting the provisions of the proposal as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect 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.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Almost all persons who operate facilities for the treatment of garbage to be fed to swine or who feed or permit the feeding of garbage to swine are considered small entities. However, the amendments made by this document will affect less than one percent of those persons who operate facilities for the treatment of garbage to be fed to swine and less than one percent of those persons who feed, or permit the feeding of, garbage to swine. These amendments will not cause significant changes in the requirements for affected persons.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have

a significant economic impact on a substantial number of small entities.

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 166

African swine fever, Animal diseases, Foot-and-mouth disease, Garbage, Hog cholera, Hogs, Swine vesicular disease, Vesicular exanthema of swine.

Accordingly, 9 CFR Part 166 is amended as follows:

PART 166—SWINE HEALTH PROTECTION

1. The authority citation for Part 166 continues to read as follows:

Authority: 7 U.S.C. 3802, 3803, 3804, 3808, 3809, 3811; 7 CFR 2.17, 2.51, and 371.2(d).

§ 166.15 [Amended]

2. Paragraph (c) of § 166.15 is amended by adding "Minnesota," immediately after "Michigan,".

3. Paragraph (d) of § 166.15 is amended by removing "Minnesota,".

Done in Washington, DC, this 1st day of October, 1987.

B.G. Johnson,

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

[FR Doc. 87-23109 Filed 10-5-87; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Dkt. 9194]

Prohibited Trade Practices, and Affirmative Corrective Actions; Buckingham Productions, Inc. et al.

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the Furlong, Pa. marketers of mail-order weight reduction or weight control products, programs or services to cease falsely representing the effectiveness of its programs, products or services without competent and reliable evidence supporting such claims.

DATE: Complaint issued June 24, 1985. Amended Complaint and Order issued July 30, 1987.[1]

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz, FTC/S-4002, Washington, DC 20580, (202) 326-3158.

SUPPLEMENTARY INFORMATION: On Friday, August 15, 1986, there was published in the **Federal Register**, 51 FR 29265, a proposed consent agreement with analysis In the Matter of Buckingham Productions, Inc., dba Rotation Diet Center; Furlong-Elliot Corp., Freedom Center, Inc., Plaza Business Services, Inc., N.F. Rotation, Inc., Rotation-Freedom Diet, Inc., Health and Diet Corp., Inc., and Howard Elliot, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding as to the above noted respondents.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: Section 13.10 Advertising falsely or misleadingly; S.13.170-74 Reducing, non-fattening, low-calorie, etc.; S.13.190 Results; S.13.205 Scientific or other relevant facts. Subpart—Corrective Actions And/Or Requirements: S.13.533 Corrective actions and/or requirements; S.13.533-20 Disclosures; S.13.533-45 Maintain records; S.13.533-45(a) Advertising substantiation. Subpart—Misrepresenting Oneself And Goods-Goods: S.13.1730 Results.

List of Subjects in 16 CFR Part 13

Mail order diets, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52)

Emily H. Rock,

Secretary.

[FR Doc. 87-23016 Filed 10-5-87; 8:45 am]

BILLING CODE 6750-01-M

[1] Copies of the Compliant and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

16 CFR Part 13

[Dkt. 9190]

Prohibited Trade Practices, and Affirmative Corrective Actions; Ticor Title Insurance Co.

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, Santa Ana, Calif-based respondent, First American Title Insurance Co., from setting any rates for title search and examination and settlement services through any rating bureau in six states. Additionally, First American Title Insurance Co. agreed to withdraw from the law suit filed by the title insurance companies named in the 1985 complaint and requires the respondent to notify the Commission at least thirty days prior to any change in the corporate respondent.

DATE: Complaint issued January 7, 1985. Order issued July 30, 1987.[1]

FOR FURTHER INFORMATION CONTACT: FTC/S-2308, Michael Antalics, Washington, DC 20580, (202) 326-2682.

SUPPLEMENTARY INFORMATION: On Monday, May 11, 1987, there was published in the **Federal Register**, 52 FR 17602, a proposed consent agreement with analysis In the Matter of Ticor Title Insurance Company, Chicago Title Insurance Company, Safeco Title Insurance Company, First American Title Insurance Company, Lawyers Title Insurance Corporation, and Stewart Title Guaranty Company, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding as to respondent First American Title Insurance Company.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Aiding, Assisting And Abetting Unfair Or Unlawful Act Or Practice: Section

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

13.290 Aiding, assisting and abetting unfair or unlawful act or practice. Subpart—Combining Or Conspiring: S.13.384 Combining or conspiring; S.13.433 To fix prices; S.13.470 To restrain and monopolize trade. Subpart—Corrective Actions And/Or Requirements: S.13.533 Corrective actions and/or requirements; S.13.533–25 Displays, in house; S.13.533–50 Maintain means of communication. Subpart—Discriminating In Price Under Section 5, Federal Trade Commission Act: S.13.870 Charges and prices.

List of Subjects in 16 CFR Part 13

Title insurance, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Emily H. Rock,

Secretary.

[FR Doc. 87–23015 Filed 10–5–87; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 284

[Docket No. RM87–34–000]

Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol

Issued: October 2, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of local seminars.

SUMMARY: The Federal Energy Regulatory Commission is announcing that it is sponsoring a series of local seminars on the implementation of Order No. 500 in Oklahoma City, OK, New Orleans, LA, Houston and Lubbock, TX, from October 19 to 22, 1987. Order No. 500 was issued by the Commission on August 7, 1987, in response to the U.S. Court of Appeals for the D.C. Circuit remand of Order No. 436, a rule which established an open-access transportation program. Order No. 500 was designed to keep gas flowing under transportation arrangements while mitigating the impact of take-or-pay liability that the Court found could occur under Order No. 436.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, (202) 357–8400, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Captiol Street NE., Washington, DC 20426.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission is sponsoring a series of local seminars on the implementation of Order No. 500. The seminars are to be held in Oklahoma City, OK, New Orleans, LA, Houston and Lubbock, TX. The purpose of these seminars is to offer technical guidance to those responsible for their company's implementation of Order No. 500. Commission representatives will clarify the scope of the rule and will explain the operation of its provisions. There will be no charge for the seminars, and no prior registration will be required.

The Commission issued Order No. 500 on August 7, 1987, (52 FR 30334, August 14, 1987) in response to the U.S. Court of Appeals for the D.C. Circuit remand of Order No. 436, a rule which established an open-access transportation program. Order No. 500 was designed to keep gas flowing under transportation arrangements while mitigating the impact of take-or-pay liability that the Court found could occur under Order No. 436.

Order No. 500 became effective with the issuance of the Court's mandate on September 15, 1987. Requirements that producers credit transported volumes against take-or-pay liability are in effect now for new arrangements, and will take effect November 1, 1987, for existing arrangements.

Following are the dates, times, and locations of these seminars:

Monday, October 19, 1987, at 2:00 p.m
Holiday Inn West, 801 South Meridian, Oklahoma City, Oklahoma 73108

Tuesday, October 20, 1987, at 2:00 p.m.
Downtown Howard Johnsons, 330 Loyola Avenue, New Orleans, Louisiana 70112

Wednesday, October 21, 1987, at 1:00 p.m.
Marriott Astrodome Hotel, 2100 South Braeswood, Houston, Texas 77030

Thursday, October 22, 1987, at 9:00 a.m.
Days Inn Civic Center, 500 Avenue Q, Lubbock, Texas 79401

Kenneth F. Plumb,

Secretary.

FR Doc. 87–23220 Filed 10–5–87; 8:45 am]

BILLING CODE 6717–01–M

18 CFR Part 4

[Docket No. RM87–32–000; Order No. 480]

Requirements of Landowner Notification Under Section 14 of the Electric Consumers Protection Act

Issued: September 30, 1987.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to implement the landowner notification requirements contained in section 14 of the Electric Consumers Protection Act (Act). The Act requires an applicant for a hydroelectric license (other than a new license under section 15 of the Federal Power Act) to make a good faith effort to notify by certfified mail certain property owners and government entities.

EFFECTIVE DATE: Effective November 5, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas J. Lane, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, (202) 357–8530.

SUPPLEMENTARY INFORMATION:

I. Introduction

On October 16, 1986, the President signed the Electric Consumers Protection Act of 1986 (ECPA).[1] Section 14 of the Act amends section 9 of the Federal Power Act (FPA)[2] to require an applicant for a hydroelectric license (other than a new license under section 15 of the FPA)[3] to make a good faith effort to notify by certified mail "(1) [a]ny person who is an owner of record of any interest in the property within the bounds of the project, [and] (2) [a]ny Federal, State, municipal or other local governmental agency likely to be interested in or affected by such application." The Commission is amending Part 4 of its regulations to implement this requirement.

II. Background

Under current Commission regulations, an applicant for a preliminary permit or hydroelectric license is required only to identify in the application certain individuals or government entities that might be affected by the project.[4] Once the Commission accepts an application, notice of the proposed project is published once each week for four weeks in a local newspaper.[5]

[1] Pub. L. No. 99–495, 100 Stat. 1243 (1986).

[2] 16 U.S.C. 802 (1982).

[3] 16 U.S.C. 808 (1982).

[4] 18 CFR 4.32(a)(2) (1987).

[5] 16 U.S.C. 797(f) (1982).

Additionally, the Commission notifies in writing any State or municipality likely to be interested in or affected by the application.[6]

Concern that publication in a local newspaper sometimes did not notify absent landowners of the proposed project led Congress to add a landowner notification provision to ECPA.[7]

III. Discussion

The Commission is amending its regulations to implement the notification requirements contained in section 14 of ECPA. The new regulations require applicants for licenses other than FPA section 15 licenses to make a good effort to notify by certified mail certain property owners and government entities. An application for such a license must contain a statement that the applicant has made this effort either at the time of or before the filing of the application.

Under the new regulations a good faith effort must be made to so notify every property owner of record of any interest in the property within the bounds of the project. For projects without a specified boundary, this effort must be made to notify any owner of property which would underlie or be adjacent to the project works including any impoundments.

Additionally, the applicant must make this effort to notify the following:

(1) Every county in which any part of the project, and any Federal facilities that would be used by the project, would be located;

(2) Every city, town, or similar local political subdivision:

(a) In which any part of the project, and any Federal facilities that would be used by the project, would be located; or

(b) That has a population of 5,000 or more people and is located within 15 miles of the project dam;

(3) Every irrigation district, drainage district, or similar special purpose political subdivision:

(a) In which any part of the project and any Federal facilities that would be used by the project, would be located; or

(b) That owns, operates, maintains, or uses any project facilities or any Federal facilities that would be used by the project; and

(4) Every other political subdivision or Federal, state, municipal or other local government agency in the general area of the project that there is reason to believe would be interested in, or affected by, the application.[8]

Notification must contain the name, business address, and telephone number of the applicant and a copy of Exhibit G as contained in the application. Exhibit G is a map of the project. The notice must also state that a license application is being filed with the Commission.

IV. Paperwork Reduction Act

The information collection provisions in this final rule are being submitted to the Office of Management and Budget (OMB) for its approval under the Paperwork Reduction Act [9] and OMB's regulations.[10] Interested persons can obtain information on the proposed information collection provisions by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (Attention: Ellen Brown, Division of Organization and Management Analysis, (202) 357–5311). Comments on the information collection provisions in this rule may be sent to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

V. Administrative Findings and Effective Date

The Administrative Procedure Act exempts interpretative rules from both the notice and comment requirements of section 4(b) of the Administrative Procedure Act [11] and the requirement that publication be made thirty days before the effective date of the rule.[12] Since this rule merely implements the notification requirements contained in ECPA it is properly characterized as an interpretative rule. In order to allow OMB sufficient time to review the reporting requirements in this final rule, however, it will become effective November 5, 1987. If OMB has not approved this rule by that date, the Commission will issue a notice temporarily suspending the effective date until OMB has approved the requirements.

List of Subjects in 18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 4, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for Part 4 is revised to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99–495; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601–2645 (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142, unless otherwise noted.

2. In § 4.32 paragraphs (a)(3) and (a)(4) are redesignated as (a)(4) and (a)(5), paragraph (a)(2)(iv) is revised and a new paragraph (a)(3) is added to read as follows:

§ 4.32 Acceptance for filing or rejection.

(a) * * *

(2) * * *

(iv) Every other political subdivision in the general area of the project that there is reason to believe would likely be interested in, or affected by, the application.

(3)(i) For a license (other than a license under section 15 of the Federal Power Act) state that the applicant has made, either at the time of or before filing the application, a good faith effort to give notification by certified mail of the filing of the application to:

(A) Every property owner of record of any interest in the property within the bounds of the project, or in the case of the project without a specific boundary, each such owner of property which would underlie or be adjacent to any project works including any impoundments; and

(B) The entities identified in paragraph (a)(2) of this section, as well as any other Federal, state, municipal or other local government agencies that there is reason to believe would likely be interested in or affected by such application.

(ii) Such notification must contain the name, business address, and telephone number of the applicant and a copy of the Exhibit G contained in the application, and must state that a

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[6] *Id.* For purposes of the FPA, a municipality means "a city, county, irrigation district, or other political subdivision or agency of a State competent under the laws thereof to carry on the business of developing, transmitting, utilizing or distributing power". 16 U.S.C. 796(7) (1982).

[7] 132 Cong. Rec. S4138–4140 (daily ed. April 11, 1986) (Statement of Senator Humphrey).

[8] These government entities are generally the ones that an applicant for a preliminary permit or license is required to identify in its application, 18 CFR 4.32(a)(2) (1987), *supra*, note 4. The language "that there is reason to believe" is designed to establish a standard for determining whether an applicant has met the notification requirements contained in ECPA.

[9] 44 U.S.C. 3501–3520 (1982).

[10] 5 CFR 1320.12 (1987).

[11] 5 U.S.C. 553(b) (1982).

[12] 5 U.S.C. 553(d) (1982).

license application is being filed with the Commission.

* * * * *

[FR Doc. 87-23044 Filed 10-5-87; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 85C-0283]

Confirmation of Effective Date for D&C Violet No. 2

AGENCY: Food and Drug Administration.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of June 29, 1987, for the final rule that amended the color additive regulations to provide for the safe use of D&C Violet No. 2 for coloring contact lenses.

EFFECTIVE DATE: Effective date confirmed: June 29, 1987.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 27, 1987 (52 FR 19719), FDA amended the color additive regulations by adding § 74.3602 (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 for coloring contact lenses.

FDA gave interested persons until June 26, 1987, to file objections or requests for a hearing on this final rule. The agency received no objections or requests for a hearing. Therefore, FDA concludes that the final rule published in the Federal Register of May 27, 1987, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), notice is given that no objections or requests for a hearing were filed in response to the May 27, 1987, final rule. Accordingly, the regulation promulgated thereby became effective June 29, 1987.

Dated: September 29, 1987.

John M. Taylor,

Asssociate Commissioner for Regulatory Affairs.

[FR Doc. 87-23037 Filed 10-5-87; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 203 and 234

[Docket No. R-87-1296; FR-2197]

Refinancing of FHA Insured Single Family Mortgages

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule adopts as final (without change) an earlier interim rule revising HUD regulations concerning the refinancing of FHA-insured single family mortgages. The rule: (1) Extends the maximum term allowable on a refinancing mortgage to the unexpired term of the existing mortgage plus twelve years, but not exceeding thirty years and (2) extends the authority to insure refinancing mortgages to FHA-insured mortgages covering units in condominium projects.

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Morris Carter, Director, Single Family Development Division, Department of Housing and Urban Development, Room 9270, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The recent trend toward lower mortgage interest rates made it advantageous for many FHA mortgagors who purchased their homes when interest rates were higher to refinance their mortgage loans. Such refinancings are also advantageous to HUD, since a lowering of monthly mortgage payments based on lower interest charges decreases the risk of default and, consequently, the risk exposure of the FHA insurance funds. In order to take better advantage of this situation HUD published an interim rule in the Federal Register on February 10, 1987 (52 FR 4138). The interim rule revised HUD's single family refinancing policies in an effort to make it possible for a larger number of FHA mortgagors to take advantage of current market conditions. This rule adopts as final, without change, the earlier interim rule.

Background and Description of Rule

HUD's authority to insure mortgages given to refinance single family insured mortgages, where the refinancing mortgage does not meet all eligibility requirements, is derived from section 223(a)(7) of the National Housing Act. The refinancing provisions in section 223(a)(7) were enacted to authorize the Department to insure mortgages given to refinance existing FHA insured mortgages, when the refinancing mortgages do not meet all of the requirements of the section of the National Housing Act under which the mortgages were originally insured. After enactment of section 223(a)(7), HUD issued a regulation (24 CFR 203.43(b)(7)), the refinancing provisions of which provide that the Department may accept a mortgage for insurance if—

> Given to refinance an existing mortgage insured under the (National Housing) Act. The amount of the refinancing mortgage shall not exceed the original principal amount of the existing mortgage. It shall have a maturity limited to the unexpired term of the existing mortgage.

The basic statute, section 223(a)(7) of the National Housing Act, also provided that—

> In any case involving the refinancing of a loan in which the Secretary determines that the insurance of a mortgage for an additional term will inure to the benefit of the applicable insurance fund, taking into consideration the outstanding insurance liability under the existing insured mortgage, such refinancing mortgage may have a term not more than twelve years in excess of the unexpired term of such existing insured mortgage.

This provision for an increased mortgage term was not incorporated in the HUD regulation—24 CFR 203.43(b)(7). In the interim rule, the Department did incorporate the statutory provision—with the addition of safeguards relating to review of the mortgagor's prior payment record and assurances that the refinancing will result in lower monthly payments. The

change was based upon HUD's findings, stated earlier, concerning current mortgage market trends and their probable impact upon FHA mortgagors and the FHA insurance funds.

The interim rule also changed the maximum mortgage amount of the refinancing mortgage so that it is the lesser of the original principal amount for the existing mortgage or the unpaid principal balance of such mortgage plus closing costs as approved by the Commissioner. Previously, 24 CFR 203.43(b)(7) provided that the mortgage amount of the refinancing mortgage shall not exceed the original principal amount of the existing mortgage.

In the interim rule; previous § 203.43(b)(7) was removed and a new § 203.43(c), containing the provisions referred to above, was substituted. In addition, the rule amended 24 CFR Part 234 (Condominium Ownership Mortgage Insurance) to authorize the refinancing of insured condominium unit mortgages under the same terms and conditions. With respect to the other large category of FHA single family mortgages that falls outside Part 203—namely section 221(d)(2) mortgages covering low-cost homes—it should be noted that 24 CFR 221.1 incorporated by reference the refinancing provisions contained in 24 CFR 203.43 as revised by the interim rule. Through similar incorporations by reference, other miscellaneous single family programs are also covered. It should be noted, however, that the rule was *not* made applicable to mortgages insured under section 235 of the National Housing Act (see 24 CFR 235.1).

The Department recognizes that the rule will not be capable of being applied to Graduated Payment Mortgages and Modified Graduated Payment Mortgages until their negative amortization has been paid down to the original principal amount. "Original principal amount" is not to be equated with the "maximum principal amount" permitted in the GPM and modified GPM programs.

Also, the rule makes clear that any refund of a one-time MIP which was included in the amount of an existing mortgage shall be deducted in determining that mortgage's original principal amount and unpaid principal balance, but the amount of one-time MIP (if any) associated with the refinancing mortgage may be included in that mortgage.

Public Comments on Interim Rule

At the time of publication, the Department solicited public comments for a 60-day period on the interim rule. Three public comments were received—National Association of Homebuilders, United States League of Savings Institutions and The Mortgage Bankers Association of America. All commenters approved on the rule as drafted and had no recommendations for changes in the regulatory text.

The National Association of Homebuilders, did, however, express some disappointment over a current HUD policy which disallows financing of Commissioner-approved closing costs under the new regulation. The Department has determined that since there is no appraisal/underwriting performed which would serve to support an increased mortgage amount, the Government's interests are better served by not increasing the basic mortgage amount in cases where such underwriting is not carried out.

The U.S. League of Savings Institutions noted that there was some confusion within its membership concerning the coverage of the interim rule. Some mortgagees did not realize that the interim rule only addressed refinancings that do not require a new appraisal and new underwriting. In other words, the mortgage term and mortgage amount limitations of the interim rule do not apply to FHA refinancings where a new appraisal and underwriting are utilized. Such loans can usually be processed to higher loan-to-value ratios with the closing costs and discounts being included in the mortgage.

At present, the Department provides for two types of mortgage refinancing transactions that do not require regular mortgage credit underwriting. They are frequently referred to as "streamlined refinancings". These two types of streamlined finance transactions involve the refinancing of an FHA insured mortgage either *without* an appraisal (as under the interim rule) or *with* an appraisal but no full underwriting. In neither case may the mortgagor take "cash out" as a part of the refinancing.

In addition, HUD insures mortgages on other refinance transactions where there is an appraisal and full underwriting of the mortgagor. In such cases owner-occupant mortgages may take cash from the transaction, provided the mortgage amount does not exceed 85 percent of the value of the property.

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumer, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect 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.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While the rule will have some impact on those mortgagors who choose to refinance their existing FHA-insured mortgages, and on their mortgagees, the rule's impact on individual borrowers and lenders should not be economically substantive, and in all instances its impact will be in accord with existing contractual rights reflected in these parties' mortgage loan contracts.

This rule was listed as item H–8–86 [Sequence Number 922] under the Office of Housing in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362, 14380) under Executive Order 12291 and the Regulatory Flexibility Act.

The FHA home mortgage insurance and condominium unit mortgage insurance programs are listed in the Catalog of Federal Domestic Assistance as 14.117, Mortgage Insurance—Homes and 14.133 Mortgage Insurance—Purchase of Units in Condominiums.

List of Subjects

24 CFR Part 203

Mortgage insurance.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

Accordingly, the interim rule on Refinancing of FHA Insured Single Family Housing promulgated on February 10, 1987 (52 FR 4138) is adopted as final without change.

Dated: September 28, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 87-22980 Filed 10-5-87; 8:45 am]

BILLING CODE 4210-27-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 221, 234, and 251

[Docket No. R-87-1339; FR-2222]

Multifamily Leasehold Projects; Minimum Lease Term Eligibility

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule implements the 1980 statutory change which lowers the minimum lease term for certain multifamily leaseholds projects to permit HUD-insured mortgages on leasehold with leases having a period of not less than 10 years to run beyond the maturity date of the mortgage. Before the statutory change, a first mortgage on real estate with a leasehold could be insured under the National Housing Act only if the lease has a period of *not less than* 50 years to run from the date that the mortgage was executed. (For administrative reasons, the Department set the limit generally at not less than 75 years.)

EFFECTIVE DATE: Under section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date.

FOR FURTHER INFORMATION CONTACT: Frank Brown, Deputy Director, Office of Multifamily Housing Development, Room 6134, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone: (202) 755-6500. (This is not a toll-free number.) Morris Bourne, Director, Office of Multifamily Housing Management, Room 6158, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Telephone (202) 426-3968. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This rule permits HUD-insured mortgages on leaseholds with leases having a period of not less than 10 years to run beyond the maturity date of the mortgage. Current regulations require that such leaseholds have a period of not less than 75 years to run from the date the mortgage was executed.

Section 306 of the Housing and Community Development Act of 1980, Pub. L. 96-399, amended the definition of "mortgage" in section 201(a) of the National Housing Act, 12 U.S.C. 1707, by inserting, in lieu of "having a period of not less than fifty years to run from the date the mortgage was executed", the language "having a period of not less than ten years to run beyond the maturity date of the mortgage". Because of the discretion afforded the Department under the terminology "not less than" and for administrative reasons concerning such problems as financing and mortgage extensions, the regulations published by the Department before the 1980 amendment required a lease term of not less than 75-years from the date of mortgage execution. The 75-year term was also set because of the Department's assessment that value often is a direct function of the remaining term of the lease. The Department has determined, however, that the 75-year restriction set because of the aforementioned underwriting concerns is no longer needed. Experience has shown that the greatest risk of foreclosure is during the early years of a mortgage and that there have been very few incidences of failure in the later years of a mortgage.

This regulatory change to reduce the required leasehold period will make insured mortgage financing more readily available in areas where leaseholds are prevalent. Renegotiations of leases solely to comply with the 50-year (or 75-year) requirement will be unnecessary. The change also provides the Department with some flexibility in disposing of Secretary-held properties. For example, ground leases will not have to be renegotiated before the property's sale. This amendment also makes HUD's program consistent with those of the VA and FNMA, whose policies require the term of a lease to exceed the mortgage term by 14 and 10 years, respectively.

This rule amends Part 221—Low Cost and Moderate Income Mortgage Insurance, Part 234—Condominium Ownership Mortgage Insurance (Projects-Conversion Individual Sales Units), and Part 251—Coinsurance for the Construction or Substantial Rehabilitation of Multifamily Housing Projects. Corresponding regulations changes were made to the single family mortgage insurance program—Parts 203, 213 (Individual Properties), and 234 (Individually Owned Units)—on May 21, 1984 (49 FR 21317). The May 21, 1984 change to Part 203 affected a number of other mortgage insurance programs because of their adoption of Part 203 definitions or eligibility requirements (e.g., Parts 220 (Homes), 222, 226,228, 233, 235, and 237). The majority of the remaining mortgage insurance programs (e.g., Parts 207, 213 (Projects), 220 (Projects), 224, 225, 227, 229, 231, 232, 238, 240, 241, 242, 244, and 255) are not affected by the 1980 statutory change to the definition of "mortgage" because they either adopt the definition of "mortgage" as stated in section 207 of the National Housing Act, which has not been amended, or they establish their own specific eligibility requirements.

Sections 221.544(a)(3), 234.520(a)(2)(ii), and 251.501(a)(3) are amended to permit HUD-insured mortgages on leaseholds with leases having a period of not less than 10 years to run beyond the maturity date of the mortgage. To make necessary conforming changes and to avoid subjecting leases executed by government agencies, Indians or Indian Tribes to more stringent insurance requirements than leases contemplated in the amended sections, §§ 221.544(a)(4), 234.520(a)(2)(iii) and 251.501(a)(4) are removed by this rule.

The Secretary has determined that notice and prior public procedure are unnecessary and contrary to the public interest and that good cause exists for making this rule effective as soon after publication as possible because this rule conforms with a statutory change, the legislative history clearly reflects the Congress' wish that the Department's programs be made consistent with those of VA and FNMA, and the effect of the rule will be to make the Department's insurance programs available for use with a wider range of mortgaged properties.

Findings

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section

1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect 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.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. While the changes made by this rule affect mortgagors and owners of leased fees, some of whom may constitute small entities, there is not likely to be any significant economic impact on them. By reducing HUD requirements regarding lease terms, the rule makes it easier, and perhaps less costly, for mortgagors to negotiate lease terms.

This rule was listed as item number 961 in the Department's Semiannual Agenda of Regulations published on April 27, 1987 (52 FR 14362) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.112, 14.124, 14.126, 14.133, 14.134, 14.135, 14.137, 14.138, and 14.139.

List of Subjects

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Displaced families, Single family housing, Projects, Cooperatives.

24 CFR Part 234

Condominiums, Mortgage insurance, Homeownership, Projects, Units.

24 CFR Part 251

Mortgage insurance, Coinsurance of multifamily mortgages.

Accordingly, Chapter II of Title 24 of the Code of Federal Regulations is amended as follows:

PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE

1. The authority citation for Part 221 is revised to read as follows:

Authority: Secs. 211 and 221, National Housing Act, 12 U.S.C. 1715b, 1715*l*; section 221.544(a)(3) is also issued under sec. 201(a) of the National Housing Act, 12 U.S.C. 1707(a).

2. Section 221.544 is amended by removing paragraph (a)(4), and by revising paragraph (a)(3) to read as follows:

§ 221.544 Eligibility of property.

(a) * * *

(3) Under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

3. The authority citation for Part 234 is revised to read as follows:

Authority: Secs. 211 and 234, National Housing Act, 12 U.S.C. 1715b, 1715y; section 234.520(a)(2)(ii) is also issued under sec. 201(a) of the National Housing Act, 12 U.S.C. 1707(a).

4. Section 234.520 is amended by removing paragraph (a)(2)(iii) and by revising paragraph (a)(2)(ii) to read as follows:

§ 234.520 Eligibility of property.

(a) * * *

(2) * * *

(ii) A period of not less than 10 years to run beyond the maturity date of the mortgage.

* * * * *

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

5. The authority citation for Part 251 is revised to read as follows:

Authority: Sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d); sec. 244, National Housing Act, 12 U.S.C. 1715z(9); section 251.501(a)(3) is also issued under sec. 201(a) of the National Housing Act, 12 U.S.C. 1707(a).

6. Section 251.501 is amended by removing paragraph (a)(4) and by revising paragraphs (a)(2) and (3) to read as follows:

§ 251.501 Mortgage requirements—real estate.

(a) * * *

(2) Under a renewable lease for not less than 99 years; or

(3) Under a lease having a period of not less than 10 years to run beyond the maturity date of the mortgage.

* * * * *

Dated: September 28, 1987.

Thomas T. Demery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 87-22979 Filed 10-5-87; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 888

[Docket No. N-87-1729; FR-2392]

Section 8 Housing Assistance Payments Program; Fair Market Rents for New Construction and Substantial Rehabilitation; Consolidation of Flint and Saginaw Market Areas

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final notice.

SUMMARY: This Notice established that Flint and Saginaw, Michigan, shall be consolidated into one market area known as "Flint" because of the historical duplication of the Fair Market Rents (FMRs) for these two areas. It also establishes that the FMRs that were set forth in the August 7, 1986 final notice for the Flint market area shall be the FMRs for the newly consolidated Flint market area.

EFFECTIVE DATE: October 6, 1987.

FOR FURTHER INFORMATION CONTACT: Edward M. Winiarski, Chief Appraiser, Valuation Branch, Technical Support Division, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, DC 20410, (202) 426-7624. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In researching previous Fair Market Rents (FMRs) for the Flint and Saginaw market areas, the Department has discovered that for several years prior to 1985 the FMRs have been the same for both areas. The published FMRs for the Flint market area, effective October 3, 1985, reflected a special request by HUD's Detroit Office to increase the Flint market area rents; however, the Saginaw market was inadvertently overlooked at that time. Therefore, this Notice established that because of the historical coinciding of the FMRs for the two market areas, the two market areas designated as Flint and Saginaw shall be consolidated and known as the "Flint" market area for purposes of establishing FMRs.

In keeping with section 8(c)(1) of the U.S. Housing Act of 1937 (42 U.S.C. 1437f), which requires the Secretary to establish FMRs periodically, but not less frequently than annually, a final notice

announcing Fiscal Year 1986 FMRs for the Section 8 Substantial Rehabilitation Program was published on August 7, 1986, at 51 FR 28486. The August 7, 1986 final notice was issued following publication of the Department's proposed FMRs on April 22, 1986, at 51 FR 15174.

As a follow-up to the consolidation of the Flint and Saginaw market areas, below is the schedule of FMRs for Fiscal Year 1986 for the newly designated "Flint" area. It reiterates the schedule as set forth in the August 7, 1986 final notice for the Flint area with only a minor deviation for an "elevator 2–4 sty, O bedroom" unit which is being raised from $321 to $326. This five dollar raise for this category is being made to conform with the logical progression of FMRs from a "walkup" to an "elevator" type unit.

Other Information

HUD regulations in 24 CFR Part 50, implementing section 102(2)(C) of the National Environmental Policy Act 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the FMRs announced in this Notice are within the exclusion set forth in § 50.20(1), no environmental assessment is required, and no environmental finding has been prepared.

The Catalog of Federal Domestic Assistance Program number and title for the activities covered by this Notice are 14.156, Lower Income Housing Assistance Program (Section 8).

Dated: September 28, 1987.

Thomas T. Demery,

Assistant Secretary for Housing—Federal Housing Commissioner.

OFFICE: DETROIT; REGION V: CHICAGO COMBINED MARKET AREAS OF SAGINAW & FLINT

Market area and structure type	Number of bedrooms				
	0	1	2	3	4 or more
Flint:					
Detached			555	638	758
Semi-detached/row	344	374	467	597	634
Walkup	321	361	421	552	628
Elevator 2–4 STY	326	379	445		
Elevator 5+	333	440	523		

[FR Doc. 87–22978 Filed 10–5–87; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 351 and 382

[DoD Directive 5134.1]

Under Secretary of Defense (Acquisition)

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule removes 32 CFR Part 351 (DoD Directive 5129.1) in its entirety. It assigns responsibilities, functions, relationships, and authorizes to the Under Secretary of Defense for Acquisition because of an agency reorganization.

EFFECTIVE DATE: February 10, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. Howard Becker, Office of the Assistant Secretary of Defense (Comptroller), Pentagon, Washington, DC 20301, telephone (202) 697–0709.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 382

Organization and functions (Government agencies).

PART 351—[REMOVED]

Accordingly, 32 CFR Part 351 is removed in its entirety.

Accordingly, Title 32 is amended to add Part 382 to Subchapter R as follows:

PART 382—UNDER SECRETARY OF DEFENSE (ACQUISITION)

Sec.

382.1 Purpose.
382.2 Definitions.
382.3 Responsibilities.
382.4 Functions.
382.5 Authorities and relationships.

Appendix A—Delegations of Authorities

Authority: 10 U.S.C. 133.

§ 382.1 Purpose.

Pursuant to title 10, United States Code this part assigns responsibilities, functions, relationships, and authorities as prescribed herein, to the Under Secretary of Defense (Acquisition) (USD(A)).

§ 382.2 Definitions.

(a) *Department of Defense Acquisition System.* A single uniform system whereby all equipment, facilities, and services are planned, designed, developed, acquired, maintained, and disposed of within the Department of Defense. The system entails establishing policies and practices that govern acquisitions, determining and prioritizing resource requirements, directing and controlling the process, contracting, and reporting to Congress.

(b) *DoD Components.* The Office of the Secretary of Defense (OSD); the Military Departments; the Organization of the Joint Chiefs of Staff (OJCS); the Unified and Specified Commands; the Office of the Inspector General, Department of Defense (OIG, DoD); Defense Agencies; and DoD Field Activities.

§ 382.3 Responsibilities.

The *Under Secretary of Defense for Acquisition* (USD(A)) is the principal staff assistant and advisor to the Secretary of Defense for all matters relating to the acquisition system; research and development; production; logistics; command, control, communications, and intelligence activities related to acquisition; military construction; and procurement.

(a) The *USD(A)* shall:

(1) Serve as the Defense Acquisition Executive with responsibility for supervising the performance of the entire DoD acquisitions system in accordance with the policies, provisions, and authorities contained in DoD Directive 5000.1[1] and Office of Management and Budget (OMB) Circular No. A–109.

[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.

(2) Develop policy for acquisition plans and strategies, validate program acquisition requirements, and develop acquisition program guidance;

(3) Set policy for acquisition matters, including contracting, research and development, production, construction, logistics, developmental testing, procurement, and training and career development of acquisition personnel;

(4) Set policy for administrative oversight of defense contractors;

(5) Serve as the DoD Procurement Executive, with responsibilities as prescribed in Executive Order (E.O.) 12352 and 41 U.S.C. 401–419;

(6) The IG, DoD shall coordinate audit and oversight of contractor activities with the USD(A) to prevent duplication of effort within the Department and unnecessary duplicative oversight of contractors.

(7) Serve as the National Armaments Director and Secretary of Defense representative to the Four Power Conference. Develop memoranda of agreements and memoranda of understandings with friendly and allied nations relating to acquisition matters; and

(8) Chair the Defense Acquisition Board (DAB) assisted by an integrated structure of councils and committees that relate to the acquisition process.

(b) For each assigned area, the *USD(A)* shall:

(1) Direct planning and special studies to analyze and evaluate the technical, economic, and military worth of programs in the acquisition system;

(2) Develop policies, conduct analyses, provide advice, make recommendations, and issue guidance on DoD plans and programs;

(3) Develop systems and standards for the administration and management of approved DoD acquisition plans and programs;

(4) Develop plans, programs, actions, and taskings to ensure adherence to DoD policies and national security objectives, and to ensure that programs and systems are designed to accommodate cross-Service operational requirements and promote modernization, consistent with the readiness, sustainability, and efficiency of the Armed Forces of the United States and its allies;

(5) Review and evaluate recommendations on requirements and priorities;

(6) Review and evaluate DoD Component plans and programs to ensure adherence to approved policies, standards, and resource planning guidance;

(7) In conjunction with the Assistant Secretary of Defense (Comptroller) ASD(C)) and Director of Program Analysis and Evaluation, review proposed resource programs, formulate budget estimates, recommend resource allocations, and monitor the implementation of approved resource programs;

(8) Fulfill planning, programming, and budgeting activities relating to USD(A) responsibilities;

(9) Promote coordination, cooperation, and mutual understanding of all matters related to assigned activities, both inside and outside the Department of Defense;

(10) Serve as primary focal point and principal spokesman for the Department of Defense and serve on boards, committees, and other groups pertaining to assigned functional areas, and represent the Secretary of Defense on USD(A) matters outside the Department of Defense;

(11) Develop and maintain information management and reporting systems; and

(12) Perform such other duties as the Secretary of Defense may prescribe.

§ 382.4 Functions.

The USD(A) shall carry out the responsibilities described in § 382.3, for the following functional areas:

(a) Acquisition management.

(b) Basic and applied research, design and engineering, and the development of weapon systems.

(c) Command, control, communications, and intelligence programs, systems, and activities related to acquisition.

(d) Logistics management, to include supply systems, spares program management, items standardization, transportation, energy, warehousing, distribution, and related activities.

(e) Procurement activities.

(f) Scientific and technical information.

(g) Production and manufacturing.

(h) Industrial base resources and productivity.

(i) Force modernization.

(j) Developmental test and evaluation, as defined in DoD Directive 5000.2,[2] and review and approval of the Test and Evaluation Master Plan.

(k) Environmental services.

(l) Assignment and reassignment of research and engineering and acquisition responsibility for programs, systems, and activities.

(m) Codevelopment, coproduction, logistics support, and research interchange with friendly and allied nations, in coordination with the Under Secretary of Defense for Policy.

(n) Installation management.

(o) Construction, including construction funded by host nations under the North Atlantic Treaty Organization (NATO) Infrastructure program.

§ 382.5 Authorities and relationships.

(a) The USD(A) shall take precedence in the Department of Defense on acquisition matters after the Secretary and Deputy Secretary of Defense. On all other matters, the USD(A) shall take precedence after the Secretary and Deputy Secretary of Defense and the Secretaries of the Military Departments.

(b) The USD(A) shall direct the Secretaries of the Military Departments and Heads of other DoD Components on policy, procedure, and execution of the acquisition system. This includes responsibility for the development, management, supervision, and evaluation of acquisition systems and processes.

(c) The Secretary/Deputy Secretary of Defense shall make decisions on Acquisition milestones and resource matters, based on recommendations by the USD(A). The USD(A) shall prepare the documentation that reflects the Secretary/Deputy Secretary of Defense milestone decisions. These decisions shall be executed through the USD(A) for implementation by the Heads of DoD Components.

(d) In the performance of assigned functions, the USD(A) shall:

(1) Exercise direction, authority, and control over activities reporting directly to that official. These include:

(i) The Director of Defense Research and Engineering;

(ii) The Assistant Secretary of Defense (Research and Technology);

(iii) The Assistant Secretary of Defense (Production and Logistics);

(iv) Acquisition-related activities of the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence);

(v) The Assistant to the Secretary of Defense (Atomic Energy);

(vi) The Director of Small and Disadvantaged Business Utilization; and

(vii) The Defense Advanced Research Projects Agency, the Defense Communications Agency, the Defense Logistics Agency, the Defense Mapping Agency, the Defense Nuclear Agency, and the Defense System Management College.

(2) Provide technical guidance for utilization of the Electromagnetic Compatibility Analysis Center.

(3) Provide policy guidance, goal setting, and management supervision for the Logistics Systems Analysis Office,

[2] See footnote 1 to § 382.3(a)(1).

Defense Logistics Studies Information Exchange, Defense Management Journal, Defense Materiel Specifications and Standards Office, Product Engineering Service Office, Weapon Support Improvement and Analysis Office, Defense Housing Management Systems Office, Defense Base Operations Analysis Office, and utilization of Federally Funded Research and Development Centers (FFRDCs).

(4) Use existing facilities and services of the Department of Defense and other Federal Agencies, whenever practicable, to avoid duplication and to achieve an appropriate balance among modernization, readiness, sustainability, efficiency, and economy.

(e) The USD(A) shall also:

(1) Issue DOD Instruction DOD publications, and one-time directive-type memoranda, consistent with DOD 5025.1–M,[3] that implement policies approved by the Secretary of Defense in the functions assigned to the USD(A). Instructions to Unified and Specified Commands shall be issued through the Chairman of the Joint Chiefs of Staff (CJCS).

(2) Obtain reports, information, advice, and assistance, consistent with DOD Directive 7750.5,[4] as necessary in carrying out assigned functions.

(3) Communicate directly with the Heads of DOD Components. Communications to Commanders of the Unified and Specified Commands shall be coordinated through the CJCS.

(4) Establish arrangements for DOD participation in nondefense governmental programs for which the USD(A) is assigned primary DOD cognizance.

(5) Communicate with other Government Agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(6) Coordinate and exchange information with other OSD and DOD officials exercising collateral or related responsibilities.

(7) Exercise the delegations of authority contained in the Appendix of this part.

(f) Other OSD officials and Heads of DOD Components shall coordinate with the USD(A) on all matters related to authorities, responsibilities, and functions assigned in this part.

Appendix A—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and subject to his direction, authority, and control, and in accordance with DOD policies, Directives, and Instructions, the USD(A), or in the absence of the USD(A), the person acting for the USD(A) is hereby delegated authority to exercise, within his assigned responsibilities and functional areas, all authority of the Secretary of Defense derived from statute, executive order, and interagency agreement, except where specifically limited by statute or executive order to the Secretary of Defense, to include but not limited to:

1. Exercise all authorities delegated to the Secretary of Defense by the International Trade Commission, Department of Commerce BDSA Del. No. 1, as amended (DOD Directive 4405.6,[5] July 8, 1986).

2. Act for the Secretary of Defense in the exercise of extraordinary contractual action authority under Pub. L. 85–804—an Act to authorize the making, amendment, and modification of contracts to facilitate the national defense, August 28, 1958, in accordance with E.O. 10789, November 14, 1958, as amended, and Part 50 of the Federal Acquisition Regulation.

3. Make Secretarial determinations, justifications, and approvals on behalf of the Defense Advanced Research Projects Agency (DARPA), Defense Communications Agency (DCA), Defense Logistics Agency (DLA), Defense Mapping Agency (DMA), and the Defense Nuclear Agency (DNA) under Title 10, United States Code, with the authority to redelegate to the Directors of those Agencies as appropriate.

4. Act for The Secretary of Defense in the establishment and granting of waivers under the Buy American Act (41 U.S.C. 10a–10b).

5. Act for the Secretary of Defense on delegations of authority to him by the U.S. Trade Representative to waive the prohibition against procurement from certain countries, pursuant to Title 3, Pub. L. 96–39, Trade Agreements Act of 1979 (19 U.S.C. 2511 *et. seq.*), and E.O. 12260, July 26, 1979.

6. Act for the Secretary of Defense in the exercise of authority delegated by the Administrator of General Services to dispose of surplus personal property and to waive prescribed demilitarization requirements under DoD Directive 4160.21,[6] December 5, 1980.

7. Make determinations with respect to the donation of surplus personal property to educational activities of special interest to the Armed Forces of the United States as prescribed in DoD Directive 4160.25,[7] April 30, 1984.

8. Act for, and exercise the powers of, the Secretary of Defense concerning requests for waiver of the navigation and vessel inspection laws of the United States under Pub. L. 891, 81st Congress, 2nd Session, December 27, 1950, (64 Stat. 1120), except on those matters that have been delegated by the Secretary of Defense to the Secretary of the Army.

9. Make recommendations to the Department of Energy in connection with facilities for transmission of electric energy and natural gas across borders of the United States, pursuant to the authority given the Secretary of Defense in E.O. 10485, September 3, 1953, as amended by E.O. 12038, February 3, 1978.

10. Act for the Secretary of Defense in the field of transportation and traffic management under section 201(a), Title 11, of the Federal Property and Administrative Services Act of 1949, June 30, 1949, as amended (40 U.S.C. 481(a)) (DoD Directive 5126.9,[8] June 18, 1979).

11. Act for the Secretary of Defense as the DoD claimant to other designated Executive Departments and Agencies for petroleum requirements and allocations in an emergency (DoD Directive 4140.25,[9] May 15, 1980).

12. Exercise all responsibilities and authorities of the Secretary of Defense under Title 10, United States Code, section 2404 with respect to the acquisition of petroleum.

13. Act for the Secretary of Defense in the implementation of OMB Circular No. A–109, "Major System Acquisitions," April 5, 1976.

14. Make the determination required by Title 50, United States Code, section 1512(1), concerning transportation or testing of any lethal chemical or any biological warfare agent.

15. Submit the annual report to Congress on funds obligated in the chemical warfare and biological defense research programs, required by Title 50, United States Code, section 1511.

16. Act for the Secretary of Defense for ensuring compliance with Pub. L. 92–463, the Federal Advisory Committee Act (5 U.S.C. Appendix), and make written determinations for conduct of all closed meetings of Federal Advisory Committees under his cognizance as prescribed by section 10(d) of the Act, (5 U.S.C. Appendix, 10(d)).

17. Act for the Secretary of Defense as the primary OSD interface with the Defense Policy Advisory Committee on Trade.

18. Act for the Secretary of Defense to make appropriate supporting determinations execute leases under title 10, United States Code, section 2667.

19. Act for the Secretary of Defense in the implementation of OMB Circular A–76, "Performance of Commercial Activities," as revised, August 4, 1983.

The USD(A) may redelegate these authorities, as appropriate, except as otherwise specifically indicated above or prohibited by law or regulation.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

September 29, 1987.

[FR Doc. 87–22897 Filed 10–5–87; 8:45 am]

BILLING CODE 3810–01–M

[3] Copies may be obtained, if needed, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[4] See footnote 1 to § 382.3(a)(1).

[5] See footnote 1 to § 382.3(a)(1).

[6] See footnote 1 to § 382.3(a)(1).

[7] See footnote 1 to § 382.3(a)(1).

[8] See footnote 1 to § 382.3(a)(1).

[9] See footnote 1 to § 382.3(a)(1).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 250

[SWH-FRL 3089-7]

Guideline for Recovered Materials Content in Paper Products Procured by the Federal Government

AGENCY: U.S. Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is issuing a guideline for Federal procurement of paper and paper products containing postconsumer recovered materials. The guideline implements section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA). Section 6002 states that if an agency uses appropriated Federal funds to purchase certain designated items, such items must contain the highest percentage of recovered materials practicable, and in the case of paper, postconsumer recovered materials. EPA is required to designate items for procurement and to issue guidelines to assist procuring agencies in complying with the section 6002 procurement provisions.

This guideline designates paper and paper products as items for which the procurement requirements of RCRA section 6002 apply. The guideline also presents recommendations for carrying out these procurement requirements, as well as the requirements to revise specifications to allow use of post consumer recovered materials to the maximum extent possible.

Elsewhere in today's **Federal Register**, EPA is proposing amendments to this guideline to recommend specific minimum content standards, a definition of "waste paper," and recommendations regarding data gathering to meet the annual review and monitoring requirement. These proposed amendments respond to comments received by EPA on the paper guideline proposed on April 9, 1985 (50 FR 14076).

DATE: The effective date of the guideline is November 5, 1987.

ADDRESS: The public docket for this guideline may be inspected in Room MLG-100, U.S. EPA, 401 M Street SW., Washington, DC from 9:00 am to 4:00 pm, Monday through Friday, excluding holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. A maximum of 50 pages of material may be copied from any regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: RCRA Hotline, toll-free, at (800) 424-9346 or at (202) 382-3000. For technical information, contact William Sanjour, Office of Solid Waste, WH-563, U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone: (202) 382-4502.

SUPPLEMENTARY INFORMATION:

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  B. Requirements of Section 6002
  C. Rationale for Selecting Paper and Paper Products Containing Recovered Materials for a Procurement Guideline
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IV. Discussion of Guideline
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  D. Executive Order No. 12291
  E. Regulatory Flexibility Act
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I. Authority

This guideline is being issued under the authority of sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962.

II. Introduction

A. Purpose and Scope

The Environmental Protection Agency (EPA) today is issuing the second of a series of guidelines designed to encourage the use of products containing materials recovered from solid waste. Section 6002 of the Resource Conservation and Recovery Act of 1976, as amended ("RCRA" or "Act"), 42 U.S.C. 6962, states that if a Federal, State, or local procuring agency uses appropriated Federal funds to purchase certain designated items, such items must be composed of the highest percentage of recovered materials practicable. EPA is required to designate such items and to prepare guidelines to assist procuring agencies in complying with the requirements of section 6002.

EPA issued the first of these guidelines, for cement and concrete containing fly ash, on January 28, 1983 (48 FR 4230). A second guideline, for paper and paper products containing recovered materials, was proposed on April 9, 1985 (50 FR 14076). A third guideline, for asphalt materials containing ground tire rubber, was proposed on February 20, 1986 (51 FR 6202). EPA also is preparing guidelines for re-refined lubricating oils and for retread tires.

Today EPA is issuing the final guideline for paper and paper products. Elsewhere in today's **Federal Register**, EPA is proposing to amend the guideline in response to certain comments.

B. Requirements of Section 6002

Section 6002 of the Act, titled Federal Procurement, directs all procuring agencies that use appropriated Federal funds to procure items that contain the highest percentage of recovered materials practicable, and in the case of paper, postconsumer recovered materials, provided that reasonable levels of competition, cost, availability, and technical performance are maintained. This requirement applies only to those items (or products) that are designated by EPA under section 6002(e). Further, the requirement applies only when the purchase price of the item exceeds $10,000 or when the cost of such items purchased during the preceding year exceeded $10,000.

Federal agencies responsible for drafting or reviewing specifications are required to review and revise their specifications for items designated by EPA in order to remove requirements that items be manufactured from virgin materials and remove prohibitions against the use of recovered materials,

including, in the case of paper, postconsumer recovered materials.

Vendors are required to estimate the percentage of postconsumer recovered materials utilized for the performance of any contract and to certify that the percentage of postconsumer recovered material content to be utilized is at least the amount called for by the specifications or other contractual requirements.

Section 501 of the Hazardous and Solid Waste Amendments of 1984 added paragraph (i) to section 6002 of RCRA. This provision requires procuring agencies to develop an affirmative procurement program for procuring items designated by EPA. The program must be consistent with Federal procurement requirements and must contain at least four elements:

(1) A recovered materials preference program;

(2) An agency promotion program;

(3) A program for requiring estimates, certification, and verification; and

(4) Annual review and monitoring of the effectiveness of the procurement program.

Section 6002(e) requires EPA to prepare guidelines to assist procuring agencies in carrying out these requirements. The guidelines must designate those products that can be produced with recovered materials and whose procurement by procuring agencies will fulfill RCRA objectives. The EPA guidelines also must provide specific recommendations with respect to the procurement of products containing recovered materials.

Federal procurement of products made from recovered materials can increase recovery of materials from the solid waste stream, and use of such products by Federal, state, and local agencies can demonstrate their technical and economic viability to others. The use of recovered materials in paper and paper products will materially reduce the quantity of paper that must be landfilled. In addition, the Federal government's commitment to increase purchases of paper and paper products containing postconsumer recovered materials may encourage manufacturers to increase the amount of other recovered materials in their products. The Federal government accounts for the purchase of about two percent of all paper consumed in the United States. For some types of paper, such as tissue and printing/writing papers, the percentage is higher than this and therefore is significant. Thus, this guideline could have a positive effect on public attitudes and on consumers' acceptance of paper and paper products containing postconsumer recovered materials.

C. Rationale for Selecting Paper and Paper Products Containing Recovered Materials for a Procurement Guideline

As indicated in the preamble to the fly ash guideline, EPA prepares guidelines for items containing recovered materials that have been designated by the Administrator under section 6002(e) after consideration of certain factors.

Section 6002(e) of RCRA specifically directs the EPA Administrator to issue a procurement guideline for paper. The term "paper" is construed by EPA to include paperboard and paper products also. Since Congress already has designated this product as an appropriate subject for a procurement guideline, it is not necessary for EPA to demonstrate further in this preamble that paper satisfies the statutory criteria for designating a procurement item.

III. Background Information on Using Recovered Materials in Paper and Paper Products

A. Introduction

In 1984, about 77 million tons of paper and paper products were consumed in the U.S.A., of which about 21 million tons were recovered for recycling and about 50 million tons of paper and paper products were disposed of, primarily in municipal solid waste landfills. This is about half of all manufactured product waste appearing in municipal solid waste and about 35 percent of all municipal solid waste discarded (principally from households, commercial businesses, and institutions). By any measure, paper and paper products constitute a major portion of solid waste in this country.

The nation spends more than $9 billion annually on solid waste disposal. Most communities are running out of landfill capacity, and the siting of new landfills has become very difficult. Thus, activity to promote recovery and reuse of paper and paper products is a matter of national priority both to reduce the cost of disposal and to extend the life of existing landfills.

It should be noted, however, that paper and paper product disposal is not known to be a significant threat to human health or the environment as the wastes are generally nonhazardous in character. Thus, while the disposal of paper does not present an urgent need for immediate solution from the health and environment viewpoint, it is being addressed because many areas of the U.S. are running out of disposal options for all wastes and face serious crises unless the solid waste streams can be reduced and/or disposed of in an acceptable manner.

B. Use of Recovered Materials in Paper and Paper Products

Within the paper industry and its suppliers, discarded paper recovered for use in manufacturing processes is called waste paper, recyclable paper, or paper stock. It is often kept separate from mixed refuse at the businesses and residences where it is discarded. For example, businesses may separate and bale used corrugated containers to be picked up by a waste paper dealer, and people may separate newspapers in their homes to be donated to a local paper drive for a charity. Some businesses and institutions practice the separate recovery of office papers in office buildings by means of a desk top sorting container or other ways. Waste paper that is separated and collected is then customarily transferred to a waste paper dealer, who prepares the paper for shipment by baling or other means, and sells the waste paper to a paper mill.

At the paper mill, waste paper is mixed with water in a large vessel with rotating beaters at the bottom similar to a kitchen blender, but much larger. The beating process separates the paper fibers and forms a slurry pulp. This recycled pulp is similar in appearance to virgin pulp prepared from wood. Recycled pulp is then cleaned and washed as necessary. In some recycling processes, the recycled pulp is washed with chemicals to remove inks, adhesives, and other contaminants. This process is referred to within the paper industry as "deinking." After deinking, the recycled pulp is equivalent to virgin pulp. Both recycled and virgin pulps are formed into paper and paper products in a similar fashion.

Paper products are manufactured from either virgin or recovered materials, or combinations of the two, by various manufacturers. Tests have shown that for a given product grade there is a wide variation in all measurable characteristics depending on particular manufacturers or particular production runs at a given mill. Products from both virgin and recovered materials generally fall into the same range of variability and frequently, they cannot be distinguished by the typical end user.

However, recycled paper fibers do tend to be shorter than virgin fibers because of the recycling process. The short fibers may cause recycled paper to be weaker than an otherwise equivalent virgin sheet, but the sheet will also have a higher opacity. In paperboard products, the recycled grade is

sometimes produced at a somewhat higher caliper (thickness) than the equivalent virgin fiber product to ensure similar performance characteristics. Paper and paperboard manufacturers can generally manufacture products that meet customer specifications by taking into account the characteristics of paper made from recovered material. For some products the recycled fiber characteristics are preferred; for most there need not be any differences distinguishable by the end user.

Some recycled fiber is derived from paper containing printing, or from paper that has other materials such as coatings or adhesives on it. Paper made from these recovered materials sometimes does not have quite the same appearance as virgin paper. It is not quite as bright, or as white, or has a grayish or bluish tint, and it is sometimes speckled in appearance. Recycled paper manufacturers can bleach and brighten the paper and clean contaminants from the pulp. Coatings can also be added to the paper surface to enhance its "whiteness" and "brightness." These processes allow paper made from recovered materials to meet customer specifications.

EPA concludes that as a general rule, paper containing recovered materials can be manufactured to meet customer specifications. However, some of the commenters on the proposd paper guideline questioned whether paper made from recovered materials is always available at all locations at a reasonable price. This concern is addressed later in this preamble.

C. "Postconsumer Recovered Materials"

RCRA Section 6002(h) provides that, in the case of paper products, the term "recovered materials" includes: (1) Postconsumer materials; and (2) manufacturing, forest residues, and other wastes. The Hazardous and Solid Waste Amendments of 1984, in revising section 6002, uses the specific term "postconsumer recovered materials" in describing the material whose use is to be maximized by the guideline for paper and paper products. For this reason, the guideline refers to paper and paper products containing postconsumer recovered materials, rather than to "recycled paper."

The general category of waste paper includes all types of postconsumer recovered materials such as old newspaper, used corrugated containers, and office waste paper. It also includes preconsumer wastes from manufacturing processes, distributors, printers and paper converting operations such as white trimmings (called pulp substitutes) or printed paper which has never reached the consumer. The use of preconsumer waste paper (or "recovered materials") is already at a high level. Increasing the demand for paper products containing recovered materials therefore requires that postconsumer waste paper be used. While the use of postconsumer recovered materials is emphasized in RCRA section 6002, increased usage of preconsumer waste materials in paper and paper products should also be addressed. As demand increases for a wider range of paper and paper products containing recovered materials, manufacturers of products that are currently made with preconsumer materials will have to use larger quantities of postconsumer recovered materials to meet their raw materials (i.e., waste paper) supply needs.

D. Major Federal Purchasers

The major Federal purchasers of paper, and, therefore, the agencies most likely to be affected by this guideline are: The Government Printing Office (GPO), which operates under the direction of the Congressional Joint Committee on Printing (JCP); the General Services Administration (GSA); and the Department of Defense (DOD). On advice of its Committee on Paper Specifications, which includes representatives from GPO, JCP adopts specifications and standards for printing and writing grades of paper. GSA adopts specifications for all other paper and paper products. DOD further reviews these standards and drafts additional specifications, as necessary, to establish military standards for some of the items it procures.

IV. Discussion of Guideline

This section of the preamble summarizes and explains the basis for each section of the final guideline. Section V discusses recommendations as to price, competition, availability, and performance, while section VI discusses implementation of the guideline.

A. Scope

This guideline applies to the use of postconsumer recovered materials in paper and paper products purchased by procuring agencies using Federal funds. Included are all paper and paperboard categories except building and construction paper grades. The Agency believes that by including as many items as possible within the scope of the guideline, the paper industry will be encouraged to increase and to improve the production of paper and paper products containing postconsumer recovered materials.

The following list of major paper and paperboard purchase categories is included as an illustration. However, the list is not intended to be all-inclusive.

- High Grade Bleached Papers
  - Printing and writing papers, including mimeo and duplicator papers
  - Mailing envelopes
  - Memo pads
  - Form bond and manifold business forms
  - Computer paper
  - Xerographic/copy paper
- Newsprint
- Tissue Products
  - Sanitary products, e.g., toilet tissue, paper towels, facial tissue, paper napkins
  - Industrial wipers
- Unbleached Paper and Paperboard
- Coarse paper
- Linerboard and corrugating medium
- Corrugated boxes
- Fiber sheets and boxes

In making its decision regarding the scope of this guideline, the Agency considered suggestions from the Government Printing Office and representatives of the printing industry to the effect that performance standards for certain grades of printing and writing paper can currently be met only by virgin paper. It was suggested that EPA exclude these papers on an item-by-item basis. It was also suggested that certain items that must meet stringent standards of noncontamination, such as surgical masks and items coming in contact with wet or oily foods, should be individually identified for exclusion.

EPA has concluded that the language of section 6002(d)(2) of RCRA requiring the "use of recovered materials to the maximum extent possible without jeopardizing the intended use of the item" effectively allows the exclusion of an item when performance standards cannot be met if postconsumer recovered materials are included in the content. None of the commenters indicated why the statutory limitation is inadequate to accommodate the concerns of agencies that draft and review specifications. A determination to exclude a specific item from a recovered materials content requirement may be made by the agency in drafting and reviewing specifications based on standards related to performance. EPA suggests a procedure for establishing such an exclusion in § 250.13 of this guideline. It is further suggested that performance tests be cited and that test results be included in records for the annual review process and in any reporting on the effectiveness of this guideline implementation.

EPA decided not to include building and construction grades of paper based on several considerations. In reviewing the variety of paper and paper products that are or may be manufactured with a percentage of postconsumer recovered materials, it became apparent that building and construction grades constitute a significant and distinct industry unrelated to the manufacturing of virtually all other grades of paper and paperboard. The manufacturing, marketing, standards, and testing mechanisms for building and construction grades are different from those for other grades of paper. Any evaluation of the feasibility and potential effectiveness of a Federal procurement program for these grades would require extensive additional information; in addition, different procurement offices and procedures are involved in the procurement of construction categories. For these reasons, EPA believes that it would be more appropriate to consider building and construction grades of paper in a separate context.

B. Applicability

The requirements of section 6002 generally apply to"procuring agencies" which are defined in section 1004 as "any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract." Under section 6002(a), the procurement requirements apply to any purchase by a procuring agency exceeding $10,000 or to purchases where the quantity of "functionally equivalent" items purchased in the preceding fiscal year exceeded $10,000. EPA believes that its interpretation of this requirement, which is described in more detail below, will provide an effective program without imposing an unreasonable bookkeeping burden on the purchasers and users of paper and paper products.

1. *Direct Purchases.* For the purpose of this guideline, purchases made as a result of a solicitation by a procuring agency for its own general use or that of other agencies (for example, GSA purchases) are considered "direct." EPA believes that a contract for printing is, in part, a paper procurement action because the type of paper to be used is explicitly stated in the contract. (Labor and overhead expenses involved in printing would be considered a service.) Therefore, a Federal agency that provides printing services to other governmental agencies would be subject to this guideline. The guideline leaves the method of calculating the value of paper used in performing a printing contract to the discretion of the agency awarding that contract. This provides wide latitude. GPO has stated that the value of the paper may be as low as 20 percent or as high as 80 percent of the contract. The value allocated to the paper used in the performance of the printing contract would determine the applicability of the guideline: If that value is $10,000 or more, the guideline would apply.

2. *Indirect Purchases.* As stated previously, section 6002 of RCRA and the guideline apply to procurement actions by non-Federal agencies if they expend appropriated Federal funds. Thus, if Federal funds are used to establish or maintain a program or activity by a State, local government, contractor, or grantee and if accounts of Federal monies are kept separately from other accounts, the requirements of section 6002 and the provisions of the guideline would apply to any procurement of paper or paper products for that program or activity if it meets the $10,000 threshold. If, however, Federal funds are used to support continuing programs and activities, and it is not possible to separate such funds from other receipts, these requirements would not apply. For example, if a city Housing Authority receives a Federal grant to build and maintain a housing project and uses $10,000 of the funds for stationery, leases, or brochures, the provisions of the guideline would apply. On the other hand, if the Housing Authority receives a disbursement of Federal funds from a block grant for general support of its continuing program, and the disbursement includes other sources of funding and/or no separate accounting for specific items is maintained, the provisions of the guideline would not apply.

3. *The $10,000 Threshold.* The procurement requirements of section 6002(a) apply to any purchase of a "procurement item" or "functionally equivalent" procurement item costing $10,000 or more. In common usage, terms such as "paper" and "boxes" include many items manufactured to meet different performance standards. They may not, therefore, technically be "functionally equivalent." (For instance, offset printing paper should not be used for high-speed office copiers.) The variations in grades and types of paper products are numerous. The JCP has specifications for over 50 grades of all types of paper, 23 for printing alone, while GSA estimates that it providesspecifications for about 300 paper products. Because few procuring agencies, as defined in the Act, purchase $10,000 worth of any one grade of paper or any one paper product, restricting the applicability of section 6002 to purchases based on a very technical definition of functional equivalency would limit the effectiveness of the guideline in meeting the objectives of the Act.

The Agency has concluded that, in the case of paper and paper products, "functionally equivalent" items should be defined as a category of items having the same or substantially similar end use. EPA has developed a categorization based on this concept of similar end use. For procuring agencies making many purchases, the categorization will extend the applicability ofthe guideline beyond a technically defined "functional equivalency" so that a greater number of procurement actions are affected. The categorization will, on the other hand, reduce the number of small entities affected because the categories represent a more limited concept of functional equivalency than the inclusive term "paper."

Under § 250.3 of the guideline, each of the following groups of items are "functionally equivalent":

—All grades and types of xerographic/copy paper;
—Newsprint;
—All grades and types of printing and writing paper;
—Corrugated boxes and fiberboard boxes;
—Folding boxboard and cartons;
—Stationery, office papers (memo pads, scratch pads, etc.), envelopes, and manifold business forms including computer paper;
—Toilet tissue, paper towels, facial tissue, paper napkins, doilies, and industrial wipers;
—Brown papers and coarse papers.

Note that some of these categories have been revised slightly from the proposed guideline in response to comments.

C. Requirements vs. Recommendations

Commenters stated that the proposed preamble and guideline did not clearly define what was required of procuring agencies. In particular, commenters found EPA's use of the verbs "shall," "must," "recommend," "should," and "suggest" to be confusing.

RCRA section 6002 requires procuring agencies and contracting officers to perform certain activities, such as revising specifications for procurement items. It also requires EPA to prepare "guidelines for the use of procuring agencies in complying with" section 6002. The guidelines refer to the section

6002 requirements and contain two types of provisions: Requirements (mandated by Congress in section 6002) and recommendations (EPA's guidance for complying with the requirements of section 6002). The verbs "shall" and "must" indicate requirements, while verbs such as "recommend," "should," and "suggest" indicate recommendations.

Procuring agencies must comply with the requirements of section 6002, whereas EPA's recommendations are only advisory. Procuring agencies may use a different approach to meeting the section 6002 requirements. EPA believes, however, that compliance with its recommendations constitutes compliance with the section 6002 requirements.

D. Definitions

Most of the definitions in this guideline are the same definitions used in RCRA and therefore do not require further explanation. Other definitions, such as "paper," incorporate standard industry definitions. A few definitions are further discussed in this section of the preamble.

1. *"Paperboard."* One common term used by the industry is "paperboard." This term is used to describe thick paper used in the manufacture of products such as tablet backs, folding boxes, and corrugated boxes. Paperboard is similar in composition and form to paper, but generally refers to sheet that is 0.012 inch thick or thicker. Thus, the term "paper," which is used in the Act, is construed to include paperboard and paperboard products.

2. *"Practicable."* Section 6002 requires procuring agencies to procure items composed of the highest percentage of recovered materials *practicable* and to develop programs to assure that recovered materials are purchased to the maximum extent *practicable* (emphasis added). Commenters asked EPA to define the term "practicable" as used in section 6002. In response, EPA has added a definition of "practicable" in the final guideline.

EPA's definition of "practicable" combines the dictionary definition with certain statutory criteria for determining practicability. The dictionary definition of practicable is "capable of being used," and EPA believes that Congress intended the term to be defined in this way. Congress also provided four criteria for determining the maximum amount practicable: Competition, availability, performance, and price. EPA's definition of "practicable" incorporates these criteria.

3. *"Mill Broke."* EPA has determined that the definition of dry paper and paperboard waste in "recoverable materials" (section 6002(h)(2)(A)) specifically excludes mill broke, which is any paper waste generated before completion of the papermaking process. Mill broke is commonly returned to the pulping process and is composed of whatever the pulp is derived from, e.g., wood pulp, waste paper, etc. In the final guideline, the definition of "mill broke" makes clear that it is excluded from the term "recovered materials."

E. Specifications

1. *General.* Section 6002(d)(1) required that, no later than May 8, 1986, Federal agencies that draft and review specifications for procurement items procured by Federal agencies eliminate specifications that prohibit the use of recovered materials or that require that items be manufactured from virgin materials only. Section 6002(d)(2) requires that within one year after publication of this guideline, procuring agencies must assure that "such specifications require the use of recovered materials to the maximum extent possible without jeopardizing the intended use of the item."

Since passage of the 1980 Amendments to section 6002(d) of RCRA, some agencies have moved to require the use of recovered materials; others have felt it sufficient to "permit" and/or "encourage" the use of "reclaimed fibers" or "recovered materials." By adding the requirements that procuring agencies establish affirmative procurement programs for items containing postconsumer recovered materials or other recovered materials, the 1984 Amendments make it clear that simply "permitting" or "encouraging" the use of such materials is not sufficient to assure that specifications require the maximum use of postconsumer recovered materials "without jeopardizing the intended use of the item." Federal agencies must take affirmative steps to encourage their use.

Section 250.12(b) of the guideline presents recommendations for specification revisions to implement the statutory requirements. Unnecessarily stringent specifications must be revised to allow for a higher postconsumer recovered materials content. Specifications need not be revised, however, "if it can be technically determined that for a particular end use a product containing such materials will not meet reasonable performance standards." (§ 250.13.)

Commenters stated that specifications sometimes do not clearly state the intended end use of products. For example, paper purchased as printing paper is sometimes used in high-speed copiers with unfortunate results simply because the user did not properly recognize a difference in paper characteristics. In such cases, product specifications should be revised to clearly state an intended end use for a product(s). When using postconsumer recovered materials, it is important that the correct grades be supplied for the intended end use. EPA recommends that specifications clearly identify both the expected performance and the specific intended use, especially when the paper is to be used in high-speed copiers.

The proposed guideline contained a recommendation that procuring agencies insert a clause in specifications to indicate that paper and paper products containing postconsumer recovered materials were preferred over those without such content. (See § 250.12(b)). Commenters pointed out that this clause was vague, ill-defined, and possibly counter-productive. EPA agrees and has deleted this paragraph from the final guideline.

2. *Specifications Related to Performance.* Certain paper items may not meet the standards of performance necessary for their intended end use if they contain any percentage of postconsumer recovered materials. Examples of such items are paper which comes into contact with wet or oily food, archival papers, certain map papers, deed papers, and face masks for use in "clean rooms." EPA considered removing these paper items from its designation of items to be covered by the guideline. Unlike construction grade papers, which are excluded on a categorical basis, these papers would have to be excluded on an item-by-item basis. EPA concluded that it does not have the expertise to make such a technical determination, and that such determinations are best left to procuring agencies.

Section 250.13 of the guideline recommends that an agency document any finding that, for a particular end use, an item containing postconsumer recovered materials will not meet reasonable performance standards and reference the documentation in subsequent solicitations for bids for that item. The documentation should clearly show that the unacceptable performance is caused by the properties of the paper itself and not by the equipment with which the paper is used. The documentation should reference specific tests used to judge performance.

Commenters raised questions relating to the performance of products containing postconsumer recovered materials in the printing/writing and fiber box categories. As a result, EPA

reviewed information about the technical performance of these products.

a. *Printing/Writing Papers.* Performance testing of paper containing postconsumer recovered materials is a continuing activity of paper manufacturers. In some instances, the evaluation of the reports of these organizations was complicated by the fact that the recovered materials used were not precisely identified as either postconsumer or other recovered materials. The reports of these organizations indicate, however, that acceptable performance is possible in most grades of paper and paper products made from recovered materials. The use of preconsumer recovered materials is common in printing and writing papers, although the use of postconsumer recovered materials is more limited.

Commenters also stated that paper containing postconsumer recovered materials causes difficulty in printing and high-speed copier machines. EPA has reviewed documentation from State printing agencies and private sector printers and has found that this is a common reaction by pressmen. In many States, printers have refused to use paper made from recovered materials. However, several States have had many years of experience in printing with such paper, after having first overcome adverse reactions by pressmen. These States report that while there is some difficulty in using printing paper made from postconsumer recovered materials, it is no more than with other economy grades of printing paper. Therefore, procuring agencies and agencies that revise and write specifications should carefully identify the performance expected of the product so that acceptance or rejection is based on verifiable tests rather than preconceived perceptions.

EPA has obtained results of laboratory tests for both virgin paper and paper made from postconsumer recovered materials.[1] These test results provide additional verification that paper made from recovered materials can and does meet the same standards as virgin paper for many categories of printing/writing papers. This is especially true in the economy grades typically purchased in competitive bids by public agencies.

b. *Fiber Boxes.* The primary standards for linerboard (the facing material of corrugated containers) and fiber boxes are set by the Uniform Freight Regulations and are measures of basis weight and mullen (burst strength). As noted below under "New Specifications," these standards are currently under review. The contemplated changes would replace the mullen test with a "crush" test that would enable linerboard manufacturers to use a percentage of postconsumer recovered materials. (In fact, there are already a few mills that produce linerboard made of 100 percent postconsumer waste paper.) Federal procurement of linerboard containing postconsumer recovered materials could then be practicable.

c. *Other Performance Issues.* Commenters recommended that the Agency develop its own tests or testing procedures. However, the Agency does not have the expertise to do so. Moreover, EPA believes that analysis of product characteristics, including conducting tests and/or analyzing test results, is a responsibility of the procuring agency. EPA also believes that procuring agencies should maintain data on such test results. In the companion action in today's **Federal Register**, EPA is proposing that procuring agencies maintain such test results.

3. *Specifications Related to Aesthetics.* Some commenters stated that specifications related to aesthetics, such as whiteness, brightness, color, and dirt count, serve as impediments to the use of paper containing postconsumer recovered materials. The American Society for Testing and Materials (ASTM) and the Technical Association of the Pulp and Paper Industry (TAPPI) have established standards for brightness and dirt counts which paper and paper products made from postconsumer recovered materials can meet. Using these established standards as a reference, EPA recommends that agencies that draft specifications conduct a careful review of existing specifications related to aesthetics to determine whether they are overly stringent for the product's intended end use, and if so, amend them.

4. *New Specifications.* Considerable technological advances are occurring in the paper and paperboard manufacturing industry. These advances are leading to increased utilization of postconsumer recovered materials in many products and the introduction of the use of preconsumer materials in other products, e.g., pulp substitutes and deinking grades of waste paper and sawdust and other forest residues. For instance, the Railway Association is currently considering a performance test change that would effectively allow more use of recovered materials in fiber (corrugated) boxes. In recent years, the process of manufacturing newsprint with nearly 100 percent postconsumer recovered materials has become common. In § 250.14 of the guideline, EPA recommends that procuring agencies monitor new developments and use them to increase the use of postconsumer and other recovered materials.

F. Affirmative Procurement Program

Section 6002(i) of RCRA requires procuring agencies to adopt an affirmative procurement program to ensure that paper and paper products containing postconsumer recovered materials are purchased to the maximum extent practicable. As discussed previously, RCRA section 6002(h) provides that "postconsumer recovered materials" are a specific subset of "recovered materials." The definition of "postconsumer recovered materials" includes paper, paperboard, and fibrous wastes that have passed through their end usage as a consumer item or that enter and are collected from municipal solid waste. "Recovered materials" is a broader term, including postconsumer recovered materials as well as such widely-used wastes as manufacturing wastes, forest residue, and other wastes. Because the intent of this guideline is to reduce the municipal solid waste stream, the focus of this guideline is postconsumer recovered materials, which are not used as widely.

EPA received comments that the proposed guideline did not make the specific requirements of an affirmative procurement program clear. In response, EPA has devoted this section of the preamble to clarifying these requirements. The affirmative procurement program must contain four elements: (1) A preference program; (2) a promotion program; (3) procedures for estimation, certification, and verification; and (4) procedures for annual review and monitoring of the program's effectiveness.

1. *Preference Program.* The first of the four requirements of the affirmative procurement program is a recovered materials preference program to maximize the use of postconsumer recovered materials. The procuring agency may implement the preference program by employing a case-by-case approach, by adopting minimum content standards, or by choosing a substantially equivalent alternative.

Section 6002(i) also requires that any affirmative procurement program be consistent with applicable provisions of Federal procurement law. From time to time, Congress has established preferential procurement programs in order to attain socioeconomic goals.

[1] See docket materials dated October 9, 1985 submitted by an EPA contractor.

Among these are the Small Business, Labor Surplus Area, and Minority Business procurement programs. EPA considered applying either or both of the mechanisms used in those programs—price preferences and set-asides—to this guideline. A price preference allows the procuring agency to pay a higher price, if necessary, for a specified product from preferred vendors. A set-aside requires the procuring agency to award a certain percentage of its contracts to preferred vendors of a product regardless of price. Price preferences and set-asides are currently being used in some State programs for the procurement of paper and paper products containing recovered materials. Four States are currently using price preference programs in which products containing recovered materials may cost from 5 to 10 percent more than virgin materials. Two States have set-aside programs for paper and paper products. These States report that they successfully procure products containing recovered materials.

EPA has considered recommending these programs at the Federal level. However, in the case of existing Federal preferential procurement programs that allow a price preference or a set-aside, the Agency found that each had been established under explicit statutory authority or a specific Executive Order. Neither the statutory language nor the legislative history of section 6002 seems, however, to contemplate the adoption of either price preferences or set-asides, and doing so would conflict with existing Federal procurement regulations. Therefore, rather than recommending price preferences or set-asides, EPA is recommending that agencies use either a case-by-case approach, minimum content standards, or a substantially equivalent alternative, as provided in RCRA section 6002(i)(3).

