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For other telephone numbers, see the Reader Aids section at the end of this issue.

Contents

Federal Register

Vol. 52, No. 246

Wednesday, December 23, 1987

Agriculture Department
See also Farmers Home Administration
RULES
Agricultural Stabilization and Conservation Service State, county, and community committees; selection and functions, 48511
NOTICES
Agency information collection activities under OMB review, 48555

Architectural and Transportation Barriers Compliance Board
PROPOSED RULES
Practice and procedure; compliance hearings, 48546

Army Department
NOTICES
Environmental statements; availability, etc.:
Binary munitions chemical facilities, Pine Bluff, AR, 48562
Meetings:
Science Board, 48562

Commerce Department
See Foreign-Trade Zones Board; International Trade Administration; National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
Chicago Board of Trade—
GNMA futures, 48559
Minneapolis Grain Exchange—
High fructose corn syrup-55, 48560

Conservation and Renewable Energy Office
NOTICES
Consumer products, energy conservation progam:
Residential energy sources, average unit costs, 48563

Defense Department
See also Army Department; Navy Department
PROPOSED RULES
Acquisition regulations:
Construction contracts; separate bid bonds, 48549
NOTICES
Agency information collection activities under OMB review, 48561
(2 documents)

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Parker Pharmacy, 48585

Economic Regulatory Administration
NOTICES
Natural gas exportation and importation:
LOUTEX Energy Inc., 48564
Poco Petroleum, Inc., 48565

Education Department
NOTICES
Grants; availability, etc.:
Pell grant program, 48626

Energy Department
See Conservation and Renewable Energy Office; Economic Regulatory Administration; Federal Energy Regulatory Commission; Hearings and Appeals Office, Energy Department

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
New Jersey, 48535
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Benomyl, 48537
Benomyl; correction, 48536
Fluazifop-butyl, 48538
N-(mercaptomethyl) phthalimide S-(O, O-dimethyl phosphorodithioate), 48538
Permethrin, 48539
PROPOSED RULES
Hazardous waste:
Underground storage tanks—
Technical requirements, financial responsibility requirements, and State program approval, 48638
NOTICES
Grants, State and local assistance:
Treatment works construction; correction, 48623
Pesticide, food, and feed additive petitions:
Abbott Laboratories, 48573
Pesticide programs:
Special review—
EPN, 48574
Pesticides; emergency exemptions, etc.:
Dicamba, etc., 48574

Executive Office of the President
See Presidential Commission on the Human Immunodeficiency Virus Epidemic

Farmers Home Administration
RULES
Food Security Act of 1985; implementation:
Debt settlement-farmer programs and single family housing; correction, 48519

Federal Aviation Administration
RULES
Transition areas, 48522
PROPOSED RULES
Airworthiness directives:
Hercules et al., 48542
NOTICES
Advisory circulars; availability, etc.:
Crewmember communication and coordination, 48618

Federal Energy Regulatory Commission
NOTICES
Natural gas companies:
Certificates of public convenience and necessity; applications, abandonment of service and petitions to amend, 48566
Applications, hearings, determinations, etc.:
Cambridge Electric Light Co., 48567
Commonwealth Electric Co., 48567
Conoco Inc., 48568
Distrigas of Massachusetts Corp., 48568
Mid Louisiana Gas Co., 48569
MIGC, Inc., 48569
Northwest Pipeline Corp., 48569
Pacific Power & Light Co., 48569
Southern Natural Gas Co., 48570
Sun Exploration & Production Co. et al., 48570
Texaco Inc. et al., 48571
Williams Natural Gas Co., 48572

Federal Home Loan Bank Board
RULES
Federal Savings and Loan Insurance Corporation:
Insured institutions—
Applications, notices, and rebuttal filings; procedural requirements, 48519
NOTICES
Federal Savings and Loan Insurance Corporation:
Insurance premimum, 48575

Federal Reserve System
NOTICES
Applications, hearings, determinations, etc.:
Belfer, Edward, 48576
Mitsubishi Ban Ltd., 48576
St. Joseph Bancorporation, Inc., et al., 48576