In the proposed guideline, EPA recommended case-by-case procurement as the preferred approach, although other approaches could be used. In response to comments, the final rule leaves the choice of approach for procurement of each paper or paper product to the individual procurement agencies. However, after careful consideration of all available data—including data submitted with the comments—EPA has concluded that agencies which elect to use reasonable minimum content standards will be in compliance with the statutory requirements, but agencies using the case-by-case approach or a substantially equivalent approach will not necessarily meet these requirements.

The strongest reason supporting this conclusion is the fact that tie bids are rare in government procurements. Consequently, wide use of the case-by-case approach may not result in agencies buying paper and paper products with postconsumer recovered materials to the maximum extent practicable. Therefore, an agency that selects the case-by-case or a substantially equivalent method will be expected to justify how its approach meets the statutory requirements.

a. *Case-by-Case Approach.* The case-by-case approach is defined in section 6002(i)(3)(A) as a policy of awarding contracts to the vendor offering an item composed of the highest percentage of recovered materials (and in the case of paper, postconsumer recovered materials) practicable, when all other factors, such as price, availability within a reasonable period of time, and ability to meet performance standards, are equal. Under the case-by-case approach, if there is a tie bid, then the procurement *must* be awarded to the vendor who offers the highest postconsumer recovered materials content.

Procuring agencies need accurate information to evaluate bids when postconsumer recovered materials content is a factor. Because an estimate of postconsumer recovered materials content to be used is not binding, it is not reliable for evaluating tie bids. By contrast, a certification becomes part of the contract and is binding. These terms are explained below in section IV.F.3 of the preamble.

Therefore, EPA recommends that procuring agencies require all vendors of paper and paper products to certify to the minimum percentage of postconsumer recovered materials in items they offer when submitting bids. Vendors should also be advised that such percentage will be the deciding factor in the event of a tie bid. Those vendors unfamiliar with the content of their products or offering products made entirely from virgin materials could easily meet the requirement by certifying a minimum percentage of 0 percent. The winning vendor that actually supplies the product *must* estimate the postconsumer recovered materials content of the paper actually supplied and the procuring agency must have a program to verify such estimates. This is true regardless of whether the selection was made on the basis of postconsumer recovered materials content.

If a paper or paper product containing postconsumer recovered materials is consistently offered at a competitive rate, EPA recommends that the procuring agency consider adopting a minimum postconsumer recovered materials content standard for that item. Through this solicitation process, the procuring agency would be assured of the lowest possible price, the maximum level of competition, and availability of the product. Several commenters voiced the opinion that a case-by-case approach would not be effective and urged EPA to eliminate that option. However, both RCRA and the Congressional colloquy show clearly that Congress intended that the case-by-case approach be an option. Therefore, EPA has no grounds to eliminate the case-by-case option.

b. *Minimum Content Standards.* Under the final guideline issued today, agencies may also adopt a program of minimum content standards for any of the items procured, as described in RCRA section 6002(i)(3)(B). Under this approach, procuring agencies would decide on minimum levels of postconsumer recovered materials, and these levels would be included in the specifications for the paper or paper products.

When using this approach, procuring agencies also need assurance from vendors that at least the minimum recovered content required in the specification will be contained in the products offered, and vendors must be required to provide estimates of the actual content in the goods supplied under contract.

EPA recommends that procuring agencies use the same certification and estimation procedure outlined in the case-by-case approach. Vendors should be required to certify to the mimimum postconsumer recovered content (which could, but would not have to be, higher than the minimum standard in the specification) when responding to bids. Vendors should also be required to provide an estimate of the actual percentage of postconsumer recovered content in the product that is shipped in fulfillment of the contract.

Comments have been received by EPA that a minimum content standards program may not be consistent with Federal procurement regulations. However, EPA has determined that since RCRA expressly authorizes specifications that include minimum content standards, such standards do not conflict with current Federal procurement regulations, if carried out under a competitive bid process. That is, full and open competition must exist, and after specifying the minimum content standard, all responsible sources that can meet the standard must be allowed to compete. The Competition

in Contracting Act of 1984 (CICA) (Pub. L. 98–369) permits agencies to use restrictive procurement procedures authorized by law, and RCRA creates the authorization for minimum content standards. In all other respects, full and open competition is necessary.

EPA believes that minimum content standards better achieve the legislative goal of procuring items containing the highest percentage of recovered materials practicable. As discussed above, today's final guideline leaves it to procuring agencies to establish minimum content standards. In response to comments, EPA is also proposing recommended minimum content standards elsewhere in today's **Federal Register**.

c. *Substantially Equivalent Approach.* Procuring agencies also can adopt a procurement approach that is substantially equivalent to the case-by-case approach and minimum content standards. Like the other two approaches, the substantially equivalent approach must assure that paper and paper products containing postconsumer recovered materials will be purchased to the maximum extent practicable. The approach also must be consistent with applicable provisions of Federal procurement law.

2. *Agency Promotion Program.* The second requirement of the affirmative procurement program is an effort by procuring agencies to promote procurement of paper and paper products containing postconsumer recovered materials. The proposed guideline made several suggestions for procuring agencies to consider for disseminating information about their preference program, such as placing notations in solicitations for bids and conducting discussions about the program at bidders' conferences and meetings. The proposed guideline also suggested that agencies such as GSA that procure paper and paper products for use by other agencies consider noting in their catalogs those papers or paper products that contain postconsumer recovered materials. These recommendations have been retained in the final guideline.

Some commenters felt that EPA should be actively involved in promotional programs. However, RCRA section 6002(1) specifies that the promotion program is an integral part of the affirmative procurement program, and therefore is the responsibility of each procuring agency, not EPA.

3. *Estimation, Certification, and Verification.* The third requirement of the affirmative procurement program set forth in section 6002(i) covers estimation, certification, and verification of postconsumer recovered material content in procurements. Estimates and certifications of content in an item are most easily expressed as a percentage of total content and can range from 0 percent to 100 percent, depending on the type of product or the feedstocks used in manufacturing the item. Many issues have been raised about these requirements, such as when the information should be provided, who is to provide it, and how it is to be obtained. To clarify this subject, it is necessary to review the requirements of the statute.

a. *Estimation.* RCRA section 6002(c)(3)(B) and section 6002(i)(2)(C) require that, after the effective date of this guideline, vendors that supply Federal procuring agencies with paper or paper products covered by this guideline must provide an *estimate* (emphasis added) of the total percentage of postconsumer recovered materials utilized in the performance of the contract. Furthermore, contracting officers must require that this information be provided.

EPA believes that this requirement is for the purpose of gathering statistical information on price, quantity, availability, and performance of paper and paper products made from postconsumer recovered materials. EPA further believes that this requirement applies regardless of the reasons why a contract is awarded. Estimates may differ from percentages of minimum postconsumer recovered content in certifications, and will provide up-to-date information for the annual review which is required of procuring agencies.

Therefore, EPA recommends that procuring agencies use the same procedure to require vendors to provide estimates of actual postconsumer recovered content in products shipped in fullfillment of contracts, no matter which approach is used.

b. *Certification.* The use of certification is common in government procurement. It is written assurance that goods or services delivered will fulfill requirements. Failure to meet conditions which have been certified can result in penalties to a vendor. RCRA section 6002(c)(3)(A) requires that after the effective date of this guideline, vendors must "certify that the percentage of postconsumer recovered materials *to be used* in the performance of the contract will be at least the amount required by applicable specifications or other contractual requirements". In other words, vendors must certify that a minimum percentage of postconsumer recovered material will be contained in products to be supplied. RCRA section 6002(i)(2)(C) requires "certification of minimum postconsumer recovered materials content *actually utilized*".

Together, these sections could be interpreted to mean that multiple certifications will be required: One when bids are offered, and another with each shipment. EPA is concerned that this interpretation could create unnecessary burdens for vendors and procuring agencies, and thus work against the intent of section 6002. States which purchase paper and paper products with recovered material content have found one certification sufficient. As an example, New York State requires certification of the content from vendors within six days of a bid opening. Vendors commonly discuss product specifications and availability with manufacturers prior to submitting a bid, so information for certification can be obtained at that time. A vendor can easily certify to a minimum of 0 percent if it does not wish postconsumer recovered material content to be a factor in its bids. The certification then becomes part of the contract awarded to the successful vendor. In the case-by-case approach, procuring agencies would have the assurance of a certification, rather than an estimate which must be confirmed, of postconsumer recovered content when bid awards are determined. Such assurance would be equally useful in the minimum content standards approach. EPA has concluded that one certification will fulfill both statutory requirements and, by using it in all instances, procuring agencies can adapt their purchasing programs most easily.

Accordingly, EPA recommends procuring agencies require certification as a condition of a responsive bid when bids are offered, regardless of whether the case-by-case, minimum content standard, or a substantially equivalent approach is used. Also, as previously stated, the successful vendor must estimate the actual postconsumer recovered content in products that are supplied. The estimate may or may not be different than the minimum percentage that is certified.

EPA understands that for both estimation and certification, the vendor will not have direct knowledge of postconsumer recovered content. Only the mill that produces the paper will have that information. However, there is no direct authority in RCRA section 6002 for the Federal government to require this information from anyone but the vendor. Therefore, the vendor must make its own arrangements for obtaining this information from the mill operator. The legislative history suggests the approach intended, as

shown by the following excerpt from the Conference Committee Report on the Hazardous and Solid Waste Amendments of 1984:

"In obtaining certification of the percentage of postconsumer materials and the percentage of manufacturing forest residues and other wastes, it is the intent of Section 6002 as amended by this Act that vendors supply the procuring agency with a statement *from the mill* indicating the percentages used *by the mill* in producing the paper and their sources of raw material." (H.R. Rep. No. 98–1133, 98th Cong. 2nd Sess. 121 (1984) [emphasis added].

c. *Verification.* Procuring agencies also are required to establish "reasonable verification procedures for estimates and certifications." See RCRA section 6002(i)(2)(C). If these verification procedures include access to mill operators' records, then the procuring agency must use some authority other than RCRA to inspect these records or must require vendors to have an agreement with the mill operator to supply such information or access to the procuring agency.

In general, paper manufacturers maintain records of the feedstocks used in each "run" or "lot" of paper for their own internal quality and specification controls. The optimum mix of recovered and virgin fiber often remains the same for each grade of paper, though variations may occur in individual runs.

In most cases manufacturers will be able to provide a certification to vendors as to the specific fiber content of the product shipped to a customer. It is not intended that the guideline require any additional records to be kept by the mills; records normally kept should be complete enough to estimate or certify to postconsumer recovered materials content accurately. However, to simplify the verification procedure and accommodate variations dictated by quality control and supply, the average amount of postconsumer materials used in each specific product over a one-month period may be used, if necessary, to meet the requirement for verification of estimates. Since mills commonly keep accounting and record summaries on a monthly basis, EPA recommends that the one-month figures be used for estimates of fiber percentages. Should it be necessary to verify the exact content of a specific lot or run of paper, the mill records for that lot or run can then be consulted.

However, if the vendor knows that that the postconsumer recovered materials content of paper or paper products supplied to procuring agencies differs from the monthly average, then the average cannot be used. For example, if the monthly average is 30 percent recovered materials content but the paper or paper product supplied contains no recovered materials or conversely contains 60 percent recovered content, then the vendor cannot use the monthly average. Use of the average in such instances will be viewed as an attempt to circumvent the requirements of RCRA in supplying paper or paper products to the procuring agency.

Monthly *averages* cannot be used for certification. Every shipment may not contain postconsumer recovered content equal to or greater than the average. However, the *minimum* percentage of postconsumer recovered materials used in recycled paper and paper products by the mill can be determined from monthly records for certification purposes.

Some comments have been made that mills cannot always distinguish postconsumer recovered materials from other recovered materials, thus making estimation and certification difficult if not impossible. EPA has verified that this is sometimes true for the printing and writing grades, but this is not generally the case. In most cases, mills have detailed knowledge of their raw materials. While postconsumer recovered materials content of every bale of waste paper may not be known to a certainty, mills can make reasonable estimates based on their extensive knowledge of their raw materials. In the companion action in today's **Federal Register**, EPA is proposing "waste paper" content standards to resolve inherent fiber identification problems with the printing and writing grades of paper.

4. *Annual Review and Monitoring.* The fourth requirement of the affirmative procurement program is an annual review and monitoring of the effectiveness of the program. The review should include an estimate of the quantity of paper and paper products containing postconsumer recovered materials purchased during the year.

EPA believes that procuring agencies should review the range of estimates and certifications of postconsumer recovered content provided by vendors during the year. Significant and repeated variations between standards, certifications, and estimates would signal whether changes in approach (e.g., from case-by-case to minimum content standards) or specific minimum content standards are warranted. EPA further believes that information provided by the estimation requirement will be particularly helpful to procuring agencies when they review their compliance with the requirement to purchase paper and paper products with the highest percentage of postconsumer recovered materials practicable. Therefore, EPA is proposing additional annual review procedures and related recordkeeping recommendations in the companion action published in the **Federal Register** today.

V. Recommendations as to Price, Competition, Availability, and Performance

Section 6002(c)(1) provides that the affirmative procurement requirement is subject to four limitations. First, the price of the item must not be unreasonable. Second, a satisfactory level of competition must be maintained. Third, the item must be reasonably available. Fourth, the item must meet the specifications established by the procuring agency.

Commenters stated that EPA is required under section 6002(e) to provide detailed information about the availability, price, and performance of paper and paper products containing postconsumer recovered materials. EPA has determined that such information varies significantly over short periods of time. Paper and paper products are made from virgin and recovered commodities which fluctuate in value according to supply and demand within the national and international economies. Even relative prices between paper products made with virgin or recovered fibers are subject to short-term fluctuation. Also, availability of paper and paper products made from recovered materials is a result of demand. Recent consolidation within the paper industry, the development of this guideline, and current activity to legislate preferences for recycled products at the State and local level, can all affect availability. Therefore, specific information about price and availability would not remain accurate long enough, at this point in time, to be useful in a guideline. General information is presented in this section. Information about performance has been obtained and is discussed in section III of the preamble.

A. Price

Section 6002 provides that a procuring agency can decide not to purchase a designated item, i.e., paper or a paper product containing postconsumer recovered materials, if the price is "unreasonable." EPA recommends that for the purpose of this guideline, when considering bids, "unreasonable price" is any price other than the price offered in the lowest responsive bid by a responsible bidder.

Several factors, other than those mentioned above, affect the market

price, or bid price, of paper and paper products containing postconsumer recovered materials in relation to the prices of products manufactured from other fibers, including the percentage of postconsumer recovered materials used, the degree of decontamination and deinking required to meet the performance standards for a specific product, and the proximity of the mill to (1) the supply of postconsumer recovered materials; and (2) the prospective customer. In many instances, mills bid for government procurements to "fill in" for capacity at a mill not already committed to other customers. Because, at a given point in time, there is no uniform method of determining the relative price of these items other than through the competitive bidding process, this final guideline recommends that procuring agencies use an "open-bid" process, allowing vendors of paper and paper products containing postconsumer recovered materials to compete for government contracts. For the case-by-case approach, this would include competition between vendors of products containing postconsumer recovered materials, as well as those which do not. If the minimum content standards approach is chosen, competition would be restricted to those products meeting the minimum content standards. However, open bidding would exist between vendors of those products.

States currently procuring paper or paper products containing postconsumer recovered materials have not been required to pay unreasonable prices for these products. Data on the recent experience of these State agencies show that virgin products and products containing postconsumer recovered materials compete in the open marketplace and are sold at competitive prices. Thus, unreasonable price should not be an issue in affirmative procurement programs, especially when open bidding will take place. Documentation of recent price comparisons in States with affirmative procurement programs can be found in the record for this guideline.

EPA does not expect that an affirmative procurement program will result in the government paying a higher price for its paper or paper products. In fact, some representatives of the paper recycling industry claim that affirmative procurement will lower the price, but this claim has not been documented by EPA.

Using the case-by-case approach, as defined in the guideline, there is no difficulty achieving price equality. However, EPA believes that approach will not usually achieve the legislative mandate of procuring "the highest percentage of recovered materials practicable." Therefore, it will usually be necessary to use a minimum content standard. But in setting such standards, it is EPA's position that "practicable" includes the concept of price equality.

In setting minimum content standards, procuring agencies must attempt to set levels of postconsumer recovered materials that are high, but not so high as to drive out competition to the point of increasing the price. But since, under this scheme, the agency would be buying only paper or paper products containing postconsumer recovered materials, it may not know if it is paying too much. Under this scheme, there is no way to guarantee that every sheet of paper procured was procured at a price no greater than the price for paper that would be procured if the policy were not in place. On the contrary, EPA expects that there will be fluctuations in price in both directions. EPA therefore is recommending that procuring agencies interpret the reasonable price provision of RCRA section 6002(c)(1)(C) to mean that, for paper or paper products containing postconsumer recovered materials, there is no long-term or average increase over the price of comparable virgin paper or paper products.

EPA also recommends that if procuring agencies using minimum content standards find over the course of several months to a year that they are paying a higher price for paper or paper products containing postconsumer recovered materials than they would have paid for comparable virgin paper or paper products, they should adjust the minimum content levels so as to try to bring the price in line. On the other hand, if they find they can raise the levels without causing a long term-increase in price, they must do so. In either case, procuring agencies must be governed by the statutory requirement to procure designated items with the highest percentage of postconsumer recovered materials practicable.

B. Competition

The existing level of competition for paper and paper products containing postconsumer recovered materials varies depending on the product. The case-by-case, open bid approach in which bids are solicited for paper and paper products composed of virgin fibers as well as those containing postconsumer recovered materials will assure competition for all potential vendors while encouraging the maximum utilization of postconsumer recovered materials by offering a preference in the bidding process for products with such materials in case of a tie bid.

The other recommended approach is to set minimum content standards. For a large majority of products, both virgin and recycled products coexist in the marketplace, with some manufacturers producing products from all-virgin materials, some using only recovered materials, and others using both. Thus, a minimum content standard will automatically exclude many potential bidders that market only virgin products. The percentage of bidders excluded depends on how high the minimum content standards are set. EPA knows of no analytical method of accurately setting minimum content standards that are low enough to assure adequate competition, and yet high enough to maximize the use of postconsumer recovered materials, except through experience. Thus, procuring agencies must learn through trial and error how best to insure competition while fulfilling the primary goals of this guideline.

C. Availability and Delays

The Agency does not believe that procuring agencies should have to tolerate any unusual or unreasonable delays in obtaining paper or paper products containing postconsumer recovered materials. The experiences of GSA and of States with affirmative procurement programs have shown that these products are generally available at all locations. One possible exception mentioned by some States is printing and writing paper. In some cases, delays have been incurred because of low levels of storage or warehousing in the vicinity of the procurement depot. However, as affirmative procurement programs prove effective, printing and writing papers containing recovered materials should become more widely and consistently available, as are other paper and paper products containing postconsumer recovered materials.

Some commenters have suggested that EPA should provide assistance to procuring agencies in determining availability by identifying potential suppliers and by encouraging these suppliers to bid on government contracts. EPA has placed in the record lists of mills that manufacture paper or paper products using postconsumer recovered materials, especially printing and writing paper and tissue products. Procuring agencies also are in direct contact with paper vendors on a regular basis and can seek this information directly.

D. Performance

Product performance is discussed in Section III.E of the preamble.

VI. Implementation

Different parts of section 6002 refer to different dates by which procuring agencies must have completed or initiated a required activity: (1) May 8, 1986 (i.e., 18 months after enactment of HSWA); (2) one year after the date of publication of an EPA guideline; and (3) the date specified in EPA guidelines. As a result, there is some confusion with respect to which activities must be completed or initiated by each date. This section of the preamble explains these requirements.

First, under section 6002(d)(1), Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items must eliminate from such specifications any exclusion of recovered materials and any requirements that items be manufactured from virgin materials. This activity was required to be completed by May 8, 1986.

Second, procuring agencies must assure that their specifications for procurement items designated by EPA require the use of recovered materials to the maximum extent possible without jeopardizing the intended end use of the item (Section 6002(d)(2)). In addition, procuring agencies must develop an affirmative procurement program for purchasing items designated by EPA, in this instance, paper and paper products containing postconsumer recovered materials (Section 6002(i)(1)). Both of these activities must be completed within *one year after the date of publication of this final guideline* [emphasis added].

Third, after the date specified by EPA in the applicable guideline, procuring agencies that procure items designated by EPA must begin procurement of such items containing the highest percentage of recovered materials practicable (Section 6002(c)(1)). In addition, contracting officers must require vendors to submit estimates and certifications of recovered materials content (Section 6002(c)(3)).

With respect to this third set of requirements, EPA believes that procuring agencies should begin to procure paper and paper products containing postconsumer recovered materials as soon as the specification revisions have been completed and the affirmative procurement programs have been developed. As stated, these latter activities must be completed within one year after publication of this final guideline. The proposed guideline did not clearly specify the date on which affirmative procurement, including a program for obtaining estimates and certifications, must begin. Therefore, to be consistent with the statutory requirements, EPA has specified that affirmative procurement should begin in one year.

To clarify this point, EPA has added § 250.22 to the final guideline which states procuring agencies must begin procurement of paper and paper products containing postconsumer recovered materials one year from the date of publication of this guideline as a final rule.

VII. Summary of Supporting Analyses

A. General

There are three major studies on the effects of a Federal policy for the procurement of paper containing recovered materials: *Can Federal Procurement Practices be Used to Reduce Solid Waste?* (Arthur D. Little, Inc., 1973); *Collection of Data Pertinent to Paper Products Containing Recycled Materials* (Franklin Associates, Ltd., 1979); and *Evaluation of Federal Paper Procurement Practices* (Gershman, Brickner and Bratton, Inc., 1981). These studies appear in the public record for this rulemaking. In addition, an economic analysis, a background document, and other pertinent information are included in the record.

B. Environmental and Energy Effects

Several commenters pointed out that the notice of proposed rulemaking contained no discussion of the environmental impact of using paper and paper products containing postconsumer recovered materials, although no such information was submitted with these comments. As stated earlier, concerns about the high cost of solid waste disposal and the difficulty many communities are having in locating new disposal sites, as well as Congressional mandate, are the chief reasons for this guideline. Published reports discussing the environmental impacts of using paper and paper products containing postconsumer recovered materials describe the impact on natural resources and air, surface water, and ground-water pollution.[2] [3] [4]

However, based on information in its possession, EPA is unable to conclude that there will be any significant environmental impact, positive or negative, from the Federal procurement of paper and paper products containing postconsumer recovered materials (or waste paper).

Several commenters took exception to the statements in the notice of proposed rulemaking regarding the contamination of recycled paper by polychlorinated biphenyls (PCBs), although, again, no contradictory data were submitted. However, upon reconsideration, EPA notes that the PCB content of paper and paper products is already regulated by the Agency under the Toxic Substances Control Act and that, therefore, no special restriction or provision is necessary in this procurement guideline.

Background information placed in the record indicates that production of recycled newsprint and semichemical medium used in fiber boxes require somewhat less fossil energy than comparable products manufactured of 100 percent virgin fiber. Other paper products vary considerably as to energy use with no clear pattern. The energy efficiency of mills depends on a number of factors, including the age and configuration of the mills. Modern mills are likely to be more energy efficient than older mills, and larger mills are likely to be more energy efficient than smaller mills. The energy advantage varies from product to product and mill to mill as well as between users of virgin and recovered materials. Recycled feedstocks seem to be a minor factor.

In any event, the variability in energy efficiency between mills, be they virgin or recycling, is greater than the difference in energy efficiency between the two types of mills, which tends to reduce the importance of this issue.

C. Volume Reduction and Cost Impacts of Reducing Paper Disposal in Landfills

Paper is the largest single component of municipal solid waste both on the basis of weight and volume. As a consequence, any reduction of the volume of paper to be disposed will have a favorable impact on both the cost of disposal and on the space devoted to landfilling.

Based on the paper consumption statistics and reported utilization rates of waste paper, EPA estimates that 50 million tons of paper entered the municipal solid waste stream in 1984 that had to be disposed of by landfill and other means. This estimate assumes a 10 percent allowance for paper that is temporarily or permanently retained

[2] Churney, K.L., et al, The Chlorine Content of Municipal Solid Waste from Baltimore County, MD, and Brooklyn, NY, April 1985, Issued October 1985, NBSIR 85-3213.

[3] Golueke, C.G., Comprehensive Studies of Solid Waste Management, Third Annual Report, Public Health Service Pub. No. 1959, SW-10rg, 1971.

[4] Metzler, S.C., Sanitary Landfill Management for Groundwater Quality Protection, Master's Thesis, University of Kansas, 1981.

(books, business records, etc.), or otherwise diverted (toilet tissue, building products, etc.). The Resource Conservation Committee report to the President and Congress [5] estimated average disposal costs for municipal solid waste at $43 per ton. Savings through diversion and/or recovery were estimated to be at least $15 per ton. Therefore, any reduction in this volume of postconsumer solid waste should be economically beneficial to the municipalities disposing of the waste.

D. Executive Order No. 12291

Under Executive Order (E.O.) No. 12291, regulations must be classified as major or nonmajor. E.O. No. 12291 establishes the following criteria for a regulation to qualify as a major rule:

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

2. A major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or

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

Federal purchases of paper and paper products do not constitute a large enough share of these markets for industry to make manufacturing decisions that are not otherwise economically feasible in order to meet Federal procurement requirements. In fact, some Federal procurement policies have been modified in recent years to conform more closely to common commercial standards for some paper products, e.g., toilet tissue. The granting of a price preference is not recommended in the final guideline; therefore, product costs should not increase. Furthermore, the flexibility allowed to the procuring agencies in implementing an affirmative procurement program should make it possible to make adjustments if any adverse market dislocation or decrease in competition should occur.

Because of the number of items included in the paper and paper product categories and the number of procurement actions taken by procuring agencies each year, some agencies may find it necessary to initially allocate additional resources to implement this guideline. However, the flexibility allowed and the practices recommended in this guideline are intended to avoid on-going increased expenditures by procuring agencies. For example, EPA has recommended that the procedure for estimating and certifying postconsumer recovered materials content be simple and that it be consistent with the procuring agency's usual contracting procedure.

On the basis of the above information and on more extensive data in the rulemaking docket, the Agency has concluded that this guideline is a nonmajor rule.

This document has been submitted to the Office of Management and Budget (OMB) for review as required by E.O. No. 12291.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions), unless the Administrator certifies that the rule will not have significant economic impact on a substantial number of small entities.

Because of the $10,000 threshold, EPA does not expect a substantial number of small entities to be affected by this guideline. The Agency also believes that the flexible approach to procurement of paper and paper products containing postconsumer recovered materials provided for in this guideline will not impose a significant regulatory or economic burden on small procuring agencies, manufacturers, vendors, or contract printers. Detailed information on this assessment can be found in the RCRA docket for this guideline.

For the above reasons, EPA certifies that this guideline will not have a significant economic impact on a substantial number of small entities. Therefore, this guideline does not require a regulatory flexibility analysis.

F. Paperwork Reduction Act

The information collection requirements contained in the final rule have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. and have been assigned OMB control number 2050–0045.

List of Subjects in 40 CFR Part 250

Forest and forest products, Government contracts, Government procurement, Packaging and containers, Paper, Recycling, Resource recovery.

Dated: September 18, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the Preamble, Part 250 is added to Chapter I of Title 40 of the CFR to read as follows:

PART 250—GUIDELINE FOR FEDERAL PROCUREMENT OF PAPER AND PAPER PRODUCTS CONTAINING RECOVERED MATERIALS

Subpart A—General

Sec.

250.1 Purpose.
250.2 Designation.
250.3 Applicability.
250.4 Definitions.

Subpart B—Revisions and Additions to Paper and Paper Product Specifications

250.10 Introduction.
250.11 Elimination of recovered materials exclusion.
250.12 Requirement of postconsumer recovered materials content.
250.13 Exclusion for products containing postconsumer recovered materials that do not meet reasonable performance standards.
250.14 New specifications.

Subpart C—Affirmative Procurement Program for Paper Containing Postconsumer Recovered Materials

250.20 Elements of affirmative procurement program.
250.21 Limitations to affirmative procurement program.
250.22 Implementation.

Authority: 42 U.S.C. 6912(a) and 6962.

Subpart A—General

§ 250.1 Purpose.

(a) The purpose of this guideline is to assist procuring agencies in complying with the requirements of section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA), as amended, as that section applies to paper and paper products.

(b) This guideline contains recommendations for implementing the requirements of section 6002 of RCRA, including the revision of specifications and the establishment of an affirmative program for the procurement of paper and paper products containing postconsumer recovered materials. The guideline also makes recommendations concerning solicitations for bids and estimation, certification, and verification procedures. In addition, the guideline sets dates for implementation.

(c) The Agency believes that adherence to the practices recommended in the guideline constitutes compliance with section 6002

[5] Choices for Conservation. SW–779. Resource Conservation Committee Final Report to the President and Congress, July 1979.

of RCRA, as it relates to the purchase of paper and paper products containing postconsumer recovered materials.

§ 250.2 Designation.

Under section 6002(e)(1) of RCRA, paper and paper products are designated as items which can be produced with recovered materials and whose procurement by procuring agencies will carry out the objectives of section 6002 of RCRA.

§ 250.3 Applicability.

(a) This guideline applies to all paper and paper products purchased with appropriated Federal funds.

(b) This guideline applies to all procuring agencies and to all procurement actions when (1) the agency purchases a procurement item, as defined in § 250.4, with appropriated Federal funds; and (2) the purchase price of the item exceeds $10,000, or the quantity of such items or of functionally equivalent items purchased with appropriated Federal funds during the preceding fiscal year was $10,000 or more. For purposes of this guideline, each item listed in each category below is considered functionally equivalent to every other item in the category: All grades and types of xerographic/copy paper; newsprint; all grades and types of printing and writing paper; corrugated and fiberboard boxes; folding boxboard and cartons; stationery, office papers (e.g., memo pads, scratch pads), envelopes, and manifold business forms including computer paper; toilet tissue, paper towels, facial tissue, paper napkins, doilies, and industrial wipers; and brown papers and coarse papers.

(c) Procurement actions covered by this guideline include:

(1) All purchases of paper or paper products made directly by a procuring agency or by any person contracting with any such agency with respect to work being performed under such contract, for example, contract printing; and

(2) Indirect purchases of paper and paper products made by a procuring agency, such as purchasing resulting from Federal grants, loans, and similar forms of disbursements of monies that the procuring agency intended to be used for the procurement of paper or paper products, except in cases where funds are designated for continuing programs or activities and no separate accounting is made.

(d) Purchases of paper and paper products that are unrelated or incidental to Federal funding, i.e., not the direct result of a Federal contract, grant, loan, funds disbursement, or agreement with a procuring agency, are not covered by this guideline.

§ 250.4 Definitions.

As used in this guideline, the following terms shall have the meaning indicated below:

"Act" or "RCRA" means the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended;

"Bleached papers" means paper made of pulp that has been treated with bleaching agents;

"Bond paper" means a generic category of paper used in a variety of end use applications such as forms (see "form bond"), offset printing, copy paper, stationery, etc. In the paper industry, the term was originally very specific but is now very general.

"Book paper" means a generic category of papers produced in a variety of forms, weights, and finishes for use in books and other graphic arts applications, and related grades such as tablet, envelope, and converting papers;

"Brown papers" means papers usually made from unbleached kraft pulp and used for bags, sacks, wrapping paper, and so forth;

"Coarse papers" means papers used for industrial purposes, as distinguished from those used for cultural or sanitary purposes;

"Computer paper" means a type of paper used in manifold business forms produced in rolls and/or fan folded. It is used with computers and word processors to print out data, information, letters, advertising, etc. It is commonly called computer printout;

"Corrugated boxes" means boxes made of corrugated paperboard, which, in turn, is made from a fluted corrugating medium pasted to a flat sheet of paperboard (linerboard); multiple layers may be used;

"Cover stock" or "Cover paper" means a heavyweight paper commonly used for covers, books, brochures, pamphlets, and the like;

"Doilies" means paper place mats used on food service trays in hospitals and other institutions;

"Duplicator paper" means writing papers used for masters or copy sheets in the aniline ink or hectograph process of reproduction (commonly called spirit machines);

"Envelopes" means brown, manila, padded, or other mailing envelopes not included with "stationery";

"Facial tissue" means a class of soft absorbent papers in the sanitary tissue group;

"Federal agency" means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including a government corporation, and the Government Printing Office;

"Fiber or fiberboard boxes" means boxes made from containerboard, either solid fiber or corrugated paperboard (general term); or boxes made from solid paperboard of the same material throughout (specific term);

"Folding boxboard" means a paperboard suitable for the manufacture of folding cartons;

"Form bond" means a lightweight commodity paper designed primarily for business forms including computer printout and carbonless paper forms. (See manifold business forms);

"Industrial wipers" means paper towels especially made for industrial cleaning and wiping;

"Ledger paper" means a type of paper generally used in a broad variety of recordkeeping type applications such as in accounting machines.

"Manifold business forms" means a type of product manufactured by business forms manufacturers that is commonly produced as marginally punched continuous forms in small rolls or fan folded sets with or without carbon paper interleaving. It has a wide variety of uses such as invoices, purchase orders, office memoranda, shipping orders, and computer printout;

"Mill broke" means any paper waste generated in a paper mill prior to completion of the papermaking process. It is usually returned directly to the pulping process. Mill broke is excluded from the definition of "recovered materials";

"Mimeo paper" means a grade of writing paper used for making copies on stencil duplicating machines;

"Newsprint" means paper of the type generally used in the publication of newspapers or special publications like the *Congressional Record*. It is made primarily from mechanical wood pulps combined with some chemical wood pulp;

"Office papers" means note pads, loose-leaf fillers, tablets, and other papers commonly used in offices, but not defined elsewhere;

"Offset printing paper" means an uncoated or coated paper designed for offset lithography;

"Paper" means one of two broad subdivisions of paper products, the other being paperboard. Paper is generally lighter in basis weight, thinner, and more flexible than paperboard. Sheets 0.012 inch or less in thickness are generally classified as paper. Its primary uses are for printing, writing, wrapping,

and sanitary purposes. However, in this guideline, the term paper is also used as a generic term that includes both paper and paperboard. It includes the following types of papers: Bleached paper, bond paper, book paper, brown paper, coarse paper, computer paper, cover stock or cover paper, duplicator paper, form bond, ledger paper, manifold business forms, mimeo paper, newsprint, office papers, offset printing paper, printing paper, stationery, tabulating paper, unbleached papers, writing paper, and xerographic/copy paper;

"Paper napkins" means special tissues, white or colored, plain or printed, usually folded, and made in a variety of sizes for use during meals or with beverages;

"Paper product" means any item manufactured from paper or paperboard. The term "paper product" is used in this guideline to distinguish such items as boxes, doilies, and paper towels from printing and writing papers. It includes the following types of products: Corrugated boxes, doilies, envelopes, facial tissue, fiber of fiberboard boxes, folding boxboard, industrial wipers, paper napkins, paper towels, tabulating cards, and toilet tissue;

"Paper towels" means paper toweling in folded sheets, or in raw form, for use in drying or cleaning, or where quick absorption is required;

"Paperboard" means one of the two broad subdivisions of paper, the other being paper itself. Paperboard is usually heavier in basis weight and thicker than paper. Sheets 0.012 inch or more in thickness are generally classified as paperboard. The broad classes of paperboard are containerboard, which is used for corrugated boxes; boxboard, which is principally used to make cartons; and all other paperboard;

"Practicable" means capable of being used consistent with: Performance in accordance with applicable specifications, availability at a reasonable price, availability within a reasonable period of time, and maintenance of a satisfactory level of competition;

"Printing paper" means paper designed for printing, other than newsprint, such as offset and book paper;

"Procurement item" means any device, good, substance, material, product, or other item, whether real or personal property, that is the subject of any purchase, barter, or other exchange made to procure such item;

"Procuring agency" means any Federal agency, or any State agency or agency of a political subdivision of a State that is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract;

"Recovered materials" means waste material and by-products that have been recovered or diverted from solid waste, but such term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term "recovered materials" includes:

(a) Postconsumer materials such as:

(1) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end usage as a consumer item, including: Used corrugated boxes, old newspapers, old magazines, mixed waste paper, tabulating cards, and used cordage, and

(2) All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste; and

(b) Manufacturing, forest residues, and other wastes such as:

(1) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: Envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(2) Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(3) Fibrous by-products of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;

(4) Wastes generated by the conversion of goods made from fibrous material (e.g., waste rope from cordage manufacture, textile mill waste, and cuttings); and

(5) Fibers recovered from waste water that otherwise would enter the waste stream;

"Recyclable paper" means any paper separated at its point of discard or from the solid waste stream for utilization as a raw material in the manufacture of a new product. It is often called "waste paper" or "paper stock." Not all paper in the waste stream is recyclable; it may be heavily contaminated or otherwise unusable.

"Specification" means a detailed description of the technical requirements for materials, products, or services that specifies the minimum requirement for quality and construction of materials and equipment necessary for an acceptable product. Specifications are generally in the form of a written description, drawings, prints, commercial designations, industry standards, and other descriptive references;

"State" means any of the several States, the District .of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands;

"Stationery" means writing paper suitable for pen and ink, pencil, or typing. Matching envelopes are included in this definition;

"Tabulating cards" means cards used in automatic tabulating machines;

"Tabulating paper" means paper used in tabulating forms for use on automatic data processing equipment;

"Toilet tissue" means a sanitary tissue paper. The principal characteristics are softness, absorbency, cleanliness, and adequate strength (considering easy disposability). It is marketed in rolls of varying sizes or in interleaved packages;

"Unbleached papers" means papers made of pulp that has not been treated with bleaching agents;

"Writing paper" means a paper suitable for pen and ink, pencil, typewriter or printing.

"Xerographic/copy paper" means any grade of paper suitable for copying by the xerographic process (a dry method of reproduction).

Subpart B—Revisions and Additions to Paper and Paper Product Specifications

§ 250.10 Introduction.

This subpart offers guidance to Federal agencies that draft or review specifications for paper and paper products.

§ 250.11 Elimination of recovered materials exclusion.

By May 8, 1986, each Federal agency was required to assure that its specifications do not unfairly discriminate against the use of recovered materials. At a minimum, except as provided in § 250.13 of this Part, each Federal agency was required to:

(a) Revise those specifications, standards, and procedures that require that paper and paper products contain

only virgin materials to eliminate this restriction; and

(b) Revise those specifications, standards, and procedures that prohibit using recovered materials in paper and paper products to eliminate this restriction.

§ 250.12 Requirement of postconsumer recovered materials content.

(a) Within one year of publication of this guideline, paper and paper product specifications must require the use of postconsumer recovered materials to the maximum extent possible without jeopardizing the intended end use of the paper or paper product.

(b) Specifications that are unnecessarily stringent for a particular end use and that bear no relation to function, such as brightness and whiteness for copy paper, should be revised in order to allow for a higher postconsumer recovered materials content. Specifications that bear no relation to function should be revised according to the agency's established review procedure. In determining the relationship to function of existing specifications, Federal agencies should make maximum use of existing voluntary standards and research by organizations such as the American Society for Testing and Materials' Committees D6, D10, and F5; the Technical Association of the Pulp and Paper Industry; and the American Institute of Paper Chemistry.

§ 250.13 Exclusion for products containing postconsumer recovered materials that do not meet reasonable performance standards.

(a) Notwithstanding the requirements of §§ 250.11 and 250.12 of this Part, Federal agencies need not revise specifications to allow or require the use of postconsumer recovered materials if it can be technically determined that for a particular end use a product containing such materials will not meet reasonable performance standards.

(b) Any determination under this section should be documented by the drafting and reviewing agency and be based on technical performance information related to a specific item, not a grade of paper or type of product. Agencies should reference such documentation in subsequent solicitations for the specific item in order to avoid repetition of previously documented points.

§ 250.14 New specifications.

When paper or a paper product containing postconsumer recovered materials is produced in types and grades not previously available, specifications should be revised to allow use of such type or grade or new specifications should be developed for such type or grade. EPA recommends that procuring agencies monitor new developments and use them to increase the use of postconsumer recovered materials as appropriate.

Subpart C—Affirmative Procurement Program for Paper Containing Postconsumer Recovered Materials

§ 250.20 Elements of affirmative procurement program.

Within one year after the publication of the final guideline, procuring agencies must establish an affirmative procurement program consisting of the following elements:

(a) A preference program for procurement of paper and paper products containing postconsumer recovered materials consisting of one of the following:

(1) A policy of awarding contracts, on a case-by-case basis (where competing bids for individual items are otherwise equal), to the vendor offering an item composed of the highest percentage of postconsumer recovered materials practicable, subject to the limitations based on competition, availability, performance, and price described in section 6002(c)(1) (A)–(C) of the Act and § 250.21 of this Part, or

(2) Minimum recovered materials content standards that assure that the postconsumer recovered materials content is the maximum available without jeopardizing the intended end use of the item or violating the limitations of section 6002(c)(1) (A)–(C) of the Act and § 250.21 of this Part, or

(3) A substantially equivalent alternative to paragraph (a)(1) or (a)(2) of this section.

(b) A promotion program to promote the preference program adopted under paragraph (a) of this section. Under the program, procuring agencies should consider all possible promotional methods including the following:

(1) A special notation prominently displayed in any paper or paper product procurement solicitation or invitation to bid.

(2) A statement in each paper or paper products specification defining "postconsumer recovered materials" as they are defined in § 250.4 of this Part.

(3) A brief statement in advertisements of bids describing the preference program. Such advertisements should be placed in the *Commerce Business Daily* and periodicals commonly read by vendors of paper and paper products containing postconsumer recovered materials.

(4) Catalog listings of available products (such as GSA's Office Supplies) indicating which paper or paper product contains postconsumer recovered materials.

(5) Discussion of the preference program at prebidders' conferences or similar meetings of potential bidders.

(c) A program for estimates, certification, and verification.

(1) Agencies must require vendors to estimate the total percentage of postconsumer recovered materials in paper and paper products supplied to them.

(2) Agencies must require vendors to certify the minimum postconsumer recovered materials to be used in the performance of a contract.

(3) There must be reasonable verification procedures for estimates and certifications, e.g., the procuring agency may state in solicitations for bids that, in the case of a bidder's protest, all estimates and certifications will be subject to audits of mill records.

(d) A program for review and monitoring.

(1) Each agency must conduct an annual review and monitoring of the effectiveness of its affirmative procurement program.

(2) The annual review should include an estimate of the quantity of paper and paper products purchased containing postconsumer recovered materials.

§ 250.21 Limitations to affirmative procurement program.

A decision not to procure paper or paper products containing postconsumer recovered materials may be based only on one or more of the following factors: lack of competition among vendors; lack of reasonable availability within a reasonable time period; failure to meet the performance standards in the solicitation for bids or in the reasonable performance standards of the agency; or unreasonable price. For purposes of this guideline when considering bids, "unreasonable price" is any price other than the price offered in the lowest responsive bid by a responsible bidder.

§ 250.22 Implementation.

Procuring agencies must begin procurement of paper and paper products containing postconsumer recovered materials as required by Section 6002 and this guideline one year from the date of publication of this guideline as a final rule.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket 87-113; FCC 87-271]

Jurisdictional Separations Procedures

AGENCY: Federal Communications Commission; Federal-State Joint Board.

ACTION: Final rule.

SUMMARY: The Commission adopted revisions to the Access Charge Rules. Since there is a close relationship between these rules and the jurisdictional separations rules, and since the jurisdictional separations rules were also recently revised, it was necessary to conform the Access Charge Rules to the new separations rules.

EFFECTIVE DATE: January 1, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Wilson or Charles Needy, Audits Branch, Accounting and Audits Division, Common Carrier Bureau, (202) 632-7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, CC Docket No. 87-113, adopted August 14, 1987, and released August 18, 1987.

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

Summary of Report and Order

1. On May 1, 1987, the Commission released Notice of Proposed Rulemaking (Notice), CC Docket No. 87-113, 2 FCC Rcd 2673, published in the **Federal Register** May 6, 1987 (52 FR 17252), seeking comment on proposed amendments to Part 69 of its Rules. The Commission stated that its primary objective was to conform these Access Charge Rules to the recently revised jurisdictional separations rules. Accordingly, it proposed numerous conformance changes that, with only two exceptions, related to the apportionment of costs among the existing access cost elements. The two exceptions were a proposal to eliminate the Local Switching subelements and a proposal to consolidate the Line Termination, Local Switching and Intercept costs elements into a single cost element called Switching. In addition to proposing conformance changes, the Commission also proposed several minor changes to enhance its ability to review annual access tariff filings. Specifically, the Notice included a proposal to limit the annual October filings to rate level changes and it discouraged filings during the three-month period following the October filings. Finally, the Commission encouraged interested parties to provide data identifying any revenue requirement shifts expected to result from implementation of the proposed revisions.

2. The majority of the parties commenting in this proceeding were supportive of the proposed revisions on the whole. Moreover, based on its analysis of test data submitted by twelve parties, the Commission determined that the proposed revisions would result in only minimal industry revenue requirement shifts among the access cost elements. Consequently, on August 14, 1987, the Commission adopted, with modifications and minor corrections, all but one of its proposed amendments to the Access Charge Rules. The rejected amendment was the proposal to assign all interstate Marketing Expense to the interexchange cost category. The Commission decided that, in view of its decision in a separate proceeding to revise the jurisdictional separations procedures for Marketing Expense, it would retain the current Part 69 procedures for apportioning this expense to maintain consistency between these two procedures.

3. Further, the Commission substantially modified four of the proposed revisions before adopting them. One of these was the proposal to eliminate the Local Switching subelements. The Commission decided that these subelements should not be eliminated on a flash cut basis but, rather, should be phased out over a five-year period in a manner that parallels the formula for phasing in the new jurisdictional separations allocation factor for the same Central Office Equipment (COE). Another revision that was substantially modified was the proposal to allocate service observation board equipment on the basis of the remaining combined investment in COE Category 2 and Category 3. The Commission decided that this apportionment basis should include COE Category 1 as well as COE Category 2 and Category 3 to maintain consistency between Part 69 and Part 36 of its Rules. In addition, the Commission substantially modified its proposal to allocate the interstate expenses in Accounts 6210, 6220 and 6230 on the basis of the associated COE investment. The Commission found that, by changing this basis to "total COE investment," the allocation procedure would not only be more consistent with the Part 36 procedure but would also result in a significant reduction of the industry revenue requirement shift between the Switching and Special Access elements. Finally, the proposal to allocate Telephone Operator Services Expense on the basis of the relative number of weighted standard work seconds was substantially changed. Because some carriers purchase such services and therefore do not know the relative number of weighted standard work seconds, the Commission modified this proposal to allow such carriers to directly assign contracted operation services to the appropriate cost element.

4. The Commission rejected the suggestion of six commenting parties that different apportionment rules be prescribed for Class A and Class B carriers. It acknowledged that, under its adopted revisions to Part 69, some shifts in revenue requirements will occur among the access cost elements for individual companies and for the industry as a whole. The Commission concluded, however, that these shifts will not be large enough for the Class B carriers as a group to merit the increased administrative costs that would result from the inconsistent treatment of Class A and Class B carriers. It further concluded that these shifts will not be large enough to produce adverse consequences. Finally, the Commission decided to make the revisions effective on January 1, 1988, to coincide with the effective date of the revised jurisdictional separations rules and the revised accounting rules.

Ordering Clause

5. Accordingly, it is ordered, that the amendments to Part 69 contained herein are adopted effective January 1, 1988. This action is taken pursuant to sections 1, 4 (i) and (j), 205, 221(c), 403, and 410 of the Communications Act, as amended, 47 U.S.C. 151, 154 (i) and (j), 205, 221(c), 403 and 410.

List of Subjects in 47 CFR Part 69

Access charge rules, Communications common carriers, Telephone, Uniform system of accounts.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Rules Changes

PART 69—[AMENDED]

1. The authority citation for Part 69 continues to read as follows:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat. 1066, 1070, 1072, 1077, 1094, as amended, 47 U.S.C. 154, 201, 202, 203, 205, 218, 403.

2. Section 69.2 is revised to read as follows:

§ 69.2 Definitions.

For purposes of the part:

(a) "Access Minutes" or "Access Minutes of Use" is that usage of exchange facilities in interstate or foreign service for the purpose of calculating chargeable usage. On the orginating end of an interstate or foreign call, usage is to be measured from the time the originating end user's call is delivered by the telephone company and acknowledged as received by the interexchange carrier's facilities connected with the originating exchange. On the terminating end of an interstate or foreign call, usage is to be measured from the time the call is received by the end user in the terminating exchange. Timing of usage at both the orginating and terminating end of an interstate or foreign call shall terminate when the calling or called party disconnects, whichever event is recognized first in the originating and terminating end exchanges, as applicable;

(b) "Access Service" includes services and facilities provided for the origination or termination of any interstate or foreign telecommunication;

(c) "Annual revenue requirement" means the sum of the return component and the expense component;

(d) "Association" means the telephone company association described in Subpart G of this Part;

(e) "Big Three Expenses" are the combined expense groups comprising: Plant Specific Operations Expense, Accounts 6110, 6120, 6210, 6220, 6230, 6310 and 6410; Plant Nonspecific Operations Expenses, Accounts 6510, 6530 and 6540, and Customer Operations Expenses, Accounts 6610 and 6620;

(f) "Big Three Expense Factors" are the ratios of the sum of Big Three Expenses apportioned to each element or category to the combined Big Three Expenses.

(g) "Cable and Wire Facilities" includes all equipment or facilities that are described as cable and wire facilities in the *Separations Manual;*

(h) "Carrier Cable and Wire Facilities" means all cable and wire facilities that are not subscriber line cable and wire facilities;

(i) "Central Office Equipment" or "COE" includes all equipment or facilities that are described as Central Office Equipment in the *Separations Manual;*

(j) "Corporate Operations Expenses" include Executive and Planning Expenses (Account 6710) and General and Administrative Expenses (Account 6720);

(k) "Customer Operations Expenses" include Marketing and Services expenses in Accounts 6610 and 6620, respectively;

(l) "Direct Expense" means expenses that are attributable to a particular category or categories of tangible investment described in Subpart D of this Part and includes:

(1) Plant Specific Operations expenses in Accounts 6110, 6120, 6210, 6220, 6223, 6310 and 6410; and

(2) Plant Nonspecific Operations Expenses in Accounts 6510, 6530, 6540 and 6560;

(m) "End User" means any customer of an interstate or foreign telecommunications service that is not a carrier except that a carrier other than a telephone compauy shall be deemed to be an "end user" when such carrier uses a telecommunications service for administrative purposes and a person or entity that offers telecommunications services exclusively as a reseller shall be deemed to be an "end user" if all resale transmissions offered by such reseller originate on the premises of such reseller;

(n) "Entry Switch" means the telephone company switch in which a transport line or trunk terminates;

(o) "Expense Component" means the total expenses and income charges for an annual period that are attributable to a particular element or category;

(p) "Expenses" include allowable expenses in the Uniform System of Accounts, Part 32, apportioned to interstate or international services pursuant to the *Separations Manual* and allowable income charges apportioned to interstate and international services pursuant to the *Separations Manual;*

(q) "General Support Facilities" include buildings, land, vehicles, aircraft, work equipment, furniture, office equipment and general purpose computers as described in the *Separations Manual;*

(r) "Information Origination/Termination Equipment" includes all equipment or facilities that are described as information origination/termination equipment in the *Separations Manual* except information origination/termination equipment that is used by telephone companies in their own operations;

(s) "Interexchange" or the "interexchange category" includes services or facilities provided as an integral part of interstate or foreign telecommunications that is not described as "access service" for purposes of this Part;

(t) "Level I Contributors" are telephone companies that are not association Common Line tariff participants, file their own Common Line tariffs effective April 1, 1989, and had a lower than average Common Line revenue requirement per minute of use in 1988 and thus were net contributors (i.e. had a negative net balance) to the association Common Line pool in 1988;

(u) "Level I Receivers" are telephone companies that are not association Common Line tariff participants, file their own Common Line tariffs effective April 1, 1989, and had a higher than average Common Line revenue requirement per minute of use in 1988 and thus were net receivers (i.e. had a positive net balance) from the association Common Line pool in 1988;

(v) "Level II Contributor" is a telephone company or group of affiliated telephone companies with fewer than 300,000 access lines and less than $150 million in annual operating revenues that is not an association Common Line tariff participant, files its own Common Line tariff effective January 1, 1990, and that had a lower than average Common Line revenue requirement per minute of use in 1988 and thus was a net contributor (i.e., had a negative net balance) to the association Common Line pool in 1988;

(w) "Level II Receiver" is a telephone company or group of affiliated telephone companies with fewer than 300,000 access lines and less than $150 million in annual operating revenues that is not an association Common Line tariff participant, files its own Common Line tariff effective January 1, 1990, and that had a higher than average Common Line revenue requirement per minute of use in 1988 and thus was a net receiver (i.e., had a positive net balance) from the association Common Line pool in 1988;

(x) "Line" or "Trunk" includes, but is not limited to, transmission media such as radio, satellite, wire, cable and fiber optic cable means of transmission;

(y) "Long Term Support" (LTS) means funds provided by telephone companies that are not association Common Line tariff participants to association Common Line tariff participants. LTS enables association Common Line tariff

participants to charge a Common Line (CL) rate equivalent to the CL rate that would result if all telephone companies participated in the association Common Line tariff;

(z) "Net Investment" means allowable original cost investment in Accounts 2001 through 2003, 1220 and 1402 that has been apportioned to interstate and foreign services pursuant to the *Separations Manual* from which depreciation, amortization and other reserves attributable to such investment that has been apportioned to interstate and foreign services pursuant to the *Separations Manual* have been subtracted and to which working capital that is attributable to interstate and foreign services has been added;

(aa) "Operating Taxes" include all taxes in Account 7200;

(bb) "Origination" of a service that is switched in a Class 4 switch or an interexchange switch that performs an equivalent function ends when the transmission enters such switch and "termination" of such a service begins when the transmission leaves such a switch, except that;

(1) Switching in a Class 4 switch or transmission between Class 4 switches that is not deemed to be interexchange for purposes of the Modified Final Judgement entered August 24, 1982, in *United States v Western Electric Co.*, D.C. Civil Action No. 82–0192, will be "origination" or "termination" for purposes of this Part; and

(2) "Origination" and "Termination" does not include the use of any part of a line, trunk or switch that is not owned or leased by a telephone company;

(cc) "Origination" of any service other than a service that is switched in a Class 4 switch or a switch that performs an equivalent function ends and "termination" of any such service begins at a point of demarcation that corresponds with the point of demarcation that is used for a service that is switched in a Class 4 switch or a switch that performs an equivalent function;

(dd) "Private Line" means a line that is used exclusively for an interexchange service other than MTS, WATS or an MTS–WATS equivalent service, including a line that is used at the closed end of an FX or CCSA service or any service that is substantially equivalent to a CCSA service;

(ee) "Public Telephone" is a telephone provided by a telephone company through which an end user may originate interstate or foreign telecommunications for which he pays with coins or by credit card, collect or third number billing procedures;

(ff) "Return Component" means net investment attributable to a particular element or category multiplied by the authorized annual rate of return;

(gg) "Subscriber Line Cable and Wire Facilities" means all lines or trunks on the subscriber side of a Class 5 or end office switch, including lines or trunks that do not terminate in such a switch, except lines or trunks that connect an interexchange carrier;

(hh) "Telephone Company" means a carrier that provides telephone exchange service as defined in section 3(r) of the Communications Act of 1934;

(ii) "Transitional Support" (TRS) means funds provided by telephone companies that are not association Common Line tariff participants, but were net contributors to the association Common Line pool in 1988, to telephone companies that are not association Common Line tariff participants and were net receivers from the association Common Line pool in 1988;

(jj) "Unit of Capacity" means the capability to transmit one conversation;

(kk) "WATS Access Line" means a line or trunk that is used exclusively for WATS service.

3. Section 69.3 is amended by revising paragraph (a) and by adding paragraph (e)(10) to read as follows:

§ 69.3 Filing of access service tariffs.

(a) A tariff for access service shall be filed with this Commission for an annual period. Such tariff shall be filed so as to provide a minimum of 90 days notice with a scheduled effective date of January 1. Such tariff filings shall be limited to rate level changes.

* * * * *

(e) * * *

(10) Any data supporting a tariff that is not an association tariff shall be consistent with any data that the filing carrier submitted to the association.

* * * * *

4. In § 69.4, paragraph (b) is revised to read as follows:

§ 69.4 Charges to be filed.

* * * * *

(b) Except as provided in subpart C of this Part and in § 69.4(c), the carrier's carrier charges for access service filed with this Commission shall include charges for each of the following elements:

(1) Limited pay telephone;
(2) Carrier common line;
(3) Local switching;
(4) Information;
(5) Common transport;
(6) Dedicated transport; and
(7) Special access.

* * * * *

5. Section 69.103 is revised to read as follows:

§ 69.103 Limited pay telephone (public telephones that can access the services of only one interexchange carrier).

(a) A charge that is expressed in dollars and cents per line per month shall be assessed upon an interexchange carrier for each line terminating in a public telephone which can be used to originate any of its interstate or foreign telecommunications services, but not such services of other interexchange carriers.

(b) The per line charge shall be computed by dividing one-twelfth of the projected annual revenue requirement for the Limited Pay Telephone element by the projected average number of public telephones which can access the services of only one interexchange carrier.

6. Section 69.106 is revised to read as follows:

§ 69.106 Local switching.

(a) Charges that are expressed in dollars and cents per access minute of use shall be assessed upon all interexchange carriers that use local exchange switching facilities for the provision of interstate or foreign services.

(b) A per minute charge shall be computed by dividing the projected annual revenue requirement for the Local Switching element by the projected annual access minutes of use for all interstate or foreign services that use local exchange switching facilities.

(c) If end users of an interstate or foreign service that uses local switching facilities pay message unit charges for such calls in a particular exchange, a credit shall be deducted from the Local Switching element charges to such carrier for access service in such exchange. The per minute credit for each such exchange shall be multiplied by the monthly access minutes for such service to compute the monthly credit to such a carrier.

(d) If all local exchange subscribers in such exchange pay message unit charges, the per minute credit described in paragraph (c) of this section shall be computed by dividing total message unit charges to all subscribers in a particular exchange in a representative month by the total minutes of use that were measured for purposes of computing message unit charges in such month.

(e) If some local exchange subscribers pay message unit charges and some do not, a per minute credit described in paragraph (c) of this section shall be computed by multiplying a credit

computed pursuant to paragraph (d) of this section by a factor that is equal to total minutes measured in such month for purposes of computing message unit charges divided by the total local exchange minutes in such month.

§ 69.107 [Removed]

7. Section 69.107 is removed.

§ 69.108 [Removed]

8. Section 69.108 is removed.

9. Section 69.201 is revised to read as follows:

§ 69.201 General.

Notwithstanding §§ 69.4, 69.104 through 69.106, and 69.111 through 69.112, charges for the access elements described in this Subpart shall be computed in accordance with this Subpart during the period commencing January 1, 1984 and ending December 31, 1992. This subpart does not supersede §§ 69.106(c) through 69.106(e).

10. Section 69.205 is revised to read as follows:

§ 69.205 Transitional premium charges.

(a) Charges that are computed in accordance with this section shall be assessed upon interexchange carriers or other persons that receive premium access in lieu of carrier charges that are computed in accordance with §§ 69.105, 69.106, 69.111 and 69.112 of this Part if any carrier or other person does not receive premium access. For purposes of this subpart, a carrier or other person shall be deemed to receive premium access if access is provided through a local exchange switch that has the capability to provide access for an MTS–WATS equivalent service that is substantially equivalent to the access provided for MTS or WATS, except that access provided for an MTS–WATS equivalent service that does not use such capability shall not be deemed to be premium access until six months after the carrier that provides such MTS–WATS equivalent service receives actual notice that such equivalent access is or will be available at such switch.

(b) The transitional premium charge for the Carrier Common Line element shall be expressed in dollars and cents per access minute. Such charge shall be computed by dividing the revenue requirement for such element by the sum of the projected premium access minutes for such element for such period and a number that is computed by multiplying the projected non-premium access minutes for such element for such period by .45.

(c) Separate Local Switching transitional premium charges that are expressed in dollars and cents per access minute shall be computed for the LS1 and LS2 categories. The LS1 category shall consist of local dial switching for services other than MTS, WATS and services receiving access to the local switch equal to that received by MTS and WATS. The LS2 category shall consist of local dial switching for MTS, WATS and services receiving access to the local switch equal to that received by MTS and WATS.

(d) The charge for an LS2 premium access minute shall be computed by dividing the premium Local Switching revenue requirement by the sum of the projected LS2 premium access minutes and a number that is computed by multiplying the projected LS1 premium access minutes by the applicable LS1 transition factor. The charge for an LS1 premium access minute shall be computed by multiplying the charge for an LS2 premium access minute by the applicable LS1 transition factor. The premium Local Switching revenue requirement shall be computed by subtracting the projected revenues from non-premium charges attributable to the Local Switching element from the revenue requirement for such element.

(e) During each of the following years the LS1 transition factor shall be:

(1) 1988—.78;
(2) 1989—.83;
(3) 1990—.88;
(4) 1991—.93; and
(5) 1992—.98.

(f) Transitional premium charges that are computed in accordance with applicable requirements shall be assessed for the Transport element or elements. Such premium charges shall be designed to produce total annual revenue that is equal to the premium transport revenue requirement. The premium transport revenue requirement shall be computed by subtracting projected revenues from non-premium charges attributable to the Transport element or elements from the revenue requirement for such element or elements.

11. Section 69.206 is revised as follows:

§ 69.206 Transitional non-premium charges for MTS–WATS equivalent services.

(a) Charges that are computed in accordance with this section shall be assessed upon interexchange carriers or other persons that receive access that is not deemed to be premium access in lieu of carrier charges that are computed in accordance with §§ 69.105, 69.106, 69.111 and 69.112.

(b) The transitional non-premium charge for the Carrier Common Line element shall be computed by multiplying the premium charge for such element by .45.

(c) The transitional non-premium charge for the Local Switching element shall be computed by multiplying a hypothetical premium charge for such element by .45. The hypothetical premium charge for such element shall be computed by dividing the annual revenue requirement for such element by the sum of the projected premium access minutes for such element for such period and a number that is computed by multiplying the projected non-premium minutes for such element for such period by .45.

(d) The transitional non-premium charge or charges for the Transport element or elements shall be computed by multiplying the corresponding premium charge or charges by .45.

§ 69.208 [Removed]

12. Section 69.208 is removed.

13. Subparts D and E of Part 69 are revised as follows:

Subpart D—Apportionment of Net Investment

Sec.
69.301 General.
69.302 Net investment.
69.303 Information origination/termination equipment (IOT).
69.304 Subscriber line cable and wire facilities.
69.305 Carrier cable and wire facilities (C&WF).
69.306 Central office equipment (COE).
69.307 General support facilities.
69.308 Equal access equipment.
69.309 Other investment.
69.310 Capital investment.

Subpart E—Apportionment of Expenses

69.401 Direct expenses.
69.402 Operating taxes (Account 7200).
69.403 Marketing expenses (Account 6610).
69.404 Telephone operator services expenses in Account 6620.
69.405 Published directory expenses in Account 6620.
69.406 Local business office expenses in Account 6620.
69.407 Revenue accounting expenses in Account 6620.
69.408 All other customer services expenses in Account 6620.
69.409 Corporate operations expenses (Account 6710 and 6720).
69.410 Equal access expenses.
69.411 Other expenses.
69.412 Non participating company payments/receipts.
69.413 Universal service fund expenses.
69.414 Lifeline assistance expenses.

Subpart D—Apportionment of Net Investment

§ 69.301 General.

(a) For purposes of computing annual revenue requirements for access elements net investment as defined in § 69.2(z) shall be apportioned among the interexchange category, the billing and collection category and access elements as provided in this subpart. Expenses shall be apportioned as provided in Subpart E of this part.

(b) The End User Common Line and Carrier Common Line elements shall be combined for purposes of this subpart and subpart E of this part. Those elements shall be described collectively as the Common Line element. The Common Line element revenue requirement shall be segregated in accordance with subpart F of this part.

§ 69.302 Net investment.

(a) Investment in Accounts 2001, 1220 and Class B Rural Telephone Bank Stock booked in Account 1402 shall be apportioned among the interexchange category, billing and collection category and appropriate access elements as provided in §§ 69.303 through 69.309.

(b) Investment in Accounts 2002 and 2003 shall be apportioned in the following manner:

(1) Central Office Equipment (COE) investment shall be apportioned among the interexchange category and appropriate access elements in the same proportions as total Accounts 2210, 2220, and 2230 COE Assets combined;

(2) Cable and Wire Facilities (C&WF) investment shall be apportioned among the interexchange category and appropriate access elements in the same proportions as total Account 2410 C&WF Assets;

(3) General Support Facilities investment shall be apportioned among the interexchange category, the billing and collection category, and appropriate access elements on the basis of General Support Facilities Investment in Account 2001.

(4) Investment that is not COE, C&WF or General Support Facilities shall be apportioned among the interexchange category, the billing and collection category, and appropriate access elements in the same proportions as the associated investment in Account 2001, Telecommunications Plant in Service.

§ 69.303 Information origination/termination equipment (IOT).

(a) Investment in public telephones and appurtenances shall be assigned to the Common Line element, if capable of use with the services of more than one interexchange carrier, or the Limited Pay Telephone element, if capable of use with the services of only one interexchange carrier.

(b) Investment in all other IOT shall be apportioned between the Special Access and Common Line elements on the basis of the relative number of equivalent lines in use, as provided herein. Each interstate or foreign Special Access Line, excluding lines designated in § 69.115(e), shall be counted as one or more equivalent lines where channels are of higher than voice bandwidth, and the number of equivalent lines shall equal the number of voice capacity analog or digital channels to which the higher capacity is equivalent. Local exchange subscriber lines shall be multiplied by the interstate Subscriber Plant Factor to determine the number of equivalent local exchange subscriber lines.

§ 69.304 Subscriber line cable and wire facilities.

(a) Investment in local exchange subscriber lines shall be assigned to the Common Line element.

(b) Investment in interstate and foreign private lines and interstate WATS access lines shall be assigned to the Special access element.

(c) Investment in lines terminating in public telephones which may only access the services of one interexchange carrier (or partnership) shall be assigned to the Limited Pay Telephone element. Investment in all other lines terminating in public telephones shall be assigned to the Common Line element.

§ 69.305 Carrier cable and wire facilities (C&WF).

(a) Carrier C&WF that is not used for "origination" or "termination" as defined in § 69.2(bb) and § 69.2(cc) shall be assigned to the interexchange category.

(b) Carrier C&WF, other than WATS access lines, not assigned pursuant to paragraph (a) of this section that is used for interexchange services that use switching facilities for origination and termination that are also used for local exchange telephone service shall be apportioned between the Dedicated Transport and Common Transport elements. Such C&WF shall be assigned to the Dedicated Transport element if it is used exclusively for the interexchange services of a particular carrier.

(c) All Carrier C&WF that is not apportioned pursuant to paragraphs (a) and (b) of this section shall be assigned to the Special Access element.

§ 69.306 Central office equipment (COE).

(a) The Separations Manual categories shall be used for purposes of apportioning investment in such equipment except that any Central office equipment attributable to a Dedicated transport subelement shall be assigned to the Dedicated transport element.

(b) COE Category 1 (Operator Systems Equipment) shall be apportioned among the interexchange category and the access elements as follows: Category 1 that is used for intercept services shall be assigned to the Local Switching element. Category 1 that is used for directory assistance shall be assigned to the Information element. Category 1 other than service observation boards that is not assigned to the Information element and is not used for intercept services shall be assigned to the interexchange category. Service observation boards shall be apportioned among the interexchange category and the Information, Common Transport and Local Switching access elements based on the remaining combined investment in COE Category 1, Category 2 and Category 3.

(c) COE Category 2 (Tandem Switching Equipment) that is deemed to be exchange equipment for purposes of the Modification of Final Judgment in *United States* v. *Western Electric Co.* shall be assigned to the Common Transport element. All other COE Category 2 shall be assigned to the interexchange category.

(d) COE Category 3 (Local Switching Equipment) shall be assigned to the Local Switching element except as provided in paragraph (a) of this Section.

(e) COE Category 4 (Circuit Equipment) shall be apportioned among the interexchange category and the Common Line, Limited Pay Telephone, Dedicated Transport, Common Transport and Special Access elements. COE Category 4 shall be apportioned in the same proportions as the associated Cable and Wire Facilities.

§ 69.307 General support facilities.

General Support Facilities investments shall be apportioned among the interexchange category, the billing and collection category, and Common Line, Limited Pay Telephone, Local Switching, Information, Dedicated Transport, Common Transport, and Special Access elements on the basis of Central Office Equipment, Information Origination/Termination Equipment, and Cable and Wire Facilities excluding Category 1.3, combined.

§ 69.308 Equal access equipment.

Equal Access investment shall be assigned to the Local Switching element.

§ 69.309 Other investment.

Investment that is not apportioned pursuant to §§ 69.302 through 69.308 shall be apportioned among the interexchange category, the billing and collection category, and access elements in the same proportions as the combined investment that is apportioned pursuant to §§ 69.303 through 69.308.

§ 69.310 Capital leases.

Capital Leases in Account 2680 shall be directly assigned to the appropriate interexchange category or access elements consistent with the treatment prescribed for similar plant costs or shall be apportioned in the same manner as Account 2001.

Subpart E—Apportionment of Expenses

§ 69.401 Direct expenses.

(a) Plant Specific Operations Expenses in Accounts 6110 and 6120 shall be apportioned among the interexchange category, the billing and collection category and appropriate access elements on the following basis:

(1) Account 6110—Apportion on the basis of other investment apportioned pursuant to § 69.309.

(2) Account 6120—Apportion on the basis of General and Support Facilities investment pursuant to § 69.307.

(b) Plant Specific Operations Expenses in Accounts 6210, 6220 and 6230 shall be apportioned among the interchange category and access elements on the basis of the apportionment of the total COE investment.

(c) Plant Specific Operations Expenses in Accounts 6310 and 6410 shall be assigned to the appropriate investment category and shall be apportioned among the interexchange category and access elements in the same proportions as the total associated investment.

(d) Plant Non Specific Operations Expenses in Accounts 6510 and 6530 shall be apportioned among the interchange category, the billing and collection category, and access elements in the same proportions as the combined investment in COE, IOT, and C&WF apportioned to each element and category.

(e) Plant Non Specific Operations Expenses in Account 6540 shall be assigned to the interexchange category.

(f) Plant Non Specific Operations Expenses in Account 6560 shall be apportioned among the interexchange category, the billing and collection category, and access elements in the same proportion as the associated investment.

(g) Amortization of embedded customer premises wiring investment shall be deemed to be associated with § 69.303(b) IOT investment for purposes of the apportionment described in paragraph (c) of this section.

§ 69.402 Operating taxes (Account 7200).

(a) Federal income taxes, state and local income taxes, and state and local gross receipts or gross earnings taxes that are collected in lieu of a corporate income tax shall be apportioned among the interexchange category, the billing and collection category and all access elements based on the approximate net taxable income on which the tax is levied (positive or negative) applicable to each element and category.

(b) All other operating taxes shall be apportioned among the interexchange category, the billing and collection category and all access elements in the same manner as the investment apportioned to each element and category pursuant to § 69.309 Other Investment.

§ 69.403 Marketing expense (Account 6610).

Marketing expense shall be apportioned among the interexchange category and all access elements in the same proportions as the combined investment that is apportioned pursuant to § 69.309.

§ 69.404 Telephone operator services expenses in Account 6620.

Telephone Operator Services expenses shall be apportioned among the interexchange category, and the Local Switching and Information elements based on the relative number of weighted standard work seconds. For those companies who contract with another company for the provision of these services, the expenses incurred shall be directly assigned among the interexchange category and the Local Switching and Information elements on the basis of the bill rendered for the services provided.

§ 69.405 Published directory expenses in Account 6620.

Published Directory expenses shall be assigned to the Information element.

§ 69.406 Local business office expenses in Account 6620.

(a) Local business office expenses shall be assigned as follows:

(1) End user service order processing expenses attributable to presubscription shall be apportioned among the Common Line, Switching, and Transport elements in the same proportion as the investment apportioned to those elements pursuant to § 69.309.

(2) End user service order processing, payment and collection, and billing inquiry expenses attributable to the company's own interstate private line and special access service shall be assigned to the Special Access element.

(3) End user service order processing, payment and collection, and billing inquiry expenses attributable to interstate private line service offered by an interexchange carrier shall be assigned to the billing and collection category.

(4) End user service order processing, payment and collection, and billing inquiry expenses attributable to the company's own interstate message toll service shall be assigned to the interexchange category. End user service order processing, payment and collection, and billing inquiry expenses attributable to interstate message toll service offered by an interexchange carrier shall be assigned to the billing and collection category. End user payment and collection and billing inquiry expenses attributable to End User Common Line access billing shall be assigned to the Common Line element.

(5) End user service order processing, payment and collection, and billing inquiry expenses attributable to TWX service shall be assigned to the Special Access element.

(6) Interexchange carrier service order processing, payment and collection, and billing inquiry expenses attributable to private lines and special access shall be assigned to the Special Access element.

(7) Interexchange carrier service order processing, payment and collection, and billing inquiry expenses attributable to interstate switched access and message toll, shall be apportioned among the Common Line, Local Switching and Transport elements in the same proportion as the investment apportioned to those elements pursuant to § 69.309.

(8) Interexchange carrier service order processing, payment and collection, and billing inquiry expenses attributable to billing and collection service shall be assigned to the billing and collection category.

(9) Coin collection and administration expenses shall be divided between limited and non-limited public telephones. Coin collection and administration expenses attributable to limited public telephones shall be assigned to the Limited Pay Telephone element. Coin collection and administration expenses attributable to non-limited public telephone shall be assigned to the Common Line element.

§ 69.407 Revenue accounting expenses in Account 6620.

(a) Revenue accounting expenses that are attributable to End User Common Line access billings shall be assigned to the Common Line element.

(b) Revenue Accounting Expenses that are attributable to carrier's carrier access billing and collecting expense shall be apportioned among all carrier's carrier access elements except the Common Line element. Such expenses shall be apportioned in the same proportion as the combined investment in COE, C&WF and IOT apportioned to those elements.

(c) All other Revenue Accounting Expenses shall be assigned to the billing and collection category.

§ 69.408 All other customer services expense in Account 6620.

All other customer services expenses shall be apportioned among the Interexchange category, the billing and collection category and all access elements based on the combined expenses in §§ 69.403 through 69.407.

§ 69.409 Corporate operations expenses (Accounts 6710 and 6720).

All corporate operations expenses shall be apportioned among the interexchange category, the billing and collection category and all access elements in accordance with the Big 3 Expense Factor as defined in § 69.2(f).

§ 69.410 Equal access expenses.

Equal Access expenses shall be assigned to the Local Switching element.

§ 69.411 Other expenses.

Except as provided §§ 69.412, 69.413, and 69.414, expenses that are not apportioned pursuant to §§ 69.401 through 69.410 shall be apportioned among the interexchange category and all access elements in the same manner as § 69.309 Other investment.

§ 69.412 Non participating company payments/receipts.

For telephone companies that are not association Common Line tariff participants, the payment or receipt of funds described in § 69.612(a) and (b) shall be apportioned, respectively, as an addition to or a deduction from their common line revenue requirement.

§ 69.413 Universal service fund expenses.

Expenses allocated to the interstate jurisdiction pursuant to §§ 36.631 and 36.641 shall be assigned to the Carrier Common Line Element until March 31, 1989. Beginning April 1, 1989, such expenses shall be assigned to the Universal Service Fund Element.

§ 69.414 Lifeline assistance expenses.

Expenses allocated to the interstate jurisdiction pursuant to § 36.741 shall be assigned to the Carrier Common Line element until March 31, 1989. Beginning April 1, 1989, such expenses shall be assigned to the Lifeline Assistance element.

14. Section 69.501 is amended by revising paragraphs (c) and (d) to read as follows:

§ 69.501 General.

* * * * *

(c) Any portion of the Common Line element annual revenue requirement that is attributable to customer premises wiring included in IOT investment or expense shall be assigned to the Carrier Common Line element or elements.

(d) Any portion of the Common Line element revenue requirement that is attributable to public telephone investment or expense shall be assigned to the Carrier Common Line element or elements.

* * * * *

15. Section 69.603 is revised to read as follows:

§ 69.603 Association functions.

(a) The Association shall not engage in any activity that is not related to the preparation of access charge tariffs or the collection and distribution of access charge revenues or the operation of a billing and collection pool on an untariffed basis unless such activity is expressly authorized by order of the Commission.

(b) Participation in Commission or court proceedings relating to access charge tariffs, the billing and collection of access charges, the distribution of access charge revenues, or the operation of a billing and collection pool on an untariffed basis shall be deemed to be authorized association activities.

[FR Doc. 87-22999 Filed 10-5-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 86-429; RM-5336]

Radio Broadcasting Services; Kaplan, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 247C2 for Channel 249A at Kaplan, Louisiana, at the request of Mid-Arcadiana Broadcasting, Inc. and modifies the license of Station KMDL(FM), Kaplan, to specify the new channel. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 13, 1987.

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-429, adopted August 25, 1987, and released September 29, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments is amended by substituting Channel 247C2 for Channel 249A at the entry for Kaplan, Louisiana.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-23056 Filed 10-5-87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 85-156; RM-4938; RM-5403; RM-5808]

Radio Broadcasting Services; Claremore and Locust Grove, OK; Barling, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mike Warren, allocates Channel 233A to Claremore, Oklahoma, at the community's first local FM service. At the request of Doyal Hoover, Channel 264A is allocated to Locust Grove, Oklahoma, as the community's first local FM service. Additionally, at the request of Teresa Brown, Channel 233C2 is substituted for Channel 233A at Barling, Arkansas, and her construction permit for Station KPHN is modified to

specify the higher powered channel. The allocation of Channel 233A at Claremore requires a site restriction of 11.6 kilometers (7.2 miles) south and Channel 233C2 at Barling requires a site restriction of 11.4 kilometers (7.1 miles) south. The allocation at Locust Grove requires no site restriction. With this action, this proceeding is terminated.

DATES: Effective November 13, 1987. The window period for filing applications for the Claremore and Locust Grove, Oklahoma, allotments will open on November 16, 1987, and close on December 16, 1987.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 85–156, adopted September 4, 1987, and released September 30, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments for Oklahoma is amended by adding Claremore, Channel 233A, and Locust Grove, Channel 264A. The FM Table of Allotments for Barling, Arkansas, is amended by adding Channel 233C2 and removing Channel 233A.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 87–23063 Filed 10–5–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87–21, RM–5623]

Radio Broadcasting Services; Diamondville, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 287C2 to Diamondville, Wyoming, as that community's first FM service, at the request of Four Seasons, Inc. With this action, this proceeding is terminated.

DATES: Effective November 13, 1987; The window period for filing applications will open on November 16, 1987, and close on December 16, 1987.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87–21, adopted August 25, 1987, and released September 29, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

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

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, in the entry for Diamondville, Wyoming, Channel 287C2 is added.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87–23058 Filed 10–5–87; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Parts 73, 74 and 76

Oversight of the Radio and TV Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Order amends the Alphabetical Indexes in Parts 73, 74 and 76 by updating and correcting them as needed.

EFFECTIVE DATE: October 1, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steve Crane, Policy and Rules Division, Mass Media Bureau, (202) 632–5414.

SUPPLEMENTARY INFORMATION: In this Order, the Alphabetical Indexes are amended by removing listings of rules removed during the past year, adding listings of newly adopted rules and correcting listings as needed. Adopted September 15, 1987; released September 30, 1987.

Order

Adopted: September 15, 1987.

Released: September 30, 1987.

By the Chief, Mass Media Bureau.

1. In this Order, the Commission adds or deletes listings in the alphabetical indexes of Parts 73, 74, and 76 (no modifications in Part 78), pursuant to changes adopted in Commission rule makings in the past 12 months. These corrections are made in September of each year for inclusion in the upcoming October edition of Title 47 of the Code of Federal Regulations.

2. Our experience in alphabetically indexing the broadcast rules clearly indicates that this data makes possible the location of regulations quickly and easily. This fast access has brought about a better understanding of our rules by broadcasters and practitioners. Providing easy access to the rules has reduced considerably the number of letters and phone calls to the FCC requesting help in rule location, thereby minimizing paperwork and administrative workload on the FCC staff, broadcasters and their legal and engineering advisors.

3. No substantive changes are made herein which impose additional burdens or remove provisions relied upon by licensees or the public. We conclude, for the reasons set forth above, that these revisions to Parts 73, 74, and 76 will serve the public interest.

4. These amendments are implemented by authority delegated by the Commission to the Chief, Mass Media Bureau. Inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose, prior notice of rule making, effective date provisions and public procedure thereon are inapplicable pursuant to the Administrative Procedure act. 5 U.S.C. 553(b)(3)(B).

5. Since general notice of proposed rule making is not required, the Regulatory Flexibility Act does not apply.

6. Therefore, it is ordered, that pursuant to sections 4(i), 303(r) and 5(c)(1) of the Communications Act of 1934, as amended, and §§ 0.61 and 0.283 of the Commission's Rules, Parts 73, 74 and 76 of the FCC Rules and Regulations

are amended as set forth below, effective October 1, 1987.

7. For further information on this Order, contact Steve Crane, Mass Media Bureau, (202) 632-5414.

Federal Communications Commission.

William H. Johnson,

Acting Chief, Mass Media Bureau.

List of Subjects in 47 CFR Parts 73, 74, and 76.

Radio broadcasting.

Rule Changes

47 CFR is amended to read as follows:

1. The authority citations for Parts 73, 74, and 76 continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

PART 73—[AMENDED]

2. The alphabetical index of 47 CFR Part 73 is amended by removing the following index entries:

Channels, Classes of Commercial, and stations operating thereon (FM).....73.206
Classes of stations and permissible channels (FM).....73.206
Origination, Program.....73.1130
Station program origination.....73.1130

3. The alphabetical index of 47 CFR Part 73 is amended by adding the following index entries:

[Following "FM subsidiary communications services".....73.295]
FM transmitter site map submissions...73.4108
[Following "Multiple" under Applications–]
Mutually exclusive applications for LPTV and TV translator and booster stations.....73.3521

4. The alphabetical index of 47 CFR Part 73 is amended by making the following corrections:

(a) Correcting the section number for the listing "Foreign broadcast stations—Permits to furnish programs" from 73.3543 to 73.3545;

(b) Correcting the section title for § 73.3572 (under Applications) which currently reads "TV, LPTV, TV translator processing" to correctly state "TV, LPTV, translator and TV booster processing".

PART 74—[AMENDED]

5. The alphabetical index of 47 CFR Part 74 is amended by adding the following index entry:

[Following "Translators, TV, Purpose of (LPTV/TV Translators)."].....74.731]
TV boosters, Broadcast rules applicable to (LPTV/TV Translators/TV Boosters.....74.780

6. The alphabetical index of 47 CFR Part 74 is amended by correcting the entry of § 74.780, Broadcast regulations applicable to LPTV and TV translators, to correctly read, Broadcast regulations applicable to LPTV, TV translators and TV boosters.

PART 76—[AMENDED]

7. The alphabetical index of 47 CFR Part 76 is amended by removing the following index entries:

Carriage services on vertical blanking interval.....76.64
Carriage, Subscription TV programs.....76.64
Carriage, TV broadcast signals.....76.55
Contours, signal, Determination of.....76.65
Determination, Signal contour.....76.65
Market size operation provisions—
Major TV markets.....76.61
Small TV markets.....76.59
Markets outside major/smaller.....76.57
Must Carry requirements.....76.7
Operating provisions by market size—
Major TV markets.....76.61
Smaller TV markets.....76.59
Markets outside major/smaller.....76.57
Provisions to operate by market size—
Major TV markets.....76.61
Smaller TV markets.....76.59
Markets outside major/smaller.....76.57
Signal Carriage, Manner of.....76.55
Signal contour determination.....76.65
Smaller TV markets.....76.5
Subscription TV program carriage.....76.64
TV broadcast signals, Carriage of.....76.51
TV markets, Smaller.....76.51

8. The alphabetical index of 47 CFR Part 76 is amended by adding the following index entries:

[Preceding "Broadcast station, TV".....76.5]
Broadcast, Sports.....76.67
[Following "Candidates for public office, Cablecast by".....76.205]
Carriage disputes.....76.58
Carriage, mandatory, Expiration of.....76.64
Carriage, Manner of.....76.62
Carriage of other TV signals.....76.60
Carriage of TV stations, Mandatory.....76.56
Carriage of TV stations, Mandatory, Exemption from.....76.70
[Following "Community Unit".....76.5]
Consumer education-selector switches.....76.66
[Following "Dismissal: Special relief petitions".....76.8]
Disputes concerning carriage.....76.58
[Following "Independent station".....76.5]
Input selector switches.....76.66
Input selector switches, consumer education.....76.66
Input selector switches, Exemption.....76.70
[Preceding "Marine and aeronautical emergency frequencies, Operation near".....76.616]
Mandatory carriage of TV stations.....76.56
Mandatory carriage of TV stations, Exemption from.....76.70
Manner of carriage.....76.62
[Under "Q"]—
Qualified TV station, Showing.....76.55
[Preceding "Show cause order".....76.9]
Selector switches, Input.....76.66
Selector switches, input, Exemption.....76.70
[Following "TV markets, Major".....76.51]
TV signals, Carriage non-mandatory.....76.60

§ 76.53 [Amended]

9. The alphabetical index of 47 CFR Part 76 is amended by correcting the entry for § 76.53, Boundaries, TV worksheets, to correctly read Boundaries, TV markets.

[FR Doc. 87-23057 Filed 10-5-87; 8:45 am]
BILLING CODE 6712-01-M

VETERANS ADMINISTRATION

48 CFR Part 819

Small Business and Small Disadvantaged Business Concerns

AGENCY: Veterans Administration.

ACTION: Final rule.

SUMMARY: The Veterans Administration (VA) is amending the VA Acquisition Regulation (VAAR) to make it consistent with the provisions in the National Defense Authorization Act for FY 1987.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Chris A. Figg, Policy and Interagency Service (91A), Office of Procurement and Supply, Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2334.

SUPPLEMENTARY INFORMATION:

I. Program Information

VAAR §§ 819.806-2 and 819.806-4 were published as deviations to the Federal Acquisition Regulation (FAR). The deviation provided a different definition of fair market price from that contained in the FAR. The VAAR definition allowed the award of 8(a) contracts if the price was determined to be fair and reasonable. Pub. L. 99-661 relies upon the FAR definition of fair market price and the VAAR is made consistent with that definition by this amendment. This amendment emphasizes steps to ensure that all appropriate actions are considered in determining the fair market price.

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this final rule is exempt from sections 3 and 4 of Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Because this final rule does not come within the term rule as defined in the RFA (5 U.S.C. 601(2)), it is not subject to the requirements of that Act. In any case, this change, in itself, will not have a significant economic impact on a

substantial number of small entities because the VAAR subpart will primarily implement the regulations set forth in FAR Subpart 8.4.

IV. Paperwork Reduction Act

This final rule requires no additional information collection or recordkeeping requirement upon the public.

List of Subjects in 48 CFR Part 819

Government procurement.

Approved: September 28, 1987.

Thomas K. Turnage,

Administrator.

Part 819 of Title 48 Code of Federal Regulations is amended as follows:

PART 819—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

1. The authority citation for Part 819 continues to read as follows:

Authority: 38 U.S.C. 210 and 40 U.S.C. 486(c).

2. In 48 CFR Part 819, all references to "Office of Construction" are revised to read "Office of Facilities."

Subpart 819.8—Contracting with the Small Business Administration (The 8(a) Program)

3. Sections 819.806–2 and 819.806–4 are revised, and section 819.806–3 is added to read as follows:

819.806–2 Estimating the current fair market price.

(a) Estimating the fair market price is a crucial initial step in determining what is a reasonable price for a negotiated 8(a) contract. For supplies and equipment, previous prices paid under competitive conditions, adjusted for inflation, may provide necessary data to make such an estimate.

(b) Estimating fair market price for such services as architect-engineer and construction may be accomplished through independent cost estimates and other pertinent data obtained from SBA when the estimated fair market price is not fully supportable from available documentation (see FAR 19.806–2(a)).

819.806–3 Pricing review by the Small Business Administration.

In order to expedite the 8(a) process, SBA should be informed as soon as a disparity between the 8(a) offered price and the estimated fair market price is determined. The SBA and the VA contracting office should collaborate to determine if the disparity is:

(a) A result of deficiencies in developing the fair market price, thereby requiring revision to the estimate;

(b) A result of overpricing by the 8(a) company, thereby requiring further efforts to negotiate a decrease in the offered price; or

(c) A legitimate differential which should be funded through the SBA business development expense.

819.806–4 Funding business development expense.

If SBA declines to fund the business development expense, it will be reported in accordance with 819.870.

819.7004 [Amended]

4. Section 819.7004 is amended by removing the words "07–2268 or."

[FR Doc. 87–22984 Filed 10–5–87; 8:45 am]

BILLING CODE 8320–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1160 and 1165

[Ex Parte No. MC–142 (Sub-No. 4)]

Revision of Licensing Procedures To Include Applications for Removal of Restrictions From Authorities of Motor Carriers of Property and Passengers

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission eliminates the restriction removal rules at 49 CFR Part 1165 and substitutes a new Subpart G to the licensing rules at 49 CFR Part 1160 to allow carriers to remove operating restrictions from their authorities by using conventional application procedures. This action unifies and simplifies the application and restriction removal guidelines, and preserves the procedural requirements for restriction removal applications of 49 U.S.C. 10922(i).

EFFECTIVE DATE: This action will be effective November 6, 1987.

FOR FURTHER INFORMATION CONTACT: Suzanne Higgins O'Malley (202) 275–7181 or Andrew L. Lyon, (202) 275–7691.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 289–4357 (assistance for the hearing impaired is available through TDD services (202) 275–1721) or by pickup from Dynamic Concepts, Inc., in Room 2229 at Commission headquarters.

Environmental and Energy Considerations

The rules adopted here will not affect significantly the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

We confirm our preliminary assessment and certify that the revised approach to restriction removal adopted here will not have a significant economic impact on the substantial number of small entities because the new Subpart G does not alter the licensing and restriction removal options presently available. Carriers are not required to take action in response to these rule revisions. When such carriers do institute an application pursuant to the rules, they need only refer to a simplified set of guidelines. Small shipper entities will continue to benefit from the resulting expanded service options.

List of Subjects in 49 CFR Parts 1160 and 1165

Administrative practice and procedure, Buses, Motor carriers.

Decided: September 28, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

Title 49 of the Code of Federal Regulations is amended as follows:

PART 1165—REMOVAL OF RESTRICTIONS FROM AUTHORITIES OF MOTOR CARRIERS OF PROPERTY, MOTOR CARRIERS OF PASSENGERS, AND FREIGHT FORWARDERS [REMOVED]

1. Part 1165 of the Code of Federal Regulations, Title 49, is removed.

PART 1160—HOW TO APPLY FOR OPERATING AUTHORITY

2. The authority citation for 49 CFR Part 1160 is revised to read as follows:

Authority: 49 U.S.C. 10101, 10305, 10321, 10921, 10922, 10923, 10924, and 11102; 5 U.S.C. 553 and 559; and 16 U.S.C. 1456.

3. Part 1160 of the Code of Federal Regulations, Title 49, is amended by adding a new Subparagraph G as follows:

Subpart G—Rules for Removing Restrictions from Operating Authority; Motor Carriers of Property and Passengers

Sec.

1160.107 Requests for restriction removal.

1160.108 Procedural guidelines.

Sec.
1160.109 Information which shall accompany the application.
1160.110 Participation of interested persons.
1160.111 Notice.
1160.112 Furnishing a copy of the application package to interested persons.
1160.113 Disposition of the application.
1160.114 Compliance.

Subpart G—Rules for Removing Restrictions from Operating Authority; Motor Carriers of Property and Passengers

§ 1160.107 Requests for restriction removal.

Form OP–1 (an original and 1 copy) is to be filed by:

(a) Motor carriers of property seeking to remove operating restrictions from their certificates or permits in accordance with 49 U.S.C. 10922(i)(1); and

(b) Motor carriers of passengers seeking to remove operating restrictions from their certificates in order to authorize interstate transportation or service to intermediate points on any authorized route in accordance with 49 U.S.C. 10922(i)(4).

§ 1160.108 Procedural guidelines.

(a) Carriers seeking to relieve their existing authorities of operating restrictions as provided should distinguish their application forms by including at the top of page one the designation "Restriction Removal Application."

(b) The Commission will assign applications identified in this manner an "X" suffix on the docket number. Applications so designated will be processed within the expedited statutory time limitations provided at 49 U.S.C. 10922(i)

§ 1160.109 Information which shall accompany the application.

In addition to the pertinent information requested in the body of Form OP–1, restriction removal applicants shall submit the following information (an original and 1 copy) in the order set forth below:

(a) A copy of the certificate or permit from which applicant seeks to have restrictions removed or which it proposes be broadened.

(b) A proposed draft of the certificate or permit (commodity and territorial descriptions) with the restrictions removed or the authority broadened as proposed, together with sufficient information for the Commission to determine readily the precise portions of the existing authority to be modified. The redrafted certificate or permit shall be in the same format as the original so that, if the application is granted, it can be issued promptly without further redrafting by the Commission.

(c) A caption summary (an original and 1 copy) of the modifications proposed, suitable for publication in the ICC Register. The caption summary shall include an accurate summary of the restrictions applicant seeks removed, the authority applicant seeks broadened under these rules, or the authority applicant would hold if its application were granted. It shall also include the authority (including specific sub-numbers) which would be superseded by a grant of the application.

(d) Where the applicant is a motor carrier of property,

(1) A brief statement affirmatively indicating that it is fit, willing, and able to perform the broader service to be authorized; and

(2) A statement describing the effect of the proposal upon one or more of the following factors:

(i) The consumption of energy resources;

(ii) Potential cost savings and improved efficiency;

(iii) The provisions of the transportation policy set forth in 49 U.S.C. 10101(a); or

(iv) The provision and maintenance of service to small and rural communities and small shippers.

§ 1160.110 Participation of interested persons.

Comments (an original and 1 copy) shall be filed with the Commission within 25 days of the date of publication in the *ICC Register*. The envelope containing the comments and the comments shall be clearly marked "Restriction Removal Comments."

(a) Comments on applications filed by motor carriers of property. Any interested persons may comment on the applicant's proposal. Comments may address either or both:

(1) The merits of the particular proposal, including the reasonableness of the sought commodity expansion, and applicant's fitness, willingness, and ability to perform operations under the broadened authority, or

(2) Whether the proposal properly should be considered under these rules.

(b) Comments on applications filed by motor carriers of passengers. No common carrier of passengers may protest an application to remove an operating restriction under 49 U.S.C. 10922(i)(4) unless:

(1)(i) It possesses authority to handle, in whole or in part, the traffic for which authority is applied;

(ii) It is willing and able to provide service that meets the reasonable needs of the traveling public; and

(iii) It has performed service within the scope of the application during the previous 12-month period or has, actively in good faith, solicited traffic within the scope of the application during such period;

(2) It has pending before the Commission an application filed prior in time to the application being considered for substantially the same traffic; or

(3) The Commission grants leave to intervene upon a showing of other interests that are not contrary to the transportation policy set forth in 49 U.S.C. 10101(a).

(c) Protests for motor carriers of passengers must address:

(1) Whether the proposed interstate transportation directly competes with a commuter bus operation; and

(2) Whether the resulting interstate transportation would have a significant adverse effect on commuter bus service in the area in which the competing service will be performed.

(3) Protests also may address whether the proposal should properly be considered under these rules.

§ 1160.111 Notice.

Notice to the public of the filing of an application under these rules will be given by the Commission through publication of a caption summary in the *ICC Register*. Applicant shall comply with the requirements at 49 CFR 1160.9 (property carriers) or 1160.77 (passenger carriers) concerning filing copies of the application or caption summary with the Commission and State regulatory bodies.

§ 1160.112 Furnishing a copy of the application to interested persons.

Applicant's representative is required to furnish a copy of the application package to interested persons in accordance with the regulations at 49 CFR 1160.13(a) (property carriers) or 1160.81 (passenger carriers).

§ 1160.113 Disposition of the application.

(a) *Basis for determining the application.* Except in extraordinary circumstances, applications will be determined solely on the basis of the application itself and any comments that are received. There will be neither oral hearings nor the opportunity for the submission of evidence under modified procedure.

(b) *The Commission's decision.* Applications will be published in the *ICC Register* in the form of tentative decisions granting the authority

requested. If no comments are filed, the application will stand granted at the conclusion of the 25-day comment period, unless the Commission, prior to that time, stays the effectiveness of the tentative decision.

(c) *Administrative finality and appeals.* A decision disposing of an application subject to these rules is a final action of the Commission. Review of such an action on appeal is discretionary and is governed by the Commission's appeal regulations at 49 CFR Part 1115. Any party seeking review should specify the "extraordinary circumstances" involved in the proceeding to enable the Commission to extend the deadline for final Commission action an additional 90 days

§ 1160.114 Compliance.

A reformed certificate or permit will be issued upon a grant of an application. Prior to beginning operations under the newly issued authority, compliance must be made as described at 49 CFR 1160.19 (property carriers) or 1160.86 (passenger carriers).

[FR Doc. 87-23012 Filed 10-5-87; 8:45 am]
BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 52, No. 193
Tuesday, October 6, 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

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 87-086]

Specifically Approved States Authorized To Receive Mares and Stallions Imported From CEM-Affected Countries

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to add Montana to the list of states approved to receive certain mares and stallions imported into the United States from countries affected with contagious equine metritis (CEM). We are taking this action because Montana has entered into an agreement with the Deputy Administrator, Veterinary Services, to enforce its state laws and regulations to control CEM and to require inspection, treatment, and testing of horses, as required by federal regulations, to further ensure the horses' freedom from CEM. This action will relieve unnecessary restrictions on importers of mares and stallions from countries affected with CEM.

DATE: Consideration will be given to comments postmarked or received on or before December 7, 1987.

ADDRESS: Send an original and two copies of written comments to Steven B. Farbman, Assistant Director, Regulatory Coordination, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 87-086. Comments received may be inspected in Room 728 of the Federal Building between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export and Emergency Planning Staff, VS, APHIS, USDA, Room 810, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8695.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 92, §§ 92.2(i)(2), 92.4(a)(5) and 92.4(a)(8), allow certain horses (mares and stallions over 731 days old) to be imported into the United States from certain countries where contagious equine metritis (CEM) exists if specific requirements to prevent their introducing CEM into the United States are met and the horses are consigned to approved states for further inspection, treatment, and testing.

Mares and stallions over 731 days old must be consigned to states which have been approved by the Deputy Administrator, Veterinary Services (VS), as meeting conditions necessary to ensure that the horses are free of CEM. These conditions, which concern inspection, treatment, and testing of the horses, are contained in § 92.4(a)(6) of the regulations for stallions and § 92.4(a)(9) of the regulations for mares.

Montana has agreed to abide by the regulations concerning horses imported from countries where CEM exists, and to enter into a written agreement with the Deputy Administrator, VS, to enforce its state laws and regulations to control CEM. Therefore, we propose to add Montana to the list of states approved to receive mares and stallions that are over 731 days old and imported into the United States from certain countries where CEM exists.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

We anticipate that fewer than 25 mares and stallions over 731 days old will be imported into the state of Montana annually from countries where CEM exists. Approximately 2,400 mares and stallions over 731 days old and from countries where CEM exists were imported into the entire United States in Fiscal Year 1986. During this same period, approximately 26,000 horses of all classes were imported into the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this section would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

Accordingly, 9 CFR Part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for Part 92 would be revised to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 9.24 [Amended]

2. In § 92.4, paragraphs (a)(5)(ii) and (a)(8)(ii) would be amended by adding

"The State of Montana." in alphabetical order.

Done in Washington, DC, on this 1st day of October, 1987.

B. G. Johnson,

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

[FR Doc. 87-23108 Filed 10-5-87; 8:45 am]

BILLING CODE 3410-34-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM-50-44]

Committee To Bridge the GAP; Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by the Committee To Bridge the Gap. The petitioner requested that the Commission amend its regulations to require all licensees whose reactors employ graphite as a neutron moderator or reflector and whose licensed power is greater than 100 W to: (1) Formulate and submit for NRC approval fire response plans for combating a reactor fire involving graphite and other constituent reactor parts (e.g., fuel); (2) formulate and submit for NRC approval evacuation plans in case of a reactor fire; and (3) perform measurements of the Wigner energy stored in the graphite of their reactors and submit these measurements to the NRC for review, together with a revised safety analysis that shall address the risks and consequences of a reactor fire.

The petitioner believes these requirements are necessary because the previous NRC safety evaluations of these reactors allegedly were based on a belief that graphite fires were not credible and on an inability of the NRC and its contractors to properly calculate Wigner energy in the graphite. The Commission is denying the petition because Fort St. Vrain Nuclear Generating Station and all NRC-licensed research and test (non-power) reactors have approved plans for dealing with emergencies in accordance with existing regulations. The protective actions are based on conservative dose calculations consistent with those proposed by the petitioner.

Graphite burning is a very low-probability (i.e., noncredible) event and its potential is essentially independent of stored energy in graphite. Empirical measurements of stored energy in graphite are not needed to perform an evaluation of the releasable stored energy. Furthermore, the requirement for such measurements could result in personnel exposures that would be inconsistent with NRC's as low as is reasonably achievable (ALARA) principle.

ADDRESSES: Copies of the petition, public comments and abstracts of the comments received on the petition, and the Brookhaven National Laboratory Report NUREG/CR-4981 are available for inspection and copying under Docket No. PRM-50-44 in the NRC Public Document Room, 1717 H Street NW., Washington, DC. Copies of NUREG/CR-4981 may be purchased through the U.S. Government Printing Office by calling (202) 275-2060 or by writing to the U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies may also be purchased from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Theodore S. Michaels, Standardization and Non-Power Reactor Project Directorate, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492-8251.

SUPPLEMENTARY INFORMATION:

The Petition

A petition for rulemaking was filed by the Committee To Bridge the GAP (CBG) on July 7, 1986. The petition was docketed by the Commission on July 7, 1986 and was assigned Docket No. PRM-50-44. A notice requesting comments on the petition was printed in the **Federal Register** on September 3, 1986 (51 FR 31341). The petition requests that the Commission amend its regulations.

Basis for the Request

The petitioner offered the following justification for the proposeod revision of the regulations:

- The occurrence of a graphite fire at the Chernobyl plant in the Soviet Union demonstrates that such fires are credible events. The NRC and its licensees have mistakenly dismissed graphite fires as noncredible events.
- New experimental data show that NRC's generic analysis of stored energy in research reactor graphite significantly underestimates the actual amount of stored energy, and thus underestimates the associated risk of graphite fire.
- The NRC failed to required basic safety measures that could help to reduce the threat of such a fire. Licensees whose reactors use graphite, including dozens of non-power reactors and one commercial power reactor, have no fire response plans for combating graphite fires in their reactors. Non-power reactor licensees do not have adequate emergency plans to evacuate members of the public in the event of a graphite fire or other severe accident.

For these reasons, the petitioner would require all licensees whose reactors employ graphite as a neutron moderator or reflector and whose licensed power is greater than 100 W to:

(a) Formulate and submit for NRC approval fire response plans for combating a reactor fire involving graphite and other constituent reactor parts (e.g., fuel) which might be involved in such a fire, taking into consideration the potential for explosive reactions. Response plans shall identify precisely which materials will be used to suppress a fire without increasing the risk of explosion, and shall indicate where and in what quantities these materials will be stored.

(b) Formulate and submit for NRC approval evacuation plans for a reactor fire. Plans should include evacuation out to a sufficient distance from the reactor such that no member of the public receives a dose to the thyroid greater than 5 rem, assuming a release to the environment of 25% of the equilibrium radioactive iodine inventory.

(c) Perform measurements of the "Wigner energy" stored in the graphite of their reactor, and submit these measurements to NRC for review together with a revised safety analysis, which shall address the risks and consequences of a reactor fire. A sufficient number of graphite samples shall be measured to identify the location of maximum stored energy, and to determine the maximum quantity of stored energy within $\pm 10\%$.

Public Comments on the Petition

On September 3, 1986, the Commission published a notice in the **Federal Register** (51 FR 31341) requesting comments on the petition. The NRC received nine requests for an extension of the comment period. An extension of the comment period was granted, changing the closing date for the comments from November 3, 1986, to February 2, 1987. A total of 27 comments were received, six of which supported the petition and 21 of which opposed the petition. Of the six commenters supporting the petition, two were individual citizens and four were from

citizen's groups. Of the 21 commenters opposed to the petition, 15 were universities or university-related organizations, four were companies involved with the nuclear industry, one was a state government agency, and one was an individual citizen.

Of the comments in support of the petition, none offered any specific technical insights but rather simply endorsed the information and basis of the petition. These comments covered general concerns that include:

- The potential for graphite fires,
- Training of firefighters to manage graphite fires,
- Evacuation of persons on-site and in nearby areas in the event of an accident.

Highlights from the comments opposing the petition are as follows:

- CBG's comparison of research reactors to the Chernobyl-4 (RBMK) reactor ignores the extreme differences in power level, core size, fission product inventory, operating temperature, reactor control systems, and inherent design characteristics.
- CBG's inference that graphite fires were the initiating events in both the Chernobyl and Windscale accidents cannot be substantiated.
- The operating temperature of the Chernobyl graphite (700°C) dismisses CBG's contention that stored energy in the irradiated graphite played any role in the Chernobyl accident.
- CBG ignores the necessity for an initiating event to raise the graphite temperature 50C°-100C° above its normal operating temperature before any Wigner (stored) energy in graphite can be released.
- CBG ignores the fact that only the releasable stored energy, not the total stored energy, in graphite, in accordance with the annealing temperature, can contribute to a graphite temperature increase.
- The conditions necessary for graphite burning do not exist nor can they be created by random events in non-power reactors.
- The conditions necessary for graphite burning do not exist in the Fort St. Vrain reactor.
- Operating temperatures of the graphite in the Fort St. Vrain reactor preclude the accumulation of any significant quantity of stored energy (i.e., the graphite is self-annealing).
- NRC-approved emergency plans (required by 10 CFR Part 50, Appendix E) are in place at all NRC-licensed reactors and are adequate and acceptable.
- Measurement of stored energy is not consistent with the ALARA philosophy, since it requires the unnecessary exposure of reactor personnel.
- CBG fails to provide a technical basis for any of the petition's proposed requirements.

The comments opposing the petititon are too numerous to address individually. However, each comment has been considered by the staff and its contractors in analyzing the petition and in developing the NRC position. Abstracts of all comments received and the full text are available at the NRC Public Document Room in the Docket file PRM–50–44, as noted in the address section above.

Analysis of the Petition

(1) The petitioner asserts that "the occurrence of a graphite fire at the Chernobyl plant demonstrates that such fires are indeed credible events."

CBG filed its petition on July 7, 1986. Consequently, only fragmentary information, mostly conjecture, was available before the petition was filed. More detailed and definitive information was first made available, outside the Soviet Union, during a meeting held by the International Atomic Energy Agency (IAEA) in Vienna, Austria, on August 25 to 29, 1986. Without the benefit of the detailed Soviet report, the basis of the petititon is seriously flawed.

In response to the CBG assertion regarding the Chernobyl event, the NRC selected Brookhaven National Laboratory (BNL), operator of the Brookhaven Graphite Research Reactor, whose staff is recognized internationally for its research on reactor-grade graphite and its properties, to review the published information and determine its relevancy to the use of graphite in NRC-licensed reactors. In addition, BNL personnel reviewed the Chernobyl and Windscale accidents and the role, if any, of the graphite moderator in these events. The results of this review are contained in NUREG/CR-4981, "A Safety Assessment of the Use of Graphite in Nuclear Reactors Licensed by the U.S. NRC," July 1987. This report is available as noted in the address section above.

The staff has used the BNL report, comments received from the public, and its own understanding of and expertise relevant to the use of graphite in non-power reactors and Fort St. Vrain to evaluate and respond to the assertions and proposed requirements of the CGB petition (PRM–50–44).

In their evaluations of the Chernobyl accident, both Soviet and international scientists argee that graphite burning did occur during this accident. However, most of the experts, including the scientists at BNL, consider the graphite burning a secondary or corollary event resulting from the explosions that occurred as a result of a very rapid reactivity insertion that overheated the fuel and cladding. The explosion created the conditions necessary to initiate and sustain graphite burning (e.g., fragmentation of fuel and graphite, rupture of the moderator inert gas boundary, admission of air, a favorable ratio of graphite volume-to-surface area, sustained heat input from asphalt fires, and decay heat). Although the petition considers the Chernobyl accident a demonstration of graphite fire credibility, the accident confirms that initiation and sustained burning of graphite require the existence of a complex combination of ideal conditions, which are extremely difficult to achieve in any real situation and are virtually incredible in the reactors being considered under this petition. The words "credible" and "incredible" have been used in many AEC/NRC safety analyses. As used by the staff, these words have always been a qualitative statement of the likelihood or probability of an event or condition occurring. Accordingly, the staff's conclusion that sustained or self-sustained graphite burning is not a credible event in NRC-licensed reactors is still valid (i.e., the random simultaneous occurrence of the several conditions necessary for sustained graphite burning or self-sustained graphite burning is an event with a very small probability of occurring). The staff thus concurs in the conclusion reached in the BNL report: "There is no new evidence associated with the analyses of either the Windscale accident or the Chernobyl accident that indicates a credible potential for a graphite burning accident in any of the reactors considered in this review. Nor is there any new evidence that detailed case-by-case safety analysis of the role of graphite in NRC-licensed reactors are warranted." Accordingly, there has been no change in the staff's assessment of graphite burning, the Chernobyl accident notwithstanding, in NRC-licensed reactors, and no changes are required in the staff's previous findings in the safety evaluation reports prepared for these reactors.

(2) The petitioner states that "the NRC has failed to require basic safety measures to reduce the threat of a graphite fire."

The petitioner did not identify the "basic measures" the NRC has failed to require and provided no basis for this statement. The staff considers that the

elements of the NRC regulatory and licensing process represent the basic safety measures required of licensees to ensure the safe design and operation of their reactors as well as to provide specific plans and procedures for managing and responding to off-normal conditions and accidents. Some examples that are relevant to fire [1] detection, protection, and mitigation are listed below:

- Safety reviews of non-power reactors include an assessment of the fire protection systems at each facility. Fire detection, fire extinguishers, fire alarms, fire prevention, fire fighting training of facility personnel, and onsite and offsite response to fire alarms are typical areas included in the safety review. Inadequacies identified during the review must be corrected before a license is granted.
- Each non-power reactor licensee is required by conditions of the license (Technical Specifications) to provide a safety review for experiments to be inserted in their reactors and for changes in reactor operation. Among many other safety considerations, an assessment of fire potential (e.g., flammable materials) is included.
- Each non-power reactor licensee has responded to the requirements of 10 CFR 50.54(q) and 10 CFR Part 50, Appendix E, in submitting an emergency plan for NRC review and approval. All licensed non-power reactors now have approved emergency plans and the necessary implementing procedures. These plans were reviewed against ANSI/ANS–15.16–1982 and Regulatory Guide 2.6, proposed Revision 1, as outlined in NUREG–0849, "Standard Review Plan for the Review and Evaluation of Emergency Plans for Research and Test Reactors."

Examples of the evaluation items that are relevant to "basic safety measures to reduce the threat of . . . fire" are listed below:

(a) The [emergency] plan should also describe non-radiological monitors or indicators * * * (2) Fire detectors * * *

(b) The emergency plan should describe an initial training and periodic retraining program designed to maintain the ability of emergency response personnel to perform assigned functions for the following:

* * * f. Police security, ambulance, and fire fighting personnel * * * (NUREG–0849, Sections 8.0 and 10.0)

The licensee for Fort St. Vrain has satisfactorily met the requirements of 10 CFR Part 50.48 and 10 CFR Part 50, Appendix R. Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," sets forth fire protection features required to satisfy Criterion 3 of Appendix A to 10 CFR Part 50. These NRC requirements include the "basic safety measures to reduce the threat of a . . . fire."

It is the staff's judgment that the NRC has required adequate basic safety measures to reduce the threat of fire as well as to mitigate the consequences of any fires that do occur. These measures have been reviewed, approved, and implemented for all licensed reactors. They generally apply to all fires and have been found to provide acceptable protection for the health and safety of the public.

(3) The petitioner alleges that "licensees have no fire response plans for graphite fires."

As discussed in item 2, above, all licensees have NRC-approved emergency plans in accordance with 10 CFR 50.54(q) and 10 CFR Part 50, Appendix E. These plans provide for response to fires, for training of fire fighting personnel, and for periodic drills to demonstrate proper operation of the plan in accordance with procedures developed for each facility. One commenter opposing the petition reported that the offsite fire fighters and their supervisors were regularly trained in fire fighting procedures for their facilities and that the fire fighters were confident that they were prepared to deal with the type of fires they could encounter, including a fire involving graphite. This is consistent with BNL research,[2] which recommends a basic fire fighting technique for graphite fires, that is, exclude air or oxygen and cool the graphite. Success in using this basic "cool-and-smother" technique was demonstrated during the Chernobyl accident. Gold nitrogen gas was pumped into the bottom of the reactor to successfully cool the graphite and fuel debris while excluding oxygen to smother any burning. Also at Chernobly, graphite blocks were successfully quenched using water (NUREG–1250, pp. 4–12, 4–21, and 7–23). Since this basic cool-and-smother technique is effective for most fires, the staff has concluded that the licensee' existing emergency plans provide an adquate response for graphite fires as well as any other type of fire.

(4) The petitioner asserts that "non-power reactors do not have adequate emergency plans to evacuate members of the public in the event of a graphite fire."

Neither the petitioner nor any of the citizens' groups or individuals supporting the petition provided a basis in support of this assertion. The staff has reconsidered the need to provide a plan to evacuate members of the public located off site in the very unlikely event of a graphite fire and, in the course of evaluating this petition, has not identified any such need.

As stated in Regulatory Guide 2.6, Revision 1:

> In the judgment of the NRC staff, the potential radiological hazards to the public associated with the operation of research and test reactors are considerably less than those involved with nuclear power plants. In addition, because there are many different kinds of non-power reactors, the potential for emergency situations arising and the consequences thereof vary from facility to facility. These differences and variations are expected to be reflected realistically in the emergency plans and procedures developed for each research and test reactor facility.

Accordingly, each non-power reactor licensee has developed an emergency plant based on the identified characteristics of its reactor facility. To assist licensees in meeting the requirements of 10 CFR Part 50, Appendix E, Regulatory Guide 2.6 (ANSI/ANS–15.16–1982, Table 2) provides an "Alternate Method for Determining the Size of an Emergency Planning Zone (EPZ)." Table 2 is based on highly conservative does calculations that are generically applicable to non-power reactors. These calculations include the very conservative assumption for non-power reactors that 25% of the equilibrium radioactive iodine is gaseous and will escape from the reactor building into the environment. It is the current and standard practice of the NRC staff to use the 25% iodine source term with regard to 10 CFR Part 20 recommended dose considerations in its safety evaluations of non-power reactors. Table 2, which is based on power level, recommends that reactors with power levels less than or equal to 2 MW use their "operations boundry" for their EPZs, which essentially recognizes that a reactor of this power level will only need to initiate protective actions for members of the general public on site and will not pose an unacceptable radiological hazard to members of the public off site. There are only five licensed non-power reactors containing graphite that have power levels greater than 2 MW. Three

[1] Covers all types of fires, including graphite fires.

[2] R.W. Powell, R.A. Meyer, and R.G. Bourdeau, "Control Radiation Effects in a Graphite Reactor Structure," *Proceedings of the Second United Nations International Conference on the Peaceful Uses of Atomic Energy*, Vol. 7, 1958, p. 293.

of the reactors have power levels less than 10 MW, one has a power level of 10 MW, and one has a power level of 20 MW. Table 2 recommends an EPZ of 100 meters of non-power reactors with power levels greater than 2 MW and equal to or less than 10 MW, and 400 meters for those with power levels greater than 10 MW and equal to or less than 20 MW. The licensee for each of these reactors has an NRC-approved emergency plan that takes into consideration the specific characteristics of each reactor (e.g., fision product inventory and engineered safety features) in the development of the action levels, procedures, and protective actions necessary to protect all members of the public within its EPZ. Regulatory Guides 1.3 and 1.4 recommend the use of the 25% radioactive iodine source term in determining the compliance of power reactors with the siting, containment, and dose guidelines of 10 CFR Part 100. The staff believes the current regulatory practices are suitable to ensure that the basic statutory requirement, for adequate protection of public health and safety, is met.

These emergency planning considerations are appropriate for reactors utilizing graphite components. Because the graphite contains no fission products and very few activation products, even the remote possibility of the graphite burning would not contribute to the radiological source term. Therefore, a graphite fire in and of itself presents essentially no radiological hazard to the public.

Because of the major differences in design, power level, core size, fission product inventory, reactor control systems, and inherent reactor neutronics, comparison of the Chernobyl accident and its consequences with accidents and the resulting consequences for non-power reactors is not appropriate, nor is it meaningful. Many of the comments received in opposition to the petition speak of the impropriety of comparing NRC-licensed non-power reactors with the Chernobyl RBMK–1000 reactor.

The petitioner has not provided any proof of inadequacy in the emergency plans for non-power reactors. On the basis of a review of the guidance for emergency planning contained in Regulatory Guide 2.6 and ANSI/ANS 15.16–1982 and the requirements of 10 CFR Part 50, Appendix E, the staff has concluded that the emergency plans previously approved by NRC are still appropriate and adequate. Neither the petitioner nor the commenters supporting the petition hve supplied information that demonstrates that, even in the remote case of graphite burning, there is a need to modify any existing emergency plans.

(5) The petitioner states that "NRC's generic analysis of stored energy in research reactor graphite significantly underestimates the actual amount of stored energy and thus underestimates the associated risk of graphite fire."

The conditions necessary for stored energency releases in graphite are described in section 3 of the BNL report. The staff agrees with the methodology derived for estimating the stored energy that can be released from graphite and in the analysis applied to the estimation of stored energy releases in Section 6 of the BNL report.

In section 2 of the BNL report, the necessary conditions for graphite to burn are discussed in detail. A reassessment of the literature on the experiments previously performed at BNL and the reported details of the Windscale and Chernobyl accidents are included in the BNL study. The conclusions reached as a result of these analyses are:

> [T]he potential to initiate or maintain a graphite burning incident is essentially independent of the stored energy in the graphite, and depends on other factors that are unique for each research reactor and for Fort St. Vrain. In order to have self-sustained rapid graphite oxidation in any of these reactors, certain necessary conditions of geometry, temperature, oxygen supply, reaction product removal and a favorable heat balance must be maintained. There is no new evidence associated with either the Windscale Accident or the Chernobyl Accident that indicates a credible potential for a graphite burning accident in any of the reactors considered in this review.

On the basis of its review of the BNL report, the literature on BNL experiments, and the information on the Windscale and Chernobyl events, the staff finds that the conclusions reached by BNL are correct and adopts them as its own.

(6) The petitioner asserts that "actual empirical measurements of Wigner energy will be required to assess the magnitude of the energy stored in research reactor graphite."

Measurements of stored energy in its research reactor graphite were made by the University of California, Los Angeles, in the course of decommissioning its Argonaut research reactor. Several things learned from its program of sampling and measuring stored energy were reported by a commenter who opposed the petition. This information was also reported in a paper by Ashbaugh, Ostrander, and Pearlman [3] at the American Nuclear Society annual meeting in June 1986.

- Stored energy decreases with increasing distance from the fuel region (e.g., 5.61 cal/gm at 18 inches, 1.34 cal/gm at 22 inches, and an unmeasurable amount at 26 inches).
- Within the graphite island, stored energy decreases from 33.3 cal/gm at the fuel box graphite interface to 19.2 cal/gm about 3 inches from the fuel box toward the center of the graphite island.

These results illustrate the principles associated with the proposed requirement to measure the Wigner energy stored in the research and test reactor graphite. The significant changes in stored energy with relatively small differences in location demonstrate the difficulty in selecting the locations and the number of samples needed to characterize the "maximum stored energy and to determine the maximum quantity of stored energy to within ±10%."

The bases fore storage and release of Wigner energy in graphite are delineated in the BNL report, which shows that there is no unique connection between total stored energy and the releasable energy. Thus, establishing the magnitude of the stored energy in non-power reactor graphite by empirical measurements would not provide the information needed to evaluate this potential. Because the releasable stored energy saturates, an upper bound on the stored energy that can be released to 700°C can be determined from existing data. Therefore, no measurement of stored energy is required.

Also, because of the several conditions required to initiate graphite burning in addition to a graphite temperature of 650°C, the potential to initiate or maintain a graphite-burning incident is esentially independent of stored energy in the graphite. This further supports the conclusion that no measurement of stored energy is needed.

Many of the commenters who opposed the petition cited a violation of ALARA considerations because stored energy measurements would not provide needed information, but would incur radiological exposures. The impracticality of taking the samples and making the measurements was also pointed out. For example, sampling the graphite reflector pieces in the ends of a

[3] C.E. Ashbaugh, N.C. Ostrander, and H. Perlman, "Graphite Stored Energy in the UCLA Research Reactor," *Transactions of the ANS*, Vol. 52, 1986, p. 372.

TRIGA fuel pin would require breaching the fuel pin cladding as well as providing shielding against the fuel pin's radioactivity. Similar challenges would be associated in taking a sample from graphite reflector components clad with metal. In addition, it was pointed out that numerous samples would be required to establish the true magnitude of stored energy in the various graphite components.

The staff has considered the relevant BNL findings and the comments received and has concluded that empirical measurement of stored energy in non-power reactor graphite components is not practical nor is it necessary to ensure the health and safety of the public.

(7) The petitioner refers to "one commercial power reactor," indicating that it has no fire response plans for combating graphite fires. The petitioner also states that "graphite is used as a moderator in the Fort St. Vrain nuclear power plant in Colorado."

Other than the lack of graphite fire response plans, the petitioner does not identify specific concerns related to Fort St. Vrain. However, it is implied that all reactors using graphite components are subject to CBG's concerns and assertions. In reality, the petition and requirements are really directed at NRC-licensed non-power reactors.

Fort St. Vrain is a high-temperature gas-cooled reactor (HTGR) owned and operated by Public Service Company of Colorado. Its design capacity is 330 MWe. It uses a ceramic fuel particle (uranium and thorium carbide) clad with silicon carbide and multiple layers of pyrolytic carbon. The fuel particles are compacted into small rods and installed in fuel holes in the hexagonal graphite fuel blocks. Including the reflectors there are 500 tons of reactor graphite in the core. The reactor coolant is helium with an average inlet temperature of 762° F (405°C) and an outlet temperature of 1445°F (785°C). The average graphite moderator temperature is 1380°F (749°C). These characteristics are far different than those of the non-power reactors. BNL has reviewed Fort St. Vrain parameters in relation to graphite stored energy and concludes in section 7 of its report, "Fort St. Vrain operates at temperatures that preclude accumulation of stored energy. There are no know problems associated with stored energy in graphite for operating temperatures associated with HTGRs." The staff agrees with BNL's conclusion and can find no reason to empirically measure the stored energy in Fort St. Vrain's graphite components.

In response to an NRC request, Public Service Company of Colorado addressed the implications of the Chernobyl accident for the Fort St. Vrain. The licensee submitted a final report entitled "Design Differences, Air Ingress and Graphite Oxidation, and Steam Ingress and Water Gas Generation" (P–86641, December 4, 1986). The staff has reviewed the report and concludes that the only significant similarity between Chernobyl and Fort St. Vrain reactors is that they both contain a large amount of graphite moderator. There are design differences between these reactors that preclude an accident similar to the Chernobyl accident at Fort St. Vrain.

Furthermore, on the basis of its reviews, the staff concluded that the structural integrity of the Fort St. Vrain prestressed concrete reactor vessel would be maintained during and after the assumed accident scenarios. Although the initiating events are beyond the plant's original design basis, the plant design appears to have an adequate margin of safety to withstand these events.

The staff's comments and conclusions can be found in the NRC Public Document Room under Docket No. 50–267, in a letter dated April 1, 1987, Accession No. 8704090248.

The petitioner's assertion that graphite burning and oxidation were not included in the staff's evaluation for Fort St. Vrain is in error. This subject was thoroughly reviewed in both the construction permit and operating license safety evaluations. These staff evaluations may be found in the Public Document Room in the 50–267 docket file. The licensee's updated Fort St. Vrain Final Safety Analysis Report, section 14, contains much of the information and analyses submitted for NRC review. The staff concluded that significant graphite oxidation at Fort St. Vrain was not credible. (Note: In addition to the previously discussed conditions necessary for graphite burning, Fort St. Vrain must suffer simultaneous independent structural failures resulting in the release of the inert helium and the subsequent supply of an adequate air/oxygen flow). The staff finds no basis for changing its previous conclusions. The licensee for Fort St. Vrain has met the requirements of 10 CFR Part 50, Appendix R (which sets forth fire protection features required to satisfy Criterion 3 of 10 CFR Part 50, Appendix A) and has an NRC-approved emergency plan that meets to 10 CFR Part 50, Appendix E. The Fort St. Vrain fire protection program and emergency plan specify the necessary organization, plans, and procedures to privide the necessary protection of the health and safety of the public even in the very unlikely event of a graphite fire.

Basis for Denial

The NRC denies the petitioner's request to amend 10 CFR Part 50 to require licensees whose reactors employ graphite as a neutron moderator or reflector and whose licensed power is greater than 100 W to:

(1) Formulate and submit for NRC approval fire response plans for combating a reactor fire involving graphite and other constitutent reactor parts (e.g., fuel);

(2) Formulate and submit for NRC approval evacuation plans in case of a reactor fire; and

(3) Perform measurements of the Wigner energy stored in the graphite of their reactors, and submit these measurements to the NRC for review together with a revised safety analysis that shall address the risk and consequences of a reactor fire.

This denial is a based on the following:

(1) Each licensee of a non-power reactor has submitted an emergency plan that has been approved as meeting the requirements of 10 CFR Part 50, Appendix E. The petitioner has not demonstrated that these plans do not provided an appropriate level of protection of the health and safety of the public.

(2) The licensee for Fort St. Vrain has an approved emergency plan that meets the requirements of 10 CFR Part 50, Appendix E, as well as an approved fire protection program that meets the requirements of 10 CFR Part 50, Appendix R. In addition, at the request of the NRC, the licensee has submitted a report addressing the implications of the Chernobyl accident for Fort St. Vrain. The report has been reviewed and approved by the staff. The petitioner has not provided a technical basis that would show that an additional fire response plan would enhance the protection provided for the health and safety of the public by the existing emergency plan and fire protection program.

(3) Measurement of maximum stored energy in non-power reactors are not necessary to ascertain the releasable stored energy in graphite components below 650°C. Existing knowledge provides this information which is adequate for a safety evaluation of the effect of stored energy on the potential for graphite burning and the associated danger to the health and safety of the public. Additionally, such measurements

are contrary to the NRC's ALARA principle, since unneeded knowledge would be sought at the expense of unnecessary personnel exposure.

Accordingly, the Commission denies the petition.

Dateds at Bethesda, Maryland, this 23 day of September 1987.

For the Nuclear Regulatory Commission.

Victor Stelle, Jr.

Executive Director for Operations.

[FR Doc. 87-23073 Filed 10-5-87; 8:45 am]

BILLING CODE 7590-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket D-8908]

Prohibited Trade Practices; Encyclopaedia Britannica, Inc., et al.

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to reopen the proceeding and modify the order.

SUMMARY: Encyclopaedia Britannica, a corporate respondent in the order in Docket No. D-8908, is prohibited from making misrepresentations while recruiting sales representatives, promoting merchandise or services, or attempting to collect debts, and filed a petition on April 2, 1987 requesting that the Commission reopen the proceeding and either set aside the order, now or at a fixed future date, or modify the order. A supplemental request to reopen the proceeding has been filed on September 22, 1987. This document announces the public comment period on the supplemental petition.

DATE: The deadline for filing comments on this matter is October 31, 1987.

ADDRESS: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

Requests for copies of the petition should be sent to Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Jock K. Chung, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326-2984.

SUPPLEMENTARY INFORMATION: The order in Docket No. D-8908 was published at 41 FR 17884 on April 29, 1976. A correction to the order was published at 41 FR 19301 on May 12, 1976. The original request to reopen the proceeding was published at 52 FR 12430 on April 16, 1987. The petitioner, Encyclopaedia Britannica, sells encyclopedias and related products and services direct to the consumer by means of in-home, over-the-counter, direct mail and telephone sales solicitation. The order modification request is based on claimed changes of fact and law. The supplemental petition was placed on the public record on September 22, 1987.

List of Subjects in 16 CFR Part 13

Encyclopedia sales, Trade practices.

Emily H. Rock,

Secretary.

[FR Doc. 87-23014 Filed 10-15-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM87-35-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

Issued: September 30, 1987.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission hereby institutes a proceeding under Part 37 of its regulations. The purpose of this proceeding is to determine an estimate of the average cost of common equity for the jurisdictional operations of public utilities for the year ending June 30, 1987 and a quarterly indexing procedure to establish benchmark rates of return on common equity for use in individual rate cases. It is proposed that these benchmark rates of return remain advisory only. These benchmark rates of return on equity established as the result of this proceeding, should be used as a guide to companies and intervenors in individual rate cases and as a reference point for the Commission in its deliberations. The Commission may take official notice of them in individual rate proceedings.

DATE: Comments addressing the issues in this proceeding are due on November 5, 1987.

ADDRESS: All filings should reference Docket No. RM87-35-000 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Ronald L. Rattey, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8293.

SUPPLEMENTARY INFORMATION:

I. Introduction

Pursuant to Part 37 of its regulations, the Federal Energy Regulatory Commission (Commission) hereby institutes its fourth annual proceeding to determine: (1) An estimate of the average cost of common equity for the jurisdictional operations of public utilities for the year ending June 30, 1987; and (2) a quarterly indexing procedure to establish benchmark rates of return on common equity for use in individual rate cases.

The benchmark rates of return resulting from the first three annual proceedings were advisory.[1] The Commission proposes to make the benchmark rates of return established by this proceeding advisory also.

II. Discussion

A. Base Year Average Cost of Common Equity: Market Required Rate of Return

The Commission proposes to adopt the same method of analysis used in Order Nos. 420, 442-A, and 461.[2] The Commission believes that the method adopted in those prior orders has received a full airing of the issues and represents the most reasonable way to determine the benchmark rate of return. Therefore, the Commission proposes to rely on the following constant growth discounted cash flow (DCF) model to determine the average market required rate of return for electric utilities for the year ending June 30, 1987:

$$k = (1 + .5g)\, y + g$$

where:

k = market required rate of return
y = current dividend yield (current annual dividend rate divided by current market price)
g = dividend growth rate

[1] In the third annual benchmark rate proceeding the NOPR proposed to presumptively set the allowed rate of return on common equity for individual utilities at the benchmark rate of return in effect at the time a company filed. *See* Notice of Proposed Rulemaking, Generic Determination of Rate of Return on Common Equity for Public Utilities, Docket No. RM86-12-000, 51 FR 27050 (July 21, 1986). The final rule, after consideration of comments filed, allowed the benchmark rates of return to remain advisory only. *See* Order No. 461, Generic Determination of Rate of Return on Common Equity for Public Utilities, 52 FR 11 at 12 (January 2, 1986).

[2] Order No. 420, Generic Determination of Rate of Return on Common Equity for Public Utilities, 50 FR 21802 (May 20, 1985). Order No. 442-A, Generic Determination of Rate of Return on Common Equity for Public Utilities, 51 FR 22505 (June 20, 1986). Order No. 461, see *supra* fn. 1.

(1+.5g)=dividend adjustment factor for quarterly dividend payments

Because this model was first adopted in Order No. 420, the Commission will refer to it hereafter on occasion as the "420 Model."

The Commission proposes that the following procedures be used to compute the dividend yield for the base year estimate of the market required rate of return as well as for the quarterly indexing procedure.

First, the Commission proposes to use a sample of 100 electric utilities based on the standards adopted in the prior annual proceedings. The sample consists essentially of those publicly traded electric utilities or combination companies that meet explicit standards; these are that the utility: [3]

(1) Is predominantly electric;

(2) Has its stock traded on either New York or American Stock Exchanges;

(3) Is included in the Utility Compustat II data base; and

(4) Is not excluded by the Commission on a case-by-case basis, based on unique circumstances.[4]

Second, the Commission proposes to continue screening the companies in the sample each quarter. The following criteria will be used in each quarterly calculation to ensure that the data for each company is available and that the data can be mechanically employed without producing distorted or unreasonable statistics. That is, a company will be dropped from the sample if:

(i) The company's common stock, through merger or other action, no longer is publicly traded;

(ii) The company has decreased or omitted a common dividend payment in the current or prior three quarters; or

(iii) The Commission determines on a case-by-case basis that some other occurrence causes the dividend yield for that company to be substantially misleading and would therefore bias the resulting quarterly average.

The Commission further proposes to use the median dividend yield for the 100 company sample as the industry average dividend yield.[5] In computing the dividend yield for each company, the Commission proposes that the dividend rate be the "indicated dividend rate," which is the last declared quarterly dividend times four. The price used in the calculation would be the simple average of the three monthly high and low prices for the quarter. The Commission proposes that the average of the quarterly median dividend yields for the sample utilities calculated in this manner be used for the base year cost determination and for the quarterly indexing procedure. The base year cost would use the average of four quarterly median dividend yields. The quarterly indexing procedure would use the average of two quarterly median dividend yields.

In estimating the (constant) growth rate that would apply to the base year determination of the cost of common equity and serve as a basis for the fixed parameters in the quarterly indexing procedure, the Commission proposes to rely on both a fundamental analysis approach and a two-stage growth model. That is, it intends to examine and evaluate the two underlying components of dividend growth: growth from retention of earnings (br) and growth from sales of new common stock (sv).[6] The Commission also intends to evaluate past and forecast data within the context of a two-state growth DCF model. The Commission will also look at other data and methods for estimating the expected growth, but primarily as a check on the reasonableness of its determination from fundamental and non-constant growth analyses.

The Commission requests that commenters provide estimates of the above-referenced model parameters applicable to determining the market required rate of return on common equity for the (base) year ending June 30, 1987.

B. Flotation Costs

The Commission proposes to estimate the adjustment to the required rate of return for flotation costs using the following formula:

$$k^* = \frac{fs}{(1+s)}$$

where:

k^* = flotation cost adjustment to required rate of return

f = industry average flotation cost as a percentage of offering price

s = proportion of new common equity expected to be issued annually to total common equity

This formula estimates an adjustment that reflects the average annualized amount of flotation costs incurred by utilities. The resulting adjustment factor would be added to the required rate of return as determined above.

The Commission requests that commenters submit estimates of the parameters in the above formula for estimating the appropriate flotation cost adjustment to the market required rate of return for the base year ending June 30, 1987.

C. Quarterly Indexing Procedure

In Order No. 461, the Commission amended § 37.9 of its regulations and adopted a quarterly indexing procedure for determining benchmark rates of return on common equity for the jurrisdictional operations of electric utilities. The Commission proposes to adopt the same procedure for the current proceeding.

In summary, the adopted indexing procedure ties the cost of common equity to changes in utility dividend yields. The dividend yield index is set as the average of the median dividend yields for the 100 company sample for the two most recent calendar quarters prior to the period to which the benchmark is intended to apply. The procedures for determining the median dividend yield are the same as those described above with reference to the estimation of the base year cost of common equity. This dividend yield will be used in a formula whose parameters are determined through the base year determination. The formula is essentially the DCF model referred to above, adjusted for flotation costs.

[3] Operationally, the Commission has selected all companies classified in the industry groupings "Electric Service" or "Electric and Other Services Combined" by Standard and Poor's Compustat Services, Inc. These industry groupings are supposed to conform as nearly as possible to the Office of Management and Budget Standard Industry Classification Codes. The Compustat "Electric Services" (Industry Classification Number 4911) is defined as establishments engaged in the generation, transmission and/or distribution of electric energy for sale where these services constitute 90% or more of revenues. "Electric and Other Services Combined" (Industry Classification Number 4931) is defined as establishments primarily engaged in providing electric services in combination with other services, with electric services as the major part, though less than 90% of revenues. (Standard and Poor's Compustat Services, Inc., Utility Compustat II User Manual (1985)).

[4] These companies which meet the first three standards are eliminated from the sample. Southwestern Public Service Company is eliminated because it is the only utility which uses a non-standard fiscal year which does not end at the end of a calendar quarter. This causes its dividend yields to be out of time with the rest of the companies. CP National is deleted because, in spite of its being listed as a predominately electric company, only 18 percent of its revenues in 1986 were derived from electric sales and only 13 percent of its assets as of the end of 1986 were electric. Finally, Catalyst Energy Development Corporation is omitted because it has never paid common stock dividends.

[5] In Order Nos. 420, 442-A, and 461, the Commission estimated the median dividend yield for each of the four quarters of the base year and then averaged them for the year. The Commission proposes to adopt the same procedure in this proceeding.

[6] Growth from retained earnings, or internal growth, is a function of the expected return on common equity (r) and the expected retention ratio (b). Growth from common stock sales, or external growth, is a function of how much stock is expected to be sold (s) and at what price relative to book value (v).

$k = a(y) + b$

where:

k = average cost of common equity
y = current dividend yield (current dividend rate divided by current market price)
a = 1 + .5g = dividend adjustment factor for quarterly dividend payments and
b = the expected dividend growth rate (g, assumed constant between proceedings) plus adjustment for flotation costs.

D. Request for Comments

The Commission has not decided a section 205 case filed since July 1985 (when the first benchmark went into effect) in which the rate of return issue was litigated. Furthermore, the issue of the appropriateness of the benchmark rates of return has not been considered in any Initial Decision by an administrative law judge. The Commission is concerned that despite numerous urgings, in the previous rulemaking proceedings, parties are not giving due consideration to the benchmark rate of return. In this proceeding, the Commission reiterates its request that all rate case participants (including staff) evaluate the reasonableness of the applicable benchmark rate of return, in light of the special circumstances of the subject utility.[7] Specifically, the Commission requests that litigants submit substantive analyses of the risks of individual utilities *vis-a-vis* the average utility represented through the benchmark rates of return. The Commission believes that such evidence will enable it to use the benchmark rates of return as points of departure in setting allowed rates of return.

In addition to requesting comments on the base year cost of common equity and the quarterly indexing procedure, the Commission requests comments on the following three proposals:

(1) Currently, the rule applies only to filling for initial or changed rates under section 205 of the Federal Power Act (FPA). The Commission is proposing that the rule also apply to complaints which arise pursuant to section 206 of the FPA. Any Commission decision in a section 206 proceeding has prospective application only. Therefore, the Commission is proposing that the applicable benchmark rate of return be the one in effect at the time the order concluding the proceeding is issued.

(2) The existing regulation requires that the Commission institute annual proceedings. The Commission is proposing to amend that regulations to require that the proceedings be periodic, but not more often than annually. The Commission believes that it is not necessary to institute a yearly proceedings since industry average growth rates and flotation cost adjustments appear to fluctuate over a very small range. However, the Commission is proposing to initiate a proceeding on its own motion or upon a motion by any person that shows changed circumstances sufficient to warrant modification of one or more parameters of the quarterly indexing procedure in effect.

(3) In the last three proceedings, the Commission found growth rates ranging from 4.30 to 4.60 percent. In the last two proceedings, the Commission found the range of plausible growth rates to be from 4.30 to 4.70 percent. The Commission also found flotation costs adjustments in the range of 0.03 to 0.07 percent in the last three proceedings. The effect of these findings has been that one parameter, a, in the quarterly indexing procedure has remained unchanged at 1.02 for the last three years and the second parameter, b,[8] has varied from 4.37 to 4.63. The Commission considers these variations to be so small that they do not justify the costs of a full blown rulemaking proceeding, especially while the benchmark remains advisory. The Commission therefore is proposing that the parameters of the quarterly indexing procedure be set based on a combined finding of an industry average growth rate and flotation cost adjustment of 4.6 percent. However, the Commission is proposing that if the combination of growth rate and flotation cost adjustment appears to move outside the range of 4.3 to 4.8 percent, it may institute a new proceeding.

Although the Commission will give consideration to all comments filed in response to this notice, the Commission expects that issues previously resolved in earlier proceedings will not be revisited.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (Act) requires Federal agencies to consider whether the rule, if promulgated, will have a "significant economic impact on a substantial number of small entities." Nearly all of the jurisdictional utilities which must comply with the rule proposed here are too large to be considered "small entities" within the meaning of the Act.[9] The Commission certifies, therefore, that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act Statement

The Paperwork Reduction Act (PRA),[10] and the Office of Management and Budget's (OMB) regulations,[11] require that OMB approve certain information collection requirements imposed by an agency. The information collection requirements provided for in this rulemaking do not require OMB approval because these requirements have not been changed from the previous generic rate of return rulemaking. Therefore, the information collection requirements imposed by this rule are not being submitted to OMB for review or approval.

V. Comment Procedure

The Commission invites interested persons to submit comments, data, views, and other information concerning the matters set out in this notice.

The original and 14 copies of such comments must received by the Commission before 5:00 p.m., November 5, 1987. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 and should refer to Docket No. RM87-35-000.

All written comments will be placed in the Commission's public files and will be available for public inspection in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426 during regular business hours.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission proposes to amend Part 37, Chapter I, Title 18, Code of Federal Regulations.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

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[7] *See e.g.*, 52 FR at 12.

[8] *Supra*, Discussion, Section C, which contains the definition for parameter a and parameter b.

[9] The Act defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. 5 U.S.C. 601(6) (1982). A "small business" is defined, by reference to Section 3 of the Smalll Business Act, as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1982).

[10] 44 U.S.C. 3501–3520 (1982).

[11] 5 CFR 1320.12 (1987).

Authority: Federal Power Act, 16 U.S.C. 791a-825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

2. In § 37.3, paragraphs (a) and (c) are revised to read as follows:

§ 37.3 Definitions.

(a) "Benchmark rate of return" means the rate of return on common equity that is determined each quarter based on the findings made in the most recently concluded proceeding regarding the indexing procedure and the average cost of common equity for the jurisdictional operations of public utilities.

* * * * *

(c) "Indexing procedure" means the method by which the average cost of common equity under this part is updated quarterly between periodic proceedings to determine benchmark rates of return.

3. Section 37.4 is revised to read as follows:

§ 37.4 Periodic proceedings.

An estimate of the average cost of common equity for the jurisdictional operations of public utilities and a quarterly indexing procedure to establish the initial benchmark rate of return and quarterly updates will be determined periodically, but not more often than annually through informal rulemaking proceedings under 5 U.S.C. 553 upon the *prima facie* showing by an interested person or the Commission that the combination of growth rate and flotation cost adjustment is outside the range of 4.3 to 4.8 percent.

4. In § 37.6, paragraph (a) is revised to read as follows:

§ 37.6 Application of benchmark rate of return in individual rate proceedings.

(a) *General rule.* Except as provided in § 37.8 and paragraph (b) of this section, it will be presumed that the allowed rate of return on common equity in an individual rate proceeding is the benchmark rate of return in effect at the time a rate schedule is filed or in effect at the time the Commission issues its order concluding a complaint proceeding brought pursuant to section 206 of the Federal Power Act, 16 U.S.C. 824e (1982).

* * * * *

5. Section 37.8 is revised to read as follows:

§ 37.8 Transitional provision.

The benchmark rates of return resulting from the first four proceedings under this part will be advisory only. During the advisory period, the Commission may take official notice of the benchmark rates of return in individual rate proceedings if they are not otherwise made a part of the record.

6. In § 37.9, paragraphs (a)(1), (a)(2), and (c)(1) are revised to read as follows:

§ 37.9 Quarterly indexing procedure.

(a) * * *

(1) For purposes of establishing the benchmark rate of return on common equity for period t, the average cost of common equity for the jurisdictional operations of public utilities will be calculated as follows:

$K_t = A(Y_t) + b$

Where:

K_t = average cost of common equity for the jurisdictional operations of public utilities for period t;

a = adjustment factor to account for the timing of dividend increases (determined in annual proceeding);

Y_t = average current dividend yield applicable to period t determined under paragraph (b) of this section;

b = adjusted factor to account for expected growth, new common stock flotation costs and jurisdictional risk difference (determined in annual proceeding); and

t = successive three month time periods: February 1 through April 30, May 1 through July 31, August 1 through October 31, and November 1 through January 31.

(2) The benchmark rate of return on common equity for each quarter to which an periodic proceeding is applicable will be set equal to the average cost of common equity for the jurisdictional operations of public utilities as determined by the formula of paragraph (a)(1) of this section.

* * * * *

(c) *Sample of Companies Used to Calculate Quarterly Dividend Yields.* (1) Except as provided in paragraph (c)(2) of this section, the sample of companies used to calculate the average current dividend yield for the purpose of this section will be specified in the final order of each proceeding.

* * * * *

[FR Doc. 87–23045 Filed 10–5–87; 8:45 am]
BILLING CODE 6717-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2640 and 2649

Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Proposed rule.

SUMMARY: The Pension Benefit Guaranty Corporation proposes to establish rules for adjusting the statutory credit against partial or complete withdrawal liability of an employer that had previously partially withdrawn from the same multiemployer pension plan. This proposed regulation is required by the Employee Retirement Income Security Act, as amended. The purpose of the statutory credit is to avoid double-charging an employer for the same unfunded vested benefits upon which its liability for the prior partial withdrawal was based. However, in certain cases, this credit must be reduced to ensure that the employer does not avoid its fair share of liability based on plan experience and its participation in the plan subsequent to the prior partial withdrawal. The effect of this regulation, if adopted, would be to establish rules for computing the adjusted credit.

DATE: Comments must be received on or before December 7, 1987.

ADDRESSES: Comments may be mailed to the Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006. Comments may be hand-delivered to Suite 7300 at the above address between 9:00 a.m. and 5:00 p.m. Written comments will be available for inspection at the above address, Suite 7100, between 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: J. Ronald Goldstein, Manager, Regulations Division, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; (202) 778–8850 (202) 778–8859 for TTY and TDD). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION:

Statutory Provisions

Under section 4205 of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), an employer is deemed to have partially withdrawn from a multiemployer pension plan under three circumstances. First, there is a partial withdrawal if the employer's contributions decline by 70-percent, as measured under section 4205(b)(1). There is also a partial withdrawal if the employer permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer had been obligated to contribute under the plan, but the employer continues to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transfers such

work to another location section (4205(b)(2)(A)(i)). If the employer permanently ceases to have an obligation to contribute under the plan with respect to work performed at one or more but fewer than all of its facilities, but the employer continues to perform work at the facility of the type for which the obligation to contribute ceased, it is also deemed to have partially withdrawn (section 4205(b)(2)(A)(ii)).

Section 4205(c) provides a special partial withdrawal rule for the retail food industry. Section 4208(d) also provides special partial withdrawal rules for the construction and entertainment industries. All of the withdrawal liability rules apply to withdrawals after September 25, 1980 (except the 70-percent rule, which applies to partial withdrawals in plan years beginning after September 26, 1982).

The amount of an employer's liability for a partial withdrawal is calculated under section 4206(a). That section provides that partial withdrawal liability is equal to the unfunded vested benefits allocable to the employer for a complete withdrawal, adjusted under section 4209, if applicable, and multiplied by a fraction that measures the extent of the decrease in the employer's contribution base units.

Under section 4219(c)(1)(E), the annual payment for partial withdrawal liability is calculated by multiplying the annual payment that would have been required for a complete withdrawal by the same fraction used in section 4206(a) to determine partial withdrawal liability.

Section 4206(b) provides special rules for adjusting the liability of an employer that partially or completely withdraws from a plan after an earlier partial withdrawal from that plan. Under section 4206(b)(1), an employer's liability for the subsequent withdrawal is reduced by the amount of any liability for the earlier partial withdrawal, less any waiver or reduction of the earlier liability. Section 4206(b)(2) requires the PBGC to issue regulations adjusting the reduction prescribed by section 4206(b)(1) as may be necessary to ensure that the employer's liability for the subsequent withdrawal properly reflects its share of liability to the plan. Section 4206(b)(2) explicitly recognizes that such adjustments might be necessary to provide for changes in unfunded vested benefits or contribution base units after the original partial withdrawal, and it also authorizes the PBGC to provide adjustments for any other factors for which it determines adjustment to be appropriate.

The PBGC has tentatively determined that no adjustments are necessary to account for changes in unfunded vested benefits or contribution base units. Both of these factors are automatically taken into account in determining the employer's liability for a subsequent withdrawal. The proposed rule, therefore, does not contain any adjustments for these factors. After thorough consideration, the PBGC believes that there is only one factor that requires adjustment of the reduction in the subsequent liability: The length of time between the initial partial withdrawal and the subsequent withdrawal.

The purpose of the section 4206(b)(1) credit is to avoid double-charging an employer for the same plan unfunded vested benefits. However, depending on when the two withdrawals occur and the allocation method used by the plan, there may be little or no overlap in the unfunded vested benefits and contributions used to calculate the employer's initial partial withdrawal liability and its liability for the subsequent withdrawal. In that event, providing a full credit for the earlier partial withdrawal liability would relieve the employer of some or all of the liability properly allocable to it for its participation in the plan after the earlier partial withdrawal. Consequently, that liability would be unfairly shifted to the other employers remaining in the plan. This proposed regulation would avoid this result by reducing the employer's credit against its subsequent withdrawal liability to the extent that that liability is based on plan experience and the employer's participation in the plan subsequent to the initial partial withdrawal.

This regulation does not provide any adjustments to the payment schedules determined under section 4219(c) of the Act for either an employer's initial partial withdrawal or subsequent withdrawal. The PBGC recognizes that it would be possible under section 4219(c) for an employer that has incurred several partial withdrawals from the same plan to owe total annual payments in excess of the annual payment amount that the employer would have owed if it had completely withdrawn. The PBGC considered including a provision in this regulation dealing with this issue. The PBGC has tentatively concluded, however, that ERISA does not authorize it to alter the rules under section 4219(c) for determining payment schedules. Plans, themselves, may provide employers relief in these cases by adopting rules pursuant to section 4224 providing for other terms and conditions for the satisfaction of an employer's withdrawal liability.

The Regulation

Section 2649.1 of the proposed regulation describes the purpose and scope of the regulation. Section 2649.1(b) provides that the regulation shall apply to employers that have partially withdrawn from multiemployer plans after September 25, 1980 and subsequently completely or partially withdraw from the same plan after the effective date of this regulation. The PBGC contemplates making this regulation effective 30 days after publication of the final rule.

Section 2649.2 provides that whenever an employer that was assessed withdrawal liability for a partial withdrawal from a plan partially or completely withdraws from that plan in a subsequent plan year, it shall receive a credit, calculated pursuant to this regulation, against the new withdrawal liability. Section 2649.2 also provides that if the amount of the credit calculated in accordance with this regulation is less than zero, the amount of the credit shall equal zero. This provision is necessary to ensure that an employer's liability for its subsequent withdrawal is never increased as a result of its previous partial withdrawal.

Sections 2649.3–2649.6 provide separate calculations for determining the amount of the credit under each of the statutory allocation methods; § 2649.7 provides the rule for determining the credit in a plan that uses a modification of one of the statutory allocation methods. Each calculation is designed to make the credit equal to the amount of the original partial withdrawal liability, reduced as if that liability were being amortized in a manner consistent with the plan's allocation method. This approach ties the credit to the degree to which the elements used to calculate the initial partial withdrawal liability phase out of the calculation of liability for a subsequent withdrawal. In this manner the regulation assures that the employer's subsequent withdrawal liability is not reduced by an amount greater than is necessary to avoid charging the employer twice for the same unfunded vested benefits.

Section 2649.3 prescribes the calculation of the credit in plans using the presumptive allocation method (described in section 4211(b) of the Act). The presumptive method allocates unfunded vested benefits based on the employer's proportional share of three elements: the unamortized amount of the plan's unfunded vested benefits at the

end of the last plan year ending before September 26, 1980; the unamortized amount of the change in the plan's unfunded vested benefits for each plan year ending after September 25, 1980; and the unamortized amount of unfunded vested benefits reallocated under section 4211(b)(4). Each element is amortized at the rate of 5 percent of the original amount for each succeeding plan year. The employer's proportional share of each element is the ratio of its required contributions for the five plan years ending with the year in which the element arose to total plan contributions in that period (excluding the contributions of previously withdrawn employers).

In the event of a subsequent withdrawal, only the unamortized balances of those elements used to calculate the initial partial withdrawal liability enter into the calculation of the new withdrawal liability. The proper credit to the employer is thus the sum of the unamortized balances of the three elements, rather than the full amount of liability for the prior partial withdrawal. Under § 2649.3 the employer's credit would equal the sum of the unamortized amounts of the three elements used to determine the employer's withdrawal liability for the previous partial withdrawal, multiplied by two fractions. The first is the fraction determined under section 4206(a)(2) for the prior partial withdrawal. The second fraction takes into account the fact that the employer's assessment for its prior partial withdrawal might have been less than its allocable liability for that withdrawal because of the *de minimis* rule or the 20-year payment cap (sections 4209 and 4219(c)(1)(B) of the Act). Accordingly, the numerator of this fraction is the liability assessed for the prior partial withdrawal and the denominator is the amount of unfunded vested benefits allocable to the employer as if it had completely withdrawn as of the date of the prior partial withdrawal (determined without regard to any adjustments), multiplied by the fraction determined under section 4206(a)(2) for the prior partial withdrawal. Finally, if the employer's prior partial withdrawal liability was abated pursuant to section 4208, § 2649.3(d) provides that the credit shall be prorated to account for the lesser amount of withdrawal liability actually paid by the employer.