Federal Trade Commission
PROPOSED RULES
Prohibited trade practices:
Sun Industries, Inc., 48543

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Continental Surety & Fidelity Insurance Co., 48618

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Northern spotted owl, 48552

Food and Drug Administration
RULES
Medical devices:
Clinical chemistry and toxicology devices—
General provisions and classifications; correction, 48623
NOTICES
Food additive petitions:
Dow Chemical Co., 48577

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Alaska, 48555, 48556 (2 documents)

General Services Administration
RULES
Federal property management:
Motor vehicle expenditure control, 48540
PROPOSED RULES
Federal property management:
Prepayment transportation audit procedures, 48547

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

Health Resources and Services Administration
NOTICES
Meetings; advisory committees:
January, 48577

Hearings and Appeals Office, Energy Department
NOTICES
Crude oil overcharges:
Processing refund applications procedures, 48572

Human Immunodeficiency Virus Epidemic Presidential Commission
See Presidential Commission on the Human Immunodeficiency Virus Epidemic

Indian Affairs Bureau
NOTICES
Agency information collection activities under OMB review, 48578

Interior Department
See Fish and Wildlife Service; Indian Affairs Bureau; Land Management Bureau; Minerals Management Service

Internal Revenue Service
RULES
Income taxes:
Taxable years of certain entities; partnerships, S corporations, etc., 48524
PROPOSED RULES
Income taxes:
Taxable years of certain entities; partnerships, S corporations, etc.; cross-reference, 48546

International Trade Administration
RULES
Export licensing:
Commodity control list—
Carbon thermal insulating materials, 48522
Stored program controlled wire bonders, 48522
NOTICES
Applications, hearings, determinations, etc.:
Lawrence Berkeley Laboratory et al., 48556

International Trade Commission
NOTICES
Import investigations:
Electrically resistive monocomponent toner and "black powder" preparations, 48581
Electronic chime modules, 48580
Internal combustion engine industrial fork-lift trucks from Japan, 48582

Liquid crystal display television receivers from Japan, 48583
Minoxidil powder, salts and compositions for use in hair treatment, 48584
Meetings; Sunshine Act, 48621

Interstate Commerce Commission
NOTICES
Rail carriers:
Cost of capital—
Limited revenue adequacy proceeding, 48584
Railroad operation, acquisition, construction, etc.:
Louisville & Jefferson County Riverport Authority et al., 48584

Justice Department
See also Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
L&C Europa Contracting Co., 48585

Land Management Bureau
NOTICES
Agency information collection activities under OMB review, 48578
(2 documents)
Oil and gas leases:
Wyoming, 48579
Realty actions; sales, leases, etc.:
Idaho, 48579
Nevada, 48579

Minerals Management Service
NOTICES
Agency information collection activities under OMB review, 48580
Outer Continental Shelf; oil, gas, and sulphur operations:
Oil and gas facilities, structural failures; investigation report, 48580
Outer Continental Shelf operations:
Chukchi Sea; lease sale, 48580
Gulf of Mexico—
Lease sale, 48650

National Credit Union Administration
NOTICES
Intergovernmental review of agency programs and activities; community development revolving loan program, 48587

National Institutes of Health
NOTICES
Meetings:
Recombinant DNA Advisory Committee, 48660
Recombinant DNA molecules research:
Actions under guidelines
Proposed, 48660

National Labor Relations Board
RULES
Election procedures:
Election notices posting, 48534

National Mediation Board
NOTICES
Meetings; Sunshine Act, 48621

National Oceanic and Atmospheric Administration
NOTICES
Permits:
Endangered and threatened species, 48557
Marine mammals, 48558
(2 documents)

Navy Department
PROPOSED RULES
Acquisition regulations, 48550
NOTICES
Meetings:
Naval Research Advisory Committee, 48562