Section 2649.4 applies to plans using the modified presumptive allocation method (section 4211(c)(2) of the Act). The modified presumptive method uses the employer's share of two elements to determine its withdrawal liability. The first is the plan's unfunded vested benefits as of the last plan year ending before September 26, 1980, reduced as if those obligations were being amortized in level annual installments over fifteen years beginning with the first plan year beginning on or after that date. The second element reflects changes in the plan's unfunded vested benefits after September 26, 1980, and the employer's allocable share of this element is based on contributions during the most recent five plan years ending prior to the employer's withdrawal. Thus, the contributions used to calculate the employer's share of the second element for its initial partial withdrawal liability effectively phase out over a five-year period.

In the event of a subsequent complete or partial withdrawal, only the unamortized balances of these two elements enter into the calculation of withdrawal liability. The proper credit to the employer is, therefore, the sum of the unamortized balance of the two elements rather than the full amount of liability for the prior partial withdrawal. This is the rule set forth in § 2649.4. If the employer's prior partial withdrawal liability was abated, § 2649.4(d) provides that the credit shall be prorated to reflect the lesser amount of withdrawal liability actually paid by the employer.

Section 2649.5 prescribes the calculation of the credit in plans using the rolling-5 allocation method (section 4211(c)(3) of the Act). The rolling-5 method is nothing more than the second element of withdrawal liability under the modified presumptive method. Under § 2649.5, therefore, the credit simply equals the unamortized balance of that element. (Since that element is the entire liability under the rolling-5 method, the calculation under proposed § 2649.5 uses the assessed liability for the prior partial withdrawal.)

Section 2649.6 applies to plans using the direct attribution allocation method (section 4211(c)(4) of the Act). The direct attribution method uses the employer's share of two elements to determine its withdrawal liability. The first element is the unfunded vested benefits attributable to service with the employer. The second element is the employer's proportional share of unfunded vested benefits that are not attributable to service with employers that were obligated to contribute under the plan in the plan year prior to that employer's withdrawal.

In the event of a subsequent complete or partial withdrawal, the employer would be charged again for benefits included in the earlier partial withdrawal liability calculation only to the extent that they remain unfunded. Because of the different methods used by plans to determine an employer's allocable share of unfunded vested benefits, there will not necessarily be a one-to-one relationship between overall plan funding and the amount allocable to an individual employer.

To compensate for the unpredictability of the recurrence of unfunded vested benefits from the prior withdrawal in the calculation of liability for the subsequent withdrawal, under § 2649.6 the credit equals the amount of the liability assessed for the prior partial withdrawal, reduced as if that amount were being fully amortized in level annual installments. The PBGC has chosen uniform amortization of the old unfunded vested benefits as the best approximation of the extent to which unfunded vested benefits from the previous partial withdrawal will be used in the calculation of liability for the subsequent withdrawal. The amortization period begins with the plan year in which the prior partial withdrawal occurred and is the greater of 10 years or the number of years remaining on the plan's amortization schedule for the unfunded vested benefits used to determine the employer's liability for the prior partial withdrawal.

The latter amortization period reflects the plan's actual schedule for retiring unfunded vested benefits. It thus parallels the rules proposed for the other allocation methods in attempting to limit the amount of the employer's credit under § 2649.2 to the amount of unfunded vested benefits that would otherwise be included in both the prior and subsequent calculations of withdrawal liability.

The PBGC is concerned, however, that this approach will not afford employers the benefit of the credit when the plan's unfunded vested benefits are small. For that reason, the proposed regulation establishes a minimum amortization period of ten years. The PBGC recognizes that there may be other minimum amortization periods that would be reasonable and specifically invites comments on this issue.

Section 2649.7 is applicable to plans that have adopted an alternative method of allocating unfunded vested benefits pursuant to section 4211(c)(5) of ERISA and 29 CFR Part 2642. All of the alternative allocation methods approved to date by the PBGC are modified versions of one of the statutory methods. The proposed regulation, therefore, requires these plans to adopt, by plan amendment, a method of calculating the

employer's credit that is consistent with the applicable method prescribed in §§ 2649.3–2649.6 for the statutory allocation method most similar to the plan's alternative allocation method. This approach should provide plans the flexibility needed to fashion adjustments to the credit that are suited to their unique allocation method, while also assuring that employers are treated equitably.

Finally, § 2649.8 modifies the rules in §§ 2649.3–2649.6 to cover those situations in which either the initial or a subsequent partial withdrawal resulted from a 70-percent contribution decline. When that is the case, for purposes of computing the credits under §§ 2649.3–2649.6, the year in which the partial withdrawal occurred shall be deemed to be the first plan year in the 3-year testing period.

Executive Order 12291 and Regulatory Flexibility Act

The PBGC has determined that this regulation is not a "major rule" for the purposes of Executive Order 12291, because it will not have an annual effect on the economy of $100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This regulation will result in some shifting of costs among employers that contribute to multiemployer plans, but will not in the aggregate, increase costs.

Under section 605(b) of the Regulatory Flexibility Act, the Pension Benefit Guaranty Corporation certifies that this rule will not have a significant economic impact on a substantial number of small entities. Pension plans with fewer than 100 participants have traditionally been treated as small plans. The proposed regulation affects only multiemployer plans covered by the PBGC. Defining "small plans" as those with under 100 participants, they represent less than 14 percent of all multiemployer plans covered by the PBGC (346 out of 84,288). Approximately 500,000 employers contribute to multiemployer plans, most of them small employers (under 100 employees). The PBGC estimates that fewer than 10,000 (2 percent) of these employers will be required to pay partial withdrawal liability in any year, and an even smaller percentage will subsequently completely or partially withdraw from the same plan and thereby become subject to these rules. Therefore, the PBGC waives compliance with sections 603 and 604 of the Regulatory Flexibility Act.

Public Comments

The PBGC invites interested parties to submit comments on this proposed regulation. Comments should be addressed to the Director, Corporate Policy and Regulations Department (35100), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006. The PBGC will make written comments available for public inspection at the above address, Suite 7100, between the hours of 9:00 a.m. and 4:00 p.m.. Each comment should include the commenter's name and address, identify this proposed regulation, and give reasons for any recommendation. The PBGC may change this proposal in light of the comments it receives.

List of Subjects in 29 CFR Parts 2640 and 2649

Employee benefit plans, Pensions.

In consideration of the foregoing, the PBGC proposes to amend subchapter F of Chapter XXVI, Title 29, Code of Federal Regulations as follows:

PART 2640—DEFINITIONS

1. The authority for Part 2640 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

2. Part 2640 is amended by adding a new § 2640.8 to read as follows:

§ 2640.8 Adjustment of Liability for a Withdrawal Subsequent to a Partial Withdrawal.

For purposes of Part 2649—

"Complete withdrawal" means a complete withdrawal as described in section 4203 of the Act.

"Partial withdrawal" means a partial withdrawal as described in section 4205 of the Act.

3. A new Part 2649 is added to read as follows:

PART 2649—ADJUSTMENT OF LIABILITY FOR A WITHDRAWAL SUBSEQUENT TO A PARTIAL WITHDRAWAL

Sec.

2649.1 Purpose and scope.
2649.2 Credit against liability for subsequent withdrawal.
2649.3 Amount of credit in plans using the presumptive method.
2649.4 Amount of credit in plans using the modified presumptive method.
2649.5 Amount of credit in plans using the rolling-5 method.
2649.6 Amount of credit in plans using the direct attribution method.
2649.7 Amount of credit in plans using alternative allocation methods.
2649.8 Special rule for 70-percent decline partial withdrawals.

Authority: 29 U.S.C. 1302(b)(3) and 1386(b).

§ 2649.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe rules, pursuant to section 4206(b) of the Act, for adjusting the partial or complete withdrawal liability of an employer that previously partially withdrew from the same multiemployer plan. Section 4206(b)(1) provides that when an employer that has partially withdrawn from a plan subsequently incurs liability for another partial or a complete withdrawal from that plan, the employer's liability for the subsequent withdrawal is to be reduced by the amount of its liability for the prior partial withdrawal (less any waiver or reduction of that prior liability). Section 4206(b)(2) requires the PBGC to prescribe regulations adjusting the amount of this credit to ensure that the liability for the subsequent withdrawal properly reflects the employer's share of liability with respect to the plan. The purpose of the credit is to protect a withdrawing employer from being charged twice for the same unfunded vested benefits of the plan. The reduction in the credit protects the other employers in the plan from becoming responsible for unfunded vested benefits properly allocable to the withdrawing employer. In the interests of simplicity, the rules in this part provide for a one-step calculation of the adjusted credit against the subsequent liability, rather than for separate calculations first of the credit and then of the reduction in the credit.

(b) *Scope.* This part applies to multiemployer plans covered under section 4021(a) of the Act and not excluded by section 4021(b) and to employers that have partially withdrawn from such plans after September 25, 1980 and subsequently completely or partially withdraw from the same plan after the effective date of this part.

§ 2649.2 Credit against liability for a subsequent withdrawal.

Whenever an employer that was assessed withdrawal liability for a partial withdrawal from a plan partially or completely withdraws from that plan in a subsequent plan year, it shall receive a credit against the new withdrawal liability in an amount determined in accordance with this part. If the credit determined under §§ 2649.3–2649.7 is less than zero, the amount of the credit shall equal zero.

§ 2649.3 Amount of credit in plans using the presumptive method.

(a) *General.* In a plan that uses the presumptive allocation method described in section 4211(b) of the Act, the credit shall equal the sum of the unamortized old liabilities determined under paragraph (b) of this section, multiplied by the fractions described or determined under paragraph (c) of this section. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with paragraph (d) of this section.

(b) *Unamortized old liabilities.* The amounts determined under this paragraph are the employer's proportional shares, if any, of the unamortized amounts as of the end of the plan year preceeding the withdrawal for which the credit is being calculated, of—

(1) The plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980;

(2) The annual changes in the plan's unfunded vested benefits for plan years ending after September 25, 1980, and before the year of the prior partial withdrawal; and

(3) The reallocated unfunded vested benefits (if any), as determined under section 4211(b)(4), for plan years ending before the year of the prior partial withdrawal.

(c) *Employer's allocable share of old liabilities.* The sum of the amounts determined under paragraph (b) of this section are multiplied by the two fractions described in this paragraph in order to determine the amount of the old liabilities that was previously assessed against the employer.

(1) The first fraction is the fraction determined under section 4206(a)(2) of the Act for the prior partial withdrawal.

(2) The second fraction is a fraction, the numerator of which is the amount of the liability assessed against the employer for the prior partial withdrawal, and the denominator of which is the product of—

(i) The amount of unfunded vested benefits allocable to the employer as if it had completely withdrawn as of the date of the prior partial withdrawal (determined without regard to any adjustments), multiplied by—

(ii) The fraction determined under section 4206(a)(2) for the prior partial withdrawal.

(d) *Special rule when prior liability abated.* If an employer's withdrawal liability for a previous partial withdrawal has been abated pursuant to section 4208 of the Act, the credit determined pursuant to paragraph (a) of this section shall be adjusted in accordance with this paragraph. The credit shall be multiplied by a fraction—

(1) The numerator of which shall equal the excess of the total partial withdrawal liability of the employer for all partial withdrawals of prior years (excluding those partial withdrawals for which the credit determined pursuant to paragraph (a) of this section is zero) over the present value of each waiver or reduction of that prior withdrawal liability, calculated as of the date on which that prior partial withdrawal liability was determined; and

(2) The denominator of which shall equal the total partial withdrawal liability of the employer for all partial withdrawals in prior years (excluding those partial withdrawals for which the credit determined pursuant to paragraph (a) of this section is zero).

§ 2649.4 Amount of credit in plans using the modified presumptive method.

(a) *General.* In a plan that uses the modified presumptive method described in section 4211(c)(2) of the Act, the credit shall equal the sum of the unamortized old liabilities determined under paragraph (b) of this section, multiplied by the fractions described or determined under paragraph (c) of this section. When an employer's prior partial withdrawal liability has been reduced or waived, this credit shall be adjusted in accordance with paragraph (d) of this section.

(b) *Unamortized old liabilities.* The amounts described in this paragraph shall be determined as of the end of the plan year preceeding the withdrawal for which the credit is being calculated, and are the employer's proportional shares, if any, of—

(1) The plan's unfunded vested benefits as of the end of the last plan year ending before September 26, 1980, reduced as if those obligations were being fully amortized in level annual installments over 15 years beginning with the first plan year ending on or after such date; and

(2) The aggregate post-1980 change amount determined under section 4211(c)(2)(C) as if the employer had completely withdrawn in the year of the prior partial withdrawal (determined without regard to any adjustments), reduced as if those obligations were being fully amortized in level annual installments over the 5-year period beginning with the plan year in which the prior partial withdrawal occurred.

(c) *Employer's allocable share of old liabilities.* The sum of the amounts determined under paragraph (b) of this section are multiplied by the two fractions described in this paragraph in order to determine the amount of old liabilities that was previously assessed against the employer.

(1) The first fraction is the fraction determined under section 4206(a)(2) of the Act for the prior partial withdrawal.

(2) The second fraction is a fraction, the numerator of which is the amount of the liability assessed against the employer for the prior partial withdrawal, and the denominator of which is the product of—

(i) The amount of unfunded vested benefits allocable to the employer as if it had completely withdrawn as of the date of the prior partial withdrawal (determined without regard to any adjustments), multiplied by—

(ii) The fraction determined under section 4206(a)(2) for the prior partial withdrawal.

(d) *Special rule when prior liability abated.* If an employer's withdrawal liability for a previous partial withdrawal has been abated pursuant to section 4208 of the Act, the credit determined pursuant to paragraph (a) of this section shall be adjusted in accordance with this paragraph. The credit shall be multiplied by a fraction—

(1) The numerator of which shall equal the excess of the total partial withdrawal liability of the employer for all partial withdrawals of prior years (excluding those partial withdrawals for which the credit determined pursuant to paragraph (a) of this section is zero) over the present value of each waiver or reduction of that prior withdrawal liability, calculated as of the date on which that prior partial withdrawal liability was determined; and

(2) The denominator of which shall equal the total partial withdrawal liability of the employer for all partial withdrawals in prior years (excluding those partial withdrawals for which the credit determined pursuant to paragraph (a) of this section is zero).

§ 2649.5 Amount of credit in plans using the rolling-5 method.

In a plan that uses the rolling-5 allocation method described in section 4211(c)(3) of the Act, the credit shall equal the amount of the liability assessed for the prior partial withdrawal, reduced as if that amount was being fully amortized in level annual installments over the 5-year period beginning with the plan year in which the prior partial withdrawal occurred.

§ 2649.6 Amount of credit in plans using the direct attribution method.

In a plan that uses the direct attribution allocation method described in section 4211(c)(4) of the Act, the

credit shall equal the amount of the liability assessed for the prior partial withdrawal (less any waiver or reduction of that liability pursuant to section 4208 of the Act), reduced as if that amount was being fully amortized in level annual installments beginning with the plan year in which the prior partial withdrawal occurred, over the greater of 10 years or the amortization period for the resulting base when the combined charge base and the combined credit base are offset under section 412(b)(4) of the Internal Revenue Code.

§ 2649.7 Amount of credit in plans using alternative allocation methods.

A plan that has adopted an alternative method of allocating unfunded vested benefits pursuant to section 4211(c)(5) of the Act and Part 2642 of this subchapter shall adopt, by plan amendment, a method of calculating the credit provided by § 2649.2 that is consistent with the rules in §§ 2649.3–2649.6 for plans using the statutory allocation method most similar to the plan's alternative allocation method.

§ 2649.8 Special rule for 70-percent decline partial withdrawals.

For the purposes of applying the rules in §§ 2649.3–2649.6 in any case in which either the prior or subsequent partial withdrawal resulted from a 70-percent contribution decline (or a 35-percent decline in the case of certain retail food industry plans), the first year of the 3-year testing period shall be deemed to be the plan year in which the partial withdrawal occurred.

Issued in Washington, DC, this 29th day of September, 1987.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 87–23104 Filed 10–5–87; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 816 and 817

Reopening and Extension of Public Comment Period; Surface Coal Mining and Reclamation Operations; Permanent Regulatory Program; Revegetation

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of reopening and extension of public comment period.

SUMMARY: On July 27, 1987, the Office of Surface Mining Reclamation and Enforcement (OSMRE) published a proposed rule which would amend its regulations dealing with revegetation requirements for the repair of rills and gullies, replanting of trees and the time for measuring revegetation success. The comment period closed on October 5, 1987. OSMRE is now reopening and extending the comment period for the proposed rule until October 21, 1987.

DATE: The comment period on the proposed rule is extended until October 21, 1987.

ADDRESSES: Written comments may be mailed to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131–L, 1951 Constitution Avenue NW., Washington, DC 20240; or hand-delivered to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 5131, 1100 L St. NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Miller, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: 202–343–5241 (Commercial or FTS).

SUPPLEMENTARY INFORMATION: OSMRE previously published the proposed rule on July 27, 1987. 52 FR 28012. The comment period was open until October 5, 1987. OSMRE received a request to extend the comment period and is hereby granting the request by reopening and extending the comment period for 15 days.

The proposed rule would amend OSMRE's regulations dealing with the repair of rills and guillies, replanting of trees and the time period for measuring revegetation success. This action is necessary because the previous rules were found in Federal district court to have been promulgated without sufficient supporting evidence in the record. The proposed rule would allow State regulatory authorities to demonstrate that the repair of rills and gullies is a normal husbandry practice in their State that may occur without restarting the operator's period of responsibility. The proposed rule also would allow certain trees planted during the operator's responsibility period to be counted in the measurement of revegetation success if State forestry and wildlife agencies approved the practice.

This proposed rule would also base the determination of whether revegetation has been achieved on a minimum two-year time period where the postmining land use is grazing land, pasture land or cropland. For further information, consult the preamble to the proposed rule, cited above.

Date: September 30, 1987.

Jed D. Christensen,

Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 87–22986 Filed 10–5–87; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 223

Regulations Governing Surety Companies Doing Business With the United States

AGENCY: Financial Management Service, Treasury.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Department of the Treasury published a notice of proposed rulemaking on August 5, 1987, at 52 FR 29039. The comment deadline on the rulemaking was October 4, 1987.

The Department of the Treasury has received a request to extend this comment period. In order to ensure that Treasury is able to consider comments from all interested parties, the comment deadline is being extended to October 19, 1987.

DATES: The proposed revision would become effective December 31, 1987.

Comment Deadline: All comments or inquiries received on or before October 19, 1987, will be given due consideration.

ADDRESS: Comments or inquiries may be mailed to Surety Bond Branch, US Treasury Dept. FMS, 1725 I St. NW., Rm. 1008A, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Terry L. Boyer, Telephone (202) 634–2214.

Dated: October 1, 1987.

Thomas F. Meade,

Acting Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 87–23019 Filed 10–1–87; 12:46 pm]

BILLING CODE 4810–35–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL 3273-4]

Assessment of Municipal Waste Combustor Emissions Under the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of reopening of public comment period.

SUMMARY: On July 7, 1987, EPA published the results of a preliminary assessment of air emissions from municipal waste combustors (MWC) (52 FR 25399). The action also constituted advance notice of EPA's intent to regulate new and existing MWC under section 111 of the Clean Air Act (CAA).

The July 7, notice requested public comment on EPA's determination by September 8, 1987. In response to requests for an extensin of this deadline, this notice reopens the period for receiving written comments until November 7, 1987.

DATES: Written comments to be included in the record on the subject notice must be postmarked no later than November 7, 1987.

ADDRESSES: Comments on the notice of the assessment of MWC emissions under the CAA should be submitted in (in duplicate if possible) to: Central Docket Section (LE–131), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, ATTN: Docket No. A–86–16. The Central Docket Section is located at the offices of the U.S. Environmental Protection Agency, South Conference Center, Room 4, 401 M Street SW., Washington, DC. The docket may be inspected between 8:00 am and 4:30 pm on weekdays.

FOR FURTHER INFORMATION CONTACT: Robert G. Kellam, Pollutant Assessment Branch (MD–12), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (Telephone: Commercial (919) 541–5646/FTS 629–5646).

SUPPLEMENTARY INFORMATION: In the course of the public commment period attendant to the July 7, 1987 notice which ended September 8, 1987, the EPA received requests for an extension of the public comment period to provide additional time to submit comments on the advance notice of proposed rulemaking. In response to this request EPA is reopening the public comment period until November 7, 1987. The additional time will permit interested parties to review the MWC determination and the background information in support of the proposed action.

Date: September 29, 1987.

W. Ray Cunningham,

Assistant Administrator for Air and Radiation.

[FR Doc. 87–23027 Filed 10–5–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 250

[SWH-FRL 3089-8]

Minimum Recovered Materials Content in Paper and Paper Products Procured by the Federal Government

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: Elsewhere in today's **Federal Register**, EPA is promulgating a final guideline for Federal procurement of paper and paper products containing recovered materials. This notice proposes to amend that guideline. Many commenters stated that EPA is required to recommend minimum recovered materials content standards for paper and paper products and, having determined that such recommendations are appropriate under section 6002(e), EPA today is proposing minimum content standards.

For most grades of paper and paper products, EPA is proposing minimum postconsumer recovered materials content standards. In the case of printing/writing grades, EPA is proposing minimum "waste paper" content standards. EPA also is proposing a definition of "waste paper"; it includes both postconsumer recovered materials and other, non-postconsumer, wastes.

EPA also is proposing recommendations for data-gathering. These are intended to provide procuring agencies with on-going information on price, availability, and performance of paper and paper products containing recovered materials.

DATE: EPA will accept public comments on this proposed rule until December 7, 1987.

ADDRESS: Comments on the proposed amendments to the paper guideline should be mailed to the Docket Clerk [Docket No. 6002, Minimum Content Standards for Paper], Office of Solid Waste, WH–565A, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. Comments received by EPA may be inspected in Room MLG–100, U.S. EPA, 401 M Street, SW., Washington, DC from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. To review docket materials, the public must make an appointment by calling (202) 475–9327. A maximum of 50 pages of material may be copied from any regulatory docket at no cost. Additional copies cost 20 cents per page.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline, toll-free at (800) 424–9346 or at (202) 382–3000. For technical information, contact William Sanjour, Office of Solid Waste, WH–563, U.S. EPA, 401 M Street SW., Washington, DC 20460, telephone: (202) 382–4502.

SUPPLEMENTARY INFORMATION:

I. Authority

The proposed amendments to the Guideline for Federal Procurement of Paper and Paper Products Containing Recovered Materials are authorized by sections 2002(a) and 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a) and 6962.

II. Proposed Revisions to the Paper Guideline

Many commenters on the paper guideline suggested that minimum content standards be established for procurement of paper and paper products containing postconsumer recovered materials. While EPA does not have authority under section 6002 to require procuring agencies to use specific minimum content standards, EPA today is proposing revisions to the paper guideline that recommend such standards as guidance to those agencies which elect to use the minimum content standards option.

As discussed in the preamble to the final rule published elsewhere in today's **Federal Register**, EPA believes that agencies which elect to use reasonable minimum content standards for applicable paper and paper products will be in compliance with the statutory obligation to procure items with the highest level of recovered materials practicable. Any agency choosing to use the case-by-case approach or a substantially equivalent approach is expected to justify how it meets the statutory requirements for each applicable procurement item.

A. Minimum Content Standards

1. *Methods for Establishing Minimum Content Standards.* Under the minimum content standards approach, procuring agencies would establish specific postconsumer recovered materials or

"waste paper" percentages in their specifications. EPA is proposing some standards as general guidance to procuring agencies. EPA notes that these proposed minimum content standards would be *recommendations*, not requirements. Procuring agencies could adopt other standards as long as the statutory requirements are met. These proposed standards include a "waste paper" category of recovered materials content for fine and printing papers. This term is discussed in section A.2.a of the preamble.

Information in the docket shows the average level of postconsumer recovered materials in common paper and paper product grades: agencies could set their minimum content standards at these levels. Agencies may instead use experience already gained by State procuring agencies, some of which have already set minimum content standards. These range from a low of 10 percent postconsumer recovered materials (within an overall 50 percent requirement for recovered materials) in California to a high of 80 percent postconsumer recovered materials in Maryland. Other State minimum content standards include 40 percent recovered materials in New York and 25 percent postconsumer recovered materials (or 50 percent recovered materials) in Oregon. All of these States reported to EPA that hte levels used have been satisfactory and no significant procurement problems have occurred. More specific information on individual state programs is included in the docket. Procuring agencies may want to use one of these alternatives or select some other reasonable basis to develop minimum content standards.

A document entitled *Background Documentation for Minimum Content Standards* has been placed in the docket and explains the basis for EPA's recommended minimum content standards. It identifies mills producing newsprint or fine papers with postconsumer or waste paper recovered content, respectively. The percentages of both types of recovered materials content in product also have been been identified.

Several commenters recommended other approaches to setting minimum content standards. These included soliciting letters of intent from purchasers including levels of postconsumer recovered materials, using trial bids, or using multiple procurements with different levels of postconsumer recovered material standards. While each of these approaches has some merit, EPA believes they are inappropriate for Federal procurement agencies, which already have experience in setting minimum content standards. However, these approaches might be suitable for agencies making small procurements, or for agencies without prior experience in procuring paper and paper products with postconsumer recovered materials.

No matter which alternative to setting standards is selected, the specific minimum content standards used should be included in the annual review process. If information from estimates received or other data reveal that sufficient bids would have been received using standards which set higher minimum content levels, then the standards must be revised accordingly. If there was a lack of competition, then the standards must be lowered. This would satisfy the statutory requirements for procuring agencies in RCRA section 6002(c)(1) and those specific to the minimum content standards approach in RCRA section 6002(i)(3)(B). EPA recommends that procuring agencies which adopt minimum content standards for paper and paper products monitor the variations between estimates and certifications of postconsumer recovered materials or waste paper content as one source of data for the annual review. This information is required from vendors, as explained in the final rule published elsewhere in today's **Federal Register**.

2. *Basis of Proposed Minimum Content Standards.* The United States General Services Administration (GSA) already has experience with minimum content standards. Beginning in 1971, minimum content standards were established for several types of paper and paper products. The GSA specifications established minimum levels for "reclaimed material" content and for "postconsumer waste" content which was a sub-set of "reclaimed material." In other words, a two-tiered approach was used. A list of those standards appear in Table 1. The "reclaimed material" and "postconsumer waste" categories correspond to the terms "recovered materials" and "postconsumer recovered materials", respectively, as used in this guideline.

TABLE 1.—GAS'S MINIMUM CONTENT STANDARDS

Product	Reclaimed material	Postconsumer waste
Newsprint	NA	NA
Offset printing	NA	NA
Mimeo and duplicator paper	NA	NA
Writing (stationery)	30	0
Office paper (note pads, etc.)	20	0
Copy paper for high-speed copiers	NA	NA
Envelopes	20–30	0
Pad backing	100	50
Form Bond including computer paper and carbonless	NA	NA
Toilet tissue	50	20
Paper towels	95	40
Paper napkins	60	30
Facial tissue	20	5
Doilies	50	40
Industrial wipers	20	0
Corrugated boxes	35	10
Fiber boxes	[1] 25–35	[1] 5–10
Brown papers (bags, etc.)	[1] 10–40	[1] 0–10
Recycled paperboard products including folding Cartons	100	50
Bond papers	NA	NA
Ledger	NA	NA
Cover stock	NA	NA

TABLE 1.—GAS'S MINIMUM CONTENT STANDARDS—Continued

Product	Reclaimed material	Postconsumer waste
Book papers	NA	NA

[1] Amounts vary depending on the specific product.

Comments have been received by EPA that very few manufacturers of printing/writing papers would be willing or able to meet a minimum content standard for postconsumer recovered materials. Thus an alternative was sought for this category. Some background information follows based upon EPA's evaluation of this subject.

First, it is important to compare and contrast the current recycling of paper in the two principal types of paper products purchased directly by Federal agencies—printing/writing papers and tissue papers. Some statistics for 1985 as reported by the American Paper Institute for these products are presented in Table 2.

TABLE 2.—API STATISTICS ON PRINTING/WRITING AND TISSUE PAPER MANUFACTURE (1985)

Category	Printing/writing and related papers [1]		Tissue Papers [1]	
	Tons	Percent of total	Tons	Percent of total
Waste paper consumed in manufacturing:				
Mixed Papers		0	72	3.5
Newspapers		0	182	8.9
Corrugated	14	1.4	200	9.8
Pulp substitute	702	68.9	654	31.9
High grade deinking	304	29.7	942	45.9
Total	1,019	100.0	2,049	100.0
Total production of finished product	18,450		4,941	
Waste paper as percent of production		5.5		41.5

[1] (In 1,000 short tons and percent).

These statistics reveal that 1.03 million tons more waste paper is recycled into tissue products than into printing/writing paper, even though total production of printing/writing grades is over four times greater than tissue. Put another way, waste paper is 5.5 percent of the raw material for printing/writing paper manufacture while waste paper is 41.5 percent of the feedstock for tissue paper manufacture.

A further contrast can be made on the source of the recovered paper that is used. Pulp substitute is a manufacturing waste, virtually all of which is derived from businesses that convert paper stock into finished products such as books or envelopes. Pulp substitute, as the name suggests, can be used instead of virgin pulp. The quantity of postconsumer recovered materials in pulp substitute is essentially zero. "High grade deinking" is printing scrap, which can include items such as missprinted forms that never reach the ultimate user. The high grade deinking category also includes a significant amount of postconsumer recovered materials, such as office waste paper. However, the paper mill does not always know whether the material is preconsumer or postconsumer because both types of material may be contained in the same bales. Tissue products use most of the postconsumer recovered materials consumed in the high grade deinking category while printing/writing paper producers use much less; many manufacturers of printing/writing papers avoid postconsumer recovered materials altogether. In other words, manufacturers of printing/writing papers tend to use preconsumer waste paper (manufacturing by-products such as pulp substitutes), whereas manufacturers of tissue papers are willing to use postconsumer waste. Tissue products do not have to meet the demands that printing and writing papers do. The contrast between the strength and color requirements for institutional paper towels and offset paper running through a high speed press illustrates this difference.

EPA contacted virtually every mill known to make printing/writing papers using recovered materials. Almost universally they stated that they preferred not to deal with postconsumer recovered materials under a minimum content standard. Some of the reasons cited were:

- Postconsumer recovered materials are not as predictable in fiber composition or content as other types, so it is difficult to assure that specifications can be met.
- A mill essentially needs deinking capability to use postconsumer recovered materials (whereas pulp substitutes are not normally cleaned in deinking systems).
- Contaminants cannot be controlled as well, and "off spec" products are much more likely to be produced using postconsumer recovered materials.
- Only a few mills handle postconsumer recovered materials successfully enough to overcome these problems consistently.

For these reasons, EPA finds that it is not advisable to set minimum postconsumer recovered materials content standards for printing/writing grades. EPA is, therefore, proposing a category of recovered materials called "waste paper" for the printing and writing paper grades only.

a. *Proposed Definition of Waste Paper.* This category includes all postconsumer recovered materials as defined in section 6002(h)(1) of RCRA, plus the first two categories of

"manufacturing, forest residues, and other wastes" as defined in section 6002(h)(2). (As discussed in the final rule published elsewhere in today's **Federal Register**, EPA has determined that mill broke is specifically excluded from the definition of recovered materials because it is waste generated *before* completion of the papermaking process.) These two non-postconsumer categories are:

(1) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: Envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(2) Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others.

EPA concludes that increasing the use of waste paper, as defined above, in the manufacturing of printing and writing papers will in fact allow maximum use of postconsumer recovered materials in those products while it increases the use of postconsumer recovered materials in others, thereby satisfying the intent of RCRA. As more preconsumer waste paper is used for printing and writing papers, there will be less available as a raw material for tissue products. As a result, manufacturers of tissue will use more postconsumer recovered materials as a raw material. Therefore, for printing and writing papers, EPA is proposing that for estimates of content, certification, minimum content standards, and any other instance where postconsumer wastes are to be quantified, information on *waste paper* content be supplied, instead of information on postconsumer recovered materials. For all other categories of paper and paper products, postconsumer recovered materials content should be used.

b. *Recommended Minimum Content Standards.* Several commenters have recommended that EPA adopt the GSA standards shown in Table 1 as minimum content standards. EPA has used these standards as a reasonable starting place for establishing recommended minimum content standards. However, because of the successful experience by several States in procuring printing and writing paper with recovered materials, EPA has determined that those grades of paper are available with a minimum of 50 percent waste paper content.

Therefore, EPA is today proposing a set of recommended minimum content standards as shown in Tabe 3 and invites comments on those standards. The previously referenced document in the docket explains how these recommended minimum content standards for each paper and paper product category were derived. EPA is proposing these standards as an amendment to the final guideline promulgated today. Following the public comment period, these or revised recommended standards would be included in the guideline for two reasons: To provide guidance for agencies that adopt a minimum content standards approach in their affirmative procurement programs (RCRA Section 6002(i)(3)(B)), and to satisfy EPA's obligations to recommend levels of recovered materials to be contained in paper products (RCRA Section 6002(e)).

TABLE 3.—EPA RECOMMENDED MINIMUM CONTENT STANDARDS FOR SELECTED PAPERS AND PAPER PRODUCTS

Product	Minimum percentage of postconsumer recovered materials	Minimum percentage of waste paper [1]
Newsprint	40	
High grade bleached printing and writing paper:		
Offset printing		50
Mimeo and duplicator paper		50
Writing (stationery)		50
Office paper (note pads, etc.)		50
Copy paper for high-speed copiers		0
Envelopes		50
Form bond including computer paper and carbonless		[2]
Book papers		50
Bond papers		50
Ledger		50
Cover stock		50
Tissue products:		
Toilet tissue	20	
Paper towels	40	
Paper napkins	30	
Facial tissue	5	
Doilies	40	
Industrial wipers	0	
Unbleached packaging:		
Corrugated boxes	40	
Fiber boxes	10	
Brown paper (bags, etc.)	5	
Recycled paperboard:		
Recycled paperboard products including folding cartons	80	
Pad backing	90	

[1] "Waste paper" is defined in § 250.4 and refers to specified postconsumer materials and other recovered materials.
[2] EPA found insufficient production of these papers with recycled content to assure adequate competition.

B. Recordkeeping Recommendations

In this notice, EPA is proposing additional recordkeeping recommendations. EPA has concluded that one purpose of the requirement that vendors estimate the total percentage of postconsumer recovered materials or (waste paper) is to provide information to procuring agencies that can be used in future procurements. Further, procuring agencies need to keep up-to-date on changes in recycling practices and availability of products containing postconsumer recovered materials or waste paper. (As explained above, in the case of printing/writing grades, waste paper content should be documented in the same way as postconsumer recovered materials content.)

For these reasons, EPA believes that agencies should keep statistical records of paper and paper products procurements to properly implement the intent of Congress in requiring an affirmative procurement program. A summary of these records should be included in the annual review and monitoring of the effectiveness of the program.

A program for gathering statistics need not be elaborated to be effective. However, agencies should monitor their procurements to provide data on the following:

(a) The percentage of postconsumer recovered materials (or waste paper) in the products procured or offered;

(b) Comparative price information on competitive procurements;

(c) The quantity of each item procured over a fiscal year;

(d) The availability of the paper and paper products to procuring agencies;

(e) Type of performance tests conducted, together with the categories of paper or paper products containing postconsumer recovered materials (or waste paper) that failed the tests, the percentage of total virgin products and products containing postconsumer or other recovered materials supplied that failed each test, and the nature of the failure;

(f) Agency experience with the performance of the procured products.

The Government Printing Office has informed EPA that every shipment of paper or paper products is tested. Because of the number of shipments received (shipments are received on a daily basis, with multiple shipments often being received on any given day), it would be a burden for procuring agencies to retain the results of each of these tests. Instead, procuring agencies should identify the performance tests used and maintain records, by test, on the percentage of failures by paper and paper products containing postconsumer recovered materials (or waste paper) and on the nature of these failures.

The Office of Procurement Policy (OFPP), in the Executive Office of the President, is required under section 6002(g) to report to Congress every two years on actions taken by Federal agencies and the progress made in implementing section 6002.

Accordingly, EPA recommends that each agency that is required to comply with section 6002(i)(2)(D) send a report on its annual review and monitoring of the effectiveness of its procurement program to OFPP. If the agency is using the case-by-case approach or a substantially equivalent approach, it should justify how that approach is maximizing the use of postconsumer recovered materials (or waste paper), and why the use of a minimum content approach is not justified. If the minimum content standard approach is used, the agency should justify whether the standard should be raised, lowered, or remain constant for each item. The justification should be based on reasonable determinations of price, quality, and availability as well as a comparison of estimates and certifications provided by the vendors. Agencies should also document their review of specifications and list those which are revised each year.

EPA notes that this guideline will apply to state and local procuring agencies, as explained under "Applicability" in the final rule published elsewhere in today's **Federal Register**. Information drawn from the experience of Federal procuring agencies about purchases of paper and paper products containing postconsumer recovered materials (or waste paper) would therefore be useful to state and local purchasing officials. Accordingly, EPA encourages Federal procuring agencies to make their reports available.

III. Regulatory Impact

Under Executive Order (E.O.) No. 12291, regulations must be classified as major or nonmajor. E.O. No 12291 establishes the following criteria for a regulation to qualify as a major rule:

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

2. A major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions; or

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

Federal purchases of paper and paper products do not constitute a large enough share of those markets for industry to make manufacturing decisions that are not otherwise enconomically feasible in order to meet Federal procurement requirements. In fact, some Federal procurement policies have been modified in recent years to conform more closely to common commercial standards for some paper products, e.g., toilet tissue. The granting of a price preference is not recommended in the proposed guideline and methods to prevent long-term increases in price have been suggested for the minimum content standard approach; therefore, product costs should not increase. Furthermore, the flexibility allowed to the procuring agencies in implementing minimum content standards should make it possible to make adjustments if any adverse market dislocation or decrease in competition should occur.

Because of the number of items included in the paper and paper product categories and the number of procurement actions taken by procuring agencies each year, some agencies may find it necessary to initially allocate additional resources to implement this guideline. However, the flexibility allowed and the practices recommended in this guideline are intented to avoid on-going increased expenditures by procuring agencies. For example, EPA has recommended that the procedure for estimating and certifying postconsumer recovered materials content be simple and that it be consistent with the procuring agency's usual contracting procedures.

On the basis of the above information and on more extensive data in the rulemaking docket, the Agency has concluded that this guideline is a nonmajor rule.

This document has been submitted to the Office of Management and Budget for review as required by E.O. No. 12291.

IV. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the impact of the rule on small entities (i.e., small businesses, small organizations, small governmental jurisdictions), unless the Administrator certifies that the rule will not have significant

economic impact on a substantial number of small entities.

As described in the final rule published elsewhere in today's **Federal Register**, there is a $10,000 threshold governing applicability of the recovered materials procurement requirement. Because of this threshold, EPA does not expect a substantial number of small entities to be affected by the proposed amendments to the paper guideline. The Agency also believes that the flexible approach to procurement of paper and paper products containing postconsumer recovered materials provided for in this guideline will not impose a significant regulatory or economic burden on small procuring agencies, manufacturers, vendors, or contract printers. Detailed information on this assessment can be found in the RCRA docket for this guideline.

For the above reasons, EPA certifies that this guideline will not have a significant economic impact on a substantial number of small entities. Therefore, the proposed amendments to the paper guideline do not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 250

Forest and forest products, Government contracts, Government procurement, Packaging and containers, Paper, Recycling, Resource recovery.

Dated: September 18, 1987.

Lee M. Thomas,

Administrator.

For the reasons set out in the preamble, it is proposed to amend 40 CFR 250.4 and 250.20 as follows:

PART 250—[AMENDED]

1. The authority citation for Part 250 continues to read as follows:

Authority: 42 U.S.C. 6912(a) and 6962.

2. In § 250.4, a definition of "waste paper" is added in alphabetical order to read as follows:

§ 250.4 Definitions.

* * * * *

"Waste paper" means any of the following "recovered materials":

(a) Postconsumer materials such as:

(1) Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end usage as a consumer item, including: Used corrugated boxes, old newspapers, old magazines, mixed waste paper, tabulating cards, and used cordage, and

(2) All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste; and

(b) Manufacturing, forest residues, and other wastes such as:

(1) Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel into smaller rolls or rough sheets) including: Envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and

(2) Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

(3) In § 250.20, paragraphs (a)(2), (b)(2), (c)(1) and (c)(2) are revised and paragraphs (c)(4), (d)(3), and (d)(4) are added to read as follows:

§ 250.20 Elements of affirmative procurement program.

* * * * *

(a) * * *

(2)(i) Minimum recovered materials content standards that assure that the postconsumer recovered materials or waste paper content required is the maximum available without jeopardizing the intended end use of the item or violating the limitations of section 6002(c)(1)(A) through (C) of the Act and § 250.21 of this part. EPA recommends that procuring agencies use minimum content standards, rather than the case-by-case approach or a substantially equivalent approach, wherever possible.

(ii) A procuring agency that uses minimum content standards may use the minimum levels in Table 1 or may establish its own minimum content standards. Minimum content standards should be revised annually based on procurement experiences, including data collected from postconsumer recovered materials or waste paper content estimates submitted by all vendors as required under § 250.20(c)(1) of this Part.

* * * * *

(b) * * *

(2) A statement in each paper specification defining "postconsumer recovered materials" or "wastepaper," as applicable, as they are defined in § 250.4 of this Part.

* * * * *

(c) * * *

(1) Agencies must require vendors to estimate the total percentage of postconsumer recovered materials or waste paper in paper and paper products supplied to them.

(2) Agencies must require vendors to certify the minimum postconsumer recovered materials or waste paper to be used in the performance of a contract.

* * * * *

(4) For each paper or paper product procured, agencies should maintain the following records:

(i) The percentage of postconsumer recovered materials or waste paper in the products procured or offered;

(ii) Comparative price information on competitive procurements;

(iii) The quantity of each item procured over a fiscal year;

(iv) The availability of the paper and paper products to procuring agencies;

(v) Type of performance tests conducted, together with the categories of paper or paper products containing postconsumer recovered materials or waste paper that failed the tests, the percentage of total virgin products and products containing postconsumer recovered materials or waste paper supplied that failed each test, and the nature of the failure;

(vi) Agency experience with the performance of the procured products.

(d) * * *

(3) Procuring agencies should monitor the variation between estimates and certifications of postconsumer recovered materials or waste paper in paper and paper products purchased during the year. If the variations are significant, procuring agencies should determine whether minimum content standards can be introduced or raised without causing a long-term increase in price.

(4) It is recommended that each procuring agency make its information available to the Office of Federal Procurement Policy. This information should include a summary of the records recommended in § 250.20(c)(4) of this part and the results of the annual review and monitoring of the effectiveness of the program.

* * * * *

4. Table 1 is added to the end of § 250.20 to read as follows:

TABLE 1.—EPA RECOMMENDED MINIMUM CONTENT STANDARDS FOR SELECTED PAPERS AND PAPER PRODUCTS

Product	Minimum percentage of postconsumer recovered material	Minimum percentage of waste paper [1]
Newsprint	40	—
High grade bleached printing and writing papers:		
Offset printing	—	50
Mimeo and duplicator paper	—	50
Writing (stationery)	—	50
Office paper (note pads, etc.)	—	50
Paper for high-speed copiers	—	0
Envelopes	—	50
Form bond including computer paper and carbonless	—	[2]
Book papers	—	50
Bond papers	—	50
Ledger	—	50
Cover Stock	—	50
Tissue products:		
Toilet tissue	20	—
Paper towels	40	—
Paper napkins	30	—
Facial tissue	5	—
Doilies	40	—
Industrial wipers	0	—
Unbleached packaging:		
Corrugated boxes	40	—
Fiber boxes	10	—
Brown papers (bags, etc.)	5	—
Recycled paperboard:		
Recycled paperboard products including folding cartons	80	—
Pad backing	90	—

[1] Waste paper is defined in § 250.4 and refers to specified postconsumer and other recovered materials.
[2] EPA found insufficient production of these papers with recycled content to assure adequate competition.

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 20

Employee Responsibilities and Conduct

AGENCY: Department of the Interior.

ACTION: Proposed rulemaking.

SUMMARY: Regulations governing the conduct and responsibilities of regular and special government employees of the Department of the Interior are proposed to be revised. This revision proposes to:

(1) Incorporate statutory requirements and Department policy decisions not previously pubished as regulations;

(2) Add new rules to correspond to rules recently established by the Office of Personnel Management's Office of Government Ethics;

(3) Update specific rules which are affected by changes in rules established and maintained by other Federal agencies;

(4) Explain existing rules and definitions which are vague or misleading; and

(5) Delete obsolete rules.

DATE: To be considered, comments must be received by November 20, 1987. All comments will receve full consideration.

ADDRESS: Comments concerning these proposed regulations should be sent to: Designated Agency Ethics Official, U.S. Department of the Interior, Mail Stop 5119, 18th & C Streets NW., Washington DC 20240.

FOR FURTHER INFORMATION CONTACT: Gabriele J. Paone or Mason Tsai on (202) 343-5916.

SUPPLEMENTARY INFORMATION: The reasons for the principal proposed additions, delections and changes are explained below:

Section 20.735-2(h)(4)(i) is proposed to be amended to state that on —— the Designated Agency Ethics Official approved a special code of conduct for all employees having duties and responsibilities involving the acquisition of property and sevices for the Department.

We propose to revise § 20.735-7 by adding a Note at the end of (b)(2)(i) which will advise employees holding acquisition duties and responsibilities that the exception on accepting gifts in (b)(2)(i) does not apply to them.

We propose to revise § 20.735-7(b)(2)(iii) to more accurately address the original intent of this provision. Gifts from Indians and Indian Tribes are commonly offered to employees who are on assignment at Bureau of Indian Affairs field locations or attending Indian program events. For cultural reasons, refusal to accept such gifts would be likely to cause offense or embarrassment or otherwise adversely affect relations with the United States. The provisions in 25 U.S.C. 451 authorize the Secretary to accept gifts for the advancement of the American Indian. Use of this authority is delegated to all employees and the proposed revision explains how this authority can be used as an exception to the policies in § 20.735-7(a).

It is also proposed to add a new paragraph § 20.735-7(b)(3) that informs the user that other statutory authorities exist that may provide an alternative to the policy in § 20.735-7(a). The proposal makes such use conditional on a determination that use will not create a conflict or apparent conflict of interest.

The proposal to revise the definition of "Minimal Value" in § 20.735–8(b)(5) is made to update the value to the current General Services Administration regulation. Refer to GSA Bulletin FPMR H–49 dated March 2, 1987.

An explanation of penalties for violations of the honorarium provisions in § 20.735–11 is proposed. The explanation is intended to provide employees with the proper legal citations and a clarification that only knowing and willful violations of the $2,000 limitation for honorariums need to be reported to the Federal Election Commission.

A proposal for changes to § 20.735–15(b) on misuse of Government motor vehicles or aircraft is made to update the U.S. Code citations. The addition, in this same section, of a paragraph on misuse of official information for private gain, provides employees with an explanation of the kind of information and situations that are of concern.

Section 20.735–17(r) proposes to add a paragraph on acceptance of commercial discounts. This proposal is based on a March 19, 1985 memorandum from the Counsel to the President to all General Counsels of Executive Departments and Agencies. The proposed addition incorporates the policies advocated by the Director, Office of Government Ethics.

In response to several suggestions received from Bureau ethics counselors and employees, § 20.735–23 would be amended by the proposal to remove the words "outside work" and add in their place, the words "outside work or outside activity". This proposal does not change the extent of the current prohibitions. The current prohibitions do cover outside work and other outside activities. However, the wording of the current section does not specifically state outside activity throughout the text of the section and this has raised questions from the counselors charged with implementing the rules. The proposal is intended to eliminate these questions and more accurately express the intent of the prohibitions in the section.

It is proposed that Indian trust, allotted or restricted lands be added to the definition of Federal lands in § 20.735–24. The purpose for this amendment is to make clear the original intention that Indian lands for which the Secretary is trustee are included in the definition of "Federal lands".

In § 20.735–24(b)(1) and (b)(3) it is proposed to remove the word "acquire" in order to clarify the Department's policy that a waiver will not be issued to allow an employee to acquire an interest in Federal lands. A waiver may only be issued to allow an employee to retain an interest in Federal lands.

It is proposed to add to § 20.735–24(e)(1)(iv)(2) rules that will allow the Designated Agency Ethics Official to approve the retention of an outside employment interest with a sole proprietor, partnership or corporation that has interests in Federal lands. Without a waiver, an employment interest in such a business could result in a financial interest in Federal lands which may be a violation of Department regulation. Rules establishing the criteria for allowing such outside employment are necessary to ensure that employees are not unduly restricted from outside employment opportunities. The rules being proposed are intended to provide reasonable standards for allowing such outside work while maintaining the spirit and purpose of the statutory requirements.

A similar proposal is added in § 20.735–27(e)(1)(iv)(2), concerning outside employment in private mining activities.

Section 20.735–30 proposes that all Executive Order financial disclosure statements be retained for six years and longer if needed for an ongoing investigation. This proposal incorporates a directive received from the Director, Office of Government Ethics on July 23, 1985.

The revisions proposed for § 20.735–31 incorporate the provisions of Pub. L. 98–150 that was signed into law by the President on November 11, 1983. Another proposed revision in this section is the addition of information about the authority to grant time extensions for the filing requirements. The proposed information about time extensions is taken from Office of Government Ethics regulations in 5 CFR Part 734.

The Department has determined that this document is not a rule as defined by Executive Order 12291 because this proposed rule is related solely to agency management and personnel. For the same reason it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. 5 U.S.C. 601 *et seq.*

List of Subjects in 43 CFR Part 20

Conflicts of interests, Government employees.

Date: September 29, 1987.

Joseph W. Gorrell,

Principal Deputy Assistant Secretary, Policy, Budget and Administration, U.S. Department of the Interior.

Accordingly, 43 CFR Part 20 is proposed to be amended as follows:

PART 20—[AMENDED]

1. The authority citation for 43 CFR Part 20 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 207(j)(Supp. V 1981); sec. 12, Ch. 576, 48 Stat. 986 (25 U.S.C. 472); sec. 201(f), Pub. L. 95–87, 91 Stat. 450–51 (30 U.S.C. 1211 (Supp. V 1981)); E.O. 11222, E.O. 12565, 30 FR 6469, 3 CFR 1964–65 (Comp.), as amended (18 U.S.C. 201–209); 18 U.S.C. 437; 30 U.S.C. 6; 43 U.S.C. 11; 43 U.S.C. 31(a); 5 CFR 735.104; 5 CFR 734.103; 5 CFR 737.1(c)(7).

2. Section 20.735–1 is amended by revising paragraph (a)(9) to read:

§ 20.735–1 Definitions.

* * * * *

(a) * * *

(9) "Designated Agency Ethics Official" means the Assistant Secretary-Policy, Budget and Administration. The Deputy Agency Ethics Official shall serve as alternate agency ethics official.

* * * * *

3. Section 20.735–2 is amended by revising paragraphs (d)(2), (g), and (h)(4)(i) introductory text, and by adding a new paragraph (h)(4)(i)(C) to read:

§ 20.735–2 Purpose, policy and general responsibilities.

* * * * *

(d) * * *

(2) Obey the proper requests of his or her supervisors.

* * * * *

(g) *Employee responsibilities.* (1) It is the responsibility of employees to be familiar with and to comply with the

regulations in this Part. Employees are expected to consult with their supervisors and personnel officers on general questions they may have regarding the applicability of the regulations in this Part. For guidance on specific matters or questions concerning conflicts of interest, employees may obtain advice and guidance from their Ethics Counselors, Deputy Ethics Counselors, Associate or Assistant Ethics Counselors, the Designated Agency Ethics Official, or appropriate officials within the Office of the Solicitor.

(2) To be cautious in dealing with the general public with representatives of private industry so as not to give an opinion or decision contrary to expressed Departmental or bureau policy.

(3) To avoid expressing personal opinions or making unauthorized decisions about work situations where those opinions or decisions may be mistakenly taken to be the opinion or decision of the bureau or Department.

(4) To report directly or through appropriate channels to the Office of Inspector General matters coming to their attention which involve or may involve violations or law or rule by employees, contractors, sub-contractors, grantees, lessees, licensees or other persons having official business with the Department.

(h) * * *

(4)(i) Special codes of conduct have been approved in accordance with this paragraph (h) for the following groups of employees:

* * * * *

(C) Department employees having duties and responsibilities involving the acquisition of property and services for the Department. The special code of conduct covering these employees is set forth in 48 CFR 1403.101 and 1415.608—approved _____ 1987.

* * * * *

§ 20.735-3 [Amended]

4. In § 20.735-3(a)(2)(iv) and (b)(1) it is proposed to remove the words "Assistant Ethics Counselors" and add, in their place, the words "Assistant or Associate Ethics Counselors.".

§ 20.735-6 [Amended]

5. In § 20.735-6(b)(3) it is proposed to remove the citation "(41 CFR 1-1.302-3)" and add, in its place, the citation "(48 CFR 3.601)".

6. In § 20.735-6(b)(4) it is proposed to remove the citation "(41 CFR 1-1.302-3)" and add, in its place, the citation "(48 CFR 1403.602)".

§ 20.735-7 [Amended]

7. In § 20.735-7(a) introductory text it is proposed to remove the words "an employee shall not" and add, in their place, the words "an employee, whether on or off duty, shall not".

8. It is proposed that § 20.735-7 be amended by revising paragraph (b)(2)(i) and (b)(2)(iii) to read:

§ 20.735-7 Gifts, entertainment, and favors from domestic sources.

* * * * *

(b) * * *

(2) * * *

(i) Food and refreshments or other tangible gifts of nominal value on infrequent occasions in the ordinary course of an official luncheon or dinner meeting or other official or professional function or on an inspection tour when an employee may properly be in attendance;

Note: The exclusion in paragraph (b)(2)(i) of this section does not apply to employees having duties and responsibilities involving the acquisition of property and services for the Department. The special code of conduct for these employees is set forth in 48 CFR 1403.101 and 1415.608.

* * * * *

(iii) Gifts, on behalf of this Department, which are offered for the advancement of the American Indian can be accepted in circumstances where declining the gifts may cause offense or embarrassment or otherwise adversely affect relations with this Department; such gifts shall be deposited with the bureau property officer within 60 days of the date of acceptance.

* * * * *

9. It is also proposed that § 20.735-7 be amended by redesignating (b)(3) as (b)(4). Then it is proposed to add a new paragraph (b)(3) to read:

§ 20.735-7 Gifts, entertainment, and favors from domestic sources.

* * * * *

(b) * * *

(3) Separate statutory gift authorities may be used to provide an exclusion to the prohibitions in paragraph (a) of this section, so long as such use creates no conflict or apparent conflict of interest. Use of such statutory gift authorities should be well documented and gifts other than food or refreshments accepted under such authorities shall be deposited with the bureau property officer within 60 days of the date of acceptance. Notwithstanding paragraphs (b)(2)(iii) and (b)(3), see 48 CFR 1403.101 for special rules governing the acceptance on behalf of the Department of donated property or services including Automated Data Processing Services which are subject to the Department of the Interior Acquisition Regulation.

* * * * *

10. It is proposed that § 20.735-8 be amended by revising paragraph (b)(5) to read:

§ 20.735-8 Gifts and decorations from foreign governments.

* * * * *

(b) * * *

(5) "Minimal Value" means a retail value in the United States at the time of acceptance of $180.00 or less. Refer to 41 CFR Part 101-49.

* * * * *

§ 20.735-8 [Amended]

11. In § 20.735-8(d)(2)(ii) it is proposed to remove the words "Assistant Secretary—Policy, Budget and Administration" and add, in their place, the words "Ethics Counselor".

12. It is proposed that § 20.735-9 be amended by revising paragraph (a)(4) to read (the Example Following (a)(4) remains unchanged):

§ 20.735-9 Reimbursement of travel and related expenses.

(a) * * *

(4) When participation at a function is not in an official capacity, an employee may accept reimbursement of travel and accommodation expenses from a private source, provided that such acceptance creates no conflict or appearance of a conflict of interest with one's official duties and is not in violation of other applicable statutory or regulatory prohibition. Refer to § 20.735-7 of this part. Participation as a private citizen must occur on one's own time, such as while on annual leave or leave without pay. If participation should occur during the course of official travel (i.e., evening or weekend hours during official travel status), the travel voucher submitted for Government reimbursement of official duty expenses must be adjusted to claim only that per diem and travel attributable to official duty. Employees who are appointed by the President and paid at a rate higher than the highest rate for GS-18 are on 24 hour duty and determinations of what constitutes official duty and what is private participation should be carefully made. In making such a determination, consultation with the Deputy Agency Ethics Official or the Associate Solicitor—Division of General Law is advisable.

* * * * *

13. It is proposed that § 20.735-11 be amended by revising paragraph (f) to read:

§ 20.735–11 Honorariums and outside earned income.

* * * * *

(f) *Violation.* In addition to the potential sanctions in § 20.735–4, any employee who knowingly and willfully violates the $2,000 limitation on the amount of an honorarium that may be accepted in § 20.735–11(b)(4) shall be reported to the Federal Election Committee in accordance with the Commission's compliance procedures in 11 CFR Part 111. The employee may be subject to civil and criminal penalties as provided for by 2 U.S.C. 437g (Pub. L. 96–187, section 108).

14. It is proposed that § 20.735–15 be amended by revising paragraphs (b), (c), and adding paragraphs (d) and (e) to read:

§ 20.735–15 Government property.

* * * * *

(b) *Misuse of Government motor vehicles or aircraft.* Employees shall not willfully use or authorize the use of a Government-owned or leased passenger motor vehicle or aircraft for other than official purposes. Violation of this provision shall automatically result in suspension from duty without compensation, for not less than one month. See 31 U.S.C. 1344(a) and 31 U.S.C. 1349(b) for additional interpretation and guidance on official use of motor vehicles or aircraft.

(c) *Misuse of information.* Except as may be provided by regulation, an employee shall not, for the purpose of furthering private interests, directly or indirectly use or allow the use of official information obtained through or in connection with his Government employment. Information that is available to the general public on request is not covered by this prohibition unless its use creates a conflict or a substantial appearance of misusing public office for private gain.

(d) *Embezzlement of Government property.* Employees shall not convert, even temporarily on loan, for personal use, any Government property or equipment nor use Government authority, even though reimbursement is made, for personal acquisitions (18 U.S.C. 641, 643 and 654).

(e) *Unauthorized use of official mail.* Mail such as personal letters and Christmas cards, job resumes and applications, Freedom of Information and Privacy Act requests and appeals, complaints, grievances, and all similar materials which do not relate exclusively to the business of the Government may not be sent as penalty or postage and fees paid mail. An employee is prohibited from using official Government envelopes, with or without applied postage, or official letterhead stationery for personal business (18 U.S.C. 1719 and 39 U.S.C. 3201 *et seq.*). These statutory requirements prohibit employees from using Government envelopes to mail their own personal job applications.

15. It is proposed that § 20.735–17 be amended by revising paragraph (m) to read:

§ 20.735–17 Other conduct.

* * * * *

(m) *Commercial Discounts.* The acceptance by an employee of any special rate or commercial discount is governed generally by the rules and prohibitions related to the acceptance of gifts except that employees may accept special rates or commercial discounts that are offered to members of the public generally. An employee may not accept a special rate or commercial discount when:

(1) It is offered only to Department or bureau employees;

(2) The person or entity offering the rate or discount:

(i) Has exclusive interests that may be directly affected by the performane or non-performance of the employee's official duties,

(ii) Has or is seeking business directly with the Department, or

(iii) Appears to be offering the rate or discount with the hope or expectation of obtaining an advantage or preferment in dealing with the Department; or when

(3) Acceptance of the rate or discount creates a conflict or an appearance of conflict of interest or would otherwise adversely affect the public's confidence in the integrity of the government.

Employees are also prohibited from using any special rate or commercial discount related to government service to obtain any item for the purpose of resale at a profit. The provisions of this paragraph do not prohibit the acceptance of discounts offered on a geographical basis (for example, a specific city or municipality) or discounts offered to non-government groups to which an employee may belong such as the American Automobile Association, etc. Employees are restricted from accepting discounts from groups that are regulated by this Department, except where the groups are required by law, regulation or contract to offer discounts to everyone. The provisions of this paragraph also do not prohibit employees from accepting discounts from Department authorized operations.

16. It is proposed that § 20.735–20 be amended by revising paragraph (c) to read:

§ 20.735–20 Scope of subpart.

* * * * *

(c) For the purpose of applying the prohibitions in § 20.735–24 Interests in Federal lands, § 20.735–27 Interested in mining activities, and § 20.735–28 Interests in trading with Indians, of this subpart, the term "Office of the Secretary and other Departmental Offices reporting directly to a Secretarial Officer" means the following offices:

(1) The Immediate Office of the Secretary;
(2) The Immediate Office of the Under Secretary;
(3) Solicitor;
(4) Inspector General;
(5) Hearings and Appeals;
(6) Congressional and Legislative Affairs;
(7) Public Affairs;
(8) All Assistant Secretaries and their immediate Office Staffs and heads of bureaus or offices;
(9) The following offices under the Assistant Secretary-Policy, Budget, and Administration:
(i) Acquisition and Property Management;
(ii) Budget
(iii) Environmental Project Review;
(iv) Policy Analysis;

* * * * *

§ 20.735–21 [Amended]

17. In § 20.735–21(b)(4)(iv) Note, it is proposed to remove the words "Interests in mining activities, and § 20.735–27-Interests in trading with Indians" and add, in their place, the words "Interests in underground or surface coal mining operations, or § 20.735–27-Interests in mining activities.".

18. It is proposed that § 20.735–21 be amended by revising the Example following (b)(5)(ii) to read:

§ 20.735–21 General conflict of interest prohibitions.

* * * * *

(b) * * *
(5) * * *
(ii) * * *

Example: An employee who works as a contracting officer owns $5,000 worth of stock in a computer company. This employee has a substantial relationship between that financial interest and the computer company if either of the following situations exists: (1) He or she is required to deal directly with, render advice about, make recommendations or decisions concerning the company, or (2) he or she may be required to deal with or

make decisions concerning the company and it is reasonable for members of the public to perceive such potential activity as being a conflict of interest. In the first instance there is a substantial conflict. In the second instance there is a substantial apparent conflict. It is important to understand that if this employee were a Personnel Officer, a $5,000 interest in a particular computer company might not create a substantial conflict or apparent conflict, but for the Contracting Officer, even a small interest in that particular computer company may be considered substantial.

* * * * *

§ 20.735–22 [Amended]

19. In § 20.735–22(c)(3) it is proposed to revise the last two sentences to read as follows: "Except for the prohibition on executing surveys or examinations for private parties or corporations, these statutory restrictions are by this sentence, extended to the Director and all members of the Minerals Management Service. Refer to § 20.735–24 for prohibitions on interests in Federal lands and resources by employees of the Department generally.".

§ 20.735–23 [Amended]

20. In § 20.735–23 it is proposed to remove the words "outside work" and add, in their place, the words "outside work or outside activity" in the following paragraph:

(b) (1) ("outside work" appears twice)
(b)(3)(i)
(c)(1)(iv)
(c)(1)(v)
(g)(2)(i)
(g)(2)(ii)
(g)(3)(i)
(h)(1)

21. It is proposed that § 20.735–23 be amended by revising paragraph (a)(2) to read:

§ 20.735–23 Outside work and interests.

* * * * *

(a) * * *

(2) "Outside activity" means volunteer services, lectures, consultations, discussions, writings, appearances and other similar activities.

* * * * *

22. In § 20.735–23(b)(3)(ii) it is proposed to remove the words "any work assignment or employment affiliation" and add, in their place, the words "any outside work or activity".

23. In § 20.735–23(c)(2) it is proposed to remove the words "may not perform outside work if:" and add, in their place, the words "may not perform outside work or an outside activity if:".

24. In § 20.735–23(c)(2)(i), (ii) and (iii) it is proposed to remove the words "The work" and add, in their place, the words "The work or activity".

25. It is proposed that § 20.735–23 be amended by revising paragraphs (d)(2), (e)(1) introductory text, (e)(1)(i) Note, (g)(1), and (g)(2)(iii) to read:

§ 20.735–23 Outside work and interests.

* * * * *

(d) * * *

(2) While a special government employee is not prohibited from performing outside work or other outside activity solely because the work or activity is of the same general nature as the work he or she performs for the Department, such an employee may not perform outside work or activity if (i) The work or activity is such that the employee would be expected to do it as a part of his or her regular duties; or

(ii) The work or activity would tend to influence the exercise of impartial judgment on any matters coming before the employee in the course of his or her official duties.

* * * * *

(e) * * *

(1) A regular employee shall not receive any salary or anything of monetary value from a private source as compensation for services to the Government (18 U.S.C. 209). This statute does not cover outside work performed for no compensation, nor does it prevent an employee from:

(i) * * *

Note: Continued participation in stock options or profit sharing benefit plans maintained by a former employer may be prohibited by other statutory requirements.

(ii) * * *

(g) * * *

(1) Except for U.S. Mineral Surveyors, a regular or special government employee engaged in outside work or outside activity shall report that work or activity to his or her immediate supervisor if the work or activity is to be performed frequently or on a standardized schedule.

(2) * * *

(iii) A statement of the employee's opinion of any apparent or potential conflict of interest between the work or activity and his or her official duties.

* * * * *

26. It is proposed that § 20.735–24 be amended by revising paragraph (a)(1) to read:

§ 20.735–24 Interests in Federal lands.

* * * * *

(a) * * *

(1) "Federal lands" means lands or resources or an interest in lands or resources which are administered or controlled by the Department of the Interior, including, but not limited to, the Outer Continental Shelf and Indian trust or restricted lands.

* * * * *

27. It is proposed that § 20.735–24 be amended by adding a sentence after paragraph (a)(4)(ii) to read:

§ 20.735–24 Interests in Federal lands.

* * * * *

(a) * * *
(4) * * *
(ii) * * *

Refer to Note in § 20.735–21(b)(4) for examples of the kinds of interests that are not covered.

* * * * *

28. In § 20.735–24(b)(1)(ii) it is proposed to remove the words "except that they may acquire or retain such interests" and add, in their place, the words "except that they may retain such interests".

29. In § 20.735–24(b)(2) introductory text it is proposed to remove the words "to GS–16 and above or who are in merit pay positions as described in 5 U.S.C. 5401(b)(1)," and add, in their place, the words "to GS–16 and above or who are in positions covered by the Performance Management and Recognition System as described in 5 U.S.C. 5402(a),".

30. In § 20.735–24(b)(3) it is proposed to remove the words "except that they may acquire or retain such interests" and add, in their place, the words "except that they may retain such interests".

31. It is proposed that § 20.735–24 be amended by redesignating paragraphs (e)(2) as (e)(3), (e)(3) as (e)(4), and (e)(4) as (e)(5). Then it is proposed to add a new paragraph (e)(2) to read:

§ 20.735–24 Interests in Federal lands.

* * * * *

(e) * * *

(2) For employees identified in § 20.735–24(b), the Designated Agency Ethics Official may appprove the retention of an outside employment interest with an entity that has an interest in Federal lands when the general provisions on outside work and interests in § 20.735–23 are met and when:

(i) The outside employment is not prohibited by 43 U.S.C. 31(a), and

(ii) There is little or no relationship or appearance of conflict of interest between the employee's outside employment interest and the employee's official duties and responsibilities, and;

(iii) Any related commercial permit, lease or other right in Federal land is not directly held by the employee, and

(iv) The outside employment interest does not result in a direct or indirect equity interest in an organization that has rights to Federal lands, and

(v) The outside employment interest of a Department employee is equally available to any member of the general public.

* * * * *

32. In newly redesignated § 20.735–24(e)(4)(i) it is proposed to remove the words "Designated Agency Ethics Official within 90 days from the effective date of these regulations, within 60 days of employment by the Department" and add, in their place, the words "Designated Agency Ethics Official within 60 days of employment by the Department".

33. In newly redesignated § 20.735–24(e)(4)(iv) it is proposed to remove the words "An explanation of why denial of the right" and add, in their place, the words "If applicable, an explanation of why denial of the right".

§ 20.735–26 [Amended]

34. In § 20.735–26(b)(1) it is proposed to remove the words "Assistant Secretary—Energy and Minerals," and add in their place, the words "Assistant Secretary—Land and Minerals Management,".

35. In § 20.735–27(b)(3) introductory text it is proposed to remove the words "to GS–16 and above or who are in merit pay positions as described in 5 U.S.C. 5401(b)(1)," and add, in their place, the words "to GS–16 and above or who are in positions covered by the Performance Management and Recognition System as described in 5 U.S.C. 5402(a),".

36. It is proposed that § 20.735–27 be amended by redesignating paragraphs (e)(2) as (e)(3), and (e)(3) as (e)(4). Then it is proposed to add a new paragraph (e)(2) to read:

§ 20.735–27 Interests in mining activities.

* * * * *

(e) * * *

(2) For employees identified in § 20.735–27(b), the Designated Agency Ethics Official may approve the retention of an outside employment interest in a mining activity that is under investigation or in a mining enterprise conducting mining activities that are under investigation, when the general provisions on outside work and interests in § 20.735–23 are met and when:

(i) The outside employment is not prohibited by 30 U.S.C. 6, and

(ii) There is little or no relationship or appearance of conflict of interest between the employee's outside employment interest and the employee's official duties and responsibilities, and

(iii) The outside employment interest does not result in a direct or indirect equity interest in an organization that has rights to mining activities, and

(iv) The outside employment interest of a Department employee is equally available to any member of the general public.

* * * * *

37. In newly redesignated § 20.735–27(e)(3)(i) remove the words "Designated Agency Ethics Official within 90 days from the effective date of these regulations, within 60 days of employment by the Department" and add, in their place, the words "Designated Agency Ethics Official within 60 days of employment by the Department".

38. In § 20.735–28(c)(1) introductory text it is proposed to remove the words "to GS–16 and above or who are in merit pay positions as described in 5 U.S.C. 5401(b)(1)" and add in their place, the words "to GS–16 and above or who are in positions covered by the Performance Management and Recognition System as described in 5 U.S.C. 5402(a)".

39. It is proposed that § 20.735–28 be amended by revising paragraph (e)(2) to read:

§ 20.735–28 Interests in trading with Indians.

* * * * *

(e) * * *

(2) Employees in Indian Affairs, the Office of the Secretary and Other Departmental Offices may be permitted to trade with Indians or Indian Organizations under regulations prescribed in 25 CFR Part 140.

* * * * *

40. It is proposed that § 20.735–29 be amended by revising paragraph (c)(1) to read:

§ 20.735–29 Indian and Alaska Native Organizations.

* * * * *

(c) * * *

(1) No person employed in Indian Affairs may hold a position on a tribal election board or on a tribal school board which oversees Bureau of Indian Affairs ept for line officers, personnel officers, contracting officers and contracting specialists, an eligile person employed in Indian Affairs, with the approval of the Deputy to the Assistant Secretary—Indian Affairs (Operations), for Central Office employees, or the appropriate Area Director for field employees, may become a condidate for office in his or her local tribe or may be appointed as a representative of his or her local tribe, if in the judgement of the Deputy to the Assistant Secretary, Area Directors or Assistant Directors, no real or apparent conflict of interest is created. The decisions of the above named officials are final and no further appeal is permitted.

* * * * *

41. In § 20.735–29 it is proposed to remove the words "Deputy Assistant Secretary—Indian Affairs" and add, in their place, the words "Deputy to the Assistant Secretary—Indian Affairs" in the following paragraphs:

(c)(2) introductory text

(c)(2)(i)

(c)(2)(ii)

42. In § 20.735–30(c) introductory text it is proposed to remove the words "the necessary form or forms to the employee" and add in their place, the words "the necessary form to the employee".

43. In § 20.735–30(d)(1) introductory text and (d)(2) it is proposed to remove the word "full-time".

44. It is proposed that § 20.735–30 be amended by revising paragraph (h) to read:

§ 20.735–30 Executive Order filing requirements.

* * * * *

(h) *Retention and disposal of statements.* All statements shall be destroyed six years from the date of filing unless the statement is needed in an ongoing investigation.

* * * * *

45. It is proposed that § 20.735–31 be amended by revising paragraphs (c)(2), (c)(3)(i) and (c)(3)(ii) to read:

§ 20.735–31 Ethics in Government Act filing requirements.

* * * * *

(c) * * *

(2) Within five days of the transmittal by the President to the Senate of the nomination of an individual to a position, appointment to which requires the advice and consent of the Senate, such individual shall file the required report in accordance with instructions received from the Executive Office of the President. The report shall be reviewed by the Designated Agency Ethics Official who shall sign approval or comment on the contents of the form before it is forwarded to the Office of Government Ethics. Also, such individual shall, not later than the first hearing to consider the nomination of such individual, make current the report filed pursuant to this section by filing the information required by section 202(a)(1)(A) of the Ethics in Government Act with respect to outside earned income and honoraria received as of the date which occurs five days before the date of such hearing. Nothing in these

regulations shall prevent any Congressional committee from requesting, as a condition of confirmation, any additional financial information from any Presidential nominee whose nomination has been referred to that committee.

(3) * * *

(i) The Deputy Ethics Counselor will grant an extension of time, not to exceed May 15, for filing the annual SF–278 form.

(ii) The Designated Agency Ethics Official may, for good cause shown, grant to any employee, an extension of time of up to 45 days beyond the May 15 deadline for the annual filing of the SF–278. This filing extension will only be considered in cases where the affected employee needs additional time to obtain tax, trust or investment information to complete his or her SF–278 form. Requests for such an extension shall be in writing to the Designated Agency Ethics Official through the employee's Deputy Ethics Counselor. Such requests must be filed no later than May 1st of the reporting year.

* * * * *

46. In § 20.735–31(e)(6) it is proposed to revise the second sentence to read as follows: "Incumbent employees shall report all positions held at any time during the applicable reporting period. *Refer to 5 CFR 734.301(f).*".

47. It is proposed that § 20.735–31 be amended by revising paragraphs (g)(1)(ii) through (vi) to read:

§ 20.735–31 Ethics in Government Act filing requirements.

* * * * *

(g) * * *

(1) * * *

(ii) Determine which, if any, conflict of interest prohibitions, in addition to Executive Order 11222 prohibitions, apply to each position (e.g., organic act prohibitions);

(iii) Review each SF–278 report for completeness and determine if any information disclosed reveals any conflict or appearance of a conflict of interest with the employee's official duties and whether any reported interest violates any applicable prohibition. For employees given filing extensions or being processed for remedial action, all SF–278's filed to satisfy the annual disclosure requirement must be submitted to the Department Ethics Office by the first Monday in April. For employees filing SF–278 new entrant or termination reports, these reports shall be reviewed and submitted to the Designated Agency Ethics Official within 15 working days after receipt by the respective bureau or office;

(iv) Sign the report indicating that the report has been reviewed and is recommended for certification. In cases where a SF–278 report is not recommended for certification, the bureau or office deputy ethics counselor shall not sign the report. The SF–278 report shall be filed with the Designated Agency Ethics Official along with a statement as to why the SF–278 should not be certified. For the submission of the SF–278's to satisfy the annual disclosure requirement, the bureau or office deputy ethics counselor shall also send a report to the Designated Agency Ethics Official listing the names of employees who were granted the May 15th filing extension.

(v) Take prompt action to resolve informally any potential conflicts, actual conflicts or apparent conflicts that exist; and

(vi) Take remedial action if informal resolution fails.

* * * * *

48. It is proposed that § 20.735–35 be amended by removing paragraph (b), redesignating paragraphs (c) and (d) as (b) and (c), and revising paragraphs (a)(1) through (3) and newly redesignated (b)(1) to read as follows:

§ 20.735–35 How to file.

* * * * *

(a)(1) Employees who are subject only to Executive Order 11222 filing requirements shall report all information required on form DI–212, Confidential Statement of Employment and Financial Interest.

(2) Employees who are in positions subject to Executive Order 11222 filing requirements and to the Surface Mining Control and Reclamation Act filing requirements shall report all information requirement on form DI–212A, Confidential Statement of Employment and Financial Interests for use by Federal employees who perform functions or duties under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1211(f).

(3) Employees who are in positions subject only to the Ethics in Government Act of 1978 filing requirements shall report all information required on the Standard Form 278. Employees filing reports under the Ethics in Government Act will also satisfy the filing requirement of Executive Order 11222 or the Surface Mining Control and Reclamation Act by filing Form DI–278. Form DI–278 is an approved Departmental supplement to SF–278 and requests only that additional information required by Executive Order 11222 or the Surface Mining Act that is not requested on the SF–278. Newly appointed or elected officials and Presidential nominees to positions requiring the advice and consent of the Senate shall also file Standard Form 278.

(b) *Where to file.* (1) The Designated Agency Ethics Official and the Deputy Agency Ethics Official shall file statements with the Under Secretary.

* * * * *

49. In newly redesignated § 20.735–35(b)(2) it is proposed to remove the words "Assistants to the Secretary; Solicitor and Deputy Solicitors;" and add in their place, the words "Assistants to the Secretary; Inspector General; Solicitor and Deputy Solicitors;".

50. It is proposed that § 20.735–35 be amended by revising newly redesignated paragraphs (b)(4) and (b)(5) to read:

§ 20.735–35 How to file.

* * * * *

(b) * * *

(4) Covered employees in the Office of Inspector General (except for the Inspector General) shall file their statements with the Inspector General of the Deputy Ethics Counselor for the Office of Inspector General, as the Inspector General may direct.

(5) Covered employees in the Office of the Secretary and in Other Departmental Offices, except those employees mentioned in paragraphs (b)(1) through (b)(4) of this section shall file their statements with the Personnel Officer, Division of Personnel Services.

* * * * *

51. It is proposed that § 20.735–36 be amended by revising paragraph (b) introductory text to read:

§ 20.735–36 Certificates of disclaimer.

* * * * *

(b) Each employee covered by one or more of these restrictions shall sign a certificate of disclaimer upon entrance to or upon transfer to these bureaus or offices. Employees may also be required to periodically renew their certificate of disclaimer. The employee's signature will indicate that he or she:

* * * * *

52. It is proposed that § 20.735–37 be amended by revising paragraph (b)(1) to read:

§ 20.735–37 Review and analysis of statements.

* * * * *

(b) * * *

(1) Ensure that all necessary financial disclosure reports are filed in accordance with Department regulations.

* * * * *

53. It is proposed that § 20.735–37 be amended by revising paragraphs (c) and (e) to read:

* * * * *

(c) Each employee's annual statement shall be reviewed by the ethics counselor with whom it is filed to ensure that the employee is in compliance with these regulations. The ethics counselor may consult with the approriate Regional Solicitor, or the Associate Solicitor—General Law, in the conduct of the review.

* * * * *

(e) All DI–212 and DI–212A financial disclosure statements filed to satisfy the annual financial disclosure filing requirements shall be reviewed and certified by the bureau ethics counselor or his or her designee by July 31 of each year. With the exceptions noted in § 20.735–31(g)(1)(iv), all SF-278 financial disclosure reports filed to satisfy the annual financial disclosure requirements shall be reviewed and submitted to the Designated Agency Ethics Official by the first Monday in April of each year for certification or appropriate action.

54. It is proposed that § 20.735–43 be amended by revising paragraphs (a) and (c)(1) to read:

§ 20.735-43 Appeal procedures.

(a) *When and how to appeal.* An employee has the right to appeal an order for remedial action under § 20.735–40. In addition, an employee may appeal the decision of his or her bureau ethics counselor to require that employee to file a financial disclosure statement as provided under 43 CFR 20.735–30(b)(5) or 30 CFR 706.11. An employee shall have 30 days from the date of the remedial action order, or from the date on which he or she was notified of the filing requirement in 43 CFR 20.735–30(b)(5) or 30 CFR 706.11, to exercise this appeal right before any administrative action may be initiated. For appeals under this section the procedures described in 370 DM 771 may not be used in lieu of or in addition to those of this section. Each appeal shall be made in writing and shall contain:

(1) The basis for appeal,

(2) Facts supporting the basis, and

(3) The appellant's current duty station and telephone number.

* * * * *

(c) * * *

(1) Each appeal shall be considered by an Appeal Review Board consisting of a program Assistant Secretary selected by the Designated Agency Ethics Official, the Associate Solicitor—Division of General Law, and the Director or Deputy Director of the Office of Personnel. Assistant Secretaries may delegate authority to serve on the Review Board to a Deputy Assistant Secretary who has not been involved, and who has not advised or made a decision on the issue or on the order for remedial action. The Designated Agency Ethics Official shall serve as an alternate member of the Appeal Review Board in the event that an appeal case involves a member of the Appeal Review Board.

* * * * *

55. It is proposed that § 20.735–61 be amended by adding a new paragraph (d) to read:

§ 20.735–61 Post-employment restrictions.

* * * * *

(d) *Measurement of the two and one-year restriction periods.* (1) For 18 U.S.C. 207(b)(i), the statutory two-year period is measured from the date when the employee's responsibility in a particular area ends, not from the termination of Government service, unless the two occur simultaneously. The prohibition applies to all particular matters subject to such responsibility in the one-year period before termination of such responsibility.

(2) For 18 U.S.C. 207(c), the statutory one-year period is measured from the date when the individual's responsibility as a Senior Employee in a particular agency ends, not from the termination of Government service, unless the two occur simultaneously.

[FR Doc. 87–22862 Filed 10–5–87 8:45 am]

BILLING CODE 4310–RK–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[CC Docket No. 87–266; FCC 87–243]

Telephone Company; Cable Television Cross-Ownership Rules

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: The Commission adopted a Notice of Inquiry on the possibility of presenting to the Congress proposals for modification of the Communications Act and Commission's Rules governing the provision of video programming by telephone common carriers within their operating areas. One party has filed a motion for 30 additional days in which to file comments and reply comments. Support of that request was filed by seven parties in the form of a joint filing and by one other party. Another party wishes to place restrictions on any extension of time the Commission may grant.

DATES: The motion was granted in an Order released under delegated authority by the Deputy Chief (Operations), Common Carrier Bureau, on September 22, 1987. Therefore, the final date for filing comments has been extended to.November 2, 1987 and reply comments to December 2, 1987.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James F. Ferris, (202) 634–1830.

SUPPLEMENTARY INFORMATION: This is a summary of a Motion for Extension of Time and other related filings pertaining to the Commission's Notice of Inquiry (NOI) in CC Docket No. 87–266, released August 18, 1987. A summary of that NOI was published in the **Federal Register** on September 15, 1987 (52 FR 34818).

Summary of Motion for Extension of Time and Related Filings

The NOI required that comments filed by interested parties be received at the Commission on or before October 2, 1987. Reply comments could be filed no later than November 2, 1987. On September 4, Centel Corporation (Centel) filed a motion for a 30-day extension of the comment and reply comment dates. Centel states that the massive information requested by the Commission in this major proceeding will take substantial time to obtain from its numerous jurisdictions and to then collate into a coherent and comprehensive policy position. Subsequently, support of Centel's motion was filed by seven parties in a joint pleading, and further support was filed by the National Cable Television Association, Inc. The United States Telephone Association (USTA) recommends that any extension in this proceeding granted by the Commission carry certain limitations. By Order released September 22, 1987, the Commission grants Centel's motion and denies the recommendation of USTA. Accordingly, parties interested in the NOI now have until November 2, 1987 to file comments, and December 2, 1987 to file reply comments.

Gerald Vaughan,

Deputy Chief (Operations), Common Carrier Bureau, Federal Communications Commission.

[FR Doc. 87–23061 Filed 10–5–87; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-385, RM-5804]

Radio Broadcasting Services; West Lafayette, IN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Purdue University proposing the allotment of Channel *267A to West Lafayette, Indiana and its reservation for noncommercial use, as that community's second FM service.

DATES: Comments must be filed on or before November 19, 1987, and reply comments on or before December 4, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David E. Hilliard, Esq., Wiley, Rein & Fielding, 1776 K Street NW., Washington, DC 20006 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT: D. David Weston, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-385, adopted August 25, 1987, and released September 28, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-23060 Filed 10-5-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-71; RM-5677]

Radio Broadcasting Services; Hartford, VT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by Timothy Dodge, proposing the allotment of Channel 282A to Hartford, Vermont, as that community's first FM service, at the request of the petitioner. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-71, adopted September 4, 1987, and released September 30, 1987. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Mark N. Lipp,

Chief, Allocations Branch, Mass Media Bureau.

[FR Doc. 87-23065 Filed 10-5-87; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-384, RM-5903]

Radio Broadcasting Services; Hot Springs, VA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Koinonia Broadcasting Company, licensee of AM Station WWES, Hot Springs, Virginia, proposing the allotment of Channel 296A to Hot Springs, Virginia, as that community's first FM service.

DATES: Comments must be filed on or before November 19, 1987, and reply comments on or before December 4, 1987.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Don Werlinger, Champion Broadcasters, Inc., P.O. Box 1516, Burlington, NJ 08016 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 87-384, adopted August 25, 1987, and released September 28, 1987. The full test of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW, Suite 140, Washington, DC. 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1231 for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Mark N. Lipp,

Chief, Allocations Branch,

[FR Doc. 87-23059 Filed 10-5-87; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1150

[Ex Parte No. 392; (Sub-No. 1)]

Class Exemption for the Acquisition and Operation of Rail Lines Under 49 U.S.C. 10901

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed reopening and modification of final rules.

SUMMARY: The Commission seeks comments on whether and, if so, how the class exemption rules filed in 49 CFR Part 1150, Subpart D, should be modified. While the agency believes the rules have worked very well, there has been concern in a limited number of cases that the rules do not allow sufficient opportunity for public comment. Issues of special concern—for which new rules are being considered—are whether the 7-day notice period should be lengthened for some or all transactions and whether more detailed information should be required.

DATE: Comments are due by November 5, 1987.

ADDRESS: Send comments to Office of the Secretary, Case Control Branch, Room 1324, Interstate Commerce Commission Building, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275–7245. TDD for hearing impaired: (202) 275–1721.

SUPPLEMENTARY INFORMATION: The Commission has not proposed specific implementing rules. However, parties are here put on notice that, following comments, final rules may be adopted.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to Office of the Secretary, Room 2215, Interstate Commerce Commission Building, Washington, DC 20423, or call (202) 275–7428, assistance for the hearing impaired is available through TDD services (202) 275–1721.

This action will not significantly affect either the quality of the human environment or energy conservation. This modification should not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1150

Administrative practice and procedure, Railroads.

Authority: 49 U.S.C. 10321, 10505, and 10901; and 5 U.S.C. 553.

Decided: September 30, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87–23013 Filed 10–5–87; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 52, No. 193
Tuesday, October 6, 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

National Agricultural Statistics Service

Cattle Grazing Rates on Privately Owned Nonirrigated Land

Notice is hereby given that in response to data user requests, effective September 30, 1987, the National Agricultural Statistics Service (NASS) changed the publication date for cattle grazing rates on privately owned nonirrigated land.

The cattle grazing rates on privately owned nonirrigated land for 1986 and earlier years were published in the December 1986 issue of *Agricultural Prices*. The 1987 rates are published in the September 1987 issue of *Agricultural Prices* released September 30, 1987. The 1987 data will also be published in the December 1987 issue of *Agricultural Prices*.

For 1988 and succeeding years, NASS plans to publish the grazing rates in the July and December issues of *Agricultural Prices*.

For further information, contact Fred Thorp, Chief, Economic Statistics Branch, Estimates Division, NASS/USDA, Room 5912–S, Washington, DC 20250–2000; telephone (202) 447–3570.

Done at Washington, DC, this 1st day of October 1987.

Charles E. Caudill,

Administrator.

[FR Doc. 87–23020 Filed 10–5–87; 8:45 am]

BILLING CODE 3410–20–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis
Title: Benchmark Survey of Foreign Direct Investment in the United States
Form Number: Agency—BE–12; OMB—NA
Type of Request: New collection
Burden: 12,000 respondents; 120,000 reporting hours
Needs and Uses: This survey is needed to collect data on foreign investment in the U.S. to be used in the formulation of Government policy and will serve as a base from which balance of payments and financial and operating data collected in sample surveys can be expanded to universe estimates. Required for balance of payments, international investment, and gross national product accounts of the U.S.
Affected Public: Farms, businesses or other for-profit institutions, small business or organizations
Frequency: Quinquennially
Respondent's Obligation: Mandatory
OMB Desk Officer: John Griffen, 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to John Griffen, OMB Desk Officer, Room 3228, New Executive Office Building, Washington, DC 20503.

Dated: September 29, 1987.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 87–23035 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–CW–M

[Docket No. 3640–60]

Order Restoring Export Privileges; Hi-Tech Air Transport Corp., Respondent

The Order of July 14, 1986 (51 FR 26030, July 18, 1986) affirmed the June 12, 1986 Decision and Order that terminated the February 28, 1983 Temporary Denial Order (48 FR 10108, March 10, 1983). Nevertheless, one Related Person has still been denied U.S. export privileges pursuant to that Temporary Denial Order, in consequence of an August 3, 1984 Amendment (49 FR 31933, August 9, 1984). Those U.S. export privileges are hereby restored to: Hi-Tech Air Transport Corporation, 110 Standard Street, El Segundo, California.

This restoration of U.S. export privileges to Hi-Tech Air Transport Corporation is effective immediately, and this Order Restoring export privileges shall be published in the **Federal Register**.

Hugh J. Dolan,

Administrative Law Judge.

Date: September 29, 1987.

[FR Doc. 87–23094 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–BP–M

[Docket No. 4652–52]

Order Denying Temporary Denial Order; Nancy P. King, Respondent

Because each of the Principal Respondent's named in the Temporary Denial Order issued February 3, 1984 (49 FR 4958, February 9, 1984) have been deleted therefrom, that Temporary Denial Order is hereby terminated.

The single Related Person for whom U.S. export privileges are still being denied pursuant to that Temporary Denial Order hereby has these U.S. export privileges restored. That person is: Nancy P. King, 5122 Grandview Avenue, Yorba Linda, CA.

This termination of the February 3, 1984 Temporary Denial Order and this restoration of U.S. export privileges to Nancy P. King are effective immediately, and this Order terminating the Temporary Denial Order shall be published in the **Federal Register**.

Hugh J. Dolan,

Administrative Law Judge.

Date: September 29, 1987.

[FR Doc. 87–23095 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–BP–M

International Trade Administration

[A–549–601]

Amended Antidumping Duty Order; Malleable Cast Iron Pipe Fittings From Thailand

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: As a result of correcting a typographical error in the Department's antidumping duty order on malleable cast iron pipe fittings from Thailand (52 FR 31440, August 20, 1987), we are hereby amending the antidumping duty order and correcting the antidumping duty rate from 2.75 percent to 1.70 percent, the rate of our final determination (52 FR 29282, July 7, 1987). **Federal Register.**

EFFECTIVE DATE: October 6, 1987.

FOR FURTHER INFORMATION CONTACT: Charles Wilson (202) 377–5288 or James Riggs (202) 377–1766, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are malleable cast iron pipe fittings advanced in condition by operations or processes subsequent to the casting process other than with grooves, or not advanced, of cast iron other than alloy cast iron, as provided for in items 601.7000 and 610.7400 of the *Tariff Schedules of the United States Annotated (TSUSA).*

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on February 5, 1987, the Department made its preliminary determination that there was reason to believe or suspect that pipe fittings from Thailand were being sold at less than fair value (52 FR 4637, February 13, 1987). On June 29, 1987, the Department made its final determination that these imports were being sold at less than fair value (52 FR 29282, July 7, 1987) and published a rate of 1.70 percent.

On August 12, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports materially injure a United States industry.

On August 20, the Department published an antidumping duty order with respect to pipe fittings from Thailand (52 FR 31440) which erroneously reported a weighted-average antidumping duty margin of 2.75 percent instead of the 1.70 percent established in the final determination.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margin of 1.70 percent.

This determination constitutes an antidumping duty order with respect to pipe fittings from Thailand, pursuant to section 736 of the Act (19 U.S.C. 1673e) and 19 CFR 353.48. We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B–099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and § 353.48 of the Commerce Regulations (19 CFR 353.48).

October 1, 1987.

Joseph A. Spetrini,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 87–23081 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–DS–M

[A–538–604]

Antidumping Duty Order; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan

AGENCY: International Trade Administration, Import Administration, Commerce.

ACTION: Notice.

SUMMARY: In separate investigations concerning tapered roller bearings and parts thereof, finished and unfinished (tapered roller bearings), from Japan, the United States Department of Commerce (the Department) and the United States International Trade Commission (the ITC) have determined that tapered roller bearings from Japan are being sold at less than fair value and that sales of tapered roller bearings from Japan are materially injuring a United States industry.

Suspension of liquidation will begin for all unliquidated entries, or warehouse withdrawals, for consumption of tapered roller bearings from Japan made on or after March 27, 1987, the date on which the Department published its preliminary determination notice in the **Federal Register.** These entries will be liable for the possible assessment of antidumping duties. Further, a cash deposit of estimated antidumping duties must be made on all such entries, and withdrawals from warehouse, for consumption on or after the date of publication of this antidumping duty order in the **Federal Register.**

EFFECTIVE DATE: October 6, 1987.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp (202) 377–1769, Office of Investigations, International Trade Administration, United States Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The products covered by this investigation are tapered roller bearings and parts thereof, currently classified under *Tariff Schedules of the United States* (TSUS) item numbers 680.30 and 680.39; flange, take-up cartridge, and hanger units incorporating tapered roller bearings, currently classified under TSUS item number 681.10; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use, and currently classified under TSUS item 692.32 or elsewhere in the TSUS. Products subject to the outstanding antidumping duty order covering certain tapered roller bearings from Japan (T.D. 76–227, 41 FR 34974) were not included within the scope of this investigation. This order does, however, include all tapered roller bearings and parts thereof, as described above, that are manufactured by NTN.

If the Department's recission of its revocation of the above cited antidumping duty order with respect to NTN is affirmed by final judicial order, this order would not apply to any bearings manufactured by NTN that would be covered by the outstanding antidumping duty order. This issue is being litigated in the Court of International Trade in *The Timken Co. v. United States,* Court No. 82–6–00890.

In accordance with section 733 of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b), on March 23, 1987, the Department made its preliminary determination that there was reason to believe or suspect that tapered roller bearings from Japan were being sold at less than fair value (52 FR 9905, March 27, 1987). On August 10, 1987, the Department made its final determination that these imports were being sold at less than fair value (52 FR 30700, August 17, 1987).

On September 23, 1987, in accordance with section 735(d) of the Act (19 U.S.C. 1673d(d)), the ITC notified the Department that such imports materially injure a United States industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department directs United States Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of tapered roller bearings from Japan not covered by antidumping duty order T.D.

76-227. These antidumping duties will be assessed on all unliquidated entries of tapered roller bearings entered, or withdrawn from warehouse, for consumption on or after March 27, 1987, the date on which the Department published its preliminary determination.

On and after the date of publication of this notice, United States Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as follows:

Manufacturers/producers/exporters	Average margin percentage
Koyo Seiko Co., Ltd.	70.44
NTN Toyo Bearing Co., Ltd.	47.05
All Others	47.57

This determination constitutes an antidumping duty order with respect to tapered roller bearings from Japan, pursuant to section 736 of the Act (19 U.S.C. 1673e) and 19 CFR 353.48. We have deleted from the Commerce Regulations, Annex I of 19 CFR Part 353, which listed antidumping duty findings and orders currently in effect. Instead, interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of the updated list of orders currently in effect.

This notice is published in accordance with section 736 of the Act (19 U.S.C. 1673e) and section 353.48 of the Commerce Regulations (19 CFR 353.48).

September 30, 1987.

Gilbert B. Kaplan,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 87-23082 Filed 10-5-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; U.S. Department of Commerce, NOAA, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 86-280. Applicant: U.S. Department of Commerce, NOAA, La Jolla, CA 92038. Instrument: Pitch-roll Sensor, Model PIRO-120. Manufacturer: Datawell B.V., The Netherlands. Intended Use: See notice at 51 FR 29149, August 14, 1986. Reasons for this Decision: The foreign article is an accessory providing pitch and roll information into a Computer Automated Measurement and Control Center.

Docket No.: 87-011R. Applicant: VA Medical Center, Baltimore, MD 21218. Instrument: Electron Microscope, Model JEM-1200 EX/SEG.

Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 52 FR 7917, March 13, 1987. Reasons for this Decision: The foreign instrument provides a point-to-point resolution of 0.3 nanometers and an accelerating potential up to 120 kV.

Docket No.: 87-039R. Applicant: Colorado State University, Fort Collins, CO 80523. Instrument: Stopped-Flow UV-VIS Spectrophotometer, Model SF-41S/SU-40A. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Intended Use: See notice at 52 FR 12220, April 15, 1987. Reasons for this Decision: The foreign instrument provides a temperature range of −40°C through +50°C and two cell pathlengths (2 and 10mm).

Docket No.: 87-072. Applicant: University of Colorado, Boulder, CO 80309. Instrument: Ultra-High Vacuum Freeze-Etching Unit, Model BAF 500-K. Manufacturer: Balzers Union, Liechtenstein. Intended Use: See notice at 52 FR 2126, January 20, 1987. Reasons for this Decision: The foreign article is capable of an ultimate vacuum of $5x10^{-10}$ mbar and a temperature range from ambient to −265°C.

Docket No.: 87-086. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Gas Isotope Ratio Mass Spectrometer, Model 251 EM with Accessories. Manufacturer: Finnigan MAT, West Germany.

Intended Use: See notice at 52 FR 5325, February 20, 1987. Reasons for this Decision: The foreign instrument provides a multi-element/multiple Faraday collector system, sample size capabity of 0.03 micro-mole and a precision of 0.002°/oo.

Docket No.: 87-089. Applicant: University of Rochester, Rochester, NY 14627. Instrument: Pulfrich Refractometer, Model PR2. Manufacturer: Jenoptik Jena GmbH, East Germany. Intended Use: See notice at 52 FR 5810, February 26, 1987. Reasons for this Decision: The foreign instrument provides a measurement sensitivity of $5x10^{-6}$ per 0.05'.

Docket No.: 87-096.Applicant: Department of the Interior, Menlo Park, CA 95025. Instrument: Borehole Tensor Strainmeter. Manufacturer: University of Queensland, Australia. Intended Use: See notice at 52 FR 7917, March 13, 1987. Reasons for this Decision: The foreign instrument is capable of strain measurements at depths to 300m and can resolve the components of plain strain at a sensitivity of 0.3 nanostrains while simultaneously providing tile at 0.3 nanoradius.

Docket No.: 87-117. Applicant: The Johns Hopkins University, Baltimore, MD 21218. Instrument: Electron Probe X-ray Microanalyzer, Model JXA-8600/3. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 52 FR 8634, March 19, 1987. Reasons for this Decision: The foreign instrument provides the capability of x-ray analysis of material surfaces and scanning electron microscope (SEM) with a SEM spatial resolution of 6.0 nanometers.

Docket No.: 87-130. Applicant: Purdue University, West Lafayette, IN 47907. Instrument: FTI Spectrophotometer, Model DA3.26. Manufacturer: Bomem, Inc., Canada. Intended Use: See notice at 52 FR 12221, April 15, 1987. Reasons for This Decision: The foreign instrument provides an unapodized resolution of 0.002 cm^{-1}.

Docket No.: 87-167. Applicant: Miami University, Oxford, OH 45056. Instrument: Portable Ultraviolet Radiometer, Model UV 103. Manufacturer: Macam Photometrics, United Kingdom. Intended Use: See notice at 52 FR 18262, May 14, 1987. Reasons for This Decision: The foreign article can be used for measurement of ultraviolet radiation above and below water surface.

Docket No.: 87-170. Applicant: University of Chicago, Chicago, IL 60637. Instrument: FTI Spectrophotometer, Model DA2. Manufacturer: Bomem, Inc., Canada. Intended Use: See notice at 52 FR 18262, May 14, 1987. Reasons for This Decision: The foreign instrument provides an unapodized resolution of 0.013 cm^{-1}.

Docket No.: 87-172. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Spectroscopic Ellipsometer with Optical Multichannel Detection, Model ES2G. Manufacturer: SOPRA, France. Intended Use: See notice at 52 FR 18262, May 14, 1987. Reasons for This Decision: The foreign instrument provides an optical multi-channel analyzer for simultaneous measurement of wavelengths over the UV-visible and IR spectral range.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign

instruments described above is pertinent to each applicant's intended purposes.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-23086 Filed 10-5-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; U.S. Department of Commerce, NOAA, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 85-274R. Applicant: National Oceanic and Atmospheric Administration, Miami, FL 33149. Instrument: Mass Spectrometer System, Model MS 80 with Accessories. Manufacturer: Kratos Analytical, United Kingdom. Intended Use: See notice at 50 FR 36128, September 5, 1985. Reasons for This Decision: The foreign instrument provides (1) scan speeds to 0.1 second per decade, (2) metastable ion acquisition and processing and (3) chromatograph-driving software. Advice Submitted by: National Institutes of Health, June 4, 1987.

Docket No.: 86-135R. Applicant: Rutgers University, Piscataway, NJ 08854. Instrument: GC/Mass Spectrometer/Data System, Model 8230C. Manufacturer: Finnigan Corporation, West Germany. Intended Use: See notice at 51 FR 9500, March 19, 1986. Reasons for This Decision: The foreign instrument provides (1) resolution to 50,000, (2) rapid switching to positive/negative ion mode, (3) linked scanning to monitor neutral ion loss and (4) FAB and HPLC ion sources. Advice Submitted by: National Institutes of Health, June 4, 1987.

Docket No.: 86-251. Applicant: North Carolina State University, Raleigh, NC 27695. Instrument: Optical Furnace. Manufacturer: Leisk Engineering Ltd., United Kingdom. Intended Use: See notice at 51 FR 33282, September 19, 1986. Reasons for This Decision: The foreign article permits the use of highly toxic and volatile materials at elevated temperatures (1400°C). Advice Submitted by: Naval Research Laboratory, January 30, 1987.

Docket No.: 86-319R. Applicant: Yale University School of Medicine, New Haven, CT 06510. Instrument: Inverted Microscope with Attachments. Manufacturer: Zeiss Optical, West Germany. Intended Use: See notice at 51 FR 36738, October 15, 1986. Reasons for This Decision: The foreign instrument provides differential interference contrast optics and minimal electrical interference. Advice Submitted by: National Institutes of Health, June 4, 1987.

Docket No.: 87-073. Applicant: University of Alabama at Birmingham, Birmingham, AL 35294. Instrument: Motorized In Vitro Perfusion System. Manufacturer: Luigs & Neumann, West Germany. Intended Use: See notice at 52 FR 2126, January 20, 1987. Reasons for This Decision: The foreign instrument provides motorized advancement of four independent concentric pipettes for resistance and intracellular electrical measurements. Advice Submitted by: National Institutes of Health, May 8, 1987.

Docket No.: 87-076. Applicant: Boston University, Boston, MA 02215. Instrument: Three-Dimensional Digitizing System, Model WATSMART. Manufacturer: Northern Digital, Inc., Canada. Intended Use: See 52 FR 2250, January 21, 1987. Reasons for This Decision: The foreign instrument provides 3-dimensional digital recordings for motion analysis with a sampling rate up to 8000 markers per second per camera. Advice Submitted by: National Institutes of Health, May 8, 1987.

Docket No.: 87-090. Applicant: California State University, Long Beach, CA 90840. Instrument: Inductively Coupled Plasma/Mass Spectrometer, Model PlasmaQuad. Manufacturer: VG Isotopes Ltd., United Kingdom. Intended Use: See 52 FR 5810, February 26, 1987. Reasons for This Decision: The foreign instrument provides a detection limit to 0.1 nanogram per milliliter and an isotope ratio precision of 0.5 percent for silver. Advice Submitted by: National Institutes of Health, June 4, 1987.

Docket No.: 87-100. Applicant: Thomas Jefferson University, Philadelphia, PA 19107. Instrument: Genetic Analyzer, Model Cytoscan 110. Manufacturer: Shandon Southern Products, United Kingdom. Intended Use: See notice at 52 FR 7918, March 13, 1987. Reasons for This Decision: The foreign instrument can search microscopic slides to identify chromosomal metaphase and stores this information for electronic analysis. Advice Submitted by: National Institutes of Health, June 4, 1987.

Docket No.: 87-106. Applicant: Woods Hole Oceanographic Institution, Woods Hole, MA 02543. Instrument: Deep-Towed Pressure Compensated Boomer Seismic System. Manufacturer: Huntec 70 Ltd., Canada. Intended Use: See notice at 52 FR 7917, March 13, 1987. Reasons for This Decision: The foreign instrument provides (1) an acoustic projector with a pressure compensated boomer to produce an output pulse with a broad frequency bandwith (1400 to 5200 hertz between −3dB points) and (2) deep towing capability. Advice Submitted by: National Oceanic and Atmospheric Administration, June 23, 1987.

Docket No.: 87-107. Applicant: Goucher College, Towson, MD 21204. Instrument: Circular Dichroism Spectropolarimeter, Model J-600A with Accessories. Manufacturer: JASCO International Co. Ltd., Japan. Intended Use: See notice at 52 FR 7917. Reasons for This Decision: The foreign instrument provides rapid kinetics capabilities with circular dichroism measurements using a stopped-flow attachment. Advice Submitted by: National Institutes of Health, June 4, 1987.

Docket No.: 87-111. Applicant: University of Houston, Houston, TX 77004. Instrument: Mass Spectrometer System, Model 70SQ/11-250J. Manufacturer: VG Instruments Inc., United Kingdom. Intended Use: See notice at 52 FR 8495, March 18, 1987. Reasons for this decision: The foreign instrument provides (1) resolution to 40,000, (2) mass range to 4000 at 4kV, (3) tandem (MS/MS) operation and (4) FAB and HPLC ion sources. Advice Submitted by: National Institutes of Health, June 4, 1987.

Docket No.: 87-152. Applicant: University of Alaska, Fairbanks, AK 99775-0800. Instrument: Magnetic Susceptibility/Temperature System, Model M.S.2. Manufacturer: Bartington Instruments, United Kingdom. Intended Use: See notice at 52 FR 15527, April 29, 1987. Reasons For This Decision: The foreign instrument provides the capability of measuring magnetic susceptibility over a temperature range of −200 °C to +900 °C. Advice Submitted by: National Bureau of Standards, May 27, 1987.

Docket No.: 87-161. Applicant: Good Samaritan Hospital and Medical Center, Portland, OR 97209. Instrument: Micromanipulator, Model PM20H. Manufacturer: Biomedizinische Instrumente, West Germany. Intended Use: See notice at 52 FR 15528, April 29, 1987. Reasons For This Decision: The foreign instrument provides

piezoelectric step velocities greater than 4.0 micrometers per millisecond, lateral stabilization, and direct mounting on a microscope. Advice Submitted by: National Institutes of Health, July 9, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The National Institutes of Health, National Bureau of Standards, National Oceanic and Atmospheric Administration, and Naval Research Laboratory advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-23085 Filed 10-5-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; U.S. Department of Energy, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-133. Applicant: U.S. Department of Energy, Argonne, IL 60439. Instrument: Oscilloscope, Model #7250. Manufacturer: Intertecnique, France. Intended Use: See notice at 52 FR 12221, April 15, 1987. Reasons for this Decision: The foreign instrument can digitize and display transient waveforms with a risetime down to 50 picoseconds. Advice Submitted By: National Institutes of Health, June 25, 1987. Instrument Ordered: January 9, 1987.

Docket No.: 86-297R. Applicant: Northwestern University, Evanston, IL 60201. Instrument: Circular Dichroism Spectropolarimeter, Model J-600. Manufacturer: Jasco, Japan. Intended Use: See notice at 51 FR 29954, August 21, 1986. Reasons for this Decision: The foreign instrument provides a wavelength scanning range to 1000 nanometers. Advice Submitted by: National Institutes of Health, May 8, 1987. Instrument Ordered: June 18, 1986.

Docket No.: 86-312R. Applicant: Harbor Branch Foundation, Inc., Fort Pierce, FL 33450. Instrument: Remotely Operated Vehicle System, HYSUB-40. Manufacturer: I.S.E. Gulf Inc., Canada. Intended Use: See notice at 51 FR 34679, September 30, 1986. Reasons for this Decision: The foreign instrument employs fiber-optic telemetry to provide high quality video signals (300 lines resolution; 35 lux sensitivity; 41 dB signal/noise ratio; and 525/60 H_z scan), and to handle several cameras simultaneously. Advice Submitted by: National Oceanic and Atmospheric Administration. Instrument Ordered: May 2, 1986.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, was being manufactured in the United States at the time the instrument was ordered.

Reasons: The National Oceanic and Atmospheric Administration and National Institutes of Health advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to any of the foreign instruments for the applicant's intended use being manufactured at the time the foreign instrument was ordered.

We know of no other domestic instrument or apparatus of equivalent scientific value to the any of the foreign instruments being manufactured at the time it was ordered.

Leonard E. Mallus,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 87-23083 Filed 10-5-87; 8:45 am]

BILLING CODE 3510-DS-M

Decision on Application for Duty-Free Entry of Scientific Instrument; Midwest Stone Institute

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 85-281R. Applicant: Midwest Stone Institute, St. Louis, MO 63110. Instrument: Extracorporeal Shock Wave Lithotripter (ESWL). Manufacturer: Dornier System GmbH, West Germany. Intended Use: See notice at 52 FR 27040, July 17, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Reasons: There is no domestic manufacturer of lithotripters or of comparable devices capable of noninvasively pulverizing kidney stones.

Our consultants in the National Institutes of Health have advised us with respect to this application that there are no known domestic instruments now available which are equivalent to the Dornier ESWL.

We know of no equivalent instrument that is being manufactured in the United States which is of equivalent scientific value to the foreign instrument for the purposes for which the instrument is intended to be used. (See also 52 FR 22512, June 12, 1987.)

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-23084 Filed 10-5-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Articles; Shadyside Hospital, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 AM and 5:00 PM in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Decision: Denied. Applicants have failed to establish that domestic instruments of equivalent scientific value to the foreign instruments for the intended purposes are not available.

Reasons: Section 301.5(e) (4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for each of the listed dockets.

Docket No.: 87-022. Applicant: Shadyside Hospital, Pittsburgh, PA 15232. Instrument: Electron Microscope, Model CM 10 with Accessories. Manufacturer: N.V. Philips, The Netherlands. Denial Without Prejudice to Resubmission: February 5, 1987.

Docket No.: 87–078. Applicant: National Oceanic & Atmospheric Administration, Boulder, CO 80303. Instrument: Ionosonde-Digital Unit, Model DBD–43. Manufacturer: KEL Aerospace, Australia. Denial Without Prejudice to Resubmission: February 20, 1987.

Docket No.: 87–006. Applicant: St. Jude Children's Research Hospital, Memphis, TN 38101. Instrument: Stopped-flow Apparatus. Manufacturer: Hi-Tech Scientific Limited, United Kingdom. Denial Without Prejudice to Resubmission: May 5, 1987.

Docket No.: 87–014. Applicant: University of Hawaii, Honolulu, HI 96822. Instrument: Rapid Kinetics Accessory for Spectrophotometers, Model SFA–11. Manufacturer: Hi-Tech Ltd., United Kingdom. Denial Without Prejudice to Resubmission: May 5, 1987.

Docket No.: 87–024. Applicant: Albion College, Albion, MI 49224. Instrument: Rapid Kinetics Accessory of UV/Vis Spectrophotometers, Model SFA–11. Manufacturer: Hi-Tech Scientific Limited, United Kingdom. Denial Without Prejudice to Resubmission: May 5, 1987.

Docket No.: 87–055. Applicant: Bates College, Lewiston, ME 04240. Instrument: Rapid Kinetics Accessory of UV/Vis Spectrophotometers, Model SFA–11. Manufacturer: Hi-Tech Scientific Limited, United Kingdom. Denial Without Prejudice to Resubmission: May 5, 1987.

Frank W. Creel,

Statutory Import Programs Staff.

[FR Doc. 87–23087 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–DS–M

Applications for Duty-Free Entry of Scientific Instruments; Shriners Hospital for Crippled Children, et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87–248. Applicant: Shriners Hospital for Crippled Children, Shriners Burn Institue, Boston Unit, 51 Blossom Street, Boston, MA 02114. Instrument: Mass Spectrometer, SIRA 10. Manufacturer: VG Isogas, United Kingdom. Intended Use: The article will be used to further: (1) Studies of energy substrate, especially glucose and fatty acid metabolism to elucidate the responses of the metabolism of these substrates to burn injury in animals and human patients; (2) studies of nitrogen and amino acid metabolism in healthy adults and in burn patients; (3) methods for measuring the turnover of skin protein, collagen, and factors that modulate collagen turnover. Application Received by Commissioner of Customs: July 9, 1987.

Docket No.: 87–278. Applicant: George Mason University, Purchasing Office, 4400 University Drive, Fairfax, VA 22030. Instrument: Rapid Kinetics Accessory for UV/Vis Specrophotometer, Model SFA–11. Manufacturer: Hi-Tech Scientific, United Kingdom. Intended Use: The instrument is an accessory for existing uv-visible spectrophotometers used in undergraduate chemistry instructional laboratory classes, Chem 445, Inorganic Preparations and Techniques; Chem 463–464, Biochemistry Laboratory; Chem 336–337, Physical Chemistry Laboratory; Chem 451–452, Undergraduate Research. The instrument will be used for the rapid mixing of solutions in a spectrophotometric cell, so that the progress of rapid reactions can be monitored, particularly when used in conjunction with a diode-array spectrophotometer. Application Received by Commissioner of Customs: August 26, 1987.

Docket No.: 87–279. Applicant: University of Washington, Nuclear Physics Laboratory, Seattle, WA 98195. Instrument: Emittance Monitor. Manufacturer: Danfysik A/S, Denmark. Intended Use: The instrument will be used to measure the emittance of the beams of particles accelerated by the University's accelerator. Knowledge of the emittance will aid in troubleshooting the accelerator and ascertaining that the beam quality meets specifications for use in nuclear experiments. Application Received by Commissioner of Customs: September 8, 1987.

Docket No.: 87–280. Applicant: The Regents of the University of California, Material Management Department, Riverside, CA 92521. Instrument: Electron Microscope, Model EM 10CA/CR/C. Manufacturer: Carl Zeiss, West Germany. Intended Use: The instrument will be used in the following research programs:

A. Proteins involved in force transmission at cell membranes.

B. Use of thin protein sections in studies of crustacean and mammalian reproductive biology.

C. Post-translational modification, storage and secretion of prolactin.

D. Cellular interactions influencing B cell differentiation.

E. Localization of T cell adhesion proteins by immunoelectron microscopy.

F. Controls of protein synthesis in early development.

G. Excitation-contraction coupling in the heart.

Application Received by Commissioner of Customs: September 4, 1987.

Docket No.: 87–281. Applicant: University of Pennsylvania, Biochemistry/Biophysics Department, D501 Richards Building/6089, Philadelphia, PA 19104. Instrument: Room Temperature Bore Cargo Magnet System. Manufacturer: Magnex Scientific, Ltd., United Kingdom. Intended Use: The instrument will be used for investigations of animal models to evaluate the effect of various strengths of magnetic field, 0.5 T, 1 T, 2 T, 3 T, 4 T and 5 T on metabolic and behavioral changes. The objective of this research is to investigate the effect of high magnetic fields on intact living systems. In addition, the instrument will be used in the course Biophysics 601 to explain the theory and use of magnet systems and electromagnetic effects. Application Received by Commissioner of Customs: September 8, 1987.

Docket No.: 87–282. Applicant: Michigan State University, Crop and Soil Sciences Department, 540–B Plant and Soil Science Building, East Lansing, MI 48824–1325. Instrument: CN Analyzer-Isotope Ratio Mass Spectrometer, TRACERMASS. Manufacturer: Europa Scientific Ltd., United Kingdom. Intended Use: The instrument will be used to service the stable isotope analysis requirements of studies in the pathways, mechanisms and kinetics of carbon and nitrogen transformations in various biological systems (14 and 15N and 12 and 13). Application Received by Commission of Customs: September 8, 1987.

Docket No.: 87–284. Applicant: Naval Hospital San Diego, Park Boulevard, San Diego, CA 92134–5000. Instrument: Electron Microscope with Integrated Imaging Spectrometer CEM 902. Manufacturer: Carl Zeiss, West Germany. Intended Use: The instrument is intended to be used for the advanced high magnification ultrastructural studies and elemental analysis of biological tissues. The primary mission

is to support medical research on primarily non-human tissues. Application Received by Commissioner of Customs: September 8, 1987.

Docket No.: 87–285. Applicant: St. Joseph's Hospital, 3301 W. Buffalo Ave., Tampa, FL 33607. Instrument: Electron Microscope, H–300. Manufacturer: Hitachi Scientific Instruments, Japan. Intended Use: The instrument will be used for the study of the abnormality of cellular structure. Tumor cells will be investigated for cancer classification and interpretation of pathological tissue diagnosis. In addition, the instrument will be used as a training tool for medical students in their pathology residency and also for surgical diagnosis. Application Received by Commissioner of Customs: September 8, 1987.

Docket No.: 87–286 Applicant: Georgia Institute of Technology, School of Civil Engineering, Atlanta, GA 30332. Instrument: GDS Stress Path Triaxial Testing System. Manufacturer: GDS Instruments, Inc., United Kingdom. Intended Use: Studies of soil, crushed stone aggregates, asphalt concrete and gravels to determine the effect of different stress paths (i.e., combinations of axial and lateral pressure during the test) on the physical properties of a wide variety of soils and aggregates. The instrument will also be used in the course CE (Civil Engineering) 6172, Soil Testing to give graduate level students a firm understanding of the state-of-the-art methods for determining physical properties of soils. Application Received by Commissioner of Customs: September 8, 1987.

Docket No.: 87–288. Applicant: University of Alabama at Birmingham, University Station, Birmingham, AL 35294. Instrument: Nuclear Magnetic Resonance Spectrometer System, Biospec 4.2/400. Manufacturer: Bruker, West Germany. Intended Use: Studies of the living heart in both a clinical and experimental environment to obtain more noninvasive and nondestructive information on cardiovascular disease processes. The primary experiments will involve NMR multi-nuclear spectroscopy studies of cardiac metabolism in acute and chronic stages of cardiovascular diseases. Application Received by Commissioner of Customs: September 8, 1987.

Docket No.: 87–290. Applicant: Rutgers University, Procurement and Contracting, P.O. Box 1089, Piscataway, NJ 08854. Instrument: Dilution Refrigerator. Manufacturer: Oxford Instruments, United Kingdom. Intended Use: The instrument will be used in the research project Experimental Study of Quantum Chaos and Magnetic Solidification in a 2-dimensional Electron System which involves studies of microwave liberation of electrons bound to the liquid helium surface and studies of the magnetically induced Wigner transition in a 2–D electron system. Application Received by Commissioner of Customs: September 8, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–23088 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–DS–M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; The University of Oklahoma, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87–010R. Applicant: The University of Oklahoma, Norman, OK 73019. Instrument: Mass Spectrometer, Model Delta E. Manufacturer: Finnigan MAT, West Germany. Intended Use: See notice at 52 FR 10395, April 1, 1987. Reasons for this Decision: The foreign instrument provides guaranteed internal precision of 0.01% for 10.0 microliter samples (STP) of carbon dioxide. Advice Submitted By: National Bureau of Standards, May 6, 1987.

Docket No.: 87–053. Applicant: University of Pennsylvania, Philadelphia, PA 19104. Instrument: 3-Dimensional Hydraulic Micromanipulator, Model MO–103M–R. Manufacturer: Narishige Scientific Instrument Laboratory, Japan. Intended Use: See notice at 51 FR 45792, December 22, 1986. Reason for this Decision: The foreign instrument provides precise and smooth movements in increments of 2.0 micrometers on any of three axes with a singly controlled variable-ratio hydraulic mechanism. Advice Submitted By: National Institutes of Health, April 9, 1987.

Docket No.: 87–063. Applicant: University of California, Berkeley, CA 94720. Instrument: Filter Photometer (Dual Wavelength), Model ZFP–22. Manufacturer: Sigma Instrumente, West Germany. Intended Use: See notice at 52 FR 1648, January 15, 1987. Reasons for this Decision: The foreign instrument provides different wavelength filtering capabilities at 336 and 405 nanometers. Advice Submitted By: National Institutes of Health, April 23, 1987.

Docket No.: 87–065. Applicant: University of California, Berkeley, CA 94720. Instrument: Cell Analyzer, Model DMIPS. Manufacturer: British Columbia Cancer Research Institute, Canada. Intended Use: See notice at 52 FR 1648, January 15, 1987. Reasons for this Decision: The foreign instrument provides periodic measurements of living cell characteristics in a prescribed region of a culture with a resolution of 1.0 micrometer and a scan rate of 1.0 square centimeter per minute. Advice Submitted By: National Institutes of Health, April 23, 1987.

Docket No.: 87–081. Applicant: University of Florida, Gainesville, FL 32611. Instrument: Precision Isotope Ratio Mass Spectrometer, Model PRISM. Manufacturer: VG Isogas Ltd., United Kingdom. Intended Use: See notice at 52 FR 4164, February 10, 1987. Reasons for this Decision: The foreign instrument can automatically treat small (milligram) samples of carbonate for direct introduction of carbon dioxide to the spectrometer inlet. Advice Submitted By: National Bureau of Standards, March 17, 1987.

Docket No.: 87–084. Applicant: University of Hawaii, Kaneohe, HI 96744. Instrument: Ultrasonic Transmitters for Monitoring Animal Movements, Model V3P–XX. Manufacturer: VEMCO, Canada. Intended Use: See notice at 52 FR 4164, February 10, 1987. Reasons for this Decision: The foreign instrument provides underwater acoustic telemetry of movement patterns from sensors attached to research animals. Advice Submitted By: National Oceanic and Atmospheric Administration, March 30, 1987.

Docket No.: 87–087. Applicant: The Pennsylvania State University, University Park, PA 16802. Instrument: Materials Preparation System for Top Seeded Flux Growth, Model MCGS3. Manufacturer: Crystalox Ltd., United Kingdom. Intended Use: See notice at 52 FR 5326, February 20, 1987. Reasons for this Decision: The foreign instrument provides an angular resolution of 10 000 steps per resolution for precise translation of crystal seed and slow growth rates. Advice Submitted By: Naval Research Laboratory, March 26, 1987.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is

intended to be used, is being manufactured in the United States. The National Institutes of Health, National Oceanic and Atmospheric Administration, National Research Laboratory and National Bureau of Standards advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-23089 Filed 10-5-87; 8:45 am]

BILLING CODE 3510-DS-M

Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments; Wright State University, et al.

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket No.: 87-185. Applicant: Wright State University, Dayton, OH 45435. Instrument: Toroidal electrostatic analyzer. Manufacturer: High Voltage Engineering, the Netherlands. Intended Use: See Notice at 52 FR 27040, July 17, 1987. Reasons for this Decision: The foreign article provides for simultaneous detection of energy and angular distribution over a 30° angle in the energy range between 50 and 350 keV.

Docket No.: 87-186. Applicant: Virginia Polytechnic and State University, Blacksburg, VA 24061. Instrument: Surface analysis System for X-ray Photoelectron Spectroscopy, Model LHS-12. Manufacturer: Leybold-Heraeus Vacuum Products, West Germany. Intended Use: See notice at 52 FR 27040, July 17, 1987. Reasons for this Decision: The foreign article provides a high pressure reactor for treating samples up to a pressure of 10 bar and a hot/cold sample probe with a temperature range from −196° C to 800°C.

Docket No.: 87-187. Applicant: University of Tennessee, Knoxville, TN 37996-1410. Instrument: Electron Microprobe. Manufacturer: Cameca Instruments Inc., France. Intended Use: See notice at 52 FR 27041, July 17, 1987. Reasons for this Decision: The foreign instrument is capable of simultaneous analysis of EDS and WOS signals and permits real time display of a spectral acquisition.

Docket No.: 87-189. Applicant: Washington State University, Pullman, WA 99164-4630. Instrument: High Pressure Stopped Flow Spectrometer. Manufacturer: Hi-Tech Scientific Ltd., United Kingdom. Intended Use: See notice at 52 FR 27041, July 17, 1987. Reasons for this Decision: The foreign article provides a rapid mixing time and operation to 2000 atmospheres.

Docket No.: 87-190. Applicant: University of Montana, Missoula, MT 59812. Instrument: Magnetic Susceptibility Meter System, Model M.S.2. Manufacturer: Bartington Instruments, United Kingdom. Intended Use: See notice at 52 FR 27041, July 17, 1987. Reasons for this Decision: The foreign article is capable of providing susceptibility measurements over a temperature range −200°C to +900°C.

Docket No.: 87-196. Applicant: University of California, Santa Barbara, CA 93106. Instrument: FTI Spectrometer, Model DA3. Manufacturer: Bomem, Canada. Intended Use: See notice at 52 FR 27038, July 17, 1987. Reasons for this Decision: The foreign article provides an unapodized resolution of $0.013cm^{-1}$.

Docket No.: 87-203. Applicant: Indiana University, Bloomington, IN 47042. Instrument: Surface Analysis System, Model LHS-12. Manufacturer: Leybold-Heraeus, West Germany. Intended Use: See notice at 52 FR 27039, July 17, 1987. Reasons for this Decision: The foreign article provides combined UHV surface analytical chambers with a microreactor capable of a high pressure (>20 bar) for rapid transient measurements while maintaining constant sample temperature between −170°C to 1400°C.

Comments: None received.

Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as each is intended to be used, is being manufactured in the United States. The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87-23090 Filed 10-5-87; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Minority Business Development Center Program Applications; New York

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 three (3) year period, subject to available funds. The cost of performance for the first *twelve* months is estimated at *$260,000* for the project performance of *February 1, 1988 to January 31, 1989*. The MBDC will operate in the *New York City (Manhattan)* Standard Metropolitan Statistical Area (SMSA). The first year cost for the MBDC will consist of *$260,000* in Federal funds and a minimum of *$45,882* in Non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit 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 three (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 an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

CLOSING DATE: The closing date for applications is *November 6, 1987.* Applications must be postmarked on or before *November 6, 1987.*

ADDRESS: New York Regional Office, Minority Business Development Agency, Jacob K. Javits Federal Building, Room 3720, New York, New York 10278, (212) 264–3262.

FOR FURTHER INFORMATION CONTACT: Gina A. Sanchez, Regional Director, New York Regional Office at (212) 264–3262.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information copies of application kits and applicable regulations can be obtained at the above address.

Date: September 30, 1987.

Gina A. Snachez,

Regional Director, New York Regional Office.

[FR Doc. 87–22998 Filed 10–5–87;8:45am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

Marine Mammals; Withdrawal of Permit Application; National Marine Fisheries Service, Southeast Fisheries Center (P77#30)

On August 17, 1987, notice was published in the **Federal Register** (52 FR 30710) that a permit application had been received from the Southeast Fisheries Center, National Marine Fisheries Service, 75 Virginia Beach Drive, Miami, Florida 33149–1099 for a Permit to take loggerhead sea turtles (*Caretta caretta*).

Notice is hereby given that this permit application was withdrawn, and the withdrawal request has been acknowledged and accepted.

Documents submitted in connection with the above permit application are available for review by interested persons in the following offices: Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, Room 805, 1825 Connecticut Avenue, NW., Washington, DC; and Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Date: October 1, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–23040 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–22–M

Marine Mammals; Receipt of Modification Request; Gerald G. Joyce (P385)

Notice is hereby given that Mr. Gerald G. Joyce, 826 NE. 80th Street, Seattle, Washington, 98115 requested a modification of Permit No. 570 issued on November 14, 1986 (51 FR 42127), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

Permit No. 570 authorized harassment up to 100 minke whales (*Balaenoptera acutorostrata*) while attempting to tag up to 20 in Antarctic waters.

The Modification requests an additional 200 minke whales to be harrassed while attempting to radio tag up to 20 in Antarctic waters; and to extend the Permit until March 1988. Data will be collected on minke whale behavior in the Antarctic during the 1987/88 IWC/IDCR Southern Hemisphere minke whale assessment cruise.

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 modification request 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 request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator of Fisheries.

All statements and opinions contained in this request 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, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115.

Dated: September 30, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–23041 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in People's Republic of China

September 30, 1987.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on October 7, 1987. For further information contact Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, please refer to the Quota Status Reports which are posted on the bulletin boards of each Customs port or call (202) 566–6828. For information on embargoes and quota re-openings, please call (202) 377–3715.

Summary

In the letter published below, the Chairman of the Committee for the Implementation of Textile Agreements directs the Commissioner of Customs to increase the previously established restraint limits for wool and man-made fiber textile products in Categories 434 and 645/646, produced or manufactured in the People's Republic of China and exported during 1987. As a result, the limits for Categories 434 and 645/646, which are currently filled, will re-open.

Background

A CITA directive dated December 23, 1986 (51 FR 47041) established import restraint limits for certain cotton, wool and man-made fiber textile products, including Categories 434 and 645/646, produced or manufactured in the People's Republic of China and exported during the twelve-month period which

began on January 1, 1987 and extends through December 31, 1987.

Under terms of the bilateral textile agreement of August 19, 1983, as amended, and at the request of the Government of the People's Republic of China, the limits for Categories 434 and 645/646 are being increased by application of swing. An adjustment was made in a previous directive in Categories 331 and 659–S to account for swing.

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).*

Adoption by the United States of the Harmonized Commonity Code (HCC) may result in some changes in the categorization of textile products covered by this notice. Notice of any necessary adjustments to the limits affected by adoption of the HCC will be published in the **Federal Register.**

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.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1987.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 23, 1986 concerning imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1987 and extends through December 31, 1987.

Effective on October 7, 1987, the directive of December 23, 1986 is amended to include adjustments to the previously established restraint limits for the following categories, as provided under the terms of the bilateral agreement of August 19, 1983, as amended: [1]

Category	Adjusted 12-mo. limit [1]
434.....	12,532 dozen.
645/646.	710,253 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1986.

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,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 87–22996 Filed 10–5–87; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Ada Board; Meeting

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Ada [1] Board will be held Tuesday, 27 October 1987 from 9:00 a.m. to 5:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

Purpose: To inform Ada Board Members of the status of Ada projects sponsored by the AJPO, through oral presentations by project managers.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, Ada [1] Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, (202) 694–0209.

Linda M. Bynum,

Alternate Ofc of the Secy of Defense, Federal Register Liaison Office, Department of Defense.

September 30, 1987.

[FR Doc. 87–23031 Filed 10–5–87; 8:45 am]

BILLING CODE 3810–01–M

Ada Insertion and Management Panel; Meeting

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Ada Insertion and Management Panel will be held Monday, 26 October 1987 from 9:00 a.m. to 5:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

Purpose of the Meeting: To review, modify and approve charter; to develop recommendations.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, Ada [1] Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, (202) 694–0209.

Linda M. Bynum,

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

September 30, 1987.

[FR Doc. 87–23028 Filed 10–5–87; 8:45 am]

BILLING CODE 3810–01–M

Ada Insertion and Management Panel; Meeting

ACTION: Notice of meeting.

SUMMARY: A meeting of the Ada Insertion and Management Panel will be held Wednesday, 28 October 1987 from 9:00 a.m. to 5:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

Purpose of the Meeting: To respond to requests to develop recommendations.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, Ada [1] Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, (202) 694–0209.

Linda M. Bynum,

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

September 30, 1987.

[FR Doc. 87–23033 Filed 10–5–87; 8:45 am]

BILLING CODE 3810–01–M

Ada Language Maintenance Panel; Meeting

AGENCY: Notice of Meeting.

SUMMARY: A meeting of the Ada [1] Language Maintenance Panel will be held Monday, 26 October 1987 from 9:00 a.m. to 5:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

[1] The agreement provides, in part, that (1) with the exception of Category 315, any specific limit may be exceeded by not more than 5 percent of its square yard equivalent total, provided that the amount of increase is compensated by an equivalent square yard decrease in one or more other specific limits in that agreement year; (2) the specific limits for categories may be increased for carryover or carryforward; and (3) administrative arrangement or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[1] Ada is a registered trademark of the U.S Government (Ada Joint Program Office).

[1] Ada is a registered trademark of the U.S Government (Ada Joint Program Office).

Purpose: To discuss the goals of the Ada Language Maintenance Panel and the procedures it should follow to achieve these goals; and to develop recommendations concerning the goals and procedures for consideration by the Ada Board.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, Ada [1] Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, (202) 694–0209.

Linda M. Bynum,

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

September 30, 1987.

[FR Doc. 87–23030 Filed 10–5–87; 8:45 am]

BILLING CODE 3810-01-M

Ada Technology and Standards Panel; Meeting

AGENCY: Notice of meeting.

SUMMARY: A meeting of the Ada Technology and Standards Panel will be held Monday, 26 October 1987 from 8:00 p.m. to 10:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

Purpose of the meeting: Organizational Meeting of the Ada Technology and Standards Panel.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, Ada [1] Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, (202) 694–0209.

Linda M. Bynum,

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

September 30, 1987.

[FR Doc. 87–23029 Filed 10–5–87; 8:45 am]

BILLING CODE 3810-01-M

Ada Technology and Standards Panel; Meeting

AGENCY: Notice of Meeting.

SUMMARY: A meeting of the Ada Technology and Standards Panel will be held Wednesday, 28 October 1987 from 8:30 a.m. to 5:00 p.m. at the Radisson Mark Plaza Hotel, 5000 Seminary Road, Alexandria, Virginia.

[1] Ada is a registered trademark of the U.S. Government (Ada Joint Program Office).

Purpose of the Meeting: To discuss issues related to Ada Technology and Standards.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Rota, Ada [1] Information Clearinghouse, IIT Research Institute, 4550 Forbes Boulevard, Suite 300, Lanham, Maryland 20706, (202) 694–0209.

Linda M. Bynum,

Alternate Office of the Secretary of Defense, Federal Register Liaison Office, Department of Defense.

September 30, 1987.

[FR Doc. 87–23032 Filed 10–5–87; 8:45 am]

BILLING CODE 3810-01-M

[1] Ada is a registered trademark of the U.S. Government (Ada Joint Program Office).

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR); Information Collection Under OMB Review

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection concerning Economic Purchase Quantities—Supplies.

ADDRESS: Send comments to Mr. Ed Springer, FAR Desk Officer, Room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Van Lierde, Office of Federal Acquisition and Regulatory Policy (202) 523–3781, or Mr. Owen Green, Defense Acquisition Regulatory Council, (703) 697–7268.

SUPPLEMENTARY INFORMATION:

a. Purpose

The provision at 52.207–4, Economic Purchase Quantities—Supplies, invites offerors to state an opinion on whether the quantity of supplies on which bids, proposals, or quotes are requested in solicitations is economically advantageous to the Government. Each offeror who believes that acquisitions in different quantities would be more advantageous is invited to (a) recommend an economic purchase quantity, showing a recommended unit and total price, and (b) identify the different quantity points where significant price breaks occur. This information is required by Pub. L. 98–577 and Pub. L. 98–525.

b. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *2,252;* responses per respondent, *35;* total annual responses *78,820;* hours per response, *.83;* and total burden hours, *65,421.*

OBTAINING COPIES OF PROPOSALS: Requesters may obtain copies from General Services Administration, FAR Secretariat (VRS), Room 4041, Washington, DC 20405, telephone (202) 523–4755. Please cite OMB Control No. 9000–0082, Economic Purchase Quantity—Supplies.

Dated: September 24, 1987.

Margaret A. Willis,

FAR Secretariat.

[FR Doc. 87–22992 Filed 10–5–87; 8:45 a.m.]

BILLING CODE 6820-61-M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Acquisition Guide (BAG)

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of document availability.

SUMMARY: Copies of the BAG which establishes the procedures BPA uses in the solicitation, award, and administration of procurement contracts, and the Bonneville Power Assistance Instructions (BPAI) which establishes the procedures BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements) are available from BPA for $20 and $10 each, respectively. The 1987 edition of the BAG will be available October 15, 1987.

ADDRESSES: Copies of the BAG or BPAI may be obtained by sending a check for the proper amount to the General Accounting Section—DTKC, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208.

FOR FURTHER INFORMATION CONTACT: Norman L. Linscott, Contracts Manager, at (503) 230–4513.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power

Marketing Agency in the Pacific Northwest. BPA is a nonappropriated fund entity which finances its operations from power revenues. Its procurement operations are conducted under 16 U.S.C. 832 et seq. as well as 16 U.S.C. 474(d)(20). Pursuant to these special authorities, the BAG is promulgated as a statement of procurement policy and as a body of interpretative regulations governing the conduct of BPA procurement activities. It follows the format of the Federal Acquisition Regulations to assist offerors in locating pertinent policies. BPA's financial assistance operations are conducted under 16 U.S.C. 832 et seq. as well as 16 U.S.C. 839 et seq. The BPAI utilizes the special authorities referred to in the preceding sentence as a basis for establishing BPA's financial assistance policy. The BPAI also contains BPA's implementation of the principles provided in the following OMB circulars:

A–21 Cost principles applicable to grants, contracts, and other agreements with institutions of higher education.

A–87 Cost principles applicable to grants, contracts, and other agreements with State and local Governments.

A–102 Uniform administrative requirements for grants in aid to State and local governments.

A–110 Grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations.

A–122 Cost principles applicable to grants, contracts, and other agreements with nonprofit organizations.

A–128 Audits of State and local governments.

All BPA solicitations include notice of applicability and availability of the BAG and the BPAI as appropriate for the information of offerors on particular procurements or financial assistance transactions.

Issued in Portland, Oregon, on September 24, 1987.

James J. Jura,

Administrator.

[FR Doc. 87–23105 Filed 10–5–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 87–49–NG]

Application To Import Natural Gas From Canada; Associated Natural Gas, 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 September 8, 1987, of an application from Associated Natural Gas, Inc. (ANGI), 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 purchasers in the United States. Authorization is requested to import 100,000 Mcf per day of natural gas up to a maximum of 18 Bcf annually for a two-year period beginning on the date of the first delivery. ANGI is a Colorado corporation with its principal place of business in Denver, Colorado. ANGI states that it intends to use existing pipeline facilities for the transportation of the proposed imports.

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 November 5, 1987.

FOR FURTHER INFORMATION CONTACT:

Edward J. Peters, Jr., Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–8162, and

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: ANGI has requested that the authorization be granted on an expedited basis in as much as its authorization request incorprorates all terms and conditions imposed by the ERA on existing blanket import authorizations.

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.

All parties should be aware that if the ERA approves this requested blanket import, it may designate a total authorized volume for the term without fixing a daily or annual limit that can be imported in order to provide the applicant with maximum flexibility of operation.

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 protest 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., November 5, 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 comment, an oral presentation, a conference, or trail-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, and show that it is material and relevant to a decision in the proceeding. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trail-type hearing must show that there are factual issues genuinely in dispute that

are relevant and material to a decision and that a trail-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 ANGI's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076 at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, September 29, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-23006 Filed 10-5-87; 8:45 am]

BILLING CODE 6450-01-M

Office of Energy Research

Continuation of Solicitation for Special Research Grants and Program Announcement for Basic Research Contracts, No. 88-1

AGENCY: Department of Energy.

ACTION: Notice of Continuation of Availability of Research Grants and Contracts.

SUMMARY: The Office of Energy Research of the Department of Energy hereby announces its continuing interest in receiving applications/proposals for Special Research Grants or Basic Research Contracts supporting work in the following program areas: Basic Energy Sciences, Biological and Environmental Research, High Energy and Nuclear Physics, and Fusion Energy. The Catalog of Federal Domestic Assistance number is 81.049. Information about submission of applications/proposals, eligibility, limitations, evaluation and selection processes, and other policies and procedures are specified, for grants, in 10 CFR Part 605 which was published in the **Federal Register** on April 15, 1985 (50 FR 14856) and, for contracts, in the Program Announcement also published on April 15, 1985 at 50 FR 14865.

DATES: Applications and proposals may be submitted at any time. Generally, those applications and proposals received prior to April 1, 1988 will be considered for FY 1988 funding; those received on or after April 1, 1988, will generally be considered for future fiscal year funding.

ADDRESSES: Applicants/proposers may obtain forms and additional information from Director, Acquisition and Assistance Management Division, Office of Energy Research, ER-64, U.S. Department of Energy, Washington, DC 20545, (301) 353-5544. Completed applications or proposals must be sent to this same address.

SUPPLEMENTARY INFORMATION: As mentioned above, the solicitations for Special Research Grants and the Program Announcement for basic research contracts were published in the **Federal Register** on April 15, 1985. Those solicitations specify the policies and procedures which govern the application, evaluation, and selection processes for research grants and contracts. It is anticipated that approximately 332 million dollars will be available in FY 1988. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications/proposals. DOE reserves the right to fund, in whole or in part, any, all, or none of the applications/proposals submitted in response to this notice.

Issued in Washington, DC, on October 1, 1987.

Ira M. Adler,

Deputy Director for Management, Office of Energy Research.

[FR Doc. 87-23005 Filed 10-5-87; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EL87-43-000 and EL87-59-000]

Electric Rates; Sale and Leaseback of Qualifying Facilities; Baltimore Refuse Energy System Co. and Wheelabrator Millbury, Inc.

September 30, 1987.

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

On June 8, 1987, and August 20, 1987, respectively, Baltimore Refuse Energy Systems Company (BRESCO) and Wheelabrator Millbury, Inc. (WMI) (together, referred to as Petitioners) filed separate petitions for declaratory orders with the Commission. BRESCO's petition, filed in Docket No. EL87-43-000, involves the proposed sale and leaseback of a solid waste disposal and electric power generation facility certified by the Commission as a qualified small power production facility in Docket No. QF82-97-000. The petition filed by WMI in Docket No. EL87-59-000 [1] involves a transaction similar to the BRESCO proposal, covering a facility certified by the Commission as a qualified small power production facility in Docket No. QF86-175-000. Each petition seeks the following relief: (1) An order disclaiming Commission jurisdiction over the participants and the financing arrangements of a proposed sale and leaseback transaction of the electric generating facilities which constitute the qualifying facility (QF); (2) An order confirming the continued applicability of the rate schedule on file with the Commission covering sales of electricity to the electric utility from the QF; and (3) a determination that the contemplated change in ownership of the facility will not result in a loss QF status.

BRESCO states that its certified QF facility, located in Baltimore, Maryland, is operated as a solid waste disposal and electric power generation facility with a net power production capacity of 55 MW.[2] The facility was certified as a QF on June 7, 1982, and by letter order dated March 14, 1983, in Docket No. ER83-267-000, the Commission accepted for filing an initial rate schedule for electricity sales by BRESCO to Baltimore Gas & Electric Company (BG&E), designated as BRESCO Rate Schedule FERC No. 1. The filed rate is based upon BG&E's avoided cost.

In its petition, BRESCO states that the proposed sale and leaseback transaction will involve a sale of the facility and a sublease of the facility site to a trust to be established for the benefit of Ford Motor Credit Company (FMCC) (Owner Participant) by a bank or trust company (Owner Trustee) acting as trustee for the Owner Participant. Simultaneously with the sale and sublease, BRESCO will lease the entire facility back from the Owner Trustee for a term of approximately 19.5 years. At the conclusion of the lease term, BRESCO has the option to purchase the facility back from FMCC. BRESCO will make rent payments sufficient to enable the Owner Trustee to pay, when due, the principal, redemption price or sinking fund installments and interest on certain bonds,[3] and to provide a positive cash

[1] BRESCO and WMI filed additional information on September 29, 1987.

[2] This is an increase from the 47 MW originally certified by the Commission.

[3] BRESCO received a loan from the Northeast Maryland Waste Disposal Authority (Authority) in the amount of $190,765,000 provided in part by the issuance of certain tax-exempt bonds. BRESCO agreed to repay the loan in installments of principal

Continued

flow [4] to the Owner Participant. BRESCO will remain fully liable for the performance of existing and future waste disposal agreements, steam sales agreements and electric energy sales agreements.[5]

BRESCO states that the property to be transferred pursuant to its proposed transaction consists of three refuse combustion furnaces, three boilers, an approximately 62 MW turbine generator, the transformer switchyard (*i.e.*, related switch gear duct and substation equipment necessary for connection to BG&E's transmission system) [6] and air pollution control equipment.

WMI states in its petition that it is the successor in interest and ownership to a proposed solid waste small power production facility from S.E.S. Millbury Company, L.P.[7] The facility is located in Millbury, Massachusetts and will have a net power production capacity of 41 MW.[8] The Commission certified the facility as a QF on January 24, 1986, and in Docket No. ER87-372-000, the Commission accepted for filing the initial rate schedule for electricity sales by WMI to the New England Power Company (NEP), which is designated as SES Millbury Company, L.P. Rate Schedule FERC No. 1.[9] The filed rate is based upon NEP's avoided cost.

WMI states that the property to be transferred consists of waste receiving facilities, waste combustion facilities, two steam boilers, a steam turbine and electric generator, related pollution control and ash handling facilities, and the transformer switchyard which steps up the voltage from the electric generator to the voltage required by the NEP transmission lines.

WMI describes the proposed transaction as a sale of the facility and sublease of the facility's site [10] to Connecticut Bank and Trust Company (CBTC) (Owner Trustee) in trust for the benefit of FMCC (Owner Participant) with a subsequent leaseback of the facilities by WMI. The purchase price payable by CBTC to WMI will be funded by equity contributions from FMCC (in the amount of $60 million) and by the issuance of secured notes by CBTC (in the amount of $100 million) to certain loan participants, currently expected to be John Hancock Mutual Life Insurance Company and other lenders. WMI will make rent payments to CBTC over the term of the lease, and will remain fully liable for performance under existing and future waste disposal and energy sale agreements. In addition, as security for payment of lease rents, WMI will pledge to CBTC pursuant to a security agreement (Lessee Security Agreement) its rights under the waste disposal and energy sale agreements.[11] WMI will hold an option to purchase the facility at the conclusion of the lease.

Notice of BRESCO's and WMI's petitions were published in the **Federal Register**, with comments due on or before June 29, 1987 [12] and September 9, 1987,[13] respectively. No comments have been received.

Discussion

The Requests for an Order Disclaiming Commission Jurisdiction

BRESCO and WMI request an order from the Commission finding that the proposed sale and leaseback transactions of the QF facilities and the Owner Participant and Owner Trustee are not subject to the Commission's jurisdiction pursuant to section 203 of the Federal Power Act (FPA).[14] Because these facilities are small power QFs over 30 MW, they ae subject to the Commission's jurisdiction under the Federal Power Act. *See*, 18 CFR 292.601 (1987). This case therefore is the first opportunity for the Commission to determine whether the disposition of a QF that is subject to FPA jurisdiction requires section 203 authorization.[15] We find that the instant transactions do require our authorization pursuant to section 203 and for the reasons set forth below we grant that authorization.

Section 203 states in pertinent part:

> No public utility shall sell, lease, or otherwise dispose of the whole of its facilities subject to the jurisdiction of the Commission, or any part thereof of a value in excess of $50,000, or by any means whatsoever, directly or indirectly, merge or consolidate such facilities or any part thereof with those of any other person, or purchase, acquire, or take any security of any other public utility, without first having secured an order of the Commission authorizing it to do so.

Section 201(e) defines a public utility as "any person who owns or operates facilities subject to the jurisdiction of the Commission" under Part II of the FPA.[16] Facilities over which the Commission has jurisdiction under Part II is defined in section 201 of the FPA as facilities used for the transmission of electric energy in interstate commerce or

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and interest payments to the Bond Trustee. The Authority took back security for the loan covering BRESCO's receipts from its various service agreements.

[4] The term "provide a positive cash flow" as used here refers to the requirement in section 4(6) of IRS Revenue Procedure 75-21 that a lessor show that it expects to receive a profit from the lease transaction in order that the transaction be considered a lease for Federal income tax purposes. The Revenue Procedure is generally followed in instances where no advance ruling is requested from IRS. Under section 4(6), the lessor must show that the aggregate amount to be paid by the lessee over the leave term plus the value of the residual investment exceeds by a reasonable amount of aggregate disbursements required to be paid by the lessor in connection with the ownership of the leased property. In other words, for the lease to qualify as a lease for tax purposes, the lessor must show that the revenues it will receive provide a profit, apart from the value or benefits obtained from tax deductions, allowances, credits and other tax attributes arising from the transaction.

[5] BRESCO is under contract with the Authority to dispose of waste for the City of Baltimore and Baltimore County. Additionally, BRESCO has agreements to service other municipalities and private waste haulers. BRESCO also sells steam to Thermal Resources of Baltimore, Inc.

[6] *See* BRECSO's petition at page 13.

[7] Concurrent with the filing of the instant petition for declaratory order, WMI filed a Notice of Succession in Ownership pursuant to § 35.16 of the Commission's regulations. By letter dated September 15, 1987, in Docket No. ER87-592-000, WMI's Notice of Succession was accepted for filing.

[8] The facility was still under construction at the time the petition was filed. WMI expected to begin the generation of electricity for test and shakedown purposes on September 15, 1987.

[9] WMI's request that the filed rate be redesignated as Wheelabrator Millbury, Inc./Rate Schedule FERC No. 1 was granted. However, as the facility had yet to be completed when the sales contract was submitted for filing with the Commission by SES Millbury, the letter accepting the rate schedule for filing stated that the rates would become effective upon commencement of service.

[10] WMI currently owns the site upon which the facility is located. WMI intends to refinance the site through an issue of bonds by Millbury Industrial Development Finance Authority (MIDFA). In connection with that refinancing, WMI will sell the site to MIDFA and lease the site back from MIDFA. WMI will then sublease the site to the Owner Trustee for a term equal to the estimated useful life to the facility. Therefore, the subject sale/leaseback transaction involves a sub-sublease of the facility site by the Owner Trustee to WMI.

[11] In its September 29, 1987 pleading, WMI stated that although under the granting clause of the Lessee Security Agreement an "assignment" of the power sales agreement is made, the intention of the parties is that such provision does not operate to create a present assignment of the contract. Actual transfer of the rights of WMI under the contract to the Owner Trustee or a third party will require foreclosure or similar proceedings under Article 9 of the Uniform Commercial Code, and would be subject to the receipt of any necessary governmental approvals. (A similar proviston is expected to be part of the security agreement associated with the BRESCO transaction). Therefore, based upon WMI's representations, we conclude that the pledge currently does not constitute an action requiring oru approval; however, if and when WMI should default on its lease payments, invocation of the granting clause and subsequent action regarding the power sales agreement by the Owner Trustee may require Commission authorization.

[12] 52 FR 23339 (1987).

[13] 52 FR 32835 (1987).

[14] 16 U.S.C. 824b (1982).

[15] Although a sale of QF facilities was involved in *Resources Recovery (Dade County), Inc.*, 25 FERC ¶ 62,191 (1983), the applicant acquiesced to section 203 jurisdiction over the transaction. *See also Resources Recovery (Dade County), Inc.*, 31 FERC ¶ 62,356 (1985). In those applications, the applicant requested Commission authorization pursuant to section 203 to transfer ownership of the 240 kV switchyard which was part of the QF facility.

[16] 16 U.S.C. 824(e) (1982).

the sale of electric energy at wholesale in interstate commerce. Our review indicates that both BRESCO's facility and WMI's facility include step-up transformers, which the Commission has held perform a transmission function, and therefore constitute transmission facilities,[17] subject to the Commission's Part II jurisdiction. Thus, both BRESCO and WMI are public utilities.[18] Since the subject QF facilities include transmission facilities, the disposition of the QFs by the Petitioners would therefore require section 203 approval to the extent that the step-up transformer facilities have a value in excess of $50,000.[19]

Having determined that the sale and leaseback transactions require section 203 authorization, the question arises whether authorization of such sales is consistent with the public interest. In order to minimize the burden on QFs subject to FPA jurisdiction, the Commission has granted waiver of the filing requirements under Part 33 of the Commission's regulations to permit QFs to file only minimal information in support of any transaction subject to Commission authorization pursuant to section 203. In *Resources Recovery, supra*, we granted section 203 authorization upon the filing of such minimal information. In our order ruling on the waiver requests in *Resources Recovery*, we stated:

> Congress has directed this Commission to provide rules which encourage the development of this industry. We therefore recognize the need to present as few regulatory impediments as possible. Congress has also specifically stated, however, that we may not exempt 30 to 80 megawatt qualifying small power production facilities from the provisions of the Federal Power Act.
>
> Section 203 of the FPA requires that the Commission issue notice and provide an opportunity for hearing before it may approve any of the subject transactions. These statutory requirements may not be waived. We do not believe, however, that it is necessary to impose the full filing requirements of Part 33 of our Regulations on RRD. Rather, we shall only require RRD to file such information as will satisfy the minimum requirements of Section 203 of the FPA. In this manner, we may balance the dual directives of Congress noted above.[20] We believe that the instant pleadings satisfy the minimal filing requirements granted by such waivers. Therefore, consistent with our order in *Resources Recovery*, we shall authorize the transactions as in the public interest pursuant to section 203 of the FPA.

We next turn to the requests in the petitions that the participants in the lease financing be found not subject to the Commission's section 203 jurisdiction because they will not become public utilities as a result of their participation in the transactions. In *Pacific Power & Light Co.*,[21] the Commission found that the owner participant and the owner trustee of a leveraged lease transaction were not to be considered public utilities. Our decision was based primarily on two factors. First, the financial institutions were not operating the facility, nor did they have any voice in or dominion over such operations. Second, none of the parties actually taking title was in the business of producing or selling electric power, and all had a principal business other than that of a public utility. They were involved in the transaction to obtain the tax benefits accruing from the transaction. The Commission stated that it would be inconsistent with the intent of the FPA to lable the parties public utilities and include them within the Commission's jurisdiction because the parties merely held either equitable or legal title to the subject facilities and were clearly removed from the actual operation of the facilities and the sale of power.[22]

In the instant transactions, the Owner Participant and the Owner Trustees are participating in roles similar to those found not to confer public utility status in *Pacific Power & Light*. Although the Owner Participant and Owner Trustees will hold either legal or equitable title to the facilities through their respective interests in the trust estates, the parties will not operate or have any control over the operation of the facilities. Furthermore, based on the representations contained in the petitions, neither the Owner Participant nor the Owner Trustees will be in the business of producing or selling electric power. The Owner Participant is merely a passive investor seeking a return on investment and certain tax benefits as a result of the transactions. The Owner Trustees are simply receiving a few for acting as trustee for the Owner Participant and have no individual interest in the transactions. Therefore, we find that the Owner Participant and Owner Trustees will not, as a result of their participation in the transactions, be deemed to be public utilities subject to the Commission's jurisdiction.