Nuclear Regulatory Commission
NOTICES
Abnormal occurrence reports:
Periodic reports to Congress, 48587
Meetings:
Reactor Safeguards Advisory Committee, 48588
Meetings; Sunshine Act, 48621
Petitions Director's decisions:
Wolf Creek Nuclear Operating Corp., et al., 48588
Applications, hearings, determinations, etc.:
Houston Lighting & Power Co. et al., 48589
Philadelphia Electric Co., 48589
Philadelphia Electric Co. et al., 48593
Tidewater Memorial Hospital, 48597
Wheeling Hospital, Inc., 48601

Postal Service
NOTICES
Meetings; Sunshine Act, 48621
(2 documents)

Presidential Commission on the Human Immunodeficiency Virus Epidemic
NOTICES
Meetings, 48604

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

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Philadelphia Stock Exchange, Inc., 48606
Self-regulatory organizations; unlisted trading privileges:
Midwest Stock Exchange, Inc., 48604, 48605
(2 documents)
Philadelphia Stock Exchange, Inc., 48606
(3 documents)
Applications, hearings, determinations, etc.:
American Airlines, Inc., 48608
Merrill Lynch KECALP L.P. et al., 48608
ML Venture Partners I, L.P., et al., 48610, 48613
(2 documents)
Prudential-Bache Global Fund, Inc., et al., 48616
Prudential-Bache Government Plus Fund II, et al., 48617

State Department
NOTICES
Meetings:
Overseas Security Advisory Council, 48617

Transportation Department
See also Federal Aviation Administration
RULES
Contract Appeals Board procedure rules (acquisition regulations), 48630

Treasury Department
See Fiscal Service; Internal Revenue Service

United States Institute of Peace
NOTICES
Grant applications:
Procedures for review, 48618

Separate Parts In This Issue

Part II
Department of Education, 48626

Part III
Department of Transportation, 48630

Part IV
Environmental Protection Agency, 48638

Part V
Department of the Interior, Minerals Management Service, 48650

Part VI
Department of Health and Human Services, National Institutes of Health, 48660

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

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
7 48511
1955 48519

12 CFR
574 48519

14 CFR
71 48522
Proposed Rules:
39 48542

15 CFR
371 48522
399 (2 documents) 48522, 48523

16 CFR
Proposed Rules:
13 48543

21 CFR
862 48623

26 CFR
1 48524
18 48524
Proposed Rules:
1 48546
18 48546

29 CFR
103 48534

36 CFR
Proposed Rules:
1150 48546

40 CFR
52 48535
180 (5 documents) 38536–48539
Proposed Rules:
280 48638
281 48638

41 CFR
12–60 48630
101–38 48540
Proposed Rules:
101–41 48547

48 CFR
Ch. 63 48630
Proposed Rules:
228 48549
252 48549
5215 48550
5252 48550

50 CFR
Proposed Rules:
17 48552

Rules and Regulations

Federal Register
Vol. 52, No. 246
Wednesday, December 23, 1987

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 7

Selection and Functions of Agricultural Stabilization and Conservation (ASC) State, County and Community Committees

AGENCY: Agricultural Stabilization and Conservation Service (ASCS), USDA.

ACTION: Interim rule.

SUMMARY: This interim rule implements provisions of section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) as amended by the Food Security Act of 1985 (The "1985 Act"), Pub. L. 99–253, and the Agriculture, Rural Development, and Related Agencies Appropriations Act, 1987, as included in Public Laws 99–500 and 99–591 ("Pub. L. 99–500") with respect to the conduct and activities of State, county, and community ASC committees and the manner in which committee members are elected. The major revisions made by this rule are: (1) The manner in which community ASC committee members are elected and (2) the manner in which county ASC committee members are elected. Generally, this rule provides that community ASC committees shall consist of members who are elected from within the community. County ASC committees will consist of members elected by community ASC committee. In counties with one community ASC committee, such committee shall also serve as the county ASC committee.

DATES: This interim rule is effective December 23, 1987.

Comments must be received on or before January 22, 1988 in order to be assured of consideration.

ADDRESS: Send comments to: Director, Cotton, Grains, and Rice Price Support Division, Room 3630–S, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Karl V. Choice, Assistant to the Director, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013, Phone (202) 447–8782.