The Requests for an Order Confirming Continued Applicability of the Rate Schedules Presently on File

The Petitioners next request that the Commission find that the respective rate schedules on file with the Commission will remain effective following completion of the proposed transactions. The original rate schedules were accepted and made effective based upon the QF status of the facilities at the time of the applications. The proposed transactions should not affect the facilities' QF status. Further, the proposed changes in ownership do not appear to alter the rates, terms, or conditions of the electric power sale agreements or the principals to those agreements. BRESCO and WMI (as successor to SES Millbury) will continue to sell power to BG&E and NEP, respectively, at each utility's avoided cost. Accordingly, the Commission finds that the proposed transactions will not affect the applicability of the filed rate schedules.

The Requests for an Order Finding That the Change in Ownership Will Not Result in Loss of QF Status

The final issue raised is whether the facilities will retain their QF status following the transfer of ownership. Based on the representations of the parties, the Commission finds that the change of ownership as discussed above, does not make the Owner Trustees or Owner Participant public utilities. Thus, there are no utility ownership problems with the transactions. Also, it appears based upon the information submitted that both facilities will continue to satisfy the size, fuel-use and ownership criteria of Part 292. Thus, the change in ownership will not result in the loss of QF status.

The Commission Orders

(A) The Petitions for Declaratory Order filed in Docket Nos. EL87–43–000 and EL87–59–000 are hereby granted in part and denied in part to the extent discussed above.

(B) The requests for a disclaimer of jurisdiction over the Owner Participant and Owner Trustees are hereby granted.

(C) The proposed transactions are hereby authorized and approved upon

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[17] *Otter Tail Power Co.*, 12 FERC ¶ 61,169 (1980).

[18] *See* section 210(e)(2) of the Public Utility Regulatory Policies Act of 1978 and § 292.601 of the Commission's regulations, 18 CFR 292.601 (1987).

[19] The finding of section 203 jurisdiction over these facilities does not affect the Commission's past determination that a QF facility may include transmission facilities where the facilities are used solely to transmit the QF energy to the purchasing utility and/or to transmit supplementary, back-up, maintenance or interruptible power from the purchasing utility to the QF. *See Kern River Corporation Co.*, 31 FERC ¶ 61,183 (1985) and *Clarion Power Company*, 39 FERC ¶ 61,317 (1987). We note that the subject step-up transformers will be used for identical transmission purposes by the Petitioners.

[20] *Resources Recovery (Dade County), Inc.*, 20 FERC ¶ 61,138 at 61,303 (1982).

[21] 3 FERC ¶ 61,119 (1978).

[22] *Id.* at 61,337.

the terms and conditions and for the purposes set forth in the Petitioners' filings. This authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of cost or any other matter whatsoever now pending or which may come before the Commission. Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(D) Docket No. EL87–43–000 is hereby terminated.

(E) Docket No. EL87–59–000 is hereby terminated.

(F) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 87–23043 Filed 10–5–87; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3267–4]

Ambient Air Monitoring Reference and Equivalent Methods; Reference Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR Part 53 as amended on July 1, 1987 (52 FR 24727), has designated a new reference method for the determination of ambient concentrations of particulate matter measured as PM_{10}. The new reference method is a gravimetric manual method which utilizes a specially-designed PM_{10} sampler for particle collection. The new designated method is identified as follows:

RFPS–1087–062, "Wedding & Associates' PM_{10} Critical Flow High-Volume Sampler", consisting of the following components:

- Wedding PM_{10} Inlet
- Wedding & Associates' Critical Flow Device
- Wedding & Associates' Anodized Aluminum Shelter
- 115, 220 or 240 VAC Motor Blower Assembly
- Mechanical Timer or optional Digital Timer
- Elapsed Time Indicator
- Filter Cartridge/Cassette

This method is available from Wedding & Associates, Inc., P.O., Box 1756, Fort Collins, Colorado 80522. A notice or receipt of application for this method appeared in the **Federal Register,** Volume 52, August 6, 1987, page 29254.

Test samplers representative of this method have been tested by the applicant, in accordance with the test procedures specified in 40 CFR Part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with Part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's Environmental Monitoring Systems Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR Part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by states and other control agencies under requirements of 40 CFR Part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method and subject to any limitations specified in the applicable designation (see description of the method above). Vendor modifications of a designated method used for purposes of Part 58 are permitted only with prior approval of EPA, as provided in Part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of Appendix C to 40 CFR Part 58 (Modifications of Methods by Users).

In general, the designation applies to any Wedding & Associates' PM_{10} sampler that is identical to the sampler described in the designation. Similar Wedding-designed PM_{10} samplers (or PM_{10} inlets) manufactured prior to the designation may be readily upgraded to be covered under this designation. Earlier versions of the Wedding PM_{10} inlet were not equipped with an easy-access port for inlet maintenance, and some used a different perfect absorber surface than that used in the current sampler. Owners of earlier versions of Wedding-designed samplers (or inlets) should contact Wedding & Associates, Inc., to determine the specific requirements of upgrading the samplers to be covered under this designation.

Part 53 requires that sellers of designated methods comply with certain conditions. These conditions are given in 40 CFR 53–9 and are summarized below:

(1) A copy of the approved operation or instructional manual must accompany the PM_{10} sampler when it is delivered to the ultimate purchaser.

(2) The PM_{10} sampler must not generate any unreasonable hazard to operators or to the environment.

(3) The PM_{10} sampler must function within the limits of the performance specifications given in Table D–1 of Part 53 for at least 1 year after delivery when maintained and operated in accordance with the operation manual.

(4) Any PM_{10} sampler offered for sale as a reference or equivalent method must bear a label or sticker indicating that it has been designated as a reference or equivalent method in accordance with Part 53.

(5) An applicant who offers PM_{10} sampler for sale as reference or equivalent methods is required to maintain a list of ultimate purchasers of such samplers and to notify them within 30 days if a reference or equivalent method designation applicable to the sampler has been cancelled or if adjustment of the samplers is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(6) An applicant who modifies a PM_{10} sampler previously designated as a reference or equivalent method is not permitted to sell the sampler (as modified) as a reference or equivalent method (although he may choose to sell it without such representation), not to attach a label or sticker to the sampler (as modified) under the provisions described above, until he has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified or until he has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler as modified.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Environmental Monitoring Systems Laboratory, Department E (MD–77), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method will provide assistance to the states in establishing and operating their air quality surveillance systems under Part 58. Additional information concerning this action may be obtained by writing to the address given above. Technical questions concerning the method should be directed to the manufacturer.

Erich Bretthaur,

Acting Assistant Administrator for Research and Development.

[FR Doc. 87–22150 Filed 10–5–87; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

September 29, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037, or telephone (202) 857–3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–4814. Copies of these comments should also be sent to the Commission. For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0020
Title: Application for Ground Station Authorization in the Aviation Services
Form No.: FCC 406
Action: Revision
Respondents: Individuals, State or local governments, Business, Small Business, Non-profit Institutions
Frequency of Response: On occasion
Estimated Annual Burden: 3,225 Responses; 4,031 Hours.
Needs and Uses: Filing is required to apply for a new, modified, or renewal of a ground station authorization. The data is used to update the database, determine eligibility, and issue licenses.

OMB No.: 3060–0034
Title: Application for Construction Permit for Noncommercial Educational Broadcast Station
Form No.: FCC 340
Action: Revision
Respondents: Non-profit institutions
Frequency of Response: On occasion
Estimated Annual Burden: 263 Responses; 20,468 Hours.
Needs and Uses: Filing is required to apply for authority to construct a new noncommercial educational FM or TV broadcast station, or to make changes in the existing facilities of such a station. The data is used to determine whether the applicant meets basic statutory requirements to become a Commission licensee.

William J. Tricarico,
Secretary.
[FR Doc. 87–23001 Filed 10–5–87; 8:45 am]
BILLING CODE 6712–1–M

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

September 30, 1987.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Suite 140, Washington, DC 20037. For further information on these submissions contact Terry Johnson, Federal Communications Commission, (202) 632–7513. Persons wishing to comment on these information collections should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–4814.

OMB Number: 3060–0165
Title: Part 41 Franks, § 41.31, Records to be maintained and reports to be filed
Action: Extension
Respondents: Business
Frequency of Response: Recordkeeping requirement
Estimated Annual Burden: 68 Recordkeepers; 408 hours
Needs and Uses: Subject carriers are required to maintain records in such manner so that if ordered by the FCC the carriers could furnish a report showing every person holding a telephone or telegraph frank. This data reports every person who has received free service. This information helps too ensure that franks are being addressed fairly. Failure to have the information recorded would prohibit the Commission from being able to respond to complaints and from generally being able to police activities. The regulated carriers are the affected public.

OMB Number: 3060–0147
Title: Section 64.804, Extension of Unsecured Credit for Interstate and Foreign Communications to Candidates for Federal Office
Action: Extension
Respondents: Business
Frequency of Response: On occasion
Estimated Annual Burden: 26 responses; 208 hours
Needs and Uses: Section 64.804 requires communications common carriers with operating revenues exceeding $1 million who extend unsecured credit to a political candidate or person on behalf of such candidate for Federal office to report to the FCC, twice a year, data including dues and outstanding balances. This information is used by the FCC to monitor the extent of credit extended to candidates for Federal office.

William J. Tricarico,
Secretary.
[FR Doc. 87–23002 Filed 10–5–87; 8:45 am]
BILLING CODE 6712–01–M

Information Collection Requirement Approval by Office of Management and Budget

September 29, 1987.

The following information collection requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Terry Johnson, Federal Communications Commission, telephone (202) 634–1535.

OMB No.: 3060–0391
Title: Monitoring Program for Impact of Federal State Joint Board Decisions
OMB Approval Expiration Date: July 31, 1990

The text of this information collection requirement may be found in the following document: MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78–72 and 80–286, Establishment of a Program to Monitor the Impact on Joint Board Decisions, FCC87J–5, released May 28, 1987 (Monitoring Recommended Decision and Order).

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 87–23066 Filed 10–5–87; 8:45 am]
BILLING CODE 6712–01–M

[Report No. 1681]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

September 25, 1987.

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full texts of these documents are available for viewing and

copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202–857–3800). Oppositions to these petitions must be filed by October 22, 1987. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Brewer, Skowhegan, and Old Town, Maine) (MM Docket No. 86–314, RM's 5030 & 5586) Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Hormigueros, Puerto Rico) (MM Docket No. 86–433, RM–5477) Number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Marietta, Ohio and Ravenswood, West Virginia) (MM Docket No. 86–474, RM–5438) Number of petitions received: 1.

Subject: Amendment of § 73.504(a), Table of Allotments, Noncommercial Educational FM Broadcast Stations. (Las Cruces and Deming, New Mexico) (MM Docket No. 86–475, RM–5572) number of petitions received: 1.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Los Ranchos de Albuquerque, Los Alamos and Corrales, New Mexico) (MM Docket No. 87–81, RM's 5558, 5610, 5658) Number of petitions received: 1.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 87–23067 Filed 10–5–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–422; File Nos. BPH–851223MV, et al]

Applications For Consolidated Hearing; A.W. Communications, Inc., et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. A. W. Communications, Inc., Spotsylvania, VA.	BPH–851223MU	87–422
B. Richard J. Hayes and Associates, Inc., Spotsylvania, VA.	BPH–851223MZ	
C. Spot Radio, Limited Partnership, Spotsylvania, VA.	BPH–860122MM	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Comparative, A, B, C
2. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–23051 Filed 10–5–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 81–423; File Nos. BPCT–870331LI, et al.]

Applications for Consolidated Hearing; Magara Communications Corp., et al.

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, City, and State	File No.	MM Docket No.
A. Magara Communications Corp, Florence, SC.	BPCT–870331LI	87–423
B. Albert D. Ervin and Hughey P. Walker, A General Partnership, Florence, SC.	BPCT–870331PS	
C. Island Television, Inc., Florence, SC.	BPCT–870616KI	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose heading are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Air Hazard, A, C
2. Comparative, A, B, C
3. Ultimate, A, B, C

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete test may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC. 20037 (Telephone No. (202) 857–3800).

Roy J. Stewart,

Chief, Video Service Division, Mass Media Bureau.

[FR Doc. 87–23052 Filed 10–5–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–420; File Nos. BPH–850710MP, et al.]

Applications For Consolidated Hearing; William Hayden Payne, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. William Haydon Payne, Rapid City, SD.	BPH–850710MP	87–420
B. Lenn R. Pruitt, Rapid City, SD.	BPH–850712GY	
C. William Howard Payne, Rapid City, SD.	BPH–850712SV	
D. Tom-Tom Communications, Inc., Rapid City, SD.	BPH–850712SW	
E. William L. and Jean M. Spitzer d/b/a Spitzer Communications Inc., Rapid City, SD.	BPH–850712E6 (DISMISSED).	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify

whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. City Coverage—FM, D
2. Environmental Impact, A, C
3. Air Hazard, B, D
4. Comparative, A, B, C, D
5. Ultimate, A, B, C, D

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan. Gay,

Assistant Chief, Audio Services Division Mass Media Bureau.

[FR Doc. 87–23053 Filed 10–5–87; 8:45 am]

BILLING CODE 6712–01–M

[MM Docket No. 87–421; File No. BPH–851025MG, et al.]

Applications for Consolidated Proceeding; Taylor Communications, Inc. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Taylor Communications, Inc., Cambridge, MD.	BPH–851028MG	87–421
B. Robert L. Purcell d/b/a Big Bay Broadcasting, Cambridge, MD.	BPH–851028MI	
C. CWA Broadcasting, Inc., Cambridge, MD.	BPH–851028MJ	
D. Shore Broadcasting, Inc., Cambridge, MD.	BPH–851028MK	
E. Philip & Eleanor D'Adamo d/b/a D'Adamo Communications Cambridge, MD.	BPH–851028ML	
F. Eastern Shore Broadcasting, Limited Partnership, Cambridge, MD.	BPH–851028NG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues have been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading, Applicant(s)

1. Environmental, A,B,F
2. Air Hazard, D,E
3. Comparative, All
4. Ultimate, All

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC.The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037, (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 87–23054 Filed 10–5–87; 8:45 am]

BILLING COCE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreements(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: 224–001839–C.

Title: South Louisiana Port Commission Lease Agreement.

Parties:

South Louisiana Port Commission (Lessor)

Louis Dreyfus Corporation (Dreyfus)

Synopsis: The proposed agreement (1) provides that 75% of all vessel fees shall be the property of, and shall inure to the benefit of Dreyfus, its successors and assigns; and (2) authorizes Dreyfus, its successors and assigns to collect all vessel fees in respect to all vessels, ships and other water vehicles docking at or along the real property covered by the Lease, except bulk-grain carrying barges (approximately 35 feet in width) on the Mississippi River.

By Order of the Federal Maritime Commission.

Dated: October 1, 1987.

Joseph C. Polking,

Secretary.

[FR Doc. 87–23046 Filed 10–5–87; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 87–20]

Filing of Complaint and Assignment; Delaware River Port Authority v. The 8900 Lines

Notice is given that a complaint filed by the Delaware River Port Authority ("Port") against a conference of water carriers operating under FMC Agreement No. 8900 (hereinafter "The 8900 Lines") was served October 1, 1987. The Port alleges that The 8900 Lines, through the publication of certain "Arbitrary Rates" in the conference Freight Tariff No. 14, and more particularly, 2nd Revised Page 45, has violated various sections of the Shipping Act of 1984 by applying a rate which is unfairly and/or unjustly discriminatory and which "[s]ubjects the Port of Philadelphia and all persons within it to undue and unreasonable prejudice or disadvantage with respect to cargo comprehended in said tariff."

This proceeding has been assigned to Administrative Law Judge Norman D. Kline ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 3, 1988, and the final decision of the Commission shall be issued by February 3, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 87–23091 Filed 10–5–87; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Enforcement of Nondiscrimination on the Basis of Handicap in Programs and Activities Conducted by the Federal Mine Safety and Health Review Commission

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Notice of self-evaluation; request for comments.

SUMMARY: The Federal Mine Safety and Health Review Commission is evaluating its current policies and practices to ensure that discrimination against handicapped persons does not occur in its programs and activities. This evaluation is being conducted to comply with the Commission's regulations concerning Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Federal Mine Safety and Health Review Commission, 29 CFR Part 2706, which requires the Commission to perform this self-evaluation and to permit interested parties to participate in the project. Accordingly, this notice summarizes the results of the Commission's self-evaluation to date and requests public comment from interested parties concerning that evaluation or any aspect of Commission policies and practices with respect to handicapped persons.

DATE: Comments must be received on or before November 5, 1987.

ADDRESSES: Written comments should be addressed to Richard Baker, Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street NW, 6th Floor, Washington, DC 20006. The Commission's self-evaluation to date and all comments received will be available for public inspection in the Commission's Office of General Counsel, Room 630, at the above address, between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: L. Joseph Ferrara, General Counsel, Office of the General Counsel, 1730 K Street NW, 6th Floor, Washington, DC 20006, 202–653–5610 (202 566–2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The Commission's regulations concerning Enforcement of Nondiscrimination on the Basis of Handicap in Federally Conducted Programs are found at 29 CFR Part 2706 and were issued pursuant to section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in executive agency programs. Section 2706.110(a) requires the Commission to evaluate its current policies and practices, and the effects thereof, in order to ensure that they do not result in discrimination against handicapped persons in employment, accessibility to facilities, communication, or otherwise. Section 2706.110(b) requires that the Commission "provide an opportunity to interested persons, including handicapped persons or organizations representing handicapped persons, to participate in this self-evaluation process by submitting comments (both oral and written)."

The Commission conducts all adjudicative proceedings and hearings required by the Federal Mine Safety and Health Act of 1977, as amended (30 U.S.C. 801 *et seq.*). Cases are assigned for hearing before a Commission administrative law judge. Decisions by Commission administrative law judges are subject to review by the full Commission.

The Commission currently has 53 employees. With regard to the Commission's employment practices, during the last two years the Commission has not received any requests for accommodation nor has it received any complaints from its employees on the basis of handicap. Likewise, during the same period there have been no requests for accommodation and no complaints from applicants for employment. Concerning the accessibility of the Commission's programs and activities, during the past two years there have been no requests for accommodation and no complaints from parties, participants, or the public on the basis of handicap, involving participation in the Commission's proceedings or otherwise.

Facilities

The Commission leases three facilities from the General Services Administration (GSA): (1) 1730 K Street, NW, 6th Floor, Washington, DC 20006, where the Commissioners meet, and where most of the Commission's employees are stationed; (2) 5203 Leesburg Pike, Falls Church, VA 22041, where most of the Commission's administrative law judges are located; and (3) 333 W. Colfax Avenue, Suite 400, Denver, CO 80204, where the remainder of the Commission's administrative law judges are located. Each of these facilities has been examined for physical barriers and impediments. The Commission believes there are some impediments to some handicapped persons at the Washington, DC, facility. As a result, the Commission is requesting that GSA take appropriate action in order to assure full compliance with the requirements of section 504 and the Commission's regulations.

Commission notices of public Commission meetings request that any person who intends to attend, and who requires special accessibility features, inform the Commission in advance so that appropriate arrangements may be made. The Commission also includes in the announcement of any administrative law judge hearing a notice that persons desiring to attend should notify the agency in advance of any accessibility features they may require. In the past two years there have been no requests for accommodation or complaints from parties, participants, or the public on the basis of handicap about the accessibility of the Commission's facilities or hearing facilities.

Communication

Commission notices of public Commission meetings also indicate that any person who intends to attend and who requires special auxiliary aids, such as sign language interpreters, should inform the Commission in advance. Commission notices of administrative law judge hearings have similar language. The Commission does not have a telecommunication device for the deaf (TDD). However, it has obtained access to a TDD relay service provided by the Architectural and Transportation Barriers Compliance Board. In the past two years there have been no requests for accommodation and no complaints involving auxiliary aids for purposes of communication.

Compliance

The Commission's compliance procedures have not been utilized because, to date, there have been no complaints. The Commission assumes the effectiveness of its compliance procedures until experience shows otherwise.

In sum, the Commission believes that it has been operating its programs and activities so that, when viewed in their entirety, such programs and activities are in general readily accessible to and usable by handicapped persons.

Comments on the Commission's programs and policies as they affect handicapped persons or on the Commission's self-evaluation, a summary of which is set forth above, are invited. Please send written comments to Richard Baker, Executive Director, Federal Mine Safety and Health Review Commission, 1730 K Street, NW., 6th Floor, Washington, DC 20006. Oral comments may be submitted to

Executive Director Baker at 202–653–5625 (202–566–2673 for TDD Relay). These are not toll-free numbers.

Upon completion of the comment period, the Commission will review all comments and take appropriate steps to address matters brought to the Commission's attention to the extent warranted. In addition, the Commission will maintain on file its self-evaluation, comments received, a description of any areas examined and any problems identified, and a description of any modifications made. This file will be maintained for a period of three years following the completion of this evaluation, and will be made available for public inspection upon request.

Dated: September 22, 1987.

Ford B. Ford,

Chairman of the Federal Mine Safety and Health Review Commission.

[FR Doc. 87–22991 Filed 10–5–87; 8:45 am]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM

Formations of; Acquisitions by; and Mergers of Bank Holding Companies; First Missouri Bancorporation, Inc., 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 October 26, 1987.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Missouri Bancoporation, Inc., Columbia, Missouri; to acquire at least 50 percent of the voting shares of Montgomery Bancshares, Inc., Columbia Missouri, and thereby indirectly acquire Jonesburg State Bank, Jonesburg, Missouri.

2. Golden Bancshares, Inc., Golden, Illinois; to become a bank holding company by acquiring at least 80 percent of the voting shares of Golden State Bank, Golden, Illinois.

3. Shelby Bancshares, Inc., Bartlett, Tennessee; to become a bank holding company by acquiring 100 percent of the voting shares of Shelby Bank, Bartlett, Tennessee, a *de novo* bank.

Board of Governors of the Federal Reserve System, September 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–22987 Filed 10–5–87; 8:45 am]

BILLING CODE 6210–01–M

Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company; First National Agency, Inc. of Cold Spring

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 offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 1987.

A. Federal Reserve Bank of Minneapolis James (Mr. Lyon, Vice President) 250 Marquettes Avenue, Minneapolis, Minnesota 55480:

1. First National Agency, Inc. of Cold Spring, Cold Spring, Minnesota; to become a bank holding company by acquiring 37.64 percent of the voting shares of First BancShares, Inc. of Cold Spring, Cold Spring, Minnesota, and thereby indirectly acquire First National Bank of Cold Spring, Cold Spring, Minnesota. Applicant also proposes to engage directly in general insurance agency activities in a place with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. This activity will be conducted in townships of Rockville and Wakefield, Minnesota.

In connection with this application First Banchshares, Inc. of Cold Spring, Cold Spring, Minnesota, has applied to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Cold Spring, Cold Spring, Minnesota.

Board of Governors of the Federal Reserve System, September 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–22988 Filed 10–5–87; 8:45 am]

BILLING CODE 6210–01–M

Acquisitions of Shares of Banks or Bank Holding Companies; Change in Bank Control Notices; Dennis I. Meyer et al.

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 October 21, 1987.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Dennis I. Meyer, Washington, DC; to acquire an additional 4.6 percent of the voting shares of United Financial Banking Companies, Inc., Vienna, Virginia, and thereby indirectly acquire The Business Bank, Vienna, Virginia.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Howard W. Sharp, Sweet Springs, Missouri; to acquire 5.72 percent of the voting shares of Sweet Springs Bancshares, Inc., Sweet Springs, Missouri, and thereby indirectly acquire Chemical Bank, Sweet Springs, Missouri.

Board of Governors of the Federal Reserve System, September 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22989 Filed 10-5-87; 8:45 am]

BILLING CODE 6210-01-M

Acquisition of Company Engaged in Permissible Nonbanking Activities; Northwest Corporation

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 1987.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire through its wholly-owned subsidiary, Norwest Mortgage, Inc., certain assets of American First Mortgage Corporation, and thereby engage in general mortgage banking activities pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted through offices of American First Mortgage Corporation located in Birmingham, Alabama; Atlanta, Georgia; Asheville, North Carolina; and Charleston, South Carolina.

Board of Governors of the Federal Reserve System, September 30, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-22990 Filed 10-5-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87D-0187]

Environmental Assessment Technical Handbook; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the Environmental Assessment Technical Handbook. The handbook was prepared to provide a central source of information to persons gathering environmental data and preparing environmental assessments for proposed actions which would result in the marketing of chemical entities regulated by FDA. The handbook was prepared by the Center for Food Safety and Applied Nutrition (CFSAN) and the Center for Veterinary Medicine (CVM).

ADDRESSES: Copies of the handbook may be obtained from the National Technical Information Service, 5285 Port Royal Rd., Springfield, VA 22161 (703-487-4650). The handbook is available for public examination at, and written comments should be addressed to, the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Buzz L. Hoffmann, Center for Food Safety and Applied Nutrition (HFF-304), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0277,

or

John C. Matheson III, Center for Veterinary Medicine (HFV-152), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1880.

SUPPLEMENTARY INFORMATION: The National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and FDA's regulations implementing NEPA (21 CFR Part 25) require that Federal decisionmaking include an objective consideration of the environmental impacts expected from proposed actions. The public participates in the decisionmaking by reviewing NEPA documents and providing comments, information, and analysis concerning environmental impacts overlooked, inadequately defined, or not properly considered in the decisionmaking.

Persons submitting applications and petitions to the agency requesting actions, such as the approval of a food additive or new animal drug, must also submit environmental information sufficient for the agency to determine whether an environmental impact statement will be required. The CEQ regulations, 40 CFR 1506.5, state that, in such cases, "the agency should assist the applicant by outlining the types of information required." The purpose of the Environmental Assessment Technical Handbook is to provide such assistance and to improve the quality and consistency of NEPA documents submitted to the agency. In addition, the

handbook should save time and resources for preparers of environmental documents and for agency personnel reviewing the information submitted.

The handbook has been developed over the past 7 years. Peer review was provided by numerous outside scientists with specific subject expertise, representing industry, academia, and government agencies. Due to demand for test protocol assistance, drafts of the handbook have been in circulation and use by applicants and petitioners over the past few years. Their experiences with these drafts have served to improve the reliability of the test methods described in the handbook. The updated handbook supersedes any previous drafts.

The handbook is organized into four sections consisting of individual technical assistance documents. Section 2.00 describes a strategy for the efficient use of FDA's policies and procedures implementing NEPA and for the collection of information to establish an adequate environmental record for FDA actions. Section 3.00 contains 12 documents which provide methods useful in predicting the environmental fate of a chemical, i.e., the persistence, mobility, and exposure levels of a chemical. Section 4.00 contains nine documents which provide methods useful in estimating the sensitivity of representative species of organisms to chemicals. These environmental effects tests are used to determine chemical levels which would or, by extrapolation, might significantly affect organisms in the environment. The last section, 5.00, consists of two documents which describe methods commonly used for data analysis of environmental effects tests.

The technical assistance documents in sections 3.00 and 4.00 include information on the appropriate methods for specific cases and the features of test design to be considered in planning and conducting tests. In some cases the documents provide sufficient detail to serve as test instructions. In all cases, however, comprehensive protocols published by other organizations or individuals are cited for further reference.

Environmental test protocols other than those described in the handbook may also be acceptable, provided they are based upon scientifically valid methodology. Applicants and petitioners are urged to confer with agency personnel when any testing is anticipated in order to develop a suitable and acceptable environmental testing plan. For proposed actions requiring the collection of environmental information through experimental studies, no individual action is expected to require all the environmental tests contained in the handbook.

Because methods for assessing the environmental fate and effects of chemicals are under continuous development and refinement, CFSAN and CVM intend to make revisions or supplements to the technical assistance documents, as appropriate. Comments on individual technical assistance documents will be welcomed and carefully considered. CFSAN and CVM will provide copies of any revised technical assistance document to any person who requests an updated version. Requests for revised copies should be made to the offices identified above under the section entitled "**FOR FURTHER INFORMATION CONTACT.**" At a future date, when sufficient revisions have been made in each of the various technical assistance documents, CFSAN and CVM will revise the entire handbook and a notice will be published in the **Federal Register** announcing the availability of the revised handbook.

The handbook is available for purchase from the National Technical Information Service (NTIS) (address above). The NTIS Order number is PB 87–175345/AS. The price codes are: A17 for paper copy ($30.95) and A01 for microfiche ($6.50).

Interested persons may submit written comments on the handbook to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 29, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87–23036 Filed 10–5–87; 8:45 am]

BILLING CODE 4160–01–M

[Docket No. 87D–0275]

Import Alert Detention of Noncertified Television Receivers Labeled for Export (Revised); Availability of Import Alert

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an Import Alert 94–01 entitled "Detention of Noncertified Television Receivers Labeled for Export." The alert, which was prepared by FDA's Center for Devices and Radiological Health (CDRH), addresses the requirement of certification for television receivers for exportation purposes as regulated by the Federal Performance Standard for Television Receivers. This guidance does not limit the agency's enforcement discretion to refuse or permit admission of a particular lot offered for import after an evaluation of the relevant facts.

ADDRESS: Single copies of the alert are available from the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857. (Send two self-addressed labels to assist in processing your requests.).

FOR FURTHER INFORMATION CONTACT: Edwin A. Miller, Center for Devices and Radiological Health (HFZ–310), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7175.

SUPPLEMENTARY INFORMATION: Until recently, importers have been permitted to import noncertified Consultative Committee for International Radio (CCIR) standard 220-volt television receivers for exportation purposes when the requirements as stated in section 358(a)(3) of the Radiation Control for Health and Safety Act (42 U.S.C. 263f(a)(3)) and FDA Compliance Program Circular 7382.007A were met. These receivers were not originally designed to receive television signals from within the United States or operate on standard 60 HZ, 110–120 VAC power sources unless extensive reconditioning was performed. Thus, these receivers were permitted to enter the United States without certification.

Now, however, the television industry has made it possible for most sets designed for CCIR broadcast standard to be capable of operation within the United States. FDA considers these receivers to be subject to the Federal Performance Standard for Television Receivers (21 CFR 1020.10), and they must be certified before admission into the United States.

FDA has become aware of widespread abuse of the for-exportation exemption in that importers have been claiming this exemption from certification for products which were adaptable to receipt of United States television signals. Due to the unlawful diversion of some such receivers into the United States market, FDA field personnel have been given discretion to detain all shipments of uncertified receivers until the importer establishes

that the product in question has been labeled for export only and cannot receive the NTSC 3.58 broadcast signal. Prior to importation for any purpose, receivers which can receive the NTSC 3.58 broadcast signal and are thus capable of use in the United States must be certified and properly labeled in accordance with FDA's television performance standard.

The authority for FDA's detention of all shipments of noncertified receivers which are capable of use within the United States is section 360B(a)(1) of the Radiation Control for Health and Safety Act (the act) (42 U.S.C. 263j (a)(1)), which makes it unlawful for any manufacturer to introduce or deliver for introduction into commerce or to import into the United States any electronic product which does not comply with an applicable standard prescribed pursuant to the Radiation Control for Health and Safety Act. Also, under section 360B(a)(5)(A) of the act (42 U.S.C. 263j (a)(5)(A)), it is unlawful for any person to fail to issue a certification as required by section 358(h) of the act (42 U.S.C. 263f(h)).

Requests for single copies of the import alert should refer to the docket number found in brackets in the heading of this notice and should be addressed to the Dockets Management Branch (address above).

Dated: September 29, 1987.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 87-23034 Filed 10-5-87; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicaid Program; Hearing; Reconsideration of Disapproval of Two New York State Plan Amendments

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on November 4, 1987 in New York, New York to reconsider our decision to disapprove New York State Plan Amendments 86-6 and 86-23.

DATES: Closing Date: Requests to participate in the hearing as a party must be received by the Docket Clerk on or before October 21, 1987.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, Hearing Staff, Bureau of Eligibility, Reimbursement and Coverage, 300 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207, Telephone: (301) 594-8261.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove two New York State Plan Amendments.

Section 1116 of the Social Security Act and 45 CFR Parts 201 and 213 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. HCFA is required to publish a copy of the notice to a State Medicaid Agency that informs the agency of the time and place of the hearing and the issues to be considered. (If we subsequently notify the agency of additional issues which will be considered at the hearing, we will also publish that information in a notice.)

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained in 45 CFR 213.15(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained in 45 CFR 213.15(c)(1).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

The issue in this matter is whether the malpractice costs included in New York's proposed plan amendments are reimbursable as inpatient hospital services under section 1902(a)(13)(A) of the Act and Federal regulations at 42 CFR Part 447, Subpart C.

The State of New York has proposed two plan amendments, 86-6 and 86-23, which revise its plan for Medicaid reimbursement of inpatient hospital services. Transmittal 86-6 covers the period January 1, 1986 to June 30, 1986, and transmittal 86-23 covers the period July 1, 1986 to June 30, 1987. These amendments allow a component to be added to each hospital's inpatient rate to reflect the cost of providing excess medical malpractice coverage for physicians affiliated with that hospital and who provide emergency care in the institution.

HCFA has determined the malpractice costs included in these amendments are not reimbursable as an inpatient hospital cost under section 1902(a)(13)(A) of the Act and the regulations set forth at 42 CFR Part 447, Subpart C. The costs included in these amendments are for physicians' services, which are governed by section 1902(a)(30) of the Act and regulations set forth at 42 CFR Part 447, Subparts A, B, and D. HCFA believes costs should be claimed and included under the appropriate program and not under 42 CFR Part 447, Subpart C.

HCFA believes the State's administrative decision to add the malpractice costs for physicians as allowable costs in determining inpatient hospital rates does not alter the fundamental nature of the costs or the Federal rules governing this reimbursement. The payments that the hospital makes for excess malpractice coverage are solely for the benefit of the physician. In the event of a malpractice recovery pursuant to a suit or claim of a patient, the subsequent insurance company payments protect the liability of the physician and not the hospital. Therefore, the insurance premiums are clearly a physician and not a hospital cost. Therefore, HCFA has determined the amendment violates section 1902(a)(13)(A) and Federal regulations at 42 CFR Part 447, Subpart C since the costs are an inappropriate component of an inpatient hospital rate in the context of the statutory requirements.

The notice to New York announcing an administrative hearing to reconsider the disapproval of its State plan amendments reads as follows:

Mr. David Emil,

Deputy Commissioner and General Counsel, New York State Department of Social Services, 40 North Pearl Street, Albany, New York 12243.

Dear Mr. Emil: This is to advise you that your request for reconsideration of the decision to disapprove New York State Plan Amendments 86-6 and 86-23 was received on September 2, 1987.

New York State Plan Amendments 86-6 and 86-23 would amend the New York reimbursement plan for payment of inpatient hospital services. You have requested a reconsideration of whether the malpractice costs included in these amendments are reimbursable as inpatient hospital costs under section 1902(a)(13)(A) of the Social Security Act and regulations at 42 CFR Part 447, Subpart C.

I am scheduling a hearing on your request to be held on November 4, 1987 at 10:00 a.m. in Room 2226, 26 Federal Plaza, New York, New York. If this date if not acceptable, we would be glad to set another date that is mutually agreeable to the parties.

I am designating Mr. Lawrence Ageloff as the presiding official. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 594-8261.

Sincerely,

William L. Roper, M.D.,

Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. 1316))

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 29, 1987.

William L. Roper, M.D.,

Administor, Health Care Financing Administration.

[FR Doc. 87-23093 Filed 10-5-87; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-87-1742]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission; (8) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirements; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposal should be sent to OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Proposal: Application for Approval as a Coinsuring Lender—Category A Documentation.

Office: Housing.

Description of the Need For the Information and Its Proposed Use: Under Section 221 Coinsurance Program, HUD must review lender's financial, technical, and organizational capacity to be approved as a coinsuring lender. This information is needed to review the lender's capacity to carry out the functions of the program.

Form Number: Various.

Respondents: Businesses or Other For-Profit and Non-Profit Institutions.

Frequency of Response: On Occasion.

Estimated Burden Hours: 6,400.

Status: Reinstatement.

Contact: James L. Hamernick, HUD, (202) 755-6500 or John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d), Department of Housing and Urban Development Act 42 U.S.C. 3535(d).

Proposal: Financial Statement (Claims collection).

Office: Administration.

Description of the Need for the Information and Its Proposed Use: Each office of HUD is authorized to have a claims collection officer to establish and maintain a file regarding each claim for which collection activities are undertaken. This information is needed by the claims collection officer to make judgments concerning the likelihood of being able to collect a claim.

Form Number: HUD-27041.

Respondents: Individuals or Households.

Frequency of Response: On Occasion.

Estimated Burden Hours: 300.

Status: New.

Contact: Ronald A. Nelson, HUD, (202) 755-1446 or John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Project Applications and Review of Application-Category B Documentation.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Under Section 221 Coinsurance Program, HUD must review approved coinsuring lender's processing of applications. This must be done to ensure adherence to underwriting and processing guidelines and also to monitor compliance with program standards.

Form Number: Various.

Respondents: Businesses or Other For-Profit and Non-Profit Institutions.

Frequency of Response: On Occasion.

Estimated Burden Hours: 92,000.

Status: Reinstatement.

Contact: James L. Hamernick, HUD, (202) 755-6500 or John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Property Survey Instructions and Certificate.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: A survey and surveyor's certificate are required to assure uniformity of certification and the exact description of the property to be mortgaged. The information is provided by a private registered civil engineer or land surveyor before initial and final endorsement and is essential to both conventional mortgages and federally assisted mortgage insurance.

Form Number: FHA-2457.

Respondents: Businesses or Other For-Profit and Small Businesses or Organizations.

Frequency of Response: On Occasion.

Estimated Burden Hours: 1,000.

Status: Reinstatement.

Contact: Richard E. Murray, HUD (202) 755-5743 or John Allison, OMB, (202) 395-6880.

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Emergency Shelter Grants Program.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The Emergency Shelter Grants Program provides grants to cities, counties, and states for renovation, rehabilitation, or conversion of buildings; supportive

services; and maintenance, operation, insurance, utilities, and furnishings in relation to emergency shelter for the homeless. Information collected will be used to ensure grantees comply with the program's statutory and regulatory requirements.

Form Number: SF–424 and SF–269.

Respondents: State or Local Governments and Non-Profit Institutions.

Frequency of Response: On Occasion and Annually.

Estimated Burden Hours: 14,000.

Status: Revision.

Contact: James R. Broughman, (202) 755–5977 or John Allison, OMB (202) 395–6880

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Proposal: Rent Increase Worksheet.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: Owners of certain subsidized, cooperative, and Section 202 projects submit this form annually when requesting an adjustment to project rents. HUD uses the form to evaluate owners' expense estimates and to calculate allowable rents and utility allowances.

Form Number: HUD–92547B.

Respondents: Business or Other For-Profit and Federal Agencies or Employees.

Frequency of Response: Annually.

Estimated Burden Hours: 50,000.

Status: Extension.

Contact: James J. Tahash, HUD, (202) 426–3970 or John Allison, OMB, (202) 395–6880

Authority: Sec. 3507, Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: September 28, 1987.

John T. Murphy,

Director, Information Policy and Management Division.

[FR Doc. 87–22981 Filed 10–5–87; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. D–87–863]

Order of Successions; Office of the Manager, Baltimore Office; Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Manager is designating officials who may serve as Acting Manager during the absence, disability or vacancy in the position of the Manager.

EFFECTIVE DATE: This designation is effective August 26, 1987.

FOR FURTHER INFORMATION CONTACT: Peter M. Campanella, Regional Counsel, Philadelphia Regional Office, Department of Housing and Urban Development, Liberty Square Building, 105 South 7th Street, Philadelphia, PA 19106–3392. Phone number (215) 597–2655 (This is not a toll-free number).

Designation

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability or vacancy in the position of the Manager, with all the powers, functions and duties redelegated or assigned to the Manager; Provided: that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Deputy Manager.
2. Director, Housing Management Division.
3. Director, Community Planning and Development Division.
4. Chief Counsel.

This designation supersedes the designation effective May 1, 1981.

Authority: Delegation of Authority by the Secretary, 50 FR 18742, May 2, 1985.

Dated: September 15, 1987.

St. George I.B. Crosse,

Manager, Baltimore Field Office.

[FR Doc. 87–22982 Filed 10–5–87; 8:45 am]

BILLING CODE 4210–32–M

Designation and Order to Succession; Office of the Manager, Honolulu Office

AGENCY: Department of Housing and Urban Development.

ACTION: Designation and order of succession.

SUMMARY: The Manager of the Honolulu Office in Region IX is designating officials who may serve as Acting Manager during the absence, disability, or vacancy in the position of Manager.

EFFECTIVE DATE: October 1, 1987.

FOR FURTHER INFORMATION CONTACT: Beverly G. Agee, Regional Counsel, Department of Housing and Urban Development, Region IX, 450 Golden Gate Avenue, Box 36003, San Francisco, CA 94102. Telephone (415) 556–6110. This is not a toll-free number.

Designation of Acting Manager

Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: *Provided:* That no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unable to act by reason of absence, disability, or vacancy in said position:

1. Director, Housing Division.
2. Chief Counsel.
3. Director, CPD Division.
4. Chief, Housing Development Branch.
5. Chief, Housing Management Branch.

This delegation supersedes and cancels any previous designation, published or unpublished, that may be in effect prior to the effective date of this document.

Authority: Delegation of Authority by the Secretary of Housing and Urban Development, 50 FR 18742, May 2, 1985.

Dated: September 14, 1987.

Gordan Y. Furutani,

Manager, Honolulu Office, Department of Housing and Urban Development, Region IX.

Concur:

William Y. Nishimura,

Acting Regional Administrator—Regional Housing Commissioner, Region IX.

[FR Doc. 87–22983 Filed 10–5–87; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA320–07–4212–02]

Bureau Forms Submitted for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Color-of-Title Application, 43 CFR Part 2540

Abstract: Any eligible individual or group making a color-of-title claim to public lands must file an application to settle the claim. The information is the basis for determining the validity of the claim.

Bureau Form Number: 2540–1
Frequency: Occasionally
Description of Respondents: Applicants seeking prior title to public lands.
Annual Responses: 50
Annual Burden Hours: 25
Bureau Clearance Officer: Rick Iovaine, 202–653–8853

Guy E. Baier,

Acting Assistant Director, Land and Renewable Resources.

Date: July 17, 1987.

[FR Doc. 87–23097 Filed 10–5–87; 8:45 am]

BILLING CODE 4310–84–M

[AA320–07–4212–02]

Bureau Forms Submitted for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer to the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Conveyances Affecting Color or Claim of Title, 43 CFR Part 2540

Abstract: Any eligible individual or group making a color-of-title claim to public lands must file an application to settle the claim. The information is the basis for determining the validity of the claim.

Bureau Form Number: 2540–2
Frequency: Occasionally
Description of Respondents: Applicants seeking proper title to public lands.
Annual Response: 50
Annual Burden Hours: 50
Bureau Clearnace Officer: Rick Iovaine, 202–653–8853

Guy E. Baier,

Acting Assistant Director, Land and Renewable Resources

Date July 17, 1987.

[FR Doc. 87–23098 Filed 10–5–87; 8:45am]

BILLING CODE 4310–84–M

[AA320–07–4212–2]

Bureau Forms Submitted for OMB Review

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Interior Department Desk Officer, Washington, DC 20503, telephone 202–395–7340.

Title: Color-of-Title Tax Levy and Payment Record, 43 CFR Part 2540

Abstract: Establish a procedure to support a claim under the Color-of-Title Act of December 22, 1928, as amended by the Act of July 28, 1953, where the applicant can provide a record of paying State and county taxes. Tax payment record is submitted with the Color-of-Title Application and may be used by any individual, group, or corporation authorized to hold title to land.

Bureau Form Number: 2540–3
Frequency: Occasionally
Description of Respondents: Applicants authorized to hold title to land.
Annual Responses: 50
Annual Burden Hours: 25
Bureau Clearance Office: Rick Iovaine, (202) 653–8853

Guy E. Baier,

Acting Assistant director, Land and Renewable Resources.

Date: July 17, 1987.

[FR Doc. 87–23099 Filed 10–5–87; 8:45 am]

BILLING CODE 4310–84–M

[OR–114–84–6310–11: GP7–304]

Oregon, Medford District Office; Off-Highway Vehicle Designation

AGENCY: Bureau of Land Management, Interior.

ACTION: Medford District Office; Notice given relating to off-highway motorized vehicle use on public lands.

SUMMARY: Notice is hereby given relating to the use of off-highway vehicles on certain public lands in accordance with the authority and requirements of Executive Orders 11644 and 11989, and regulations contained in 43 CFR Part 8340.

The following lands under the administration of the Bureau of Land Management are changed from the existing open designation and are hereby redesignated as limited, under Interim Management Policy and Guidelines for Lands under Wilderness Review, or closed to off-highway motor vehicle use.

The areas affected by the designations are managed by the Medford District and are located in Jackson, Josephine, and Klamath Counties, Oregon.

These designations are published as final until such time that changes in resource management warrant modifications.

FOR FURTHER INFORMATION CONTACT: Fred Tomlins, Outdoor Recreation Planner, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, telephone (503) 776–3767, FTS 424–3767.

A. Limited Designations

Two Wilderness Study Areas (WSAs), comprising 5,974 acres, will be managed in accordance with the nonimpairment criteria of the Wilderness Interim Management Policy which allows off-highway vehicle use to continue in the manner and degree on ways and trails where such use was occurring on October 21, 1976.

WSA Unit No.	WSA Name	Acres
11–1	Mountain Lakes	334
11–17	Soda Mountain	5,640

These limited vehicle use designations will remain in effect until Congressional release of WSAs, or if actual or unforeseeable use levels cause the nonimpairment criteria to be violated, in which case more restrictive designations may be made.

B. Closed Designations

The Eight Dollar Mountain Area of Critical Environmental Concern, comprising 1,240.6 acres is designated closed to motorized vehicle use to protect resource values.

These designations become effective upon publication in the **Federal Register** and will remain in effect until rescinded or modified by the Medford District Manager. Information and maps of the above areas are available at the Bureau of Land Management, Medford District Office, 3040 Biddle Road, Medford, Oregon 97504, Telephone (503) 776–4174.

David A. Jones,

District Manager.

Date Signed: September 28, 1987.

[FR Doc. 87–23100 Filed 10–5–87; 8:45 am]

BILLING CODE 4310–33–M

National Park Service

Availability of Approved Upper Delaware River Management Plan and Decision; New York and Pennsylvania

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of the approved Final Upper Delaware River Management Plan and the approved record of decision, New York and Pennsylvania.

This notice announces the availability of the approved river management plan required by section 704 of Pub. L. 95–625 and the approved record of decision for the Delaware Scenic and Recreational River. The approved plan has been transmitted to the Chairman, Committee on Interior and Insular Affairs, House of Representatives and Chairman, Committee on Energy and Natural Resources, United States Senate.

DATES: The plan will become effective January 4, 1988.

ADDRESSES: Copies of the approved river management plan and the approved record of decision are available from the National Park Service (Mid-Atlantic Regional Office, 143 South Third Street, Philadelphia, Pennsylvania 19106 and Upper Delaware National Scenic and Recreational River, Drawer C, Narrowsburg, New York 12764–0159).

FOR FURTHER INFORMATION CONTACT: Michael H. Gordon, Mid-Atlantic Regional Office, 143 South Third Street, Philadelphia, Pennsylvania 19106, (215) 597–9195.

Donald Paul Hodel,

Secretary of the Interior.

Date: September 29, 1987.

[FR Doc. 87–23079 Filed 10–5–87; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Pending Nominations; Kentucky, et al

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 26, 1987. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, U.S. Department of the Interior, Washington, DC 20243. Written comments should be submitted by October 21, 1987.

Carol D. Shull,

Chief of Registration, National Register.

KENTUCKY

Fayette County

Lexington, Basye, T. D., House, 3501 Georgetown Rd.

MAINE

Washington County

Milbridge, Petit Manan Light Station, Petit Manan Island

MASSACHUSETTS

Franklin County

Charlemont, Charlemont Village Historic District, MA 2 (Main St.) between South St. & Harmont St.

Suffolk County

Boston, Sumner Hill Historic District, Roughly bounded by Seaverns Ave., Everett St., Carolina Ave., & Newbern St.

OHIO

Montgomery County

Dayton, Sacred Heart Church, 217 W. Fourth St.

TENNESSEE

Giles County

Pulaski, *White,* Newton, House, Old Pigeon Roost Rd.

Haywood County

Stanton, Stanton Masonic Lodge and School, W. Main St.

Knox County

Concord, Concord Village Historic District, Roughly bounded by Lakeridge & Third Drs., Spring St., and the Masonic Hall & Cemetery

Wayne County

Waynesboro, Waynesboro Cumberland Presbyterian Church, High St.

TEXAS

McLennan County

McGregor, Brown-Mann House, 725 W. Sixth St.

VIRGINIA

Clarke County

Berryvile, Berryville Historic District, Jct. of US 7 & 340, Main, Church, & Buckmarsh St.

[FR Doc. 87–23080 Filed 10–5–87; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[TA–503(a)–15 and 332–249]

President's List of Articles Which May Be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences

AGENCY: United States International Trade Commission.

ACTION: Change in scope of investigation.

EFFECTIVE DATE: September 30, 1987.

SUMMARY: Following receipt of a request from the Office of the U.S. Trade Representative (USTR) dated September 16, 1987, the Commission has expanded the scope of the above referenced investigation to include examination of the probable effect on U.S. industries producing like or directly competitive articles and on consumers of (1) the complete removal of Generalized System of Preferences (GSP) duty-free status for leather cut into soles for footwear, classified in item 791.28 of the Tariff Schedules of the United States (TSUS), and in item 6406.99.60 of the proposed Harmonized Tariff Schedule (HS) of the United States and (2) the removal only of these products of Argentina from GSP duty-free treatment.

Background

The Commission published the initial notice of institution of its investigation in the **Federal Register** of August 26, 1987 (52 FR 32179).

Public Hearing

A public hearing in connection with the investigation is already scheduled to be held in the Commission Hearing Room, 701 E Street NW., Washington, DC 20436, beginning at 9:30 a.m. on October 7, 1987, and continuing as required on October 8 and 9. Persons wishing to appear at the public hearing in connection with the product being added to the investigation should file requests to appear and should file prehearing briefs (original and 14 copies) with the Secretary, United States International Trade Commission, 701 E Street NW., Washington, DC 20436, not later than noon, October 2, 1987. Post-hearing briefs are required by October 16, 1987.

Written Submissions

In lieu of or in addition to appearances at the public hearing, interested persons are invited to submit

written statements concerning the investigation. Written statements for the product being added to this investigation must be received by the close of business on October 20, 1987. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 724–0002.

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: September 30, 1987.

[FR Doc. 87–23003 Filed 10–5–87; 8:45 am]

BILLING CODE 7020–02–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31111]

Exemption; Joint Project for Relocation of a Line of Railroad; Burlington Northern Railroad Co. and Southern Pacific Transportation Co.

On September 18, 1987, Burlington Northern Railroad Company (BN) filed a notice of exemption under 49 CFR 1180.2(d)(5) for a joint project with the Southern Pacific Transportation Company (SP) to relocate a line of railroad.

BN and SP both own lines of railroad in Washington County, OR. The joint project involves: (1) BN's acquisition of overhead trackage rights from SP between SP milepost 756.94 at St. Marys and SP milepost 765.71 at Hillsboro; and (2) the discontinuance of BN's overhead trackage rights over SP between SP milepost 774.77 at Banks and SP milepost 765.50 at Hillsboro.

SP had previously granted bridge trackage rights to Oregon Electric Railway Company (OE) between the above-mentioned SP mileposts at Banks and Hillsboro. BN has since succeeded OE as the grantee of those trackage rights.

Now, BN and SP intend to substitute the new overhead trackage rights between St. Marys and Hillsboro for the existing overhead trackage rights between Banks and Hillsboro. The trackage rights granted to BN between St. Marys and Hillsboro and BN's discontinuance of service between Banks and Hillsboro are effective on September 28, 1987.

SP service is not affected by the transaction. The relocation will provide BN with a shorter route to and from Hillsboro, and will result in more efficient and economical operations. BN has filed a petition for waiver of the environmental reporting requirements since the subject transaction will have no significant physical impact on the environment. The waiver request has been granted by decision served October 6, 1987.

The joint project involves the relocation of a line of railroad that does not disrupt service to shippers. Accordingly, it falls within the class of transactions identified at 49 CFR 1180.2(d)(5). The Commission categorically exempted these transactions under 49 U.S.C. 10505 in *Railroad Consolidation Procedures*, 366 I.C.C. 75 (1982). The Commission determined that line relocations embrace trackage rights transactions such as the one proposed here. *See D.T.&I.R.—Trackage Rights*, 363 I.C.C. 878 (1981).

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the trackage rights agreement will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified by *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980). Any employees affected by the discontinuance will be protected by the conditions in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).[1]

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Decided: September 28, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–22927 Filed 10–5–87; 8:45 am]

BILLING CODE 7035–01–M

[1] The Railway Labor Executives' Association filed a request for labor protection. Since this transaction involves an exemption from 49 U.S.C. 11343, whereby the imposition of labor protective conditions is mandatory, labor protective conditions have been imposed.

[Finance Docket No. 31110]

Exemption, Acquisition and Operation—Rail Line of Chicago and North Western Transportation Co. Between Harvard and Chemung in McHenry County, IL; Chicago-Chemung Railroad Corp.

Chicago-Chemung Railroad Corporation (CCRC) has filed a notice of exemption to acquire and operate a 3.5-mile line of the Chicago and North Western Transportation Company (CNW) between milepost 64.0 near Harvard, IL, and milepost 67.5 near Chemung, IL, and 0.5 miles of incidental trackage rights between milepost 64.0 and milepost 63.5. The trackage rights are to enable CCRC to use the CNW passing track for interchanging trainloads of grain. Comments must be filed with the Commission and served on: Thomas F. McFarland, Jr., Belnap, Spencer, McFarland, Emrich & Herman, 20 North Wacker Drive, Chicago, IL 60606, (312) 236–0204.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time.[1] The filing of a petition to revoke will not automatically stay the transaction.

Decided: September 23, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87–22808 Filed 10–5–87; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub-No. 294X)]

Exemption; Abandonment in King and Kittitas Counties, WA; Burlington Northern Railroad Co.

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 36.56-mile line of railroad between milepost 2137.25 near Cedar Falls and milepost 2100.69 near Cabin Creek, in King and Kittitas Counties, WA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years and that any overhead traffic may be rerouted; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local

[1] On September 22, 1987, the Commission denied a petition for stay filed by Patrick W. Simmons, Illinois Legislative Director for the United Transportation Union.

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 November 5, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by October 16, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 26, 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:

Peter M. Lee, Assistant General Counsel, Burlington Northern Railroad Company, 3800 Continental Plaza, 777 Main Street, Fort Worth, TX 76102.

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: September 22, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22810 Filed 10-5-87; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 1X)]

Exemption; Abandonment of Service in York County, SC; Carolina and Northwestern Railway Co.

Applicant has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its 3.8-mile line of railroad between milepost HG-32.0 and milepost HG-35.8 in York County, SC.

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 November 5, 1987 (unless stayed pending reconsideration). Petitions to stay must be filed by October 16, 1987, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by October 26, 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:

Angelica D. Lloyd, Norfolk Southern Corporation, 8 N. Jefferson Street, Roanoke, VA 24042-0041.

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: September 24, 1987.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 87-22811 Filed 10-5-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-19, 958 et al.]

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance; Kimberly Clark Corp.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period September 21, 1987—September 25, 1987.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-19,958; Kimberly Clark Corp., Spotswood, NJ

TA-W-19,906; Texas Industries, Inc., Midlothian, TX

TA-W-19,871; Deena Products Co., Arlington, KY

TA-W-19,918; Precise Metals & Plastic, Inc., Cumberland Div., Cumberland, MD

TA-W-19,932; General Motors Corp., Central Foundry, Saginaw, MI

TA-W-19,933; General Motors Corp., Central Foundry, Pontiac, MI

TA-W-19,935; General Motors Corp., CPC Grand Rapids, Grand Rapids, MI

TA-W-19,936; General Motors Corp., CPC Marion, Marion, IN

TA-W-19,940; General Motors Corp., Fisher Guide Div., Flint, MI

TA-W-19,941; General Motors Corp., Hydramatic Div., Muncie, IN

TA-W-19,942; General Motors Corp., Inland Div., Euclid, OH

TA-W-19,943; General Motors Corp., Inland Div., Livonia, MI

TA-W-19,945; General Motors Corp., Saginaw Div., Athens, AL

TA-W-19,946; General Motors Corp., Saginaw Div., Buffalo, NY

TA-W-19,947; General Motors Corp., Saginaw Div., Detroit Gear & Axle, Detroit, MI

TA–W–19,937; General Motors Corp., Detriot Diesel-Allison Div., Indianapolis, IN

TA–W–19,938; General Motors Corp., Electro-Motive Div., La Grange, IL

In the following cases the investigation revealed that criterion (3) has not been met for the reasons specified.

TA–W–19,927; General Motors Corp., CPC Bowling Green, Bowling Green, KY

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,957; General Motors Corp., BOC Leeds, Kansas City, MO

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,924; General Motors Corp., BOC Lansing, Lansing, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,999; R.E., Schall Mining Co., Inc., Raymond Schall Trucking, Kittaning, PA

Imports of coal are negligible.

TA–W–20,025; Vandrill, Inc., Edmond, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,994: Daco, Inc., Borger, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–19,923; General Motors Corp., BOC Hamtramck, Detroit, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,926; General Motors Corp., BOC Wentzville Assembly Center, Wentzville, MO

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,925; General Motors Corp., BOC Orion Assembly, Orion Township, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,944; General Motors Corp., Rochester Products Grand Rapids, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,948; General Motors Corp., Saginaw Div., Saginaw, MI

Increased imports did not contribute importantly to workers separations at the firm.

TA–W–19,922; General Motors Corp., BOC Buick Assembly, Flint, MI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA–W–19,928; General Motors Corp., CPC Pontiac Fiero, Pontiac, MI

A certification was issued covering all workers of the firm separated on or after July 16, 1986.

TA–W–20,026; Al Tech Specialty Steel Corp., Toledo Tool Steel Depot, Walbridge, OH

A certification was issued covering all workers of the firm separated on or after July 29, 1986.

TA–W–19,955; Finkel Outdoor Products, Garfield, NJ

A certification was issued covering all workers of the firm separated on or after June 17, 1986.

TA–W–19,909; A & L Seaman, Bayshore, NY

A certification was issued covering all workers of the firm separated on or after July 1, 1986.

TA–W–19,953; Everything is Jake, Inc., Allentown, PA

A certification was issued covering all workers of the firm separated on or after July 13, 1986.

TA–W–19,949; Ajax Frock, Inc., New York, NY

A certification was issued covering all workers of the firm separated on or after July 16, 1986.

TA–W–19,018; Moseley Petroleum Corp., Dallas, TX

A certification was issued covering all workers of the firm separated on or after August 6, 1986.

TA–W–19,931; General Motors Corp., Central Foundry-Defiance, Defiance, OH

A certification was issued covering all workers of the firm separated on or after July 16, 1986.

TA–W–19,934; General Motors Corp., CPC Flint Engine, Flint MI

A certification was issued covering all workers of the firm separated on or after July 16, 1986 and before September 1, 1987.

TA–W–19,939; General Motors Corp., Fisher Guide Div., Anderson, IN

A certification was issued covering all workers of the firm separated on or after July 16, 1986.

TA–W–19,991; Barad & Company, Thayer, MO

A certification was issued covering all workers of the firm separated on or after July 29, 1986 and before September 7, 1987.

I hereby certify that the aforementioned determinations were issued during September 21, 1987–September 25, 1987. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213 during normal business hours or will be mailed to persons who write to the above address.

Marvin M. Fooks,

Director, Office of Trade Adjustemnt Assistance.

Dated: September 29, 1987.

[FR Doc. 87–23075 Filed 10–5–87; 8:45am]

BILING CODE 4510–30–M

Mine Safety and Health Administration

Establishment of Advisory Committee

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Establishment of Advisory Committee.

SUMMARY: The Secretary of Labor has determined that it is in the public interest to establish an Advisory Committee to review standards and regulations related to the approval and use of diesel-powered equipment in underground coal mines. The Committee would provide a collective expertise not otherwise available to the Secretary to address the complex and sensitive issues involved. The Secretary is considering promulgation of diesel standards and regulations for underground coal mines under sections 101 and 508 of the Federal Mine Safety and Health Act of 1977 (Mine Act).

DATE: Comments must be received on or before October 21, 1987.

ADDRESS: Send comments to the Office of Standards, Regulations, and Variances; Mine Safety and Health Administration; Room 631; Ballston Tower #3; 4015 Wilson Boulevard; Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvery, Acting Associate Assistant Secretary for Mine Safety and Health, MSHA, (703) 235–1910.

SUPPLEMENTARY INFORMATION: Over the past decade, diesel-powered equipment has been introduced into the underground coal mining industry in increasing numbers. MSHA does not have standards or regulations applicable

to diesel-powered equipment in underground coal mines. MSHA's existing regulations (30 CFR Part 36) address diesel-powered equipment for noncoal mines. MSHA encourages underground coal mine operators to use equipment approved under Part 36; however, equipment without explosion-proof features is being used.

The internal-combustion engines of diesel-powered equipment present potentially serious fire and explosion hazards from, for example, the escape of flame and high surface temperatures. To be safe in the potentially explosive atmosphere of underground coal mines, this equipment needs to be specially designed to protet against these hazards. In addition, the combustion products of diesel engines may contain potentially harmful airborne contaminants which when released into the mine atmosphere could endanger the health of miners.

In accordance with the provisions of the Federal Advisory Committee Act and after consultation with the General Services Administration; the Secretary of Labor has determined that the establishment of the Advisory Committee on Standards and Regulations for Diesel-Powered Equyipment in Underground Coal Mines is in the public interest in connection with performance of the duties imposed on the Department by section 101 of the Mine Act.

The Committee will advise the Secretary of Labor on safety and health standards related to the use of diesel-powered equipment in underground coal mines. It will also review related data and information and make recommendations to the Secretary of Labor regarding regulations. The appropriateness of diesel equipment use in underground coal mines will not be an issue to be addressed by the Committee.

As required by section 102(c) of the Mine Act, the majority of the Committee will be composed of individuals who have no economic interests in the mining industry and who are not operators, miners, or officers or employees of the Federal Government or any State, or local government. There will be nine committee members: Two representing labor, two representing industry, and five persons with no economic interests in the industry.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter will be filed under that Act fifteen days from the date of this publication.

Interested persons are invited to submit comments regarding the establishment of the Committee on Standards and Regulations for Diesel-Powered Equipment in Underground Coal Mines to Patricia W. Silvey, Acting Associate Assistant Secretary for Mine Safety and Health, at the aforementioned address.

Date: October 1, 1987.

William E. Brock,

Secretary of Labor.

[FR Doc. 87-23076 Filed 10-5-87; 8:45 am]

BILLING CODE 9510-43-M

[Docket No. M-87-16-M]

Petition for Modification of Application of Mandatory Safety Standard; Van Dyke Minerals, Ltd.

Van Dyke Minerals, Ltd., 17233 East Kenyon Drive, Aurora, Colorado 80013 has filed a petition to modify the application of 30 CFR 57.4533 (mine opening vicinity)— to its Bueno Mine (I.D. No. 05-02404) located in Boulder County, Colorado. 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 surface buildings or other similar structures within 100 feet of mine openings used for intake air or within 100 feet of mine opoenings that are designated escapeways in exhaust air be constructed of noncombustible materials; or constructed to meet a fire resistance rating of no less than one hour; or provided with an automatic fire suppression system; or covered on all combustible interior and exterior structural surfaces with noncombustible material, such as five-eighth inch, type "X" gypsum wall-board.

2. As an alternate method, petitioner proposes to locate the shed 85 feet from the portal in lieu of the 100 feet as required.

3. In support of this request, petitioner states that the portal is covered with fire retardant paint, there is virtually no flammable vegetation between the portal and the shed, the air flows out of the portal, and there is a secondary exit.

4. For these reasons petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before November 5, 1987. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Acting Associate Assistant Secretary for Mine Safety and Health.

Date: September 22, 1987.

[FR Doc. 87-23074 Filed 10-5-87; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

Advisory Council on Employee Welfare and Pension Benefits Plans; Work Group Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting of the Work Group on Employee Stock Ownership Plans (ESOP) of the Advisory Council on Employee Welfare and Pension Benefit Plans will be held at 10:30 a.m., Tuesday, October 27, 1987, in Room N-3437B,C, U.S. Department of Labor Building, Third and Constitution Avenue, NW., Washington, DC 20210.

This nine-member work group was formed by the Advisory Council to study various ERISA issues relating to employee stock ownership plans (ESOP's).

The purpose of the October 27 meeting is to review and consider a draft report on the use of ESOPs in conjunction with leveraged buyouts involving multiple investors.

Individuals, or representatives or organizations, wishing to address the work group should submit written requests on or before October 22, 1987 to Charles W. Lee, Jr., Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N-5677, 200 Constitution Avenue, NW., Washington, DC 20210. Oral presentations will be limited to ten minutes, but witnesses may submit an extended statement for the record.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before October 22, 1987.

Signed at Washington, DC, this 1st day of October, 1987.

David M. Walker,

Assistant Secretary-Designate for Pension and Welfare Benefits Administration.

[FR Doc. 87-23011 Filed 10-5-87; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel (Challenge III Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on October 20, 1987, from 9:00 a.m.–5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of Feburary 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

September 25, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–22993 Filed 10–5–87; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel (Challenge III Section); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Challenge III Section) to the National Council on the Arts will be held on October 16, 1987, from 9:00 a.m.—5:30 p.m. in room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

September 25, 1987.

Yvonne M. Sabine,

Acting Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 87–22994 Filed 10–5–87; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Romulus, MI; Aircraft Accident

In connection with its investigation of the accident involving Northwest Airlines, Inc., DC–9–82, of U.S. Registry N312RC, at the Detroit-Metro Wayne County International Airport, Detroit (Romulus), Michigan, on August 16, 1987, the National Transportation Safety Board will convene a public hearing at 9:30 a.m. (local time), on November 16, 1987, in the Michigan Ballroom of the Ramada Inn-Detroit Metropolitan Airport, located at 8270 Wickham Road, Romulus, Michigan. For more information contact Alan Pollock, Office of Government and Public Affairs National Transportation Safety Board, 800 Independence Avenue, SW., Washington, DC 20594, telephone (202 382–6606.

Bea Hardesty,

Federal Register Liaison Officer.

September 30, 1987.

[FR Doc. 87–23101 Filed 10–5–87; 8:45 am]

BILLING CODE 7533-01-M

NUCLEAR REGULATORY COMMISSION

[Byproduct Material License No. 34–19089–01; Docket No. 30–16055–SP; ASLBP No. 87–545–01–SP]

Reconstitution of Board; Advanced Medical Systems, Inc.

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Advanced Medical Systems, Inc.*, Docket No. 30–16055–SP, is hereby reconstituted by appointing Administrative Judges Robert M. Lazo, Ernest E. Hill and Harry Foreman in place of Administrative Law Judge Ivan W. Smith, who is unable to serve.

As reconstituted, the Board is comprised of the following Administrative Judges: Dr. Robert M. Lazo, Chairman; Mr. Ernest E. Hill; Dr. Harry Foreman.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701(1980). The addresses of the new Board members are:

Administrative Judge Robert M. Lazo, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC. 20555

Administrative Judge Ernest E. Hill, Hill Associates, 210 Montego Drive, Danville, California 94526

Administrative Judge Harry Foreman, 1564, Burton Avenue, ST. Paul, Minnesota 55108

Issued at Bethesda, Maryland, this 29th day of September 1987.

Robert M. Lazo

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 87–23070 Filed 10–5–87; 8:45 am]

BILLING CODE 7590-01-M

[Byproduct Material License No. 34–19069–01; E. A. 87–139; Docket No. 30–16055–0M; ASLBP No. 87–555–01–0M

Reconstitution of Board; Advanced Medical Systems, Inc.

Pursuant to the authority contained in 10 CFR 2.721, the Atomic Safety and Licensing Board for *Advanced Medical Systems, Inc.*, Docket No. 30–16055–0M, is hereby reconstituted by appointing Administrative Judges Robert M. Lazo, Ernest E. Hill and Harry Foreman in place of Administrative Law Judge Ivan W. Smith, who is unable to serve.

As reconstituted, the Board is comprised of the following Administrative Judges: Dr. Robert M. Lazo, Chairman; Mr. Ernest E. Hill; Dr Harry Foreman.

All correspondence, documents and other material shall be filed with the Board in accordance with 10 CFR 2.701 (1980). The addresses of the new Board members are:

Administrative Judge Dr. Robert M. Lazo, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge Ernest E. Hill, Hill Associates, 210 Montego Drive, Danville, California 94526.

Administrative Judge Harry Foreman, 1564 Burton Avenue, St. Paul, Minnesota 55108

Issued at Bethesda, Maryland, this 29th day of September 1987.

Robert M. Lazo

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 87-23071 Filed 10-5-87; 8:45 am]

BILLING CODE 7590-01-M

[Source Material License No. SUA-917; Docket No. 40-3453-SP; ASLBP No. 87-557-05-SP]

Designation of Presiding Officer; Atlas Minerals Division of Atlas Corp.

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:

Atlas Mineral Division of Atlas Corp.

Source Material License No. SUA-917

The presiding officer is being designated pursuant to an Order of the Commission, dated September 25, 1987, granting a request for a hearing by Atlas Minerals Division of Atlas Corporation regarding the Regional Administrator's denial of its application to renew Source Material License No. SUA-917.

The presiding officer in this proceeding is Administrative Judge John H Frye.

Following consultation with the Panel Chairman, pursuant to the provisions of 10 CFR 2.722, the Presiding Officer has appointed Administrative Judge James H. Carpenter to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Frye and Judge Carpenter in accordance with 10 CFR 2.701. There addresses are:

Administrative Judge John H Frye, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Administrative Judge James H Carpenter, Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 29th day of September 1987.

Robert M. Lazo,

Acting Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 87-23072 Filed 10-5-87; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Extension of Forms Submitted to OMB for Clearance

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S.C., Chapter 35), this notice announces a proposed extension of forms which collect information from the public. The Establishment Information Form, the Wage Data Collection Form, and the Continuation Form are wage survey forms developed by the Office of Personnel Management and used by three lead agencies, the Department of Defense, the Veterans Administration, and the National Aeronautics and Space Administration, to survey private sector business establishments. The surveys are conducted annually to determine the level of wages paid by private enterprise establishments for representative jobs which are common to both private industry and Government. The lead agencies use this information to establish rates of pay for Federal Wage System employees, competitive with the private sector. For copies of this proposal, call William C. Duffy, Agency Clearance Officer, on (202) 632-7714.

DATE: Comments on this proposal should be received on or before October 20, 1987.

ADDRESSES: Send or deliver comments to—

William C. Duffy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 6410, Washington, DC 20415

and

Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, New Executive Office Building, NW., Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: William C. Duffy, (202) 632-7714.

U.S. Office of Personnel Management.

James Colvard,

Deputy Director.

[FR Doc. 87-23068 Filed 10-5-87; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review By Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs, 450 Fifth Street, NW., Washington, DC 20549

New File No. 270-313, Rule 10b-6

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 clearance on an emergency basis a proposal to require certain members of the International Stock Exchange of the United Kingdom and the Republic of Ireland, Limited ("ISE") to notify the ISE and the Commission and retain certain transaction information for two years as conditions to relying on an exemption from Rule 10b-6 under the Securities Exchange Act of 1934. The exemption would allow an ISE member firm to engage in "passive market making" transactions whenever it is participating in a multinational offering of a security designated 'alpha" or "beta" by the ISE, with a portion to be distributed in the U.S., or whenever the ISE firm's U.S. affiliates are participating in a distribution in the U.S. of such security. Rule 10b-6 prohibits persons participating in a distribution from bidding for or purchasing the security being distributed, or a related security, during the distribution. Rule 10b-6(h) permits the Commission to exempt transactions from Rule 10b-6 either unconditionally or on specified terms or conditions. The omnibus exemption should result in considerable cost savings to affected ISE member firms and to Commission staff, since a written exemption request will not have to be made by individual firms, and reviewed and responded to by the staff, each time a multinational offering of a U.K. security occurs. It is estimated that approximately 15 broker-dealers will rely on the exemption during FY 1988 at an estimated annual average of 26.4 hours.

Submit comments to OMB Desk Officer: Mr. Robert Neal, (202) 395-7340, Office of Information and Regulatory Affairs, Office of Management and

Budget, Room 3228 NEOB, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

September 29, 1987.

[FR Doc. 87-23111 Filed 10-5-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-24948; File No. SR-AMEX-87-22]

Self-Regulatory Organization's; Proposed Rule Change by the American Stock Exchange, Inc. Relating to Long-term Options

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 September 4, 1987 the American Stock Exhange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The American Stock Exchange, Inc. ("AMEX" or "Exchange") proposes to amend Rule 903C as set forth below. *Underlining* indicates material proposed to be added; [brackets] indicate material proposed to be deleted.

Rule 903C—Series of Stock Index Options

(a) After a particular class of stock index options has been approved for listing and trading on the Exchange, the Exchange shall from time to time open for trading series of options therein. Within each approved class of stock index options, the Exchange may open for trading series of options expiring in consecutive calendar months ("consecutive month series"), as provided in subparagraph (i) of this paragraph (a), [and/or] series of options expiring at three-month intervals ("cycle month series"), as provided in subparagraph (ii) of this paragraph (a)[.] *and/or series of options having up to thirty-six months to expiration ("long-term options series") as provided in subparagraph (iii) of this paragraph (a).* Prior to the opeining of trading in any series of stock index options, the Exchange shall fix the expiration month and exercise price of option contracts included in each such series.

(i) No change.

(ii) No change.

(iii) Long-term Option Series—The Exchange may list, with respect to any class of stock index options, series of opitons having up to thirty-six months to expiration. Such series of options may be opened for trading simultaneously with series of options trading consecutive month series (as provided in subparagraph (i)) and/or with series of options trading on the cycle month series (as provided in subparagraph (ii)).

(b) No change.

(c) No Change.

The Exchange has indicated by letter that the listing of these long term stock index opitons will affect normal trading rules [1] and for that reason, clarifications will be made to the rules before their adoption.

The Exchange states that such long term series—series longer than current "normal" expirations—will be opened for trading either when there is buying or selling interest, or 40 minutes prior to the close, whichever occurs first. No quotations will be posted for such long term option series until they are opened for trading. When these option series come within the "normal expiration series", they will be treated like any other non-long term option for all trading procedures, including opening rotations.

The Exchange states that with respect to strike price intervals, bid/ask differentials and continuity rules, such rules will not apply to long term option series until the time to expiration "normalizes". However, such waiver will not prevent the potential of an Exchange finding of inadequate market-maker performance should a specialist and/or registered trader enter into transactions or make bids of offers in long term opitons that are inconsistent with the maintenance or a fair and orderly market.

The Exchange intends to monitor the trading in long term options closely and will re-examine the applicability of these rules to such options in one year's time.

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.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to list long-term options on its broad-based indices. These long-term options would expire in either one, two or three years, however, the Exchange seeks to retain the right to also list options with intervening six month expirations (e.g. 1½, 2½ years). Initially, the Exchange plans to list long term options on only the Institutional Index ("XII") with initial long term expirations in December. In addition, strike price intervals may be wide than those currently being used and may be as wide as twenty five or fifty points.

For example, upon approval of this rule change and assuming an index level of 350, XII long term options could be introduced with expirations of December 1988, 1989 and/or 1990 with strike prices of 300 and/or 325; 350; and/or 375/400. Intervening expirations of June 1989 and/or June 1990 could also be listed.

Portfolio managers and other institutional customers have expressed a need for longer-term portfolio hedges. Currently, institutional investors can insure their portfolios with either futures positions or off-exchange customized options. Long-term options, as proposed by the Exchange, will give institutional investors an alternative by providing standardized options that have the benefit of issuance and clearance by the Options Clearing Corporation and a centralized, regulated secondary market on the Exchange.

The proposed change is consistent with the requirements of the Securities Exchange Act of 1934 ("1934 Act") and the rules and regulations thereunder applicable to the Exchange since it will add liquidity to the market by allowing institutional investors to hedge the risks of their stock portfolios over a longer period of time and with a known and limited cost.

Therefore, the proposed rule change is also consistent with section 6(b)(5) of the 1934 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.

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[1] Letter from Howard A. Baker, Senior Vice President, American Stock Exchange to Joseph Furey, Division of Market Regulation, SEC, dated September 21, 1987.

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 of the AMEX Board of Governors comprised of members and representatives of member 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 organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the Submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference 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 within 21 days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: September 29, 1987.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23112 Filed 10-5-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

September 30, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f) (1) (B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Allstate Municipal Income Trust
Shares of Beneficial Interest (File No. 7-0502)
Firstfed Financial Corp.
Common Stock, $.01 Par Value (File No. 7-0503)
Dixons Group PLC
American Depositary Shares Each Representing 3 Ordinary Shares of 10P Each (File No. 7-0504)
Dreyfus Strategic Municipals Inc.
Common Stock, $.001 Par Value (File No. 7-0505)
Charles Schwab Corporation (The)
Common Stock, $.01 Par Value (File No. 7-0506)
Union Texas Petroleum Holdings Inc.
Common Stock, $.01 Par Value (File No. 7-0507)
Champion Enterprises Inc.
Common Stock, $1.00 Par Value (File No. 7-0508)
Battle Mountain Gold Co.
Common Stock, $.10 Par Value (File No. 7-0509)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 21, 1987 written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23113 Filed 10-5-87; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

September 30, 1987.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

ALZA Corporation (Delaware;)
Class A Common Stock, $1.00 Par Value (File No. 7-0500)
Ideal Basic Industries, Inc. (Delaware)
Common Stock, $0.01 Par Value (File No. 7-0501)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 21, 1987, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-23114 Filed 10-5-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16016; File No. 812-6777]

Application for Exemption; Delaware Group Premium Fund, Inc.

September 29, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Delaware Group Premium Fund, Inc.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from sections 9(a), 13(a), 15(a), and 15(b) and Rules 6e-2(b)(15) and 6e-3(T)(b)(15).

Summary of Application: Applicant requests an exemption permitting it to offer its shares to a class of life insurers ("Participating Insurance Companies") in connection with variable annuity contracts and variable life insurance policies offered by the Participating Insurance Companies. Such Participating Insurance Companies may or may not be affiliated with each other.

Filing Date: The application was filed on June 26, 1987 and amended on September 2, 1987.

Hearing or Notification: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any request must be received by the SEC no later than 5:30 p.m., on October 26, 1987. Request a hearing in writing, giving the nature of your interest, the reasons for the request, and the issues you contest. Applicant should be served with a copy of the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Notification of the date of a hearing should be requested by writing to the Secretary of the SEC.

ADDRESS: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Delaware Group Premium Fund, Inc., 10 Penn Center Plaza, Philadelphia, PA 19103.

FOR FURTHER INFORMATION CONTACT: Jeffrey M. Ulness, Attorney, at (202) 272-2026, or Lewis B. Reich, Special Counsel, (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 at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is registered under the 1940 Act as an open end diversified management investment company of the series type. It currently has four Portfolios (Series): Equity/Income Series, High Yield Series, Capitol Reserves Series and Multiple Strategy Series.

2. Applicant proposes to offer its shares to the separate accounts of Participating Insurance Companies which issue either variable annuity contracts or scheduled or flexible premium variable life insurance contracts (together, "variable life insurance"). The use of a common investment management company as the investment medium of both variable annuities and variable life insurance is referred to herein as "mixed funding." The use of a common investment management company as the investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

3. Rules 6e-2 and 6e-3(T) under the Act provide certain exemptions from the Act in order to permit insurance company separate accounts to issue variable life insurance. Rule 6e-2(b)(15), however, precludes mixed and shared funding and Rule 6e-3(T)(b)(15) precludes shared funding. Applicant has requested exemptive relief to the extent necessary to permit shares of the Applicant to be sold for mixed funding and shared funding. Applicant proposes that the requested relief extend to a class consisting of life insurers and variable life separate accounts investing in Applicant (and principal underwriters and depositors of such separate accounts) which would otherwise be precluded from investing in Applicant by virtue of Applicant offering its shares to variable annuity separate accounts or unaffiliated separate accounts.

4. Applicant asserts that granting the request for relief to engage in mixed and shared funding will benefit variable contract owners by: (1) Eliminating a significant portion of the costs of establishing and administering separate funds; (2) allowing for the development of larger pools of assets resulting in greater cost efficiencies; and (3) encouraging more insurance companies to offer variable contracts, which should result in increased competition and lower contract charges. Applicant asserts that the Portfolios will not be managed to favor or disfavor any particular insurer or type of insurance product.

Disqualification

5. Applicant requests relief from section 9(a) and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) to the extent necessary to permit mixed and shared funding. Applicant proposes that the relief granted by paragraph (b)(15) of Rules 6e-2 and 6e-3(T) from section 9(a) be extended to Participating Insurance Companies and variable life separate accounts which may use Applicant as an investment medium to fund variable life insurance contracts, subject to the conditions regarding conflicts set out below.

6. In support of this request for relief, Applicant asserts that the same policies that led the Commission to limit the provisions of section 9(a) to those employees of an insurance company engaged in managing the separate account are applicable to insurance companies and their separate accounts that are funded by a fund offering mixed and shared funding. Thus, Applicant argues that it would serve no regulatory purpose to apply the provisions of section 9(a) to the many employees of the Participating Insurance Companies whose separate accounts may utilize Applicant as a funding medium for variable life insurance contracts. Moreover, Applicant submits that applying the requirements of section 9(a) in such cases would increase the costs of monitoring for compliance with that section, which would reduce the net rates of return realized by contractowners. Under the relief requested, section 9 would still be in effect and would insulate Applicant from those individuals who are disqualified under the Act.

Voting

7. Applicant requests relief from sections 13(a), 15(a), and 15(b) of the Act and Rules 6e-2(b)(15) and 6e-3(T)(b)(15) thereunder to the extent necessary to permit mixed and shared funding: i.e., Applicant proposes that the relief granted by paragraph (b)(15) of Rules 6e-2 and 6e-3(T) from sections 13(a), 15(a) and 15(b) be extended to the Participating Insurance Companies and their variable life separate accounts which use Applicant as an investment medium to fund variable life contracts subject to the conditions regarding conflicts set out below.

8. In support of this request for relief, Applicant states that all variable annuity and variable life contractowners will be provided pass-through voting rights with respect to shares of the Applicant. Because paragraphs (b)15) of both Rule 6e-2 and

Rule 6e–3(T) permit the insurance company to disregard these voting instructions in certain limited circumstances, Applicant acknowledges that this may cause an irreconcilable conflict to develop among the separate accounts. Applicant proposes to resolve these potential conflicts through certain undertakings it propose as conditions to receipt of exemptive relief set out below. Thus, according to Applicant, if a particular Participating Insurance Company's disregard of voting instructions conflicted with the voting instructions of a majority of the contractowners, or precluded a majority vote, the insurer may be required, at Applicant's election, to withdraw its separate account's investment in Applicant. The Participating Insurance Companies will vote shares for which they have not received voting instructions, as well as shares attributable to them, in the same proportion as they vote shares for which they have received instructions.

Applicant's Conditions

Applicant states that it will comply with the following conditions:

1. A majority of the Board of Directors of Applicant ("Board") shall consist of persons who are not interested persons of Applicant, as defined by the 1940 Act.

2. The Board will monitor Applicant for the existence of any material irreconcilable conflict between the interests of the contractowners of all separate accounts investing in Applicant.

An irreconcilable material conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance tax, or securities law or regulations, or a public ruling, private letter ruling, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of any Portfolio are being managed; (e) a difference in voting instructions given by variable annuity contractowners and variable life insurance contractowners or by contractowners of different Participating Insurance Companies; or (f) a decision by an insurer to disregard the voting instructions of contractowners.

3. Participating Insurance Companies and the Investment Adviser will report any potential or existing conflicts to Applicant's Board. Participating Insurance Companies will be responsible for assisting the Board in carrying out its responsibilities by providing the Board with all information reasonably necessary for the Board to consider any issues raised including information as to a decision by an insurer to disregard voting instructions of contractowners. The responsibility to report such information and conflicts and to assist the Board will be contractual obligations of all insurers investing in Applicant under their agreements governing participation in Applicant.

4. If it is determined by a majority of the Board of Applicant or a majority of its disinterested trustees that a material irreconcilable conflict exists, the relevant Participating Insurance Companies shall, at their expense, take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, which steps could include: (a) Withdrawing the assets allocable to some or all of the separate accounts from Applicant or any Series (Portfolio) and reinvesting such assets in a different investment medium, including another Portfolio of Applicant, or submitting the question of whether such segregation should be implemented to a vote of all affected contractowners and, as appropriate, segregating the assets of any particular group (i.e., annuity contractowners, life insurance contractowners, or variable contractowners of one or more Participating Insurance Companies) that votes in favor of such segregation, or offering to the affected contractowners the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participating Insurance Company's decision to disregard contractowner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participating Insurance Company may be required, at Applicant's election, to withdraw its separate account's investment in Applicant, and no charge or penalty will be imposed against a separate account as a result of such a withdrawal. The responsibility to take remedial action in the event of a Board determination of an irreconcilable material conflict and to bear the cost of such remedial action shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in Applicant and those responsibilities will be carried out with a view only to the interests of their contractowners. For purposes of this condition 4, a majority of the disinterested members of the Board shall determine whether or not any proposed action adequately remedies any irreconcilable conflict, but in no event will Applicant be required to establish a new funding medium for any variable contract. No Participating Insurance Company shall be required by this condition 4 to establish a new funding medium for any variable contract if an offer to do so has been declined by vote of a majority of affected contractowners.

5. The Board's determination of the existence of an irreconcilable material conflict and its implications shall be made known promptly to all Participating Insurance Compnies.

6. Participating Insurance Companies shall provide pass-through voting privileges to all variable contractowners so long as the Commission continues to interpret the Act to require pass-through voting privileges for variable contractowners. Paticipating Insurance Companies shall be responsible for assuring that each of their separate accounts participating in Applicant calculates voting privileges in a manner consistent with other Participating Insurance Companies. The obligation to calculate voting privileges in a manner consistent with all other separate accounts investing in Applicant shall be contractual obligation of all present and future Participating Insurance Companies under their agreements governing participation in Applicant. Participating Insurance Companies will vote shares for which they have not received voting instructions, as well as shares attributable to them, in the same proportion as they vote shares for which they have received instructions.

7. All reports received by the Board of potential or existing conflicts, determining the existence of a conflict, notifying Participating Insurance Companies of a conflict, and determining whether any proposed action adequately remedied a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23115 Filed 10–5–87; 8:45 am]

BILLING CODE 8010–15–M

[Rel. No. IC-16015; 812-6802]

Application for Exemption; ICN Pharmaceuticals, Inc.

September 29, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: ICN Pharmaceuticals, Inc.

Relevant 1940 Act Section: Exemption requested under section 3(b)(2) or, alternatively, under section 6(c) of the 1940 Act.

Summary of Application: Applicant is seeking an order declaring that it is not an investment company under the 1940 Act or, in the alternative, an order exempting Applicant from all provisions of the 1940 Act until July 23, 1988. Applicant further requests a temporary order exempting Applicant from all provisions of the 1940 Act until a final determination is made on the application.

Filing Date: The application was filed on July 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 this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 23, 1987. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for attorneys, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 375 Park Avenue, New York 10152, Attention: Lawrence H. Penitz, Esq.

FOR FURTHER INFORMATION CONTACT: Sherry A. Hutchins, Staff Attorney, (202) 272-3026, or Brion R. Thompson, Special Counsel, (202) 272-3016 (Division of Investment Management.)

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 in Maryland (301) 358-4300).

Applicant's Representations

1. Applicant is a pharmaceutical and biomedical company primarily engaged, through majority-owned subsidiaries, in the development, manufacture, distribution and sale of pharmaceutical and biomedical products and services in the United States and several foreign countries. Applicant's pharmaceuticals group manufactures, distributes and sells over 300 pharmaceutical products in the United States and abroad. Through a joint venture, Applicant also conducts research and development on compounds derived from nucleic acids. Applicant's biomedical subsidiary manufactures and distributes research chemicals and radioactive and stable isotape labelled products and biochemicals and offers radiation monitoring services.

2. Applicant was incorporated in 1960 and engaged initially in the marketing and thereafter in the production of research chemicals. In 1968, Applicant began to carry out research into drugs for the treatment of viral diseases. By the early 1970's, this research had led to the synthesis of between 5,000 and 6,000 chemical compounds. A decision was made to concentrate further research and development on one of those compounds, ribavirin.

3. Since 1982, Applicant has pursued a program of acquiring compatible pharmaceutical and biomedical companies in order to expand its pharmaceutical and biomedical businesses. During this five-year period, Applicant acquired 13 pharmaceutical or biomedical companies at an aggregate cost of approximately $58,394,000. Ten of these acquisitions, with an aggregate purchase price of approximately $56,219,000, occurred within the last three and one-half years, with the latest aquisition having been completed in June, 1987. Additionally, Applicant currently is engaged in negotiations for the acquisition of additional pharmaceutical and biomedical companies. Applicant has retained the services of the investment banking firm of PaineWebber Incorporated ("PaineWebber") to assist Applicant in its efforts to acquire compatible companies.

4. Applicant's acquisition program is financed primarily through offerings of its equity and debt securities. In July 1986, Applicant sold 2,330,000 shares of its common stock and $115,000,000 principal amount of its debentures (the "Debentures") in simultaneous underwritten public offerings (the "1986' Offerings") from which it received aggregate net proceeds of approximately $148,000,000 on July 24, 1986. Additional issuances of Applicant's equity and debt securities during the period from 1983 through March 1987 in the United States and abroad resulted in additional net proceeds to Applicant of approximately $342,585,000. The stated used of proceeds of the 1986 Offerings focused on the acquisition of compatible pharmaceutical or biomedical companies by Applicant.

5. In order to preserve the value of the proceeds from the 1986 Offerings and to offset the debt service costs resulting from the issuance of the Debentures, Applicant purchased interest-bearing obligations with the proceeds of the 1986 offerings, pending application of those funds to the acquisition of pharmaceutical or biomedical companies. Approximately three weeks after the receipt of the proceeds of the 1986 Offerings, more than 40% of the value of Applicant's total assets (on an unconsolidated basis and exclusive of government securities and cash items) were comprised of positions in "investment securities" as defined in section 3(a)(3) of the 1940 Act. At May 31, 1987, the date of the last fiscal quarter for which financial statements are available, Applicant's positions in investment securities approximated 55.8% of the value of its total unconsolidated assets and 52.6% of the value of its total consolidated assets. This contrasts with the very substantial percentage of Applicant's total assets (excluding cash items and government securities), which historically has been represented by property, plant, equipment, inventory, receivables and other non-investment securities assets essential to its pharmaceutical and biomedical businesses as soon as reasonably practicable.

6. Applicant states that a substantial portion of its assets continue to be comprised of property, plant and equipment essential to its pharmaceutical and biomedical businesses. Applicant has represented in its Annual Reports to Shareholders, press releases and other public documents that it is engaged in the pharmaceutical and biomedical businesses. Applicant's eight directors and twelve elected officers dedicate substantially all of their working time in operational and administrative activities related to its pharmaceutical and biomedical businesses. Applicant's Board of Directors adopted a resolution declaring Applicant's continuing intention to be engaged primarily in noninvestment company businesses.

7. A very substantial portion of Applicant's consolidated reserve and income for recent periods has been

derived from its operations in the pharmaceutical and biomedical businesses. From November 30, 1984 through August 31, 1986, Applicant did not derive any net income from its securities positions. However, for the six months ended May 31, 1987, Applicant realized net income of $10,720,000, primarily from disposition of equity positions in former acquisition candidates, representing 20.7% of total revenue and 272.6% of total income. Further, its securities positions were assumed to, among other things, facilitate the expansion of its operating businesses.

8. From July 24, 1986, Applicant relied on the one year exemption provided by Rule 3a–2 under the 1940 Act for transient investment companies. Applicant's inability to expend substantially all of the funds from its 1986 Offerings within one year was in large measure due to factors beyond Applicant's control. The continued acquisition of pharmaceutical and biomedical businesses companies, the retention of PaineWebber to provide advice concerning acquisition candidates, the time managements spends on decisions relating to its acquisition program and the resolution adopted by Applicant's Board of Directors reflect Applicant's good faith efforts to primarily be engaged in noninvestment company business as soon as practicable.

Applicant's Legal Analysis

1. Applicant submits that its historical development, the nature of its assets, its public representations of policy, the activities of its officers and directors and the sources of its income demonstrate that Applicant is primarily engaged in the pharmaceutical and biomedical businesses and is not primarily engaged in the business of investing, reinvesting, owning, holding or trading in securities within the meaning of section 3(b)(2) of the 1940 Act and, therefore, is entitled to an order of the SEC under that provision.

2. In the alternative, Applicant submits that an order pursuant to section 6(c) of the 1940 Act exempting Applicant until July 23, 1988 is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act. Applicant maintains that its contemplated operations are not susceptible to abuses of the sort that the 1940 Act was designed to remedy.

3. Applicant further submits that a temporary order exempting Applicant from all provisions of the 1940 Act pursuant to section 6(c) until a final determination is made on the application is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

Applicant's Conditions

Applicant undertakes that during the period for which an exemption is provided.

1. Applicant will not engage in trading in securities for short-term speculative purposes, and

2. Applicant will continue to seek to acquire, as soon as reasonably possible, compatible pharmaceutical and biomedical businesses companies.

Temporary Order

The request for temporary exemptive relief pending a final determination on the application by the SEC has been considered, and its is found that, in view of the circumstances set forth above and in the application, that it is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act to grant an immediate temporary order as requested by Applicant. Accordingly.

It is ordered, pursuant to section 6(c) of the 1940 Act, that the application for a temporary order exempting Applicant from all provisions of the 1940 Act, be and hereby is, granted, during the period from September 21, 1987 until the SEC shall make a final determination upon the application, subject to the undertakings to which Applicant has consented and which are set forth above and in the application.

For the SEC, by the Division of Investment Management pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23116 Filed 10–5–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16017; (812–6168)]

Application for Exemption: Morgan Guaranty Trust Co. of New York

DATE: September 29, 1987.

AGENCY: Securities and Exchange Commission (SEC).

ACTION: Notice of amended application for exemption under the Investment Company Act of 1940. ("1940 Act").

Applicant: Morgan Guaranty Trust Company of New York.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from section 17(f).

Summary of Application: Applicant seeks an order to permit maintenance of securities and other assets of investment companies registered under the 1940 Act other than an investment company registered under section 7(d) of the 1940 Act ("Investment Companies") for which Applicant serves as custodian or subcustodian with (i) Morgan Bank Nederland ("MBN"), Morgan Guaranty Australia Limited ("MGAL") or MGAL's nominee J.P. Morgan Nominees Pty. Limited ("JPMN"), all of which are indirect wholly-owned subsidiaries of J.P. Morgan & Co. Incorporated ("Foreign Subsidiaries") and (ii) Frankfurter Kassenverein, one of the central systems for the handling of securities in West Germany.

Filing Dates: Applicant's original application was filed on July 31, 1985, and amended on August 14, 1985, and an order granting that application was issued on September 11, 1985 (Investment Company Act Release No. 14713). The amendments to which this notice relates were filed on September 2 and 22, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the requested exemption will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on October 26, 1987. Request a hearing in writing, giving the nature of your interest, the reasons for your 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 in the case of an atorney-at-law, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Morgan Guaranty Trust Company of New York, Margaret M. Foran, Assistant Resident Counsel, 23 Wall Street, New York, NY 10015.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney, (202) 272–3033, or Brion R. Thompson, Special Counsel, (202) 272–3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicant's Representations

1. MBN is an indirect wholly-owned subsidiary of J.P. Morgan & Co.

Incorporated ("J.P. Morgan") and is regulated as a banking institution by the Central Bank of the Netherlands. MBN has been providing custody services for over 55 years and currently serves as subcustodian for Applicant's New York and European branches.

2. MGAL is an indirect wholly-owned subsidiary of J.P. Morgan and is an Australian merchant bank. As such, MGAL provides traditional merchant bank services to its clients including domestic short term money market operations, foreign exchange trading, international finance transactions and portfolio investment management.

3. JPMN is an indirect wholly-owned subsidiary of J.P. Morgan and is MGAL's nominee. Under this arrangement all securities purchased for MGAL or its clients are held by, and in the name of, JPMN. MGAL and JPMN have been providing custody services for over 30 years.

4. Frankfurter Kassenverein is one of the central systems for the handling of securities or equivalent book-entries in West Germany. It is the depository and clearing agency which services the Frankfurt Stock Exchange.

Applicant's Legal Analysis

1. MBN, MGAL and JPMN each do not have shareholders' equity in excess of U.S. $100 million and thus, Applicant may not rely upon the exemption from section 17(f) afforded by Rule 17f–5 in connection with the proposed foreign custody arrangements. Applicant submits that the Foreign Subsidiaries are experienced, capable and well qualified to provide custody services to Investment Companies, and that under the proposed foreign custody arrangements, the protection of investors will not be diminished.

2. With respect to the deposit of securities with Frankfurter Kassenverein, Applicant notes that it cannot rely upon the exemption afforded by provision (c)(2)(iii) of Rule 17f–5 because there is no single central system for handling securities in West Germany as contemplated by that provision. Applicant asserts that similar relief has been granted to other major U.S. banks and, for the same reasons described in those applications, Applicant seeks the same exemptive relief. Accordingly, Applicant submits that permitting the deposit of securities with Frankfurter Kassenverein and the Foreign Subsidiaries is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Applicant's Conditions

If the requested order is granted, Applicant expressly consents to the following conditions:

1. The foreign custody arrangements proposed with respect to MBN, MGAL and JPMN will satisfy the requirements of Rule 17f–5 in all respects except the shareholders' equity requirement.

2. The foreign custody arrangements proposed with respect to Frankfurter Kassenverein will satisfy the requirements of Rule 17f–5 in all respects other than the requirement that securities depositors, to be eligible foreign custodians, must be the central system or a transnational system for the handling of securities or equivalent book-entries in the relevant country.

3. Securities of Investment Companies will be maintained with MBN, MGAL or JPMN, as the case may be, only in accordance with an agreement, required to remain in effect at all times during which each of the Foreign Subsidiaries fails to satisfy all the shareholders' equity requirement of Rule 17f–5, among the Investment Companies or custodians for which Applicant serves as custodian or subcustodian, Applicant, and the Foreign Subsidiaries, pursuant to the terms of which, (i) Applicant would act as the custodian or subcustodian of the securities of the Investment Company, (ii) Applicant would delegate to the Foreign Subsidiaries such of Applicant's duties and obligations as would be necessary to permit the Foreign Subsidiaries to hold in custody, in the country in which they operate, the securities of the Investment Company or custodian. The agreement would further provide that Applicant's delegation of duties to the Foreign Subsidiaries would not relieve Applicant of any responsibility to the Investment Company or custodian for any loss due to such delegation, except such loss as may result from (i) political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities), and (ii) other risks of loss (excluding bankruptcy or insolvency of MBN, MGAL or JPMN) for which neither Applicant nor MBN, MGAL, or JPMN would be liable under Rule 17f–5 (*e.g.*, despite the exercise of reasonable care, loss due to acts of God, nuclear incident and the like).

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–23117 Filed 10–5–87; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2291]

Declaration of Disaster Loan Area; Virginia

Henry County in the State of Virginia constitutes a disaster loan area because of damage from severe flooding which occurred September 5–7, 1987. Applications for loans for physical damage may be filed until the close of business on November 27, 1987, and for economic injury until the close of business on June 28, 1988, at the address listed below:

Disaster Area 2 Office, Small Business Administrtion, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308; or other locally announced locations.

The interest rates are:

Homeowners With Credit Available Elsewhere	8.000%
Homeowners Without Credit Available Elsewhere	4.000%
Businesses With Credit Available Elsewhere	8.000%
Businesses Without Credit Available Elsewhere	4.000%
Businesses (EIDL) Without Credit Available Elsewhere	4.000%
Other (Non-Profit Organizations Including Charitable and Religious Organizations)	9.500%

The number assigned to this disaster is 229106 for physical damage and for economic injury the number is 655800.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008).

Date: September 28, 1987.

James Abdnor,

Administrator.

[FR Doc. 87–23021 Filed 10–5–87; 8:45 am]

BILLING CODE 8025–01–M

[Application No. 03/03–0185]

Application for License To Operate as a Small Business Investment Company; Morgan Investment Corp.

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing

small business investment companies (13 CFR 107.102 (1985)) by Morgan Investment Corporation, 902 Market Street, Wilmington, Delaware 19801 (Applicant), with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1987).

The officers, directors and sole shareholder of the Applicant are as follows:

Name	Title or relationship	Percentage of shares owned
William Edward Pike, 4 Carriage Road, Greenville, Delaware 19807.	Chairman of the Board of Directors and President.	
Rushton Leigh Ardrey, Jr., 70 East 96th Street, New York, New York 10028.	Director	
Donald Richard Brunner, 614 Black Gates Road, Wilmington, Delaware 19803.	Director	
Miriam Raney, 424 West End Avenue, Apartment 20E, New York, New York 10024.	Director	
Frank John Corrado, Jr., 21 Hillstream Road, Newark, Delaware 19711.	Treasurer	
James Dale Goodpasture, 117 Montchan Drive, Greenville, Delaware 19807.	Secretary	
Morgan Holdings Corporation, 902 Market Street, Wilmington, Delaware 19801.		100

Morgan Holdings Corporation is a Delaware bank holding company which is wholly owned by J.P. Morgan & Co. Incorporated, 23 Wall Street, New York, New York 10015.

The Applicant, a Delaware Corporation, will begin operations with $30,000,000 paid in capital and paid in surplus. The Applicant will conduct its activities primarily in the State of Delaware but will consider investments in business in other areas in the United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Wilmington, Delaware.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

Dated: September 28, 1987.

[FR Doc. 87-23022 Filed 10-5-87; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/1124]

Study Groups A and C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting

The Department of State announces that Study Groups A and C of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on November 5, 1987 beginning at 10:00 a.m. in Room 1912, Department of State, 2201 C Street NW., Washington, DC.

Study Group A deals with international telecommunications policy and services; Study Group C will deal with CCITT structure, Special "S" and Study Group II issues.

The purpose of the meeting will be a debriefing of recent meetings of CCITT Study Groups/Working Parties I, III and preparation for the upcoming meeting of CCITT Study Groups, Special "S" and III.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mr. Earl Barbely, State Department, Washington, DC, telephone (202) 653-6102. All attendees must use the C Street entrance to the building.

Date: September 21, 1987.

Earl S. Barbely,

Director, Office of Technical Standards and Development, Chairman, U. S. CCITT National Committee.

[FR Doc. 87-22995 Filed 10-5-87; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 87-10-3; Dockets 42263, 42187 and 42667]

Aviation Proceedings; Proposed Revocation of the Section 401 Certificates of Aerostar Airlines, Inc., d/b/a Flight International Airlines, Inc., and Flight International Airlines, Inc.

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders revoking the certificates of Aerostar Airlines, Inc. d/b/a Flight International Airlines Inc., and Flight International Airlines, Inc., issue under section 401 of the Federal Aviation Act.

DATE: Persons wishing to file objections should do so no later than October 16, 1987.

ADDRESSES: Responses should be filed in Dockets 42263, 42187, and 42667 and addressed to the Documentary Services Division, Department of Transportation, 400 7th Street SW., Room 4107, Washington, DC 20590, and should be served on the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Kathy A. Lusby, Air Carrier Fitness Division, P-56, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-2337.

Dated: October 1, 1987.

Patrick V. Murphy,

Director of Special Programs.

[FR Doc. 87-23106 Filed 10-5-87; 8:45 am]

BILLING CODE 4910-62-M

[Order 87-9-66; Docket 45165]

Aviation Proceedings; Institution of the Seattle/Portland-Japan Service Proceeding

AGENCY: Department of Transportation.

ACTION: Order Instituting Investigation, (Order 87-9-66), docket 45165.

SUMMARY: The Department of Transportation is instituting the *Seattle/Portland-Japan Service Proceeding* to examine through oral evidentiary procedures whether a carrier should be chosen to replace United Air Lines, Inc. on the Seattle/Portland-Tokyo/Osaka route. The proceeding shall include consideration of the following issues: (a) Which primary carrier and which backup carrier, if any, should be authorized to engage in foreign air

transportation of persons, property and mail between the coterminal points Seattle, Washington and Portland, Oregon, on the one hand, and the coterminal points Tokyo and Osaka, Japan, on the other; (b) what terms, conditions, or limitations, if any, should be placed on any authority awarded in this proceeding; and (c) whether the certificate authority of United Air Lines, Inc., for segment 3 of Route 57 should be deleted under section 401(g) of the Federal Aviation Act.

DATES: Applications, motions to consolidate, and petitions for leave to intervene should be filed by October 21, 1987. Answers to such application and/or petitions shall be filed by October 28, 1987.

ADDRESSES: Documents should be filed with the Docket Section, Docket 45165 Documentary Services Division, Department of Transportation, 400 7th Street, SW., Room 4107, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Warren L. Dean, Assistant General Counsel for International Law, C–20, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366–2972.

Dated: September 30, 1987.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 87–23008 Filed 10–5–87; 8:45 am]

BILLING CODE 4910–62–M

[Docket 45165]

Aviation Proceedings; Assignment of Seattle/Portland-Japan Service Proceeding

This proceeding has been assigned to Administrative Law Judge Burton S. Kolko. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M–50, Room 9228, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 87–23009 Filed 10–5–87; 8:45 am]

BILLING CODE 4910–62–M

Coast Guard

[CGD 87–074]

Towing Safety Advisory Committee, Subcommittee on Personnel Manning and Licensing; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; U.S.C. App. I), notice is hereby given of a meeting of the following subcommittee of the Towing Safety Advisory Committee (TSAC):

1. The Subcommittee on Personnel Manning and Licensing will meet on 27 October 1987 in Room 1105 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The meeting will commence at 3:00 p.m. and end prior to 5:00 p.m. The agenda for the meeting will be the following discussion item:

(a) Issues involving the local knowledge requirements for the licensing of pilots on tankbarges.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting. Additional information may be obtained from Captain J. J. Smith, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G–CMC/21), Washington, DC 20593–0001 or by calling (202) 267–1477.

Dated: September 30, 1987.

B. P. Novak,

Acting Executive Director, Towing Safety Advisory Committee.

[FR Doc. 87–22997 Filed 10–5–87; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Proposed Advisory Circular on Modified Seats and Berths Initially Approved Under a Technical Standard Order

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: The Federal Aviation Administration has proposed an advisory circular to provide information and procedural guidance for the approval and installation of modified seats and berths initially approved under a technical standard order in the U.S. type certificated aircraft. The Federal Aviation Regulations require design and installation approval of modifications to each seat or berth. The proposed advisory circular will provide information and procedural guidance concerning the approval and installation of modified technical standard order (TSO) seats and berths in U.S. type certificated aircraft.

DATE: Commenters must identify File AC No. 21– (AWS–120/ASW–150) and submit comments in duplicate on or before November 20, 1987.

ADDRESSES: Send all comments on the proposed advisory circular (AC) to: Technical Analysis Branch, AWS–120, Aircraft Engineering Division, Office of Airworthiness, File AC No. 21– (AWS–120/ASW–150), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; or deliver comments to: Room 335D, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur J. Hayes, Technical Analysis Branch, AWS–120, Telephone (202) 267–9937.

SUPPLEMENTARY INFORMATION: Any interested person not receiving copies of this proposed AC should contact the person named under **"FOR FURTHER INFORMATION CONTACT."**

Comments Invited

Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments as they may desire. All comments received on or before the closing date for comments specified above will be considered by the Director of Airworthiness before issuing the final AC. The proposed AC and comments received may be examined in Room 335D, FAA Headquarters Building (FOB–10A), 800 Independence Avenue SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m. weekdays, except Federal holidays.

Issued in Washington, DC, on September 28, 1987.

M.C. Beard,

Director of Airworthiness.

Modified Seats and Berths Initially Approved Under A Technical Standard Order

1. Purpose.

This advisory circular provides information and procedural guidance concerning the approval and installation of modified technical standard order (TSO) seats and berths in U.S. type certificated aircraft.

2. Related Federal, Aviation Regulations (FAR) Sections

Sections 21.101, 21.305, 21.601, 21.611, 23.785 (former CAR 3.390), 23.853, 25.785 (former CAR 4b.358), 25.853, 27.785, 27.853, 29.785, 29.853, and 43.13 and Part 25, Appendix F, Parts I and II.

3. Background

Minimum performance standards for aircraft seats and berths are established by TSO-C39b in conjunction with National Aircraft Standards (NAS) Specification NAS 809. Because owners or operators of air carriers, air taxi, and general aviation aircraft often prefer use of different features (such as their own upholstery), seats and berths approved under TSO procedures may be modified prior to installation. The FAR require FAA approval of each seat or berth after any design change. Therefore, the installer has the responsibility to assure that the modified seat or berth is approved prior to installation in an aircraft. FAR 21.305 states that whenever a material, part, process, or appliance is required to be approved, it may be done under a parts manufacturer approval, under a TSO, in conjunction with type certification procedures, or in any other manner approved by the Administrator.

4. Discussion

a. Approval Considerations

1. (1) *Applicable Regulations.* Each applicant seeking approval of a modified TSO seat or berth for installation in an aircraft must show that the article meets the design alteration requirements of FAR Part 43, the applicable airworthiness requirements for that aircraft as specified in paragraphs (a) and (b) of FAR 21.101, or the requirements of FAR 21.305(b) if the applicant is the seat or berth manufacturer and elects to show that the modified article still meets the TSO standards.

(2) *General Design.* The modified seat or berth, as installed, should not have design features or details that experience has shown to be hazardous.

(3) *Material and Workmanship.* The materials used on the modified seat or berth should continue to be of a quality that meets the TSO standards. Workmanship also should be consistent with high-grade aircraft manufacturing practice. In addition, all material contained in the article should be protected against deterioration or loss of strength that may result in service from weather, corrosion, abrasion, or other causes.

(4) *Structural Tests.* For each seat or berth previously produced, tested, and certified to structural specifications (i.e., NAS 809), the effect of the modification on the validity of those tests should be addressed. For example, in NAS 809, subparagraph 4.3.1, side-load and up-load tests assume seat and back cushions are in place and the seat cushion is compressed 2 inches for the location of the load application. Modification of a seat cushion may necessitate an analysis to verify that the NAS 809 specifications are still met. If the specifications are not met, additional tests or analysis will be necessary.

(5) *Fire and Flammability Tests.* The modified seat or berth assembly should be demonstrated to meet the fire and flammability requirements for the aircraft for which installation approval is desired. In addition, consideration should be given to the flammability requirements that may be applicable, based on the type of operations (i.e., FAR 91, 121, or 135).

(6) *Marking.* (i) If the modified seat or berth incorporates only a minor change by the manufacturer holding the TSO authorization, the provisions of FAR 21.611(a) apply, and the TSO marking need not be changed, except as the manufacturer elects with respect to changed part numbers.

(ii) If the modified seat or berth incorporates a major change by the manufacturer holding the TSO authorization and if the modified seat or berth continues to meet the TSO requirements, the provisions of FAR 21.611(b) apply. The manufacturer must re-mark the modified article to show the new type or model designation and must obtain a new TSO authorization.

(iii) If a person other than the original manufacturer incorporates any design change in a previously TSO'd seat or berth, the provisions of FAR 21.611(c) apply. If that person is a manufacturer, that manufacturer must apply for a separate TSO authorization to obtain TSO approval under FAR Part 21. Marking of the modified article would be the same as for any other newly-authorized TSO article, with all previous markings deleted. Persons, other than manufacturers seeking TSO authorization, may obtain approval for design changes under Part 43 or under the applicable airworthiness regulations (Parts 23, 25, 27, 29, etc.), in which case, articles for which approval is obtained will have no TSO markings.

(iv) If a modified seat or berth does not continue to meet TSO standards, the TSO identification on the original manufacturer's nameplate should be permanently removed in a manner such that it cannot be restored. A seat or berth so modified and installed in an aircraft should be approved as part of the aircraft type design in conjunction with the type certification procedures of FAR Part 21.

b. Documentation

After successfully showing compliance with the applicable regulations, the installer should receive approval from the FAA for the design change and receive manufacturing authorization under one of the methods specified in FAR 21.305.

[FR Doc. 87-22977 Filed 10-5-87; 8:45 am]
BILLING CODE 4910-3-M

National Highway Traffic Safety Administration

[Docket No. IP 87-12; Notice 1]

Receipt of Petition for Determination of Inconsequential Noncompliance; General Motors Corp.

General Motors Corporation of Warren, Michigan, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.101, Federal Motor Vehicle Safety Standard No. 101, "Controls and Displays," on the basis that it is inconsequential as it related to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 101 specifies individual identifying symbols for the windshield washer control and the windshield washer and wiper combined control. These controls are required by Standard No. 101 to be capable of being illuminated whenever the headlights are activated. General Motors has determined that a total of forty-eight 1987 Brigadier trucks were manufactured with the windshield washer controls incorrectly identified. The symbol for windshield washer and wiper combined was used instead of the identifying symbol for windshield washer. General Motors supports its petition with the following:

1. "The washer control in question is properly identified on the control itself with the symbol specified in FMVSS 101. The incorrect symbol usage is limited to an adjacent identification which is present for purposes of meeting the illumination requirement of FMVSS 101.

2. The Owner's Manual clearly illustrates and describes the washer control and its function.

3. A driver will easily and readily recognize this control, especially the skilled professional driver of heavy duty commercial vehicles such as the Brigadier."

Interested persons are invited to submit written data, views and arguments on the petition of General Motors Corporation described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, a Notice will be published in the **Federal Register** pursuant to the authority indicated below:

Comment Closing date: November 5, 1987.

(Sec. 102, Pub. L. 83–492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: October 1, 1987.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 87–23078 Filed 10–5–87; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: September 29, 1987.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0274.
Form Number: 2163(c).
Type of Review: Extension.
Title: Employment—Reference Inquiry.
Description: Form 2163 is used by IRS to verify past employment history and to question listed and developed references as to the character and integrity of current or potential IRS employees. The information received is incorporated into a report on which a security determination is based.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations.
Estimated Burden: 4,000 hours.
OMB Number: 1545–0491.
Form Number: 6243.
Type of Review: Extension.
Title: Small Business Tax Workshop Registration Form.
Description: The forms are necessary for the promotion of the SBW Program. Form 6243 is prepared mainly to record walk-in and telephone inquiries or for taxpayers to mail in to District Offices.
Respondents: Individuals or households, Federal agencies or employees, Small businesses or organizations.
Estimated Burden: 20,000 hours.
OMB Number: 1545–0805.
Form Number: 5472.
Type of Review: Revision.
Title: Information Return of a Foreign Owned Corporation.
Description: Form 5472 is used to report the activities between domestic corporations and foreign corporations that have a trade or business in the U.S. and that are owned by foreign persons. The form is used to report the activities between the foreign owned foreign corporation and foreign persons related to the activities. The IRS uses Form 5472 to determine if there are any income tax liabilities for the persons related to the activity.
Respondents: Businesses or other for-profit.
Estimated Burden: 337,554 hours.
Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Comptroller of the Currency

OMB Number: New.
Form Number: None.
Type of Review: New Collection.
Title: Regional Bank Fact Book Questionnaire.
Description: This information is needed to insure and evaluate the safety and soundness and to identify trends concerning the financial condition of regional national banks. It is a pilot program. This voluntary information collection is sent to the 20 largest regional banking companies in OCC's Northeastern District.
Respondents: Businesses or other for-profit.
Estimated Burden: 160 hours.
Clearance Officer: Eric Thompson, (202) 447–1632, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.
OMB Reviewer: Robert Fishman, (202) 395–7340, Office of Management and Budget, Room 3228, New Executive Office Building, Washington, DC 20503.

Financial Management Service

OMB Number: 1510–0006.
Form Number: TFS 6312.
Type of Review: Extension.
Title: Current Federal Process Agent Appointments.
Description: Information is collected from Treasury certified insurance companies to provide Treasury with a listing of judicial districts in which a process agent has been appointed for service of process for a civil action by a Federal agency.
Respondents: Businesses or other for-profit.
Estimated Burden: 306 hours.
Clearance Officer: Hector Leyva, (301) 436–5300, Financial Management Service, Room 100, 3700 East West Highway, Hyattsville, MD 20782.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 87–23069 Filed 10–5–87; 8:45 am]

BILLING CODE 4810–25–M

Fiscal Service

Financial Guidelines for Qualification of Surety Companies

AGENCY: Financial Management Service, Treasury.

ACTION: Proposed guideline; extension of comment period.

SUMMARY: The Department of the Treasury published a notice of proposed financial guideline on August 5, 1987, at 52 FR 29115. The comment deadline on the financial guideline was October 4, 1987.

The Department of the Treasury has received a request to extend this comment period. In order to ensure that Treasury is able to consider comments form all interested parties, the comment deadline is being extended to October 19, 1987.

DATES: The proposed additional financial guideline for companies seeking or holding Treasury Authority is

proposed to become effective December 31, 1987. Under the proposed guideline, companies holding a Treasury Certificate of Authority at December 31, 1987, will have until December 31, 1990, to meet the additional financial standard.

Comment Deadline: All comments or inquiries received on or before October 19, 1987, will be given due consideration.

ADDRESS: Comments or inquiries may be mailed to Surety Bond Branch, US Treasury Dept.-FMS, 1725 I St., NW., Rm. 1008A, Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Terry L. Boyer, Telephone-(202) 634–2214.

Dated: October 1, 1987.

Thomas F. Meade,

Acting Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 87–23018 Filed 10–1–87; 12:46 pm]

BILLING CODE 4810-35-M

VETERANS ADMINISTRATION

Agency Form Letter Under OMB Review

AGENCY: Veterans Administration.

ACTION: Notice.

The Veterans Administration has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document contains an extension and lists the following information: (1) The department or staff office issuing the form letter, (2) the title of the form letter, (3) the agency form letter number, if applicable, (4) a description of the need and its use, (5) how often the form letter must be filled out, (6) who will be required or asked to report, (7) an estimate of the number of responses, (8) an estimate of the total number of hours needed to fill out the form letter, and (9) an indication of whether section 3504(h) of Public Law 96–511 applies.

ADDRESSES: Copies of the form letter and supporting documents may be obtained from Patti Viers, Agency Clearance Officer (732), Veterans Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233–2146. Comments and questions about the items on the list should be directed to the VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395–7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 60 days of this notice.

Dated: September 30, 1987.

By direction of the Administrator.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Office of Personnel and Labor Relations.
2. Inquiry Concerning Applicant for Employment.
3. VA Form Letter 5–127.
4. This information is used to determine fitness and qualifications for employment.
5. On occasion.
6. Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees.
7. 12,500 responses.
8. 3,125 hours.
9. Not applicable.

[FR Doc. 87–22985 Filed 10–5–87; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 193
Tuesday, October 6, 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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

"FEDERAL REGISTER" ANNOUNCEMENT OF PREVIOUS CITATION: Vol. 52, P. 37042.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: October 7, 1987.

Changes: Item Concerning Bunk Beds deleted. Item concerning 16 CFR 1015.12 added.

Listed below is the Revised Agenda:

Commission Meeting, Wednesday, October 7, 1987, 10:00 a.m., Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Md.

Open to the Public

1. *FY 88 Operating Plan.* The Commission will consider the Fiscal Year 1988 Operating Plan.

2. *16 CFR 1015.12:* The Commission will discuss the prvisions of CPSC's Freedom of Information Act regulation concerning Congressional requests for Commission documents.

Agenda revised 10/1/87 to delete previous item 1 concerning bunk beds and add present item 2 concerning 16 CFR 1015.12.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

October 2, 1987.

[FR Doc. 87–23166 Filed 10–2–87; 1:56 pm]

BILLING CODE 6355–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration; Correction of Sunshine Act Notice.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on September 18, 1987 (52 FR 35349) of a special meeting of the Farm Credit Administration Board (Board) which was held on September 22, 1987. This notice is to reflect a revision to the agenda for that meeting to include two additional items to the closed portion.

FOR FURTHER INFORMATION CONTACT: David A. Hill, Secretary to the Farm Credit Administration Board, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 833–4010.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: The following portions of the meeting were closed to the public:

1. Litigative Strategy; [1] and

2. Prior Approval Matters Relating to Farm Credit System Employee Programs and Policies.[2]

Dated: October 2, 1987.

David A. Hill,

Secretary, Farm Credit Administration Board.

[FR Doc. 87–23168 Filed 10–2–87; 1:57 pm]

BILLING CODE 6705–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, September 29, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the applications of Northwest Florida State Bank, Pensacola, Florida, a proposed State nonmember bank, which it to be a successor institution to First Mutual Savings and Loan Association, a Stock Corporation, Pensacola, Florida, for Federal deposit insurance; for consent to merge with First Mutual Bank, Pensacola, Florida, a State nonmember bank, in organization, under the charter and title of First Mutual Bank; and for consent to establish the fifteen branches of Northwest Florida State Bank as branches of the resultant bank.

[1] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(10).

[2] Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(4) and (6).

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: October 1, 1987.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 87–23195 Filed 10–2–87; 3:04 pm]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Tuesday, September 29, 1987, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Recommendation regarding the Corporation's assistance agreement with an insured bank.

Matters relating to certain financial institutions.

Memorandum regarding the Corporation's corporate activities.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: October 1, 1987.

Federal Deposit Insurance Corporation.

Hoyle R. Robinson,

Executive Secretary.

[FR Doc. 87–23196 Filed 10–2–87; 3:04 pm]

BILLING CODE 6714–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 52 FR 35992, September 24, 1987.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:30 a.m., Thursday, October 1, 1987.

CHANGES IN THE MEETING: One of the items announced for inclusion at this meeting was consideration of any agenda items carried forward from a previous meeting; the following such closed item(s) was added:

Preliminary consideration of testimony on banking issues. (This item was originally announced for a closed meeting on September 21, 1987.)

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: October 1, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87–23160 Filed 10–2–87; 8:45 am]

BILLING CODE 6210–01–M

PAROLE COMMISSION

DATE AND TIME: Thursday, October 1, 1987—1:30 p.m. Eastern Daylight-Savings Time.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland 20815, by conference telephone call.

STATUS: Closed pursuant to vote to be taken at the beginning of the meeting.

MATTERS TO BE CONSIDERED: Record review on an application for a certificate of exemption under 29 U.S.C. section 504(a).

CONTACT PERSON FOR MORE INFORMATION: Rockne Chickinell, Attorney, Office of General Counsel, United States Parole Commission, (301) 492–5959.

Date: September 30, 1987.

Patrick J. Glynn,

General Counsel, United States Parole Commission.

[FR Doc. 87–23134 Filed 10–2–87; 11:08 am]

BILLING CODE 4410–01–M

PAROLE COMMISSION

Record of Vote of Meeting Closure

I, Benjamin F. Baer, Chairman of the United States Parole Commission, presided at a meeting of said Commission which started at 1:40 p.m. (EDT) on Thursday, October 1, 1987, by conference telephone call initiated at 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about 2:00 p.m. (EDT). The purpose of the meeting was to decide an application for a certificate of exemption under 29 U.S.C. section 504(a). Six Commissioners were present, constituting a quorum, when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and a certification of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Saundra Brown Armstrong (Belmont, California); Vincent J. Fechtel (Chevy Chase, Maryland); Daniel R. Lopez (Philadelphia, Pennsylvania); G. MacKenzie Rast (Atlanta, Georgia); Cameron M. Batjer (Chevy Chase, Maryland) and Benjamin F. Baer (Chevy Chase, Maryland). The Commissioners and two attorneys from the Commission's legal staff attended.

In Witness Whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

Dated: October 1, 1987.

Benjamin F. Baer,

Chairman, United States Parole Commission.

[FR Doc. 87–23135 Filed 10–5–87; 11:08 am]

BILLING CODE 4410–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 5, 1987:

Closed meetings will be held on Thursday, October 8, 1987, at 10:30 a.m. and following the 2:30 p.m. open meeting. An open meeting will be held on Thursday, October 8, 1987, at 2:30 p.m., Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9) (A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Thursday, October 8, 1987, at 10:30 a.m., will be:

Application for Commission order involving commencement of administrative proceeding.

Subpoena enforcement action.

Institution of injunctive actions.

Settlement of administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, October 8, 1987, at 2:30 p.m., will be:

Oral argument on an appeal by RFG Options Co., a registered broker-dealer, and Eugene V. Rintels, Andor A. Fleischman, and Dennis G. Guy, the firm's general partners, from an administrative law judge's initial decision. For further information, please contact Daniel J. Savitsky at (202) 272–7400.

The subject matter of the closed meeting scheduled for Thursday, October 8, 1987, following the 2:30 p.m. open meeting, will be:

Post oral argument discussion.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brent Taylor at (202) 272–2014.

Jonathan G. Katz,

Secretary.

September 29, 1987.

[FR Doc. 87–23110 Filed 10–1–87; 4:50 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 52, No. 193
Tuesday, October 6, 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.

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Collective-Bargaining Units in the Health Care Industry

Correction

In proposed rule document 87-22515 beginning on page 36589 in the issue of Wednesday, September 30, 1987, make the following correction:

On page 36589, in the third column, under **FOR FURTHER INFORMATION CONTACT**, in the third line, the telephone number should read "(202) 254-9430."

BILLING CODE 1505-01-D

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2290]

Declaration of Disaster Loan Area, Pennsylvania

Correction

In notice document 87-22255 appearing on page 36325 in the issue of Monday, September 28, 1987, make the following correction:

In the third column, under *Percent*, in the sixth line, "9.000" should read "9.500".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. IRA-34]

State of Illinois Fee on Transportation of Spent Nuclear Fuel; Inconsistency Ruling; Wisconsin Electric Power Co. et al.

Correction

In notice document 87-22128 beginning on page 36200 in the issue of Friday, September 25, 1987, make the following corrections:

1. On page 36200, in the first column, in the **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the 8th line, "HHMR" should read "HMR", and in the 11th line, "set" should read "sets".

2. On the same page, in the second column, in designated paragraph 1, in the sixth line, "fee" should read "fees".

3. On page 36201, in the second column, in the third paragraph, in the 12th line, "HMNTA" should read "HMTA".

4. On page 36202, in the third column, in the second complete paragraph, in the fifth line, delete "to".

5. On page 36204, in the second column, in the first complete paragraph, in the eighth line, "Surrey" was misspelled.

6. In the same column, in the second complete paragraph, in the 16th line, "licenses" should read "licensees".

7. In the same column, in the fourth complete paragraph, in the eighth line, "prenotification" was misspelled.

8. On page 36205, in the first column, in the fifth complete paragraph, in the 16th line, the second "of" should read "or".

9. On page 36206, in the first column, in the last line, "cite" should read "cites".

10. On the same page, in the second column, in the second line, insert a comma after "Co."

11. In the same column, in the first complete paragraph, in the 17th line, "accomplished" should read "accomplish".

BILLING CODE 1505-01-D

federal register

Tuesday
October 6, 1987

Part II

Department of Justice

28 CFR Part 44

Unfair Immigration-Related Employment Practices; Final Rule

DEPARTMENT OF JUSTICE

28 CFR Part 44

[Order No. 1225-87]

Unfair Immigration-Related Employment Practices

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule establishes standards and procedures for the enforcement of section 102 of the Immigration Reform and Control Act of 1986 (IRCA), which prohibits certain unfair immigration-related employment practices.

EFFECTIVE DATE: November 5, 1987.

ADDRESS: Comments received on the Notice of Proposed Rulemaking will remain available for public inspection in the Office of the Special Counsel for Immigration-Related Unfair Employment Practices, 1100 Connecticut Avenue, NW., Suite 800, Washington, DC 20036, from 9:00 A.M to 5:00 P.M., Monday through Friday, except legal holidays, until December 7, 1987.

FOR FURTHER INFORMATION CONTACT: Mary E. Mann, Acting Special Counsel for Immigration-Related Unfair Employment Practices, Office of the Special Counsel, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035-5490; (202) 653-8121 (Voice) or (202) 724-7678 (TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION: The Immigration Reform and Control Act of 1986 (Pub. L. 99-603, 100 Stat. 3359), prohibits employers from knowingly hiring, or recruiting or referring for a fee, any alien not authorized to work in the United States. Out of concern that this prohibition and the sanctions created by the Act to enforce it might lead to employment discrimination against "foreign looking" or "foreign sounding" persons or against persons who, although not citizens, are legally in the United States, Congress in section 102 of the Act (8 U.S.C. 1324b) outlawed certain unfair immigration-related employment practices and established enforcement procedures to enforce these prohibitions.

Section 102 of the Act, with specified exceptions, makes it an unfair immigration-related employment practice to discriminate against an individual in hiring, discharging, or recruiting or referring for a fee because of an individual's national origin or, in the case of a citizen or intending citizen, because of that individual's citizenship status.

In order to prevent the occurrence of these practices and to provide redress for persons injured by them, section 102 establishes enforcement measures and provides for appointment of a "Special Counsel for Immigration-Related Unfair Employment Practices" within the Department of Justice. Among the Special Counsel's statutory responsibilities is the investigation of unfair immigration-related employment practices either on his or her own initiative or in response to charges filed with the Office of the Special Counsel by aggrieved individuals, their representatives, or officers of the Immigration and Naturalization Service (INS).

Where there is reasonable cause to believe that such practices have occurred, the Special Counsel may file a complaint with an administrative law judge. The Special Counsel may also seek to intervene in proceedings involving complaints brought directly before administrative law judges. (The statute provides that a charge filed with the Special Counsel may be brought directly before an administrative law judge by a private party, if the Special Counsel fails to file a complaint with an administrative law judge within 120 days of receipt of the charge.) Once the administrative law judge issues an order, the Special Counsel may seek judicial enforcement of the judge's order in the appropriate Federal district court or judicial review of the order in the appropriate Federal court of appeals.

This final rule in three subparts implements section 102 of the Act. Subpart A states the purpose of the regulation and defines certain key terms; Subpart B provides substantive guidance as to the meaning of the term, "unfair immigration-related employment practices;" and Subpart C establishes procedures specifying how private individuals may file charges with the Special Counsel and the manner in which the Special Counsel will proceed to investigate these charges.

On March 23, 1987, the Department of Justice published a Notice of Proposed Rulemaking (NPRM). In response to this NPRM the Department received 66 comments, some signed by more than one individual or organization. Twenty-two of these comments came from persons or organizations in the District of Columbia, 23 from California, 7 from New York, and the remaining 14 comments came from 11 other States. Of the 66 comments, 19 came from civil rights groups, church organizations, or associations representing the interests of aliens; 16 came from employers or organizations representing the interests of employers; 19 came from individual members of the general public; 8 came from Federal, State, or local governments; and 4 came from members of the United States Congress.

The Department read and considered each comment. The decisions that the Department made in response to these comments were not made on the basis of the number of commenters addressing any one point but on a thorough consideration of the merits of the points of view expressed in the comments.

The purposes of this preamble are to highlight key features of the final rule, indicate changes from the NPRM, and address various issues raised in the comments.

I. Counting Employees for Jurisdictional Purposes

Section 44.200 of the rule prohibits unfair immigration-related employment practices in accordance with the terms of the statute. Paragraph (b) of § 44.200 codifies the Act's exceptions to this general prohibition. Among the exceptions is an exclusion from coverage of employers with three or fewer employees (§ 44.200(b)(1)(i)). In addition, if the national origin discrimination is covered under section 703 of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-2), there is no overlapping jurisdiction under the Immigration Reform and Control Act (§ 44.200(b)(1)(ii)). In this regard, it is noted that section 703 of title VII only applies to employers with 15 or more employees "for each working day in each of twenty or more calendar weeks in the current or preceding calendar year" (42 U.S.C. 2000e(b))

Unlike title VII, section 102 does not contain the 20 calendar week durational minimum. In light of the language and legislative history of the IRCA antidiscrimination provisions, the Special Counsel will calculate the number of employees referred to in paragraph (b)(1)(i) of § 44.200 by counting all part-time and full-time employees employed on the date that the alleged discrimination occurred. The Department, therefore, will not use the 20 calendar week requirement contained in title VII in counting employees for purposes of determining coverage by section 102. The Department will, however, use the 20 calendar week requirement for purposes of determining whether the exception of paragraph (b)(1)(ii) of § 44.200 applies, and will refer to EEOC charges of national origin discrimination that the Special Counsel determines are covered by section 703 of title VII. This is the same position that the Department took in its NPRM.

Another exception to the citizenship discrimination prohibitions of section 102 is codified in § 44.200(b)(1)(iii). Under that exception, an employer is permitted to discriminate on the basis of citizenship status if such discrimination (a) is required to comply with law, regulation, or executive order, or (b) is required by Federal, State, or local government contract, or (c) if it is determined by the Attorney General to be essential for an employer to do business with an agency or department of the Federal, State, or local government. Therefore, an employer may not impose a blanket citizenship requirement for all jobs in its workforce unless such a requirement can be justified for each job under this exception.

II. Standard of Proof

The general rule prohibiting unfair immigration-related employment practices in section 102 of the Act is codified in § 44.200(a) of the final rule.

Most of the comments that the Department received concerned the proposed standard of proof in § 44.200(a). These comments were provided by civil rights groups, Members of Congress, employer representatives, and others. The Department has reviewed these comments carefully. The Department concludes that its original determination that the statute prohibits intentional discrimination rather than neutral conduct with an unintended disparate impact is sound.

Commenters made several points in setting forth the case for a disparate impact standard in this area that should be addressed.

Some commenters stated that section 102, containing the antidiscrimination provisions, was intended to fill gaps in coverage under title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e to 2000e–16) and that section 102 was intended to broaden title VII. Indeed, some commenters made reference to a remark in the House Conference Report: "The bill broadens the title VII protections against national origin discrimination * * *." H.R. Rep. No. 99–1000, 99th Cong., 2d Sess. 87 (1986). This remark in full context, however, obviously has no reference to the standard of proof to be satisfied under the new statute. Rather, the "broadened" protections in the national origin area refer to the increase in the number of employers subject to a ban on national origin discrimination (i.e., those who have 4 employees to 14 employees and employers who may have 15 or more employees, but for less than 20 weeks in a calendar year) and to the coverage of certain employers not covered by title VII, such as certain businesses located on or near Indian reservations (42 U.S.C. 2000e–2(i)) (thus expanding the scope of the ban on national origin discrimination).

With respect to the substantive standards of the antidiscrimination provisions, they, in turn, are discerned from the operative portions of IRCA's antidiscrimination provisions themselves, 8 U.S.C. 1324b(a), and, to the extent necessary, resort to the legislative history. That history reflects that the concern giving rise to the adoption of the antidiscrimination provisions was the fear that employers seeking to avoid sanctions would simply refuse to hire, or would fire, persons who look or sound foreign. Such practices are necessarily reflective of intentional discrimination. By tying the antidiscrimination provisions of the bill closely to the sanctions provisions and in identifying the concerns that underlie the antidiscrimination provisions in the Act, as is reflected throughout the legislative history, it is quite clear that Congress was attempting to reach intentional discrimination and was expanding the scope of such an existing ban in the national origin context. Indeed, as mentioned earlier, the Conference Report notes that the bill only provides such protection while sanctions are in effect. H.R. Rep. No. 99–1000, *supra*, at 87 (1986).

It is also anomalous to claim that Congress intended to expand broadly the substantive standards of title VII rather than the scope of coverage of one form of discrimination prohibited by title VII. Not only did Congress not amend title VII itself, but also Congress did not go as far as title VII in substance when it banned national origin discrimination in IRCA: Section 102 of this Act does not prohibit discrimination in compensation, promotions, or any other term or condition of employment other than hiring, firing, and recruitment or referral for a fee. This difference in the types of employment practices covered buttresses the view that references to "broadening" the scope of title VII reflects the increase in the number of employers subject to a ban on intentional national origin discrimination, rather than the incorporation of a substantive disparate impact standard.

Some commenters have taken out of context statements in the legislative record that Members of Congress were concerned that the sanctions provisions would "result" in discrimination. For example, the Conference Report notes that the anti-discrimination provisions would be repealed if Congress adopts a joint resolution approving a GAO finding "that the sanctions had resulted in no significant discrimination * * *." *Id.* Congressman Rodino said, following the Report of the Conference, "[the anti-discrimination] provision is a direct response to the fears and concerns expressed by many Hispanic organizations that sanctions would automatically result in discrimination based on national origins." 131 Cong. Rec. H10,584 (daily ed. Oct. 15, 1986).

Some commenters noted, in addition, the following comments: "Conferees wish to emphasize that the anti-discrimination provision has been included in order to respond to the fears and concerns expressed by many that the sanctions will result in employment discrimination based on national origin or citizenship status." H.R. Rep. No. 99–1000, *supra*, at 87–88. The report of the House Committee on Education and Laobr "strongly endorses this [antidiscrimination] provision and * * * expresse[s] its fear that the imposition of employer sanctions will give rise to employment discrimination against Hispanic Americans and other minority group members. It is the committee's view that if there is to be sanctions enforcement and liability there must be an equally strong and readily available remedy if resulting employment discrimination occurs. In the last Congress, the full House of Representatives recognized the potential for this unfortunate cause and effect relationship between sanctions enforcement and resulting employment discrimination * * *" and adopted the "so-called 'Frank Anti-discrimination' amendment." H.R. Rep. No. 99–682, 99th Cong., 2d Sess., pt. 2, at 12.

These excerpts from the legislative history reflect the concern of some members of Congress that IRCA's sanctions provisions could lead to (or "result in") discrimination—not what some might call statistical discrimination or numerical imbalances, but intentional discrimination. The term "result," as used in the referenced colloquies or passages, was never offered as a legislative standard of proof, but was only mentioned to express possible consequences that might flow from the imposition of sanctions. The post hoc suggestion that the word should be wrenched from the context in which it was obviously used, and recast in terms of a legal standard that tolerates a finding of wrongdoing on less than a demonstration of intentional discrimination, cannot be accomplished grammatically, let alone legally.

Some commenters have suggested that the disjunctive use of the phrase

"pattern or practice of discriminatory activity" (8 U.S.C. 1324b(d)(2)) as an alternative to "knowing and intentional discrimination" provides sufficient latitude to read into the "pattern or practice" phrase activity having an unintended disparate impact. But, as discussed in the preamble to the NPRM (52 FR 9275), Congress unambiguously expressed its view that the phrase "pattern or practice" embraced only intentional discrimination. The House Judiciary Committee in its section-by-section analysis of section 274B(d) (8 U.S.C. 1324b(d)) noted that it "[a]uthorizes private action where the Special Counsel has not filed a complaint within 120 days based on a charge alleging knowing and intentional discriminatory activity or a pattern or practice of *such* activity." H.R. Rep. No. 99-682, 99th Cong., 2d Sess., pt. 1 at 93 (1986) (emphasis added). Moreover, in explaining its use of the term "pattern or practice" in a different portion of the Act dealing with criminal sanctions against employers, the House Judiciary Committee emphasized that "pattern or practice" refers to intentional activities and noted that this interpretation should apply in the unfair immigration-related employment practices context as well.

> [T]he term "pattern or practice" has its generic meaning and shall apply to regular, regular, repeated and intentional activities, but does not include isolated, sporadic or accidental acts. The same interpretation of "pattern or practice" shall apply when that term is used in this bill with regard to the injunctive remedy that may be sought by the Attorney General for recruitment, referral or employment violations, as well as for certain unfair immigration-related employment practices.

Id. at 59. By including this phrase in 8 U.S.C. 1324b (d) (2) Congress undertook to make plain that a private party could not only bring a case alleging isolated or sporadic acts of intentional discriminatory discrimination but could also bring a case of repeated, intentionally activities with many victims.

Some commenters responded to the analogy drawn between section 102 of the Act and section 703(a)(1) of title VII. They noted that some courts, *e.g.*, *Wambheim* v. *J.C. Penney Co., Inc.*, 705 F.2d 1492 (9th Cir. 1983), *Colby* v. *J.C. Penney Co., Inc.*, 811 F.2d 1119 (7th Cir. 1987), have indicated that a case of disparate impact can be brought under section 703(a)(1), and, therefore, assert that our analogy to title VII is faulty. These comments misconstrue the point made in the Notice of Proposed Rulemaking. The NPRM stated that the language of section 102 is analogous to language in section 703(a)(1) upon which the disparate treatment prong of title VII is generally based. Section 703(a)(2), which speaks of "adversely affecting" employees, is generally the basis for the impact standard. That a minuscule number of cases (*Colby* is inapt as an indicator of congressional intent since it was decided after IRCA's enactment) suggest section 703(a)(1) may support use of a disparate impact standard when the overwhelming number of intent cases under title VII at the time of IRCA's enactment are premised on section 703(a)(1), *see, e.g.*, *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973); *City of Los Angeles Department of Water and Power* v. *Manhart*, 435 U.S. 702 (1977), and the overwhelming number of title VII impact cases are premised on section 703(a)(2), *see, e.g.*, *Griggs* v. *Duke Power Co.*, 401 U.S. 424 (1971), *Connecticut* v. *Teal*, 457 U.S. 440 (1982), does not suggest the analogy is invalid in discerning the meaning of these IRCA provisions, as intended by Congress.

Because Congress did not amend title VII itself to encompass alienage discrimination and a broader range of employers engaging in national origin discrimination, and in light of Congress' general purposes in enacting section 102, Congress' reliance on language analogous to section 703(a)(1), from which the intent standard is generally derived, rather then section 703(a)(2), from which the impact standard is generally derived, amply supports the position taken by the Department in the NPRM.

If Congress had wanted to use an "effects" standard, it certainly could have done so, either directly or by incorporating language analogous to section 703(a)(2), which has been repeatedly construed in title VII discrimination law to provide for such a standard. It chose not to do so and all of the relevant indicators in the legislative history reinforce the conclusion that the reason rested on a considered legislative judgement to prohibit only intentional discrimination.

Some commenters have erroneously asserted that, while a refusal to hire anyone with accented speech or dark skin, hair and eyes falls within the intentional discrimination prong of employment discrimination law, facially neutral policies, such as "English-only" rules, lengthy residence requirements, or a hierarchy of preferred documents for employee verification can only be challenged under the disparate impact theory. This is untrue. The intent standard makes illegal facially neutral policies which are intended to discriminate on prohibited bases and have that effect. Indeed, this has been true in American jurisprudence since at least the case of *Yick Wo* v. *Hopkins*, 118 U.S. 356 (1886), wherein the Supreme Court ruled that the discriminatory application of a facially neutral policy requiring special approval for the operation of laundries made of a material other than brick or stone was illegal under the 14th Amendment because those who enforced it applied it deliberately to put only Chinese-owned laundries operating in buildings of wood out of business while similarly situated laundries owned by non-Chinese were not denied the right to continue to conduct business. Further, a facially neutral policy neutrally applied, but adopted for the purpose of discriminating on a prohibited basis and having that effect, is similarly prohibited. Indeed, this misconception of the intent standard may be a substantial part of the reason for concern over the use of this standard in the context of the immigration reform effort.

While the preamble to the Notice of Proposed Rulemaking touched upon the operation of the intent standard, further elaboration on that discussion would be useful. Discriminatory intent may be shown by both direct and circumstantial evidence. Thus, the discriminatory intent standard encompasses more than just cases where employers have made bigoted remarks or openly engage in facilally disparate treatment. In order for an individual to prevail in a case of disparate treatment, the model of proof in *McDonnell Douglas Corp.* v. *Green*, 411 U.S. 792 (1973), and *Texas Department of Community Affairs* v. *Burdine*, 450 U.S. 248 (1981), is applicable. Thus, an individual would make a *prima facie* showing by proving that he or she is part of a national origin or citizenship status group, that he or she applied for a job and was rejected, that the job was kept open and given to another individual of similar qualifications. At this point, the burden of production shifts to the employer to come forward with a nondiscriminatory explanation for the rejection of the charging party. If an explanation is produced, the charging party then has the opportunity to show that this reason was a pretext and that the employer's refusal to hire him or her is because of national origin or citizenship status. Moreover, while under this standard it is not sufficient to allege that an action results in disproportionate impact, statistics may be used in appropriate cases to aid in proving discriminatory intent. Courts and administrative

agencies at all levels of government routinely infer intentional discrimination in employment, as well as in other areas of discrimination law.

Indeed, without suggesting how individual cases will be handled by the Special Counsel, an example concerning an "English-only" rule is instructive. If an employer who has been in business for several years and has successfully obtained satisfactory employees without the use of an "English-only" rule, adopts such a rule after November 6, 1986, when this Act became law, and if the adoption of that rule falls with disproportionate impact on a particular citizenship stastus group or national origin group, the Special Counsel is well justified under the intent standard in pursuing an investigation to seek an explanation for the adoption of such a rule. While it is feasible that an employer will have a legitimate, nondiscriminatory reason for the adoption of an English language rule during this particular period, the circumstances surrounding the adoption of this new rule may well give rise to a determination by the Special Counsel of a violation of the anti-discrimination provisions in a number of cases.

At least one commenter suggested that it was irrational and illogical to subject employers to different liability standards based solely on their size. The Department disagrees with this observation. Congress clearly desired to prevent employers from protecting themselves from sanctions by refusing to hire persons who look and sound foreign, i.e., from engaging in intentional discrimination. Congress also wished to reach employers with four or more employees. It was not irrational or illogical for Congress to rely upon an existing enforcement mechanism for employers already prohibited from intentional national origin discrimiantion i.e., title VII, even through title VII also proscribes additional conduct, and to create a new mechanism, under section 102 of IRCA, to cover those additional employers and the citizenship discrimination claims it sought to reach.

One commenter suggested that there is an inconsistency in the Department's supposedly taking the position that Congress only prohibited intentional discrimination flowing from fear of sanctions yet covering all intentional discrimination under section 102, whether or not flowing from an employer's desire to avoid sanctions, but refusing to extend the antidiscrimination provisions to disparate impact discrimination. The Department believes there is no inconsistency at all in Congress' banning all intentional discrimination because of its fear that employers desire to avoid sanctions would lead to intentional discrimination in light of the likely difficulty for a charging party or the Special Counsel to prove that such discrimination stemmed directly from an employer's desire to avoid sanctions. It is substantively far different, however, to expand the provisions of the Act through administrative action to a wholly different theory of discrimination, i.e., disparate impact.

Moreover, the preamble to the NPRM did not state that Congress only wished to prohibit international discrimination flowing from sanctions. Rather it said: "Congress' purposes in enacting section 102 is clearly to address intentional discrimination" (52 FR 9275). It then went on to note that the legislative history clearly reflected Congress' desire to prohibit intentional discrimination flowing from sanctions, but it did not state that that was the only species of intentional discrimination prohibited by the Act. The language of section 102 is broad enough to cover all intentional discrimination because of national origin or citizenship status.

The legislative history is also replete with the close connection between the sanctions provisions and the antidiscrimination provisions. Indeed, as mentioned earlier, the sunset provision in the antidiscrimination provisions is also tied to the sunset of the sanctions provisions. Congress' purpose in enacting section 102 was to address employer discrimination caused by the Act, i.e., employer efforts to avoid sanctions by refusing to hire, recruit or refer for a fee, or firing someone because the person looked or sounded "foreign." Congress was not talking about antidiscrimination provisions based on a past history of discrimination. Indeed, Congressman Rodino stated: "Antidiscrimination legislation of this nature is unprecedented in that it is based upon anticipated discrimination, rather than an historical pattern of past discrimination." 131 Cong. Rec. H10, 584 (daily ed. Oct. 15, 1986).

The Department reiterates that, with the easy means available to verify both identity and authorization to work, there is no excuse for any employer to discriminate on the basis of appearance or accent in a misguided effort to avoid sanctions. Indeed, INS rules reflect the statute's clear provision that, so long as the documentation appears reasonable on its face, and the employer does not knowingly hire a person not authorized to work, no sanctions will be imposed if an individual is later determined to be an alien unauthorized to work.

III. Procedures

Section 102 of the Act provides procedures for enforcement of its provisions. The final rule implements the statutory requirements and provides supplemental material where necessary.

Section 44.300 Filing a charge.

In accordance with the statute, charges of unfair immigration-related employment practices may be filed with the Special Counsel by aggrieved individuals, their authorized representatives, or by officers of the Immigration and Naturalization Service (§ 44.300(a)). A charge may be filed against any "person or entity" that engages in an unfair immigration-related employment practice. The regulation uses the statutory phrase "person or entity" in the definition of respondent in § 44.101(f), rather than "employer" because the statute covers practices by entities that may not be in an employment relationship to the aggrieved individual, e.g., recruitment or referral agencies, or unions or other organizations performing I–9 employment verification functions for employers.

One commenter indicated that the definition of charging party in the NPRM implied that only individuals, and not organizations, could file a charge on behalf of an injured party. The definition and related sections (§§ 44.101(b), 44.300(a)(1)) have been revised to clarify that private organizations may file on behalf of individuals. State or local government agencies or organizations, however, are not authorized to be complainants before administrative law judges because the statute speaks only of "private actions" (8 U.S.C. 1324b(d)(2)). Accordingly, they are also not included in the definition of charging party. Information provided to the Special Counsel by Federal, State, or local government organizations, of course, can form the basis of an investigation on the Special Counsel's own initiative. Federal officials, other than officers of the Immigration and Naturalization Service (who are authorized by statute to file charges), may not be charging parties. To permit other Federal officials to file charges would undermine the central Federal enforcement role contemplated by Congress for the Special Counsel.

The NPRM specified that the filing of a charge on another person's behalf must be authorized in writing. Some commenters urged that the injured party

not be required to sign the charge in cases where he or she has authorized another individual or an organization to be the charging party. The Department agrees that it is not necessary to have the injured party's written authorization or signature on the charge, so long as the charging party affirms that he or she is authorized to file a charge on the injured party's behalf. The signature requirement of § 44.101(a) (10)(ii), therefore, has been deleted.

If a charging party is alleging the occurrence of an unfair immigration-related employment practice adversely affecting directly more than one person, only one injured person need be identified in the charge. As required by the statute, the regulation mandates that charges be filed within 180 days of the alleged discrimination. Thus, in the case of charges where more than one person has arguably been subjected to discrimination, only those persons who have been discriminated against within 180 days of the filing of the charge will be entitled to be protected by the anti-discrimination provisions.

Several commenters urged that the 180-day filing requirement not be made effective until the Office of Special Counsel is fully operational. We believe it would be illegal to toll the running of the 180-day period for this reason. Even though Congress made section 102 effective immediately upon its enactment and knew that an administrative enforcement structure could not be established immediately, it nevertheless established an unqualified 180-day filing requirement. It should be noted that an Acting Special Counsel was named by President Reagan on April 16, 1987. Further, a postal address was established for the receipt of charges within 180 days of the effective date of the statute. Charges should be sent to: Office of the Special Counsel for Immigration-Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 65490, Washington, DC 20035–5490.

Section 44.300(d) of the final rule, which was not included in the NPRM, delineates the exclusive spheres of jurisdiction of the Office of the Special Counsel and EEOC over charges of unfair immigration-related employment practices in accordance with 8 U.S.C. 1324(b)(2).

The definition of "charge" lists information that the Special Counsel must have before proceeding with an investigation. The definition of charge as amended in the final rule requires an alien to disclose his or her alien registration number and date of birth. This information will enable the Special Counsel to verify whether an alien is authorized to work and, thus, protected by section 102.

If the injured party is an alien authorized to work, the regulation also requires the charging party to provide information concerning whether the alien: Is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1255a(a)(1), is admitted as a refugee under 8 U.S.C. 1157, or has been granted asylum under 8 U.S.C. 1158; has applied for naturalization and the date of such application; and has completed a declaration of intention to become a citizen and the date of such declaration. This information is required in order for the Special Counsel to determine whether the alien meets the statutory definition of "intending citizen" protected by the antidiscrimination provisions of the Act where the charge is based on citizenship status. (Authorized aliens need not establish "intending citizen" status in order to file a charge alleging national origin discrimination.) This information, which is required for a non-citizen or non-national injured party to assert a citizenship discrimination claim under the Act, should be within the injured party's knowledge and its disclosure will save time in the Special Counsel's investigations. Such information will also be useful even in cases where an alien alleges only national origin discrimination because the Special Counsel may determine that there has been discrimination on the basis of citizenship. However, if the charging party alleges only national origin discrimination, the omission of this information will not render the charge incomplete.

The definition of "citizen or intending citizen" requires that aliens make timely application for naturalization in order to acquire "intending citizen" status. We wish to emphasize that this requirement does not bar aliens who are not yet eligible to apply for naturalization, but who otherwise satisfy the requirements of the definition, from achieving "intending citizen" status and, thus, protection from citizenship discrimination under the statute.

The Department received a number of specific comments on the definition of "charge." One commenter argued that it is unreasonable to require injured parties or their representatives, particularly when they are not attorneys, to identify the alleged discrimination as citizenship or national origin discrimination. We believe that this information is important for the Special Counsel to be able to determine whether it has jurisdiction over part or all of the charge and, thus, whether to refer to the charge to EEOC for investigation under title VI when appropriate. Nothing in the rule forecloses a charging party from identifying the discrimination as both citizenship and national origin discrimination. A charging party, however, before he or she has filed a charge, must believe some form of prohibited discrimination occurred or the charge would not have been filed.

Several commenters urged that the definition of "citizen or intending citizen" in § 44.101(c) and the charge form be expanded to include aliens granted temporary resident status under the Special Agricultural Worker Program or the Replenishment Agricultural Worker Program. Expanding the definition, however, would contravene the express language of the statute. Of the myriad categories of aliens in the United States, Congress specifically chose to confer protection only on those four categories mentioned in the statute.

Aliens who are authorized to work by INS as a result of the amnesty application process may assert national origin discrimination claims and, upon meeting criteria for the status of "intending citizen," may file citizenship claims as well. In the case of an alien not authorized to work, but who indicates he or she intends to apply for amnesty, such an alien is regarded as authorized to work through September 1, 1987, and is protected by section 102 through September 1, 1987. Such an individual who, by September 1, 1987, has applied for amnesty and is authorized by INS to work during the pendency of the application will continue to be protected under relevant provisions of section 102. Of course, if authorization to work is withdrawn, the protections of section 102 cease.

One commenter queried whether the charge requirements would be satisfied if the declaration of intention to become a citizen were completed at some point after the occurrence of the alleged discrimination. In addition, several commenters urged that the declaration of intention requirement not become effective until a form evidencing this intent becomes widely available. It was asserted that the form currently used for this purpose (INS Form N–315, "Declaration of Intention") has fallen into disuse and that it could be executed only by legal permanent resident aliens.

We believe that the statute affords protection from citizenship discrimination only to those individuals who meet the statutory definition of "citizen or intending citizen" at the time

of the alleged discriminatory acts. Therefore, the written declaration of intention must be completed prior to the occurrence of the alleged discrimination acts. However, because of the initial unavailability of the new INS Form I–772, "Declaration of Intending Citizen," this requirement will not apply to acts of discrimination occurring prior to December 1, 1987. Therefore, for purposes of determining whether individuals are "intending citizens," the Special Counsel will deem them to have completed the new INS Form I–772 prior to any discriminatory act occurring between November 6, 1986, and December 1, 1987, if such individuals: (1) Complete the new INS Form I–772 on or before December 1, 1987, and (2) assert in a charge that, prior to the alleged act of discrimination, they intended to become U.S. citizens, and would have completed this form had it been available. "Completion" of a declaration of intention to become a citizen means that an INS Form N–315, "Declaration of Intention," has been filed with any court exercising naturalization jurisdiction (8 CFR 334a.1) or that an INS Form I–772, "Declaration of Intending Citizen," has been filed with the Immigration and Naturalization Service.

An alien authorized to work in the United States who is not an intending citizen can, of course, avail himself of the Act's protections against national origin discrimination.

In order to conform the regulation to the statute, the final rule contains a technical amendment to § 44.101(a)(6) that requires that a charge indicate whether the injured party is an alien "authorized to work in the United States." The proposed rule merely required the injured party to indicate whether he or she is an alien.

To facilitiate the filing of charges, the Department has prepared the following charge form that, if completed, would provide the Special Counsel with the information necessary to proceed with an investigation of the charge.

Department of Justice Office of the Special Counsel for Immigration-Related Unfair Employment Practices

Post Office Box 65490, Washington, DC 20035–5490

Charge Form for Unfair Immigration-Related Employment Practices

(1) Charging Party:

Full Name:_____
Other Names Ever Used: _____
Address: _____
City, State and Zip Code: _____
Telephone Number:_____
(Area Code)

Injured Party (if injured party is same as charging party, write "same")

Full Name:_____
Other Names Ever Used: _____
Address: _____
City, State and Zip Code: _____
Telephone Number:_____
(Area Code)

(2) Individual, business, or organization which you believe has discriminated:

Full Name:_____
Address: _____
City, State and Zip Code: _____
Telephone Number:_____
(if known) (Area Code)

(3) Individual, business, or organization has (check one):

____ Less than 15 employees, but more than 3 employees.
____ 15 or more employees.
____ Unable to estimate number of employees

(4) Injured party was discriminated against because of (check one or both):

____ National Origin
____ Citizenship

(5) Injured party is:

____ Citizen or national of the United States
____ Alien authorized to work in the United States
(Date of birth: _____)
(Alien registration number(s): _____)

If an alien authorized to work in the United States, injured party (check one, if applicable):

____ Is lawfully admitted for permanent residence
____ Has status of alien lawfully admitted for temporary residence under 8 U.S.C. 1255a(a)(1)
____ Is admitted as a refugee under 8 U.S.C. 1157
____ Has been granted asylum under 8 U.S.C. 1158.

If an alien authorized to work in the United States, injured party:

____Has applied for naturalization
Date of Application: _____
____Has not applied for naturalization

If an alien authorized to work in the United States, injured party:

____Has completed a declaration of intention to become a citizen
Date of Declaration: _____

(6) When did the discrimination occur:

_____
(Date)

(7) Where did the discrimination occur:

_____
(Place)

(8) Describe the discrimination:

(Use additional sheets if necessary)

_____
_____

(9) Has a charge based on this set of facts been filed with EEOC?

____Yes
____No

If yes, which office?

Address: _____
City, State and Zip Code: _____
Telephone: _____
(Area Code)
Contact Person (if known): _____
Date filed: _____

(10) Affirmation and Signature of Charging Party:

(a) If this charge is being filed by the injured party:

As a person alleging that I have been injured by an unfair immigration-related employment practice, I understand that the Office of the Special Counsel may find it necessary to reveal my identity and other information during the conduct of the investigation of my charge, during any hearing or other proceeding as a result of my charge, or in limited circumstances in response to inquiries under the Freedom of Information Act. I give my consent. I affirm that, to the best of my knowledge, the information provided on this form is true.

_____
(Signature of injured Party)

_____
(Date)

(b) If this charge is being filed by an authorized representative of the injured party:

I affirm that, to the best of my knowledge, the information provided on this form is true and that I am authorized to file this charge on behalf of the injured party. I understand that the Office of the Special Counsel may find it necessary to reveal my identity during the conduct of the investigation of this charge, during a hearing or other proceeding as a result of this charge, or in limited circumstances in response to inquires under the Freedom of Information Act. I give my consent.

_____
(Signature of Authorized Representative)

_____
(Date)

(c) If this charge is being filed by an INS officer:

I affirm that, to the best of my knowledge, the information provided on this form is true. I understand that the Office of the Special Counsel may find it necessary to reveal my identity during the conduct of the investigation of this charge, during a hearing or other proceeding as a result of this charge, or in limited circumstances in response to inquires under the Freedom of Information Act. I give my consent.

_____
(Signature of INS Officer)

_____
(Date)

Although the Department encourages use of the form, its use is optional. The Department intends to have copies of this form made available across the United States—at Offices of the Immigration and Naturalization Service, at Offices of the United States Attorneys, and at district, area, and local offices of the Equal Employment Opportunity Commission. This charge form will be available in both English and Spanish. If used, responsibility for filing it with the Office of the Special Counsel rests with the charging party.

Section 44.301 Acceptance of charge.

As required by the Act, the regulation requires that respondents be notified of charges against them filed with the Special Counsel (§ 44.301(a),(e)). In addition, it supplements the Act by requiring notice to the charging party upon receipt of his or her charge by the Special Counsel (§ 44.301(a),(b)). If the charging party's submission lacks information necessary for it to constitute a "charge" as defined in § 44.101(a), the regulation requires the Special Counsel to notify the charging party that the submission is inadequate and to specify the additional information that is needed for it to be considered a complete charge (§ 44.301(c)). In the final rule, however, § 44.301 has been revised to make clear that if a written submission does not contain all of the information necessary to constitute a charge, the Special Counsel may in his or her discretion treat it as a filed charge and collect the rest of the needed information during his or her investigation. The Department does not intend through its charge requirement to erect technical barriers to the filing of charges. Nevertheless, charging parties should include all of the information specified in the definition of charge to the best of their abilities. Indeed, the rule retains the authority of the Special Counsel to request in writing the additional information necessary to constitute a charge. This flexible approach best serves the interest of effective enforcement of section 102.

The 120-day statutory period in which the Special Counsel must undertake to investigate the charge and determine whether or not to file a complaint with an administrative law judge does not begin to run until a "charge," as defined by the regulation (§ 44.101(a)), or a submission deemed to be a filed charge under § 44.301(c)(2), has been received by the Special Counsel. In the case of inadequate submissions that are later deemed charges upon the receipt of additional information requested by the Special Counsel, the date from which the 120-day period begins to run is the date when the Special Counsel receives the additional information (§ 44.301(c)(1)). A submission deemed to be a charge under § 44.301(c)(1) meets the 180-day filing requirement of § 44.300(b) so long as the original submission is filed within 180 days of the alleged occurrence of an unfair immigration-related employment practice, and any additional information is provided either within the 180-day period or within 45 days of the date on which the charging party receives the Special Counsel's request for additional information, whichever is later.

The Special Counsel's notice to the charging party will specify the date on which the charge was received and inform the charging party, other than an officer of the Immigration and Naturalization Service, that he or she has the right to file a compliant directly before an administrative law judge if the Special Counsel does not do so within 120 days of the date of the Special Counsel's receipt of the charge (§ 44.301(b)). As required by the statute, notice of the charge will also be served by certified mail on the respondent within 10 days of the Special Counsel's receipt of the charge (§ 44.301(e)).

Section 44.302 Investigation.

In accordance with the statute, the Special Counsel must, within 120 days of receipt of a charge, undertake an investigation of the charge and determine whether a complaint with respect to the charge will be brought before an administrative law judge (§ 44.303(a)). Section 44.302(b) specifies that any person or entity being investigated shall permit access to its books, records, accounts, and other pertinent information during normal business hours. The authority for this provision can be found in 8 U.S.C. 1324b(f)(2), which specifies that the Special Counsel must be provided reasonable access to examine the evidence of any person or entity being investigated (§ 44.302(b)). On-site investigations may be conducted at the discretion of the Special Counsel.

One commenter urged that respondents be permitted to engage in discovery upon acceptance of a charge by the Special Counsel. We believe, however, that such discovery would be inappropriate while the Special Counsel is discharging his or her investigatory responsibilities under the Act. Respondents, of course, may be entitled to discovery once a complaint is filed with an administrative law judge.

Section 44.303 Determination.

As provided in the statute, the regulation allows the charging party, other than an officer of the Immigration and Naturalization Service, to file a complaint with an administrative law judge if the Special Counsel fails to do so within 120 days (§ 44.303)c)). We emphasize that, although the complaint must allege the same unfair immigration-related employment practice as alleged in the charge, complete identity of facts between the charge and the complaint is not required and new information may be added. Section 44.101(d), defining "complaint" has been reworded to clarify this point.

The statute sets no limitation on the period of time that the complainant has to file his or her own action. It is reasonable, however, to limit this time period in some way in order to avoid the filing of stale complaints. Consequently, the regulation gives the complainant 90 days from the end of the 120-day period to bring an action directly (§ 44.303(c)). This 90-day limit is analogous to the statutory 90-day period provided under section 706 of title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e–5) during which a charging party may file a civil action against the respondent after receipt of a right to sue letter. The period of time in which the Special Counsel may file a complaint in the absence of a filing by the charging party is similarly limited to 90 days from the end of the 120-day period (§ 44.303(d)(1)).

The regulation also allows the Special Counsel, if he or she desires to notify the charging party even before the end of the 120-day period that a complaint will not be brought before an administrative law judge (§ 44.303(b)). If such a letter of determination is issued, the final rule allows the charging party, other than an officer of the Immigration and Naturalization Service, 90 days from the end of the 120-day period to file his or her own complaint directly with an administrative law judge (§ 44.303(c)). The NPRM had only permitted the charging party 90 days from the issuance of the letter to file a complaint.

Even after the expiration of the 120-day period, the regulation permits the Special Counsel to file a complaint within 90 days so long as the individual has not yet filed his or her own complaint (§ 44.303(d)(1)). The reference to a "letter of determination" in § 44.303(d)(1), which appeared in the NPRM, has been deleted from the final rule. The Special Counsel also remains free at any time to seek intervention in any proceeding brought before an administrative law judge by the charging party (§ 44.303(d)(2)).

Section 44.304 Special Counsel acting on own initiative.

Section 44.304(b) has been amended in the final rule to limit the period of time in which the Special Counsel on his or her own initiative may investigate and file a complaint of an unfair immigration-related employment practice. We believe that requiring a complaint to be filed within 180 days of the occurrence of an unfair immigration-related employment practice is a reasonable implementation of the desire of Congress reflected in 8 U.S.C. 1324b(d)(1), (3), to place a time limit on the actions of the Special Counsel.

IV. Deletion of Administrative Law Judge Procedures

The Executive Office of Immigration Review is issuing a detailed procedural regulation to govern hearings by administrative law judges under both the antidiscrimination and employer sanctions provisions of IRCA. This regulation, which will be codified as 28 CFR Part 66, will include provisions covering the same procedural issues addressed in the Department's proposed rule. In order to avoid duplication, those sections of the proposed rule containing procedures relating to the conduct of administrative enforcement proceedings (§§ 44.306–44.310) have been deleted from this final rule. The Executive Office of Immigration Review procedural rule will be published as an interim final rule. Thus, the public will be given another chance to comment on the procedures that will be used to conduct hearings and, at the same time, the Department will have in place a functioning set of procedures so that there will be no delay in enforcing section 102 of the Act.

V. New Provision Prohibiting Intimidation or Retaliation

The final rule includes a new § 44.201 which prohibits certain acts of interference with rights secured by this part and intimidation or retaliation against persons seeking vindication or their rights under this part. Although the statute does not include such a provision, we believe that § 44.201 is reasonably related to the purposes of the Act and that its absence could eviscerate the effectiveness of section 102. The prohibitions contained in this section are not limited to persons or entities against whom a charge has been filed. They would also apply, for example, to an employer who refuses to hire an applicant because that individual has filed a charge against another employer.

This rule is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp., p. 127). Moreover, a regulatory flexibility analysis has not been prepared under the Regulatory Flexibility Act (5 U.S.C. 601-612), because the rule is unlikely to have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 44

Administrative practice and procedure, Aliens, Citizenship and naturalization, Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Investigations, Law enforcement officers, Minority groups, Nationality, Naturalization, Nondiscrimination, Refugees.

For the reasons set forth in the preamble, Chapter I of Title 28 of the Code of Federal Regulations is amended by adding Part 44 to read as follows:

PART 44—UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES

Subpart A—General

Sec.
44.100 Purpose.
44.101 Definitions.
44.102–44.199 [Reserved].

Subpart B—Prohibited Practices

44.200 Unfair immigration-related employment practices.
44.201 Intimidation or retaliation prohibited.
44.202–44.299 [Reserved].

Subpart C—Enforcement Procedures

44.300 Filing a charge.
44.301 Acceptance of charge.
44.302 Investigation.
44.303 Determination.
44.304 Special Counsel acting on own initiative.
44.305 Regional offices.

Authority: 8 U.S.C. 1324b

Subpart A—General

§ 44.100 Purpose.

The purpose of this part is to effectuate section 102 of the Immigration Reform and Control Act of 1986, which prohibits certain unfair immigration-related employment practices.

§ 44.101 Definitions.

(a) "Charge" means a written statement under oath or affirmation that—

(1) Identifies the charging party's name, address, and telephone number;

(2) Identifies the injured party's name, address, and telephone number, if the charging party is not the injured party;

(3) Identifies the name and address of the person or entity against whom the charge is being made;

(4) Includes a statement sufficient to describe the circumstances, place, and date of an alleged unfair immigration-related employment practice;

(5) Indicates whether the basis of the alleged discrimination is national origin, citizenship status, or both;

(6) Indicates whether the injured party is a U.S. citizen, U.S. national, or alien authorized to work in the United States;

(7) Indicates, if the injured party is an alien authorized to work, whether the injured party—

(i) Has been—

(A) Lawfully admitted for permanent residence;

(B) Granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1255a(a)(1);

(C) Admitted as a refugee under 8 U.S.C. 1157; or

(D) Granted asylum under 8 U.S.C. 1158; and

(ii) Has completed a declaration of intention to become a citizen (INS Form N–315, "Declaration of Intention"; or INS Form I–772, "Declaration of Intending Citizen") and, if so, indicates the date of the declaration; and

(iii) Has applied for naturalization (and if so, indicates the date of the application);

(8) Identifies, if the injured party is an alien authorized to work, the injured party's alien registration number and date of birth.

(9) Indicates, if possible, the number of persons employed on the date of the alleged discrimination by the person or entity against whom the charge is being made;

(10) Is signed by the charging party and, if the charging party is neither the injured party nor an officer of the Immigration and Naturalization Service, indicates that the charging party has the authorization of the injured party to file the charge.

(11) Indicates whether a charge based on the same set of facts has been filed with the Equal Employment Opportunity Commission, and if so, the specific office, and contact person (if known); and

(12) Authorizes the Special Counsel to reveal the identity of the injured or charging party when necessary to carry out the purposes of this part.

(b) "Charging party" means—

(1) An individual who files a charge with the Special Counsel that alleges that he or she has been adversely affected directly by an unfair immigration-related employment practice;

(2) An individual or private organization who is authorized by an individual to file a charge with the

Special Counsel that alleges that the individual has been adversely affected directly by an unfair immigration-related employment practice; or

(3) An officer of the Immigration and Naturalization Service who files a charge with the Special Counsel that alleges that an unfair immigration-related employment practice has occurred.

(c) "Citizen or intending citizen" means an individual who—

(1) Is a citizen or national of the United States; or

(2) Is an alien who—

(i) Is lawfully admitted for permanent residence, is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1255a(a)(1), is admitted as a refugee under 8 U.S.C. 1157, or is granted asylum under 8 U.S.C. 1158; and

(ii) Evidences an intention to become a citizen of the United States through completing a declaration of intention to become a citizen (INS Form N–315, "Declaration of Intention"; or INS Form I–772, "Declaration of Intending Citizen"). As used in this definition it does not include an alien who—

(3) Fails to apply for naturalization within six months of the date the alien first becomes eligible (by virtue of period of lawful permanent residence) to apply for naturalization or, if later, by May 6, 1987; or

(4) Has applied on a timely basis, but has not been naturalized as a citizen within two years after the date of the application, unless the alien can establish that he or she is actively pursuing naturalization, except that time consumed in the Immigration and Naturalization Service's processing of the application shall not be counted toward the two-year period.

(d) "Complaint" means a written submission filed with an administrative law judge by the Special Counsel or the charging party, other than an officer of the Immigration and Naturalization Service, that is based on the same charge filed with the Special Counsel.

(e) "Injured party" means a person who claims to have been adversely affected directly by an unfair immigration-related employment practice or, in the case of a charge filed by an officer of the Immigration and Naturalization Service or by a charging party other than the injured party, is alleged to be so affected.

(f) "Respondent" means a person or entity against whom a charge of an unfair immigration-related employment practice has been filed.

(g) "Special Counsel" means the Special Counsel for Immigration-Related Unfair Employment Practices appointed by the President under section 102 of the Immigration Reform and Control Act of 1986, or his or her designee.

Subpart B–Prohibited Practices

§ 44.200 Unfair immigration-related employment practices.

(a) *General.* It is an unfair immigration-related employment practice for a person or other entity to knowingly and intentionally discriminate or engage in a pattern of practice of knowing and intentional discrimination against any individual (other than an unauthorized alien) with respect to the hiring, or recruitment or referral for a fee, of the individual for employment or the discharging of the individual from employment—

(1) Because of such individual's national origin; or

(2) In the case of a citizen or intending citizen, because of such individual's citizenship status.

(b) *Exceptions.* (1) Paragraph (a) of this section shall not apply to—

(i) A person or other entity that employs three or fewer employees;

(ii) Discrimination because of an individual's national origin if the discrimination with respect to that person or entity and that individual is covered under 42 U.S.C. 2000e–2; or

(iii) Discrimination because of citizenship which—

(A) Is otherwise required in order to comply with law, regulation, or Executive order; or

(B) Is required by Federal, State, or local government contract; or

(C) Which the Attorney General determines to be essential for an employer to do business with an agency or department of the Federal, State, or local government.

(2) Notwithstanding any other provision of this part, it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit or refer for a fee an individual who is a citizen or national of the United States over another individual who is an alien if the two individuals are equally qualified.

§ 44.201 Intimidation or retaliation prohibited.

No person or other entity subject to § 44.200(a) shall intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured by this part or because he or she intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.

Subpart C—Enforcement Procedures

§ 44.300 Filing a charge.

(a) *Who may file.* (1) Any individual who believes that he or she has been adversely affected directly by an unfair immigration-related employment practice, or any individual or private organization authorized to act on such person's behalf, may file a charge with the Special Counsel.

(2) Any officer of the Immigration and Naturalization Service who believes that an unfair immigration-related employment practice has occurred or is occurring may file a charge with the Special Counsel.

(b) *When to file.* Charges shall be filed within 180 days of the alleged occurrence of an unfair immigration-related employment practice. For purposes of determining when a charge is timely under this paragraph, a charge mailed to the Special Counsel shall be deemed filed on the date it is postmarked.

(c) *How to file.* Charges may be (1) mailed to: Office of the Special Counsel for Immigration-Related Unfair Employment Practices, P.O. Box 65490, Washington, DC 20035–5490 or (2) delivered to the Office of the Special Counsel at 1100 Connecticut Avenue, NW., Suite 800, Washington, DC 20036.

(d) *No overlap with EEOC complaints.* No charge may be filed respecting an unfair immigration-related employment practice described in § 44.200(a)(1) if a charge with respect to that practice based on the same set of facts has been filed with the Equal Employment Opportunity Commission under title VII of the Civil Rights Act of 1964, unless the charge is dismissed as being outside the scope of such title. No charge respecting an employment practice may be filed with the Equal Employment Opportunity Commission under such title if a charge with respect to such practice based on the same set of facts has been filed under this section, unless the charge is dismissed by the Special Counsel as being outside the scope of this part.

§ 44.301 Acceptance of charge.

(a) The Special Counsel shall notify the charging party of receipt of a charge as defined in § 44.101(a) or receipt of a submission deemed to be a charge under paragraph (c)(2) of this section.

(b) The notice to the charging party shall specify the date on which the charge was received, state that the charging party, other than an officer of the Immigration and Naturalization Service, may file a complaint before an administrative law judge if the Special Counsel does not do so within 120 days

of receipt of the charge, and state the last date on which such a complaint may be filed.

(c)(1) Subject to paragraph (c)(2) of this section, if a charging party's submission is inadequate to constitute a charge as defined in § 44.101(a), the Special Counsel shall notify the charging party that specified additional information is needed. As of the date that adequate information is received in writing by the Special Counsel, the charging party's submission shall be deemed a filed charge and the Special Counsel shall issue the notices required by paragraphs (b) and (e) of this section.

(2) In the Special Counsel's discretion, the Special Counsel may deem a submission to be a filed charge as of the date of its receipt even though it is inadequate to constitute a charge as defined in § 44.101(a). The Special Counsel may then obtain the additional information specified in §44.101(a) in the course of investigating the charge.

(d)(1) If the Special Counsel receives a charge after 180 days of the alleged occurrence of an unfair immigration-related employment practice, the Special Counsel shall dismiss the charge with prejudice.

(2) In adequate submissions that are later deemed charges under paragraph (c)(1) of this section are timely filed as long as—

(i) The original submission is filed within 180 days of the alleged occurrence of an unfair immigration-related employment practice; and

(ii) Any additional information requested by the Special Counsel pursuant to paragraph (c)(1) of this section is provided in writing to the Special Counsel within the 180-day period or within 45 days of the date on which the charging party received the Special Counsel's notification pursuant to paragraph (c) of this section, whichever is later.

(e) The Special Counsel shall serve notice of the charge on the respondent by certified mail within 10 days of receipt of the charge. The notice shall include the date, place, and circumstances of the alleged unfair immigration-related employment practice.

§ 44.302 Investigation.

(a) The Special Counsel may propound interrogatories, requests for production of documents, and requests for admissions.

(b) The Special Counsel shall have reasonable access to examine the evidence of any person or entity being investigated. The respondent shall permit access by the Special Counsel during normal business hours to such of its books, records, accounts, and other sources of information, as the Special Counsel may deem pertinent to ascertain compliance with this part.

§ 44.303 Determination.

(a) Within 120 days of the receipt of a charge, the Special Counsel shall undertake an investigation of the charge and determine whether a complaint with respect to the charge will be brought before an administrative law judge specially designated by the Attorney General to hear cases under section 102 of the Act.

(b) The Special Counsel may, within the 120-day period, issue a letter of determination notifying the charging party and respondent of the Special Counsel's determination that there is no reasonable cause to believe that the charge is true and that a complaint will not be brought by the Special Counsel before an administrative law judge.

(c)(1) If the Special Counsel does not issue a letter of determination pursuant to § 44.303(b) and fails to bring a complaint before an administrative law judge within 120 days of the date specified in the notice provided under § 44.301(b), the charging party, other than an officer of the Immigration and Naturalization Service, may bring his or her complaint directly before an administrative law judge within 90 days of the end of the 120-day period.

(2) If the Special Counsel issues a letter of determination indicating there is no reasonable cause to believe that the charge is true, pursuant to § 44.303(b), the charging party, other than an officer of the Immigration and Naturalization Service, may immediately, or any time within 90 days of the end of the 120-day period, file a complaint directly before an administrative law judge.

(d) The Special Counsel's failure to bring a complaint before an administrative law judge within 120 days shall not affect the right of the Special Counsel—

(1) At any time during the 90-day period defined in paragraph (c)(1) of this section, but before the charging party files a complaint of his or her own, to bring the complaint before an administrative law judge; or

(2) To seek to intervene at any time in any proceeding before an administrative law judge brought by the charging party.

§ 44.304 Special Counsel acting on own initiative.

(a) The Special Counsel may, on his or her own initiative, conduct investigations respecting unfair immigration-related employment practices when there is reason to believe that a person or entity has engaged or is engaging in such practices.

(b) The Special Counsel may file a complaint with an administrative law judge where there is reasonable cause to believe that an unfair immigration-related employment practice has occurred within 180 days from the date of the filing of the complaint.

§ 44.305 Regional offices.

The Special Counsel, in consultation with the Attorney General, shall establish such regional offices as may be necessary to carry out his or her duties.

Edwin Meese III,

Attorney General.

Date: September 30, 1987.

[FR Doc. 87-23047 Filed 10-5-87; 8:45 am]

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federal register

Tuesday
October 6, 1987

Part III

Department of Education

Perkins Loan (formerly National Direct Student Loan), College Work-Study, and Supplemental Educational Opportunity Grant Programs; Notice of Closing Date for Institutions To File "Request for Institutional Eligibility for Programs"

DEPARTMENT OF EDUCATION

Perkins Loan (formerly National Direct Student Loan) College Work-Study, and Supplemental Educational Opportunity Grant Programs; Closing Date for Institutions To File "Request for Institutional Eligibility for Programs"

AGENCY: Department of Education.
ACTION: Notice of closing date for Institutions to file "Request for Institutional Eligibility for Programs" to participate in the Perkins Loan, College Work-Study, and Supplemental Educational Opportunity Grant Programs for the 1988–89 Award Year.

SUMMARY: The Secretary invites currently ineligible institutions of higher education that wish to participate in the "campus-based programs" in the 1988–89 award year to submit to the Secretary an institutional eligibility application form.

The campus-based programs are the Perkins Loan Program, the College Work-Study Program, and the Supplemental Educational Opportunity Grant Program and are authorized by Title IV of the Higher Education Act of 1965. The 1988–89 award year is July 1, 1988 through June 30, 1989.

(20 U.S.C. 1087aa–1087ii; 42 U.S.C. 2751–2756b; and 20 U.S.C. 1070b–1070b–3)

Closing Date For Filing Application. To participate in a campus-based program in the 1988–89 award year, an institution must mail or hand deliver its "Request for Institutional Eligibility for Programs" form to the address indicated below on or before January 15, 1988.

Applications Delivered by Mail. An institutional eligibility application delivered by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: DEC/DCMAS/OPE, 400 Maryland Avenue, SW., Washington, DC 20202.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail. Institutions which submit eligibility applications that are received after the closing date will not be considered for funding under the campus-based programs for award year 1988–89.

Applications Delivered by Hand. An institutional eligibility application that is hand-delivered must be taken to the U.S. Department of Education, Application Control Center (ACC), Room 3633, Regional Office Building 3, 7th and D Streets SW., Washington, DC. The Application Control Center will accept hand-delivered applications between 8:00 a.m. and 4:30 p.m. (Eastern Standard Time) daily, except Saturdays, Sundays, and Federal holidays. An application for the 1988–89 award year eligibility that is hand-delivered will not be accepted after 4:30 p.m. on the closing date.

Supplementary Information

Under the three campus-based programs, the Secretary allocates funds to eligible institutions of higher education. The Secretary will not allocate funds under the campus-based programs for award year 1988–89 to any currently ineligible institution unless the institution files its "Request for Institutional Eligibility for Programs" form (ED Form 1059) by the closing date. If the institution submits its institutional eligibility application after the closing date, the Secretary will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 1989–90 award year.

Ineligible institutions include:

(1) An institution that has not been designated as an eligible institution by the Secretary.

(2) A location of an eligible institution that is currently not included in the Department's eligibility certification but has been included in the institution's Fiscal-Operations Report and Application to Participate (FISAP).

(3) A branch campus that is currently part of an eligible institution but has filed its own FISAP and is seeking eligibility as a separate institution of higher education. (ED Form 1059, OMB #1840–0098 approved through August 31, 1987).

The Secretary wishes to advise institutions that the institutional eligibility form "Request for Institutional Eligibility for Programs" (ED Form 1059) should not be confused with the FISAP (ED Form 646–1) that institutions were required to submit by September 25, 1987, in order to receive funds under the campus-based programs for the 1988–89 award year.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) National Direct Student Loan Program, 34 CFR Part 674.

(3) College Work-Study Program, 34 CFR Part 675.

(4) Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

For Further Information Contact. For information concerning designation of eligibility, contact: Dr. Joan E. Duval, Director, Division of Eligibility and Certification, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Mail Stop 3329, ROB–3), Washington, DC 20202. Telephone (202) 732–4906.

For technical assistance concerning the FISAP and/or other operational procedures of the campus-based programs, contact: Robert R. Coates, Chief, Campus-Based Programs Branch, Division of Program Operations, 400 Maryland Avenue, SW., (Mail Stop 4621, ROB–3), Washington, DC 20202. Telephone: (202) 732–3715.

(20 U.S.C. 1087 *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

(Catalog of Federal Domestic Assistance No. 84.038, National Direct Student Loans; 84.033, College Work-Study Program; and 84.007, Supplemental Educational Opportunity Grants)

Dated: September 29, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–23103 Filed 10–5–87; 8:45 am]

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federal register

Tuesday
October 6, 1987

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rules and Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Rule to Determine Glaucocarpum suffrutescens (Toad-flax Cress) to be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines a plant, *Glaucocarpum suffrutescens* (toad-flax cress), to be an endangered species under the authority of the Endangered Species Act of 1973, as amended. It is endemic in the Uinta Basin of northeastern Utah on shale barrens of the Green River Formation, in or adjacent to the Hill Creek drainage in southern Uintah County, and at the base of the Badland Cliffs in adjacent Duchesne County. The nine known populations of the species total about 3,000 individuals and have experienced a range and population decline since its discovery 50 years ago. The reasons for the decline are not fully understood, and may be due to habitat alteration, possibly from building stone removal, localized historic overgrazing and oil and gas development. Oil, gas, and oil shale development could significantly jeopardize the species in the future. This rule implements protection provided by the Endangered Species Act of 1973, as amended. A proposal to designate critical habitat for this species is withdrawn.

DATE: The effective date of this rule is November 5, 1987.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Service's Regional Office, 134 Union Boulevard, 4th floor, Lakewood, Colorado; or Salt Lake City Field Office, Room 2078 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104.

FOR FURTHER INFORMATION CONTACT: Mr. John L. England, Botanist, at the Salt Lake City address above, (801/524–4430 or FTS 588–4430).

SUPPLEMENTARY INFORMATION:

Background

Glaucocarpum suffrutescens was first discovered in 1935 by Edward Graham and described by Reed Rollins as *Thelypodium suffrutescens* (Graham 1937). Following further research, Dr. Rollins erected the monotypic genus *Glaucocarpum* for this species (Rollins 1938). The species has also been treated in the genus *Schoenocrambe* (Welsh and Chatterley 1985). The toad-flax cress is a member of the mustard family (Brassicaceae); it is a perennial herb from a deep woody root and forms a clump of several slender simple stems, with elongated loose inflorescence and yellow flowers.

Glaucocarpum suffrutescens is one of several endemics limited to the Green River Formation in the Uinta Basin of eastern Utah. It survives with a few other species primarily on one calcareous shale stratum strongly resistant to erosion. The habitat of this plant is disjunct knolls and benches resembling small extremely dry desert islands surrounded by sagebrush or pinyon-juniper woodland. *Cryptantha barnebyi* (Barneby cat's-eye), another candidate plant under review for threatened or endangered status (50 FR 39526), occurs, at least in part, in the habitat of *Glaucocarpum*.

Glaucocarpum occurs in two main population groups near each other in Uintah County. One group is centered in the Gray Knolls between the Green River and Hill Creek, with 800–1,000 plants in 3 populations. The other group is centered on Little Pack Mountain and along the flanks of Big Pack Mountain between Hill Creek and Willow Creek, with about 2,000 individuals in 5 populations. A small third population center, about 20 miles to the west in Duchesne County, has 107 known plants. The individual populations range in size from 3 to perhaps 1,000 plants. Most of the populations occur on Federal land under the jurisdiction of the Bureau of Land Management (BLM) and the Department of Energy (DOE) and on Indian land under the jurisdiction of the Bureau of Indian Affairs (BIA) and the Ute Indian tribe.

From 1977 to 1986, field work was undertaken on this species by Karl Wright, Larry England, Kathy Mutz, Elizabeth Neese, Scott Peterson, and John and Leila Shultz. This work documented range, specific occurrences, approximate number of individuals, and recommended areas of critical habitat for *Glaucocarpum* (Shultz and Mutz 1979, England 1982).

The toad-flax cress habitat is underlain by oil shale deposits. Building stone collecting may have significantly altered the habitat of the species and decreased its range and population. Historic heavy grazing may also have had an impact on some of the species' populations. Oil shale and oil and gas development without adequate provision for the species could destroy it in the future.

Section 12 of the Endangered Species Act of 1973 (Act) 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 the report as a petition to list the taxa named therein under section 4(c)(2) of the 1973 Act (petition acceptance is now governed by section 4(b)(3) of the Act), and of its intention to review the status of those plants. *Glaucocarpum suffrutescens* was included in the July 1, 1975, notice and was proposed by the Service for listing as endangered along with some 1,700 other vascular plant taxa on June 16, 1976 (41 FR 24523). General comments received in relation to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909).

The Endangered Species Act amendments of 1978 required that all proposals over 2 years old be withdrawn; proposals already over 2 years old were subject to a 1-year grace period. On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired (44 FR 70796). The July 1975, notice was replaced on December 15, 1980, by the Service's publication in the **Federal Register** (45 FR 82480) of a new notice of review for plants, which included *Glaucocarpum suffrutescens* as a category 1 species. Category 1 comprises taxa for which the Service presently has significant biological information to support their being proposed to be listed as endangered or threatened species.

The Endangered Species Act amendments of 1982 required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. The deadline for a finding on such petitions, including that for *Glaucocarpum suffrutescens*, was October 13, 1983. On October 13, 1983, and again on October 12, 1984, a petition finding was made that listing this species was warranted but precluded by other listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act. The Service published a proposed rule to list *Glaucocarpum suffrutescens* as an endangered species on September 5, 1985, constituting the next 1-year finding that would have been required on or before October 13, 1985.

Summary of Comments and Recommendations

In the September 5, 1985, proposed rule (50 FR 36118) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. The Service extended the initial comment period on November 4, 1985 (50 FR 45846), to accommodate a requested public hearing. In addition, the Service reopened the comment period on December 11, 1985 (50 FR 50646), at the request of a private landowner whose property had been proposed as critical habitat. The reopening of the comment period was needed to provide additional time for the private landowner and others to formulate recommendations concerning the listing of the species and its critical habitat designation. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices were published in the *Vernal Express*, *The Uintah Basin Standard*, *The Deseret News*, and *The Salt Lake Tribune* during the period of September 27 to October 23, 1985. Fifteen written comments were received and are discussed below. A public hearing was held on November 21, 1985, in Vernal, Utah. Thirteen verbal comments were received at that hearing. The public hearing is summarized with the written comments below.

Four comments, one from the BLM, one from the Utah State University Cooperative Extension Service (USU Extension Service), one from the Uinta Basin Association of Governments, and one from the agent of the private landowner whose property had been proposed as critical habitat, stated that the Service has not proven that grazing and building stone removal have caused the decline in the range and abundance of *Glaucocarpum suffrutescens*.

The Service believes that the causes of the decline of the range and abundance of the *Glaucocarpum* are not understood and probably are a complex interaction of various factors affecting the species' habitat and populations. Observations by E.H. Graham and R.C. Rollins indicate that the population of *Glaucocarpum* along the east flank of Big Pack Mountain was essentially continuous on a narrow band about 20 feet wide on one stratum of highly calcareous soil for the entire distance of their initial survey (over 3 miles). Extrapolating from the densities observed by Graham and Rollins and corroborated with recent observations by Shultz and Mutz (1979) and England (1982), it appears that the population along the east flank of Big Pack Mountain harbored in excess of 3,000 individuals in 1935. This population now comprises fewer than 1,000 individuals. Currently, in habitat similar to the east Big Pack Mountain habitat, the west flank of Big Pack Mountain supports a *Glaucocarpum* population of fewer than 200 individuals. Populations at Little Pack Mountain and in the Gray Knolls total no more than 1,600 plants between them. The Service, in an effort to determine what factors may have caused such a population decline, looked for human-induced changes in the habitat of *Glaucocarpum* since the first observation of the species 50 years ago. Heavy grazing and removal of the surface stone peculiar to the calcareous outcrops to which *Glaucocarpum* is endemic occurred concurrently with the decline of the species. While neither of these factors may have been solely responsible for the species' decline, there is a distinct possibility of their effect having led to the current endangered status of *Glaucocarpum*.

Three comments, one from the BLM, one from the USU Extension Service and one from the private landowner stated that listing of *Glaucocarpum suffrutescens* should be deferred until the reasons causing the decline of the species are known.

Service data indicate that the decline of the population and range of *Glaucocarpum suffrutescens* in absolute terms is well established as described above. Given the rarity of *Glaucocarpum suffrutescens*, its consequent vulnerability to even trivial disturbance of its habitat, and the potential for that habitat disturbance, the Fish and Wildlife Service believes it is appropriate to protect *Glaucocarpum suffrutescens* under the Endangered Species Act despite uncertainty as to the reasons for its decline.

Two comments, one from the BLM and one from the private landowner, stated that oil and gas and oil shale development are not likely to be threats to *Glaucocarpum suffrutescens* under current energy market conditions. The Service acknowledges that apparent fact. The future development of oil and gas and oil shale energy resources on the habitat of *Glaucocarpum suffrutescens*, however, does remain a potential threat to the species and its habitat. Recently portions of two populations of *Glaucocarpum* have been lost directly to energy development activity. Private land on which the species occurs was patented from the public domain to private ownership because of its oil shale value; other land supporting the species was set aside as a portion of the DOE's Naval Oil Shale Reserve No. II; and the entire area of the population under Federal jurisdiction is under executive withdrawal for mineral entry because of its oil shale value (Executive Order 5327). The Service continues to believe that some potential for oil, gas, and shale development exists and that this potential is properly considered as a contributing basis for listing the species.

The BLM commented that *Glaucocarpum suffrutescens* is receiving consideration as a sensitive plant species in the BLM's environmental planning documents (BLM 1984) and that the BLM will protect it under its land management authority as long as the species is under review by the Service for official status under the Endangered Species Act. The Service acknowledges the conservation measures the BLM has extended the *Glaucocarpum* and other rare and sensitive species within the Vernal BLM District.

Six written comments and eight oral comments from the public hearing—one from the private landowner, three from regional economic development agencies, eight from private individuals, one from a county commissioner, and one from a livestock production group—stated that listing *Glaucocarpum suffrutescens* would adversely affect economic development of energy resources in Duchesne and Uintah Counties, Utah. The Service expects that from time to time *Glaucocarpum suffrutescens* may be the subject of interagency consultations regarding such development. The Service is confident that the species can be conserved and that energy development with proper safeguards for the species may also take place. The Act, through the section 7 interagency consultation provision is designed to address and resolve such conflicts between listed threatened and endangered species and actions that may adversely affect them.

Two comments—one written and one oral—stated that *Glaucocarpum suffrutescens* is a weed common in Utah. The Service disagrees; the species' localized area is in the southern Uinta Basin in Utah, and based on best current knowledge it is found nowhere else in the world.

Four written comments—two from conservation organizations, one from a professional botanist, and one from a private citizen—supported the proposal of endangered status and stated that *Glaucocarpum suffrutescens* is a very rare, narrowly distributed species that is highly vulnerable to habitat disturbance.

Three comments—one from the State of Utah, one from a conservation organization and one from a private citizen—were in general agreement with the Service's position in the proposed rule.

Additional comments relating solely to the proposed designation of critical habitat are noted below in the Critical Habitat section of this rule.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Glaucocarpum suffrutescens* (toad-flax cress) should be classified as an endangered species. Procedures found in section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or a threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Claucocarpum suffrutescens* (Rollins) Rollins (toad-flax cress) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Over the 50 years since its original discovery, there has been a decline in the population and range of this species. During repeated fieldwork at the type locality, the most recent by Karl Wright and Larry England in 1987, no individuals have been found (England 1982; Rollins, Harvard University, pers. comm., 1983, 1986). A population between the type locality and the Little Pack Mountain population has been found (BLM, pers. comm., 1987). Removal of building stone and localized heavy grazing in a portion of the species' range are possible factors that may have contributed to the extirpation of this population (England 1982). Current livestock grazing, as now managed by the BLM in the habitat area of *Glaucocarpum suffrutescens*, is not expected to adversely affect the species. Any grazing threat would be a consequence of localized uncontrolled use by insects, rodents, rabbits, and wild horses.

The entire range of this monotypic genus is underlain by oil shale, which may be mined when economic conditions favor it, and by conventional oil and gas deposits that have begun to be developed. The largest population is partly on Naval Oil Shale Reserve No. II of the DOE, and partly on the Uintah and Ouray Indian Reservation, which is held in trust by the U.S. Department of the Interior for the Ute Indian tribe. The other four populations with 70 or more plants are partly under BLM, private, State, or Indian tribal management, while the three smallest populations are solely managed by one of the above entities. Portions of the species habitat are also now under lease by an oil shale development company. Without a concerted effort and coordinated planning to provide for its conservation during any energy development that may take place, this monotypic genus could inadvertently be brought to extinction (England 1982).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* None known.

C. *Disease or predation.* Sheep and cattle grazing may have had an impact on this species historically, but, with current levels of grazing management by BLM, domestic livestock are not expected to further impact the species. Grazing by wildlife, particularly rabbits and wild horses, may adversely affect some populations of this species.

D. *The inadequacy of existing regulatory mechanisms.* There are no Federal, State, or local laws or regulations that address this species specifically or directly provide for protection of its habitat. The BLM is aware of this plant and has considered it in its environmental planning of the resource area on which it occurs (BLM 1984). No Federal agencies are under current legal obligation for the conservation of *Glaucocarpum*. The Act offers possibilities for additional protection of this species through section 7 (interagency cooperation) and section 9 (prohibiting removal and reduction to possession of a listed plant from an area under Federal jurisdiction).

E. *Other natural or manmade factors affecting its continued existence.* The estimated total number of individuals of toad-flax cress that currently exist is fewer than 3,000. Only 5 of the 9 populations consist of 170 individuals or more, and 3 consist of fewer than 30 plants each. Only the largest populations may have sufficient genetic variability to provide for long-term adaptation to natural changes in environmental conditions.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Glaucocarpum suffrutescens* as endangered. With fewer than 3,000 individuals known in nine populations and the risk of damage to the toad-flax cress and its habitat, endangered status seems an accurate assessment of the plant's condition. For reasons explained below, the proposal to designate critical habitat for this species is withdrawn.

Critical Habitat

Critical habitat, as defined by section 3 of the Act, means: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Section 4(a)(3) of the Act requires that critical habitat be designated to the maximum extent prudent and determinable concurrently with the determination that a species is endangered or threatened. Critical habitat was proposed to be designated for *Glaucocarpum suffrutescens*. However, the Service no longer believes such designation would be prudent. The area originally proposed as critical habitat was quite large (over 7,000 acres) in relation to the number of individual plants known. Several comments noted this fact and recommended that the extent of critical habitat be reduced or that critical habitat not be designated. While the Service could designate inclusive boundaries for critical habitat that would encompass several scattered small populations or individuals of the species, it no longer finds that the entire area proposed can be supported as critical habitat. At the same time, designating more narrowly focused areas surrounding individual local populations of the species could expose these populations to a significant risk of vandalism. The proposed designation is therefore withdrawn because no benefit to this species has been identified that would be provided by the designation and that would overbalance the inherent risk of precisely identifying its location. Careful coordination with the other involved Federal agencies will be no less feasible in the absence of designated critical habitat, and will be equally effective in the conservation of the 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)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The Bureau of Land Management, the Department of Energy, and the Bureau of Indian Affairs have jurisdiction over portions of the habitat of the toad-flax cress. If resident and transient human populations in the Uintah Basin increase as a consequence of energy development, these agencies may find it necessary, in order to comply with section 7, to increase regulation of activities that could have detrimental effects on the species.

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. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These probibitions, 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 to remove it and reduce it to possession from areas under Federal jurisdiction. 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. No trade in *Glaucocarpum suffrutescens* is known. It is anticipated that few trade permits would ever be sought or issued, since this species is not common in the wild or in cultivation and is of no known commercial interest. 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).

National Environmental Policy Act

The Fish and Wild Service has determined that an Environmental Assessment, as defined by 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

Bureau of Land Management. 1983. Environmental Impact Statement. Uinta Basin Synfuels Development, Vernal, Utah. 2 Vols., 1,019 pp.

Bureau of Land Management. 1984. Environmental Impact Statement. Book Cliffs Resource Management Plan, Vernal, Utah. 519 pp.

England, J.L. 1982. Status report on *Glaucocarpum suffrutescens* (Rollins) Rollins. Office of Endangered Species, U.S. Fish and Wildlife Service, Region 6, Denver, Colorado. 39 pp.

Graham, E.H. 1937. Botanical studies in the Uinta Basis of Utah and Colorado. Annals of the Carnegie Museum 26:1–432.

Rollins, R.C. 1938. *Glaucocarpum*, a new genus in the Cruciferae. Madrono 4:232–235.

Shultz, L.M. and K.M. Mutz. 1979. Threatened and Endangered Plants of the Willow Creek Drainage. Vernal District, Bureau of Land Management, Vernal, Utah. 74 pp.

Welsh, S.L. and L.M. Chatterley. 1985. Utah's rare plants revisited. Great Basin Naturalist 45:173–230.

Authors

The primary author of this rule is John L. England of the Service's Salt Lake City Field Office (801/524–4430 or FTS 588–4430). Dr. James L. Miller of the Service's Denver Office served as editor.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended 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. Amend § 17.12(h) by adding the following, in alphabetical order under the family Brassicaceae, 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					
Brassicaceae—Mustard family:						
Glaucocarpum suffrutescens	Toad-flax cress	U.S.A. (UT)	E	293	NA	NA

Dated: September 18, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-23023 Filed 10-5-87; 8:45 am]

BILLING CODE 4310-55-M

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of the Black-capped Vireo To Be an Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the black-capped vireo (*Vireo atricapillus*) to be an endangered species. This bird formerly bred from Kansas through Oklahoma and Texas to central Coahuila, Mexico. The vireo no longer occurs in Kansas, is gravely endangered in Oklahoma, and is no longer found in several parts of its formerly extensive range in Texas. The black-capped vireo is threatened by brown-headed cowbird (*Molothrus ater*) nest parasitism and loss of habitat due to such factors as urbanization, grazing, range improvement, and succession. This rule implements the protection provided by the Endangered Species Act of 1973, as amended, for *Vireo atricapillus*.

DATES: The effective date of this rule is November 5, 1987.

ADDRESSES: The complete file for this rule is available for public inspection during normal business hours, by appointment, at the Service's Regional Office of Endangered Species, 500 Gold Avenue SW., Room 4000, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: J. Allen Ratzlaff, Endangered Species Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766-3972 or FTS 474-3972).

SUPPLEMENTARY INFORMATION:

Background

The black-capped vireo is a 4½ inch (11 centimeter), insectivorous bird. Woodhouse (1852) discovered the species when he collected two specimens on May 26, 1851, along the Rio San Pedro (now called Devil's River) in Sutton County, Texas (Deignan 1961).

Adult male black-capped vireos are olive green on the upper surface and white beneath and have faintly yellowish green flanks. The crown and upper half of the head is black with a partial white eye-ring and lores; this pattern is unique in the family Vireonidae. The iris is brownish red, the bill black. Adult females are duller colored, with the crown slate gray instead of black and the underparts washed with greenish yellow (Marshall *et al.* 1985).

The black-capped vireo formerly bred from Kansas through Oklahoma and Texas to central Coahuila, Mexico with an outlying, possibly temporary, colony in Nuevo Leon, Mexico. Winter residents ranged from Sonora to Oaxaca, Mexico, but occurred mostly in Sinaloa and Nayarit. The species disappeared from Kansas after 1953 (Grzybowski *et al.* 1984, Marshall *et al.* 1985). Graber (1961) believed that land use (grazing) and climatic conditions (drought) had made former habitat in southern Kansas unsuitable. The northernmost breeding areas found by Graber, from 1954 to 1956, were in northern Oklahoma. The present breeding range is from Blaine County, central Oklahoma south through Dallas, the Edwards Plateau, and Big Bend National Park, Texas to at least Sierra Madera in Central Coahuila, Mexico (Marshall *et al.* 1985).

In 1986, only 44–51 adult birds were located in Oklahoma and were limited to three small areas (Grzybowski 1987). Only 35–39 birds were found at these sites in 1985 when limited cowbird control measures were initiated (Grzybowski 1985a). A total of 280 adults were found at 33 sites in Texas in 1985. Though several Texas sites had slightly higher numbers of vireos in 1986, some sites experienced notable decreases (Grzybowski 1986). An estimated 24 adults were found in breeding areas in Mexico in 1983–1984 (Marshall *et al. 1985).*

Black-capped vireos and their habitat in the U.S. occur on Federal, State, and private land. The vireo's habitat consists of scattered trees and brushy areas. Woody vegetation occurs in clumps and is separated by bare ground, rocks, grasses, or wildflowers (Marshall *et al.* 1985); over 55 percent of black-capped vireo habitat is composed of non-woody elements (Grzybowski 1986). Foliage that extends to ground level is the most important requirement for nests. Most nests (90%) are found 16 to 49 inches (0.4 to 1.25 meters) above ground (Grzybowski 1986) and are screened from view by foliage (Grzybowski *et al.* 1984). Marshall *et al.* (1985) summarized known nest sites and found that 63 percent of all 164 documented nests were located in four species of woody vegetation: *Quercus marilandica, Q. shumardii texana, Q. stellata,* and *Rhus virens.* The remaining 37 percent were found in some 20 other species of plants. Grzybowski (1986) noted similar preferences but also noted variation between sites that depended on woody plant species availability.

Many black-capped vireo territories are located on steep slopes, such as the heads of ravines or along the sides of arroyos. On such areas, the shallow soils slow succession, and the microclimates provided by the rugged terrain perpetuate clumping of vegetation, thus sustaining an area suitable for the vireo (Graber 1961). On level terrain, vireo habitat tends to change through succession to prairie-grass, closed-canopy hardwood forest, or cedar brakes so dense that the necessary understory is suppressed (Grzybowski *et al.* 1984). Black-capped vireo habitat, under natural conditions, was maintained by wildfires and wildlife grazing that kept the vegetation in an early successional stage.

The black-capped vireo was included as a category 2 species on the Service's December 30, 1982, Notice of Review (47 FR 58454), but was changed to a category 1 species in the September 18, 1985, Notice of Review (50 FR 37958). Category 1 includes those species for which the Service currently has substantial information to support the biological appropriateness of proposing to list the species. In the December 12, 1986, **Federal Register** (51 FR 44808–44812), the Service published a proposed rule to determine endangered status for this species.

Summary of Comments and Recommendations

In the December 12, 1986, proposed rule and associated notifications, all interested parties were requested to

submit factual information that might contribute to the final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices, inviting general public comment, were published in the *Express-News* in San Antonio, Texas on January 13, 1987; the *American-Statesman* in Austin, Texas on January 20, 1987; the *Oklahoman* in Oklahoma City on January 10, 1987; and the *Pioneer* in Fort Stockton, Texas on January 11, 1987. Seventeen responses were received in support of the proposal and six responses expressed neither support nor opposition. Summaries of the comments follow:

The National Wildlife Federation, the Sportsmen's Clubs of Texas, Inc., the Bureau of Economic Geology (University of Texas, Austin), the City of Austin, the Texas Natural Heritage Program, the Oklahoma Department of Wildlife Conservation, the Oklahoma City Audubon Society, Dr. Keith Arnold (Curator of Birds, Texas A & M University), Dr. Frederick Gehlbach (Dept. of Biology, Baylor University), Col. L.R. Wolfe, Richard Spotts (Defenders of Wildlife), and seven private individuals supported the proposal. The Texas Parks and Wildlife Department did not respond to the proposed rule. In response to a pre-proposal notification letter, that agency supported listing the black-capped vireo, though only as threatened. Letters that expressed neither support nor opposition were received from Big Bend National Park, Texas, the editor of *American Birds*, the Texas Air Control Board, Dr. F. Bryant (Texas Tech University, Lubbock, Texas), and Dr. A.R. Phillips.

Issue 1: Commentors recommended critical habitat be designated. *Service response:* Because the black-capped vireo occurs in scattered, small areas, critical habitat would be difficult to delineate and would offer no benefit to its recovery. Furthermore, due to the dynamic nature of its habitat (changes through succession), the location of the patches of optimal habitat will not necessarily be the same from year to year or decade to decade. The Service also believes that, due to the popularity of the bird, publication of critical habitat maps in the **Federal Register** would increase the likelihood of harassment that could affect reproductive success. In the future the Service could publish a proposal in the **Federal Register** to designate critical habitat.

Issue 2: Dr. W. M. Pulich (Associate Professor of Biology, University of Dallas Station, Texas) though not opposed to listing, questioned the extent of previous black-capped vireo status work. The Texas Parks and Wildlife Department also suggested that more habitat for the vireo likely exists on private land. *Service response:* Though it is impossible to search everywhere, over 700 areas of "suitable" black-capped vireo habitat have been surveyed over the last several years. Almost all private range lands are presently being grazed by introduced herbivores (e.g., goats, cattle), and thus the bulk of any remaining vireo habitat is not very likely to continue in suitable condition. The number of vireos on private range land (which represents the vast majority of its historic habitat) is expected to be relatively low. Undoubtedly more vireos exist than have been noted, but the marked decline and/or complete absence of the black-capped vireo over the majority of its historic range warrants the actions being taken.

Issue 3: The Texas Parks and Wildlife Department also suggested that the Service has the technology and personnel to manage cowbirds over the range of the vireo. *Service response:* Cowbird control is very labor intensive and can only offer relief to the vireos in a very limited area. Further research is needed to find more efficient and effective long term management techniques. The Animal Damage Control Program was transferred to the Department of Agriculture about 2 years ago.

Issue 4: In response to a pre-proposal notification letter, the Texas Parks and Wildlife Department thought the vireo only warranted threatened status, as the State of Texas was then proposing to add to its own list of endangered and threatened species. *Service response:* The Service has reviewed the status of the vireo throughout its range, not just Texas, and finds that the species does warrant endangered status because it is in danger of extinction over a significant portion of its range in the next several decades, unless appropriate management occurs.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that the black-capped vireo (*Vireo atricapillus*) should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.)* and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the black-capped vireo are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Major threats to black-capped vireo habitat include possible development; grazing by sheep, goats, and other exotic herbivores (which remove vegetative cover near ground level that is necessary for vireo nesting); and range improvement that involves the removal of broad-leaved, low woody vegetation (Marshall *et al.* 1985). In addition, any activity that divides habitat into narrow strips can make vireo nests more vulnerable to cowbird parasitism (Grzybowski *et al.* 1984).

In the Austin area, which contains the largest known concentration of black-capped vireos, 88 percent of the vireo population is presently threatened with extirpation because of development activity and road construction (J. Carrasco, City Manager of Austin, *in litt.*). The City of Austin's Department of Planning and Growth Management estimates that most of the habitat for this population will be lost in less than 10 years, if the anticipated rate of development is realized. The Austin City Manager further states that "Proposed development plans and roadway improvement *presently* before the City of Austin for consideration could eliminate 20 pairs in the immediate (1 to 5 years) future" (J. Carrasco *in litt.*).

In addition, extensive evidence of heavy grazing, trampling and browsing exists on the Edwards Plateau. Besides a substantial Angora goat enterprise, the Plateau contains a variety of herbivorous, exotic game species (Marshall *et al.* 1985).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* The black-capped vireo is especially attractive to ornithologists and amateur birders. Nests have failed or been abandoned due to excessive activities of photographers; one territory was possibly abandoned because of frequent harassment from tape-recorded songs (Marshall *et al.* 1985).

C. *Disease or predation.* Black-capped vireos are remarkably free of disease and ectoparasites (Graber 1961). However, eggs and young vireos are subject to some predation. Of 134 eggs lost, Graber (1961) found 12 (9 percent) lost to predators, including snakes and a fox squirrel. Graber also found 16 of 95 hatchlings (17 percent) lost to predators, including snakes and ants. Grzybowski

(1986) also noted that scrub jays (*Aphelocoma coerulescens*) may be depredating vireo nests. Little evidence of predation on adults exists. The first known instance of predation on an adult occurred in 1985: A female brooding young on a low nest was eaten during the night by an unknown predator (Marshall *et al.* 1985).

D. *The inadequacy of existing regulatory mechanisms.* The Migratory Bird Treaty Act (16 U.S.C. 703 *et seq.*) protects this species from being killed or taken captive. However, this Act does not provide any protection to the species' habitat. The state of Texas listed the black-capped vireo as a threatened species on March 1, 1987, but this action provides no protection to the habitat of the vireo.

E. *Other natural or manmade factors affecting its continued existence.* Graber (1961) found that 55.1 percent of all black-capped vireo eggs laid were lost before hatching and, of this loss, 72.3 percent was due to brown-headed cowbird (*Molothrus ater*) nest parasitism. During the nestling period, the major loss was also due to cowbird activity. Cowbirds lay their eggs in vireo nests before the vireo clutch is complete. Cowbird eggs hatch 2–4 days before vireo eggs, and, by the time the vireos hatch, the cowbird nestlings outweigh them tenfold. In all cases where a cowbird occupied the nest, no vireo chicks survived (Graber 1961). Grzybowski (1986) summarized cowbird nest parasitism from 1983 to 1986 and found that overall cowbird nest parasitism on black-capped vireos was 80 percent in study areas in Texas and Oklahoma. However, when cowbird trapping was initiated in those same areas, nest parasitism dropped to as low as 22 percent (Grzybowski 1985b).

Manmade changes in landscape and land use patterns, in particular the opening up of forested areas and the spred of cattle over the past 150 years or so, have apparently favored the brown-headed cowbird. The brown-headed cowbird is an "edge species" and appears to have increased in abundance, range, and the number of species it parasitizes. Cowbirds feed near cattle and agricultural areas and commute daily to areas where they search for nests; therefore, host populations nesting in extensive unbroken tracts may escape parasitism entirely (May and Robinson 1985). Because of brush clearing and the consequent interspersion of scrub habitats with potentially more suitable cowbird feeding habitats, the vireos may be more accessible to cowbirds than in the past (Grzybowski 1985b).

Vegetational succession may also lead to a reduction in vireo habitat. On level terrain with good soil, succession will convert vireo habitat either to prairie grass, closed-canopy hardwood forest, or cedar brakes so dense that the necessary understory is suppressed (Grzybowski *et al.* 1984).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the black-capped vireo (*Vireo atricapillus*) as endangered. A decision to take no action would exclude it from protection provided by the Endangered Species Act. A decision to list as threatened would not adequately reflect the severity of the threats facing this species throughout a significant portion of its range and the resulting danger of this species becoming extinct. For the reasons given below, no critical habitat has been designated for this species.

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. For this particular situation, however, the Service has concluded that there is no demonstrable benefit to the vireo in designating critical habitat and therefore such an action is not prudent. The habitat of the black-capped vireo occurs in scattered, small patches; occupied habitat would be difficult to delineate and may vary over time due to succession. Service recovery actions will continuously update and address the vireo's habitat management needs. In addition, as mentioned under "B" in "Summary of Factors Affecting the Species", the black-capped vireo is popular among bird-watchers. Possible increased harassment could occur due to the publication of critical habitat maps. Should that Service receive additional information on this subject, which would warrant reconsideration of this decision, the Service could propose critical habitat in the furture. Future proposal of critical habitat would require an additional **Federal Register** publication.

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 Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species.

These recovery actions are initiated by the Service following listing. Such actions may also be initiated prior to listing if circumstances permit. Probable recovery actions will likely include continued monitoring of known populations, additional work to locate other populations, cowbird trapping in nesting areas, and land management practices to maintain black-capped vireo habitat in a suitable successional stage. Also, additional information will likely be collected on the ecology of the species to further identify possible life history parameters that can be enhanced to aid in the species' recovery.

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. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species. If a Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

Federal lands on which vireos have been reported recently include the National Park Service (NPS), the Fish and Wildlife Service, and two military installations (Fort Hood and Fort Sill). Fort Hood and Fort Sill personnel have expressed an interest in protecting this species, and NPS and refuges are responsible for protecting natural resources; therefore, little adverse Federal involvement is expected. Kerr State Wildlife Management Area, Kerrville, Texas, was purchased partially with Federal Aid monies and State and Federal Aid monies are used in the management of the area. Current management plans for the area are under review. Federally supported highway improvement in the Austin, Texas area, and proposed actions by the Navarro County Electric Cooperative, Inc. have potential to affect black-

capped vireo habitat. Should it be determined that the above proposed actions "may affect" the black-capped vireo, section 7 consultation, as described above, will be required. No other Federal activities are known to be presently occurring on State and private lands containing black-capped vireos.

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 a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving 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.

National Environmental Policy Act

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

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Author

The primary author of this final rule is J. Allen Ratzlaff, Endangered Species Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended 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.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

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

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
BIRDS							
*	*	*	*	*	*	*	
Vireo, black-capped	Vireo atricapillus	U.S.A. (KS, LA, NE, OK, TX), Mexico.	Entire	E	294	NA	NA
*	*	*	*	*	*	*	

Dated: September 21, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–23024 Filed 10–5–87; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Gila Trout (Salmo gilae) From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to reclassify the Gila trout (*Salmo gilae*), a species endemic to New Mexico and Arizona, from endangered to threatened under provisions of the Endangered Species Act (Act) of 1973, as amended. *Salmo gilae* was originally listed as endangered on March 11, 1967 (32 FR 4001). Based on a 1986 review of status information, the Service has determined that reclassification of the Gila trout to threatened status is warranted because the five original populations have been restored, replicated, and biologically secured, and because seven additional populations have been established within the historic range of this fish. These accomplishments also fulfill criteria for reclassification as given in the species' recovery plan. Included with this proposal is a special rule, which, if made final, will enable the New Mexico Department of Game and Fish to promulgate special regulations allowing public sport fishing for the species. The Service is requesting comments and information pertaining to this proposed reclassification.

DATES: Comments from all interested parties must be received by December 7, 1987. Public hearing requests must be received by November 20, 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: Gerald Burton, Endangered Species Biologist, Albuquerque, New Mexico (see **ADDRESSES** above) (505/766–3972 or FTS 474–3972).

SUPPLEMENTARY INFORMATION: .

Background

The Gila trout (*Salmo gilae*) is native to relatively undisturbed, high altitude mountain streams in Arizona and New Mexico. Historically, Gila trout occurred in the Verde and Agua Fria drainages, Arizona, and in the upper Gila drainage in New Mexico. Gila trout may also have been indigenous to Eagle Creek, Arizona, and some tributaries of the San Francisco River, New Mexico.

When the Gila trout was listed as endangered (March 11, 1967; 32 FR 4001), its range had been reduced to five streams within the Gila National Forest, New Mexico. These five streams were Iron, McKenna, and Spruce Creeks in the Gila Wilderness Area, and Main Diamond and South Diamond Creeks in the Aldo Leopold Wilderness Area. Reasons for the drastic decline of the species included hybridization and competition with and/or predation by non-native rainbow trout (*Salmo gairdneri*), cutthroat trout (*Salmo clarki*), and brown trout (*Salmo trutta*).

Recovery actions initiated after listing have included chemically treating streams within the historic range of the species to remove exotic competitive and predatory fish species, and constructing physical barriers to prevent reinvasion of exotics. The five indigenous populations were thus secured, and seven additional populations were established by replicating these populations. Replication involved moving adults from each successfully reproducing indigenous population and releasing them into the closest suitable renovated stream. The seven populations established in this manner occur in Gap Creek, Prescott National Forest, Arizona; and Trail Canyon, Little, McKnight, Big Dry, Iron, and Sheep Corral Creeks in the Gila National Forest, New Mexico. The populations in Sheep Corral, McKnight, and Gap Creeks represent replications of the morphotype in Main Diamond Creek. The South Diamond Creek population has been replicated in Trail Canyon Creek, and Spruce Creek has been replicated in Big Dry Creek. The Little Creek population is a replication of McKenna Creek. The Iron Creek population has been essentially replicated (or expanded) in Iron Creek by renovating a reach of the creek downstream from the indigenous population and establishing a population there. In summary, twelve secure populations presently exist, including five indigenous and seven reintroduced populations. These stream renovation and transplantation efforts have been accomplished jointly by the Service, U.S. Forest Service, New Mexico Department of Game and Fish, and New Mexico State University.

Surveys of the twelve existing populations indicate that the recovery efforts have been successful. Presently, all five indigenous populations are secure and occupy their habitat to its maximum carrying capacity. Reintroduced populations that have been surveyed are successfully reproducing and will soon fill their habitat to carrying capacity (Turner 1986).

By replicating the five indigenous populations to establish seven additional populations, the Service has fulfilled criteria for reclassifying the Gila trout as threatened as outlined by the Gila Trout Recovery Plan (USFWS 1984). The Plan states that "the species could be considered for downlisting from its present endangered status to a threatened status when survival of the five original ancestral populations is secured and when all morphotypes are successfully replicated or their status is otherwise appreciably improved." The Service has determined that the recovery efforts have improved the status of the Gila trout such that the species is no longer "in danger of extinction throughout all or a significant portion of its range" (i.e., endangered), but that hybridization and/or competition with non-native salmonids still threatens this fish below stream barriers (see Factors "C" and "E" in the "Summary of Factors Affecting the Species" section). Therefore, the Service believes that reclassification to a threatened status is appropriate.

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 reclassifying species on the Federal Lists. A species may be listed or reclassified as threatened or endangered due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Gila trout (*Salmo gilae* Miller) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* In the past, Gila trout populations were threatened by habitat destruction due to timber harvesting, mining, and other watershed disturbances. These factors compounded the threats posed by non-native salmonids (see Factors "C" and "E" in the "Summary of Factors Affecting the Species" section for discussions on non-native salmonids). Presently, ten of the eleven creeks that

contain Gila trout occur in Forest Service Wilderness Areas within the Gila National Forest, New Mexico, or the Prescott National Forest, Arizona. The Gila Wilderness Area contains Sheep Corral, Big Dry, Little, McKenna, Spruce, Trail Canyon and Iron Creeks, and the Aldo Leopold Wilderness Area contains South Diamond and Main Diamond Creeks. Gap Creek is within the Cedar Bench Wilderness Area in the Prescott National Forest, Arizona. Habitat protection provided by Wilderness Area regulations will prevent or minimize future habitat destruction.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Presently all stream reaches that contain Gila trout are closed to sport fishing. While some illegal fishing takes place, the Service believes that the amount of take is small and has a minimal effect on populations. Most illegal fishing is done by backpackers who are unaware the stream is closed to fishing and who only take a few fish.

Some Gila trout are taken for scientific or educational proposes, but the take is small and controlled through the Federal and State permitting processes.

C. *Disease and predation.* Gila trout are not known to be impacted by various disease and parasites that affect other trout species. The species' lack of parasitism is probably the result of extreme isolation and pristine habitat conditions.

Predation of Gila trout by brown trout has been a serious problem, and continues to be a problem for fish below stream barriers. The brown trout, a non-native salmonid, preys on small Gila trout and is able to severely depress Gila trout populations. In Gila trout streams that were restored, the predation threat was eliminated by chemically removing all fish and reintroducing only native species. Physical stream barriers constructed by the U.S. Forest Service prevent brown trout from moving upstream and preying on Gila trout. However, downstream from these barriers, brown trout and other non-native species remain a threat.

D. *The inadequacy of existing regulatory mechanisms.* Prior to 1967, when the Gila trout was Federally listed as endangered, the species had no legal protection. Listing the species provided recognition, protection, and prohibitions against certain practices (such as take), and also stimulated recovery actions. In response to the Federal listing action, the States of New Mexico and Arizona officially recognized the declining status of the species. Arizona designated the Gila trout as a threatened species (Group 1), which includes species that are known or suspected to have been extirpated from Arizona but that still exist elsewhere. New Mexico designated the Gila trout as an endangered species (Group 1) on January 24, 1975 (NM State Game Commission Regulation No. 563). Group 1 species are those whose prospects of survival or recruitment in New Mexico are in jeopardy. The designation provides the protection of the New Mexico Wildlife Conservation Act (Sections 17–2–37 through 17–2–46 NMSA 1978) and prohibits taking of such species except under a scientific collecting permit. New Mexico also has a limited ability to protect the habitat of the species through the Habitat Protection Act (Sections 17–6–1 through 17–6–11), through water pollution legislation, and tangentially through a provision which makes it illegal to dewater areas used by game fish (Section 17–4–14).

E. *Other natural or manmade factors affecting its continued existence.* When the Gila trout was listed as endangered, the most important reason for the species' decline was hybridization and competition with and/or predation by non-native salmonids. Due to declining native fish populations, the New Mexico Department of Game and Fish maintained propagation and stocking programs of Gila trout, rainbow trout, cutthroat trout, and brown trout during the early 1900's to improve fishing success. Gila trout were propagated from 1923 to 1935 (USFWS 1984) at the Jenks Cabin Hatchery in the Gila Wilderness, but the program was abandoned because of the hatchery's poor accessibility and low productivity. After early stocking programs were discontinued, the non-native trout species persisted and seriously threatened the genetic purity and survival of the few remaining populations of Gila trout. Recent efforts to recover the species have included eliminating non-native salmonids from the species' historic habitat and building barriers to prevent their reinvasion. Presently, twelve viable populations of Gila trout exist in the absence of non-native salmonids.

Other factors that will continue to affect the Gila trout and its habitat include forest fires, flash floods, and droughts. Flash floods can displace the trout and alter its habitat. A particularly severe flash flood has the potential to displace fifty percent or more of an existing trout population. In the process, many fish are killed or injured and those that do survive are often swept downstream into areas occupied by rainbow and brown trout with which they are unable to compete. Low water conditions caused by droughts reduce the amount of available habitat and increase the trout's susceptibility to predators such as birds and racoons. Forest fires have affected and continue to threaten the habitat by causing removal of vegetative cover and declines in water quality due to siltation.

Prior to the introduction of non-native salmonids, forest fires, droughts, and floods probably were not major threats to the species. However, these factors presently are threats because the Gila trout's reduced range and abundance and presumably lowered genetic potential makes the species more vulnerable to catastrophes.

The Service believes that reclassifying the Gila trout from endangered to threatened status is consistent with the Act and that the action will further the conservation and recovery of this species. Threatened status seems appropriate because the number of populations has increased from five to twelve since recovery efforts began. Ten of these populations occur on Forest Service Wilderness Areas, which have regulations providing habitat protection and which are relatively remote from human disturbance. Threatened status also seems appropriate for the Gila trout because the major threats have been reduced by recovery efforts and by the legal protection given under State laws and the Act. Non-native salmonids, which were the major threat to the species, have been removed from the eleven streams that currently support Gila trout. However, non-native trout species remain a threat because the majority of historic Gila trout habitat remains dominated by these species. State and Federal regulations limit the take of Gila trout. Currently, few Gila trout are taken for scientific or educational purposes, and this take is controlled through the State and Federal permitting process. Current State and Federal regulations prohibit taking this species for commercial or sporting purposes. Threats due to natural disasters remain, but are unavoidable risks. Therefore, the Service believes that, given continued careful management, reclassification to a threatened status is appropriate.

Critical Habitat

Section 4(a)(3) of the Act requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is determined to be endangered or threatened. The Gila trout, however,

was listed as endangered (32 FR 4001), prior to passage of the Act. Subsequently, no critical habitat was designated because the habitat was included in Forest Service Wilderness Areas and was believed to be adequately protected. Because the same protection remains, the Service finds that no net benefit to the conservation of this species would accrue from designating critical habitat at this time.

Effects of Rule

This rule, if made final, would change the status of the Gila trout from endangered to threatened. The final rule would formally recognize that this species is no longer in danger of extinction in the foreseeable future. Reclassifying the species will have no effect on regulations regarding protection and recovery of the species. Protection given to threatened species under sections 7 and 9 of the Act is essentially the same as that given to endangered species. Recovery provisions are the same for threatened species as for endangered species.

An important effect of reclassifying the Gila trout as threatened is that the Secretary would then have the option of promulgating a special rule under section 4(d) of the Act, an option not available for species listed as endangered. The special rule included with this proposal would enable the New Mexico Department of Game and Fish to promulgate special regulations allowing sport fishing for Gila trout. This action has been determined to be necessary and advisable to provide for the conservation of the species, and has been identified in the Gila trout recovery plan as an important recovery effort. Developing a sport fishery for Gila trout will help to reduce the number of fish in streams that have reached or are near carrying capacity. By allowing regulated take, the Service hopes to garner public support for species recovery by showing that Gila trout can provide the same quality of sport fishing as non-native trouts. A sport fishery for Gila trout will be combined with an angler education program and will instruct the public about the value and identifying features of this native species of trout. After a more favorable public impression of Gila trout as a sport fish is attained, the Service hopes to renovate larger streams and establish more populations. The Service believes there will be no adverse effects of sport fishing on Gila trout because the restored populations are reproducing successfully and are near carrying capacity.

This action will not be an irreversible commitment on the part of the Service. The action is reversible, and reclassifying the Gila trout to endangered would be possible should changes occur in management, habitat, or other factors which alter the present threats to the species' survival and recovery.

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 from the public, other concerned government agencies, the scientific community, industry, or other interested parties concerning any aspect of this proposal are hereby solicited. Comments are particularly sought regarding:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to Gila trout;

(2) Information on environmental impacts that would result from the rule; and

(3) Possible alternatives to this proposed rule.

Final promulgation of the regulations on Gila trout will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of final regulations that differ 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).

References Cited

Turner, P.R. 1986. Restoration of the Endangered Gila Trout. Typed script of paper presented to Annual Meeting of the Western Division, American Fisheries Society, Portland, Oregon. 12 pp.

U.S. Fish and Wildlife Service. 1984. Gila Trout Recovery Plan. Endangered Species Office, Albuquerque, NM. 52 pp.

Author

This proposed rule was prepared by Sue Rutman, Endangered Species Biologist, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103 (505/766–3972 or FTS 474–3972).

List of Subjects in 50 CFR Part 17

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

Proposed Regulations 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.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.11(h) by revising the entry for Gila trout under "Fishes" to read as follows:

§ 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						
FISHES							
*	*	*	*	*	*	*	
Trout, Gila	*Salmo gilae*	U.S.A. (NM,AZ)	Entire	T	1,___	N/A	17.44(u)
*	*	*	*	*	*	*	

3. It is further proposed to add the following new paragraph (u) as a special rule to § 17.44:

§ 17.44 Special rules—fishes.

* * * * *

(u) Gila trout, *Salmo gilae.*

(1) No person shall take the species, except in accordance with applicable State fish and wildlife conservation laws and regulations in the following instances: (i) For educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act, (ii) during a designated open season, or (iii) incidental to State permitted recreational fishing activities for other species or for Gila trout outside the permitted season, provided that the individual Gila trout taken is immediately returned to its habitat.

(2) Any violation of applicable State fish and wildlife conservation laws or regulations with respect to the taking of this species will also be a violation of the Endangered Species Act.

(3) No person shall possess, sell, deliver, carry transport, ship, import, or export, by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations.

(4) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (u)(1) through (u)(3) of this section.

Dated: September 22, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87-23025 Filed 10-5-87; 8:45 am]

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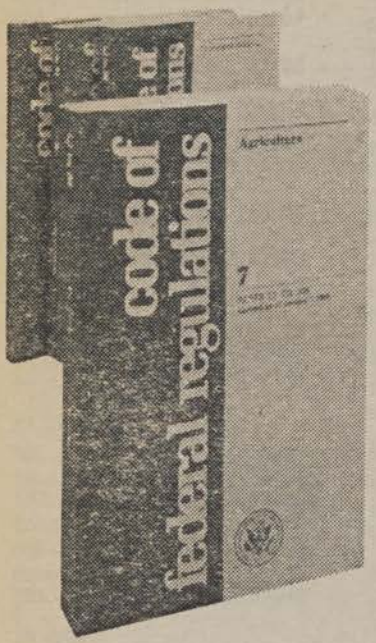

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