SUPPLEMENTARY INFORMATION:

This rule has been reviewed under U.S. Department of Agriculture (USDA) procedure established in accordance with provisions of Executive Order 12291 and Departmental Regulation 1512–1 and has been classified "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or process for consumers, individuals, 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 United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

It has been determined that a Regulatory Impact Analysis is not required for the changes which are made by this interim rule.

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

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

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

Background

Section 8(b) of the Soil Conservation and Domestic Allotment Act, as amended, provides for the selection of local (referred to as "community" committees in 7 CFR Part 7), county and State ASC committees. These committees are utilized in the administration of various programs conducted by the Department of Agriculture.

The 1985 Act and Public Laws 99–253 and 99–500 amended section 8(b) with respect to the manner in which local ("community") and county ASC committees are selected. Prior to these amendments, eligible farmers within a community elected a community ASC committee which in turn elected a county ASC committee person from eligible farmers within the county when the number of community ASC committees that were in a county was greater than one. In those counties in which there was only one community ASC committee, this committee also served as the county ASC committee. All county ASC committees consist of three members. The amendments made by the 1985 Act, Public Laws 99–253 and 99–500 provide that county ASC committees may be selected in one of two methods. Under the first method, farmers within one of three local administrative areas in a county may elect community ASC committee members who in turn elect a member to the county ASC committee. Under the second method, the county ASC committee may, if there was one community ASC committee established in a county prior to December 24, 1985, provide that the farmers in the community elect directly a member of the county ASC committee. Also, the length of office for community ASC committee members is increased from one to three years.

Special provisions were also made with respect to counties with a small number of farmers. County committees may reduce the number of local administrative areas from three to one if there is less than 150 farmers in the county. In addition, the Secretary may include more than one county or parts of different counties in a local administrative area if the Secretary determines that there is an insufficient number of farmers in an area to establish a slate of candidates and hold an election.

In addition to incorporating the amendments made by these statutory provisions, 7 CFR Part 7 also is amended to set forth a statement of the current

duties of State ASC committees and to make certain technical and grammatical corrections. Accordingly, the rule sets forth 7 CFR Part 7 in its entirety.

Since no substantive changes are made to 7 CFR Part 7 except as required by the amendments of the authorizing legislation, it has been determined that this interim rule shall become effective upon publication in the **Federal Register** without prior opportunity for public comment. Comments are requested, however, and will be taken into consideration in developing the final rule.

List of Subjects in 7 CFR Part 7

Agriculture.

Accordingly, 7 CFR Part 7 is revised to read as follows:

PART 7—SELECTION AND FUNCTIONS OF AGRICULTURAL STABILIZATION AND CONSERVATION STATE, COUNTY AND COMMUNITY COMMITTEES

Sec.

7.1 Administration.
7.2 General.
7.3 Definitions.
7.4 Selection of committee members.
7.5 Eligible voters.
7.6 Determination of elective areas.
7.7 Calling of elections.
7.8 Conduct of community committee elections.
7.9 Election of community committee members, delegates to local administrative area and county conventions, and county committee members.
7.10 Conduct of county convention.
7.11 County committee members.
7.12 Tie votes.
7.13 Vacancies.
7.14 Appeals.
7.15 Eligibility requirements of county committee members, community committee members, and delegates.
7.16 Eligibility requirements of all other personnel.
7.17 Dual office.
7.18 Terms of office of county and community members.
7.19 Terms of office of delegates to the conventions.
7.20 State committee duties.
7.21 County committee duties.
7.22 Community committee duties.
7.23 Chairperson of the county committee duties.
7.24 Chairperson of the community committee duties.
7.25 County executive director duties.
7.26 Private business activity and conflicts of interest.
7.27 Political activity.
7.28 Removal from office or employment for cause.
7.29 Delegation of authority to Deputy Administrator.
7.30 Right of review.
7.31 Hearing in connection with appeals and requests for reconsideration to Deputy Administrator.
7.32 Findings, analysis, and recommendations of hearing officer.
7.33 Determination of the Deputy Administrator.
7.34 Custody and use of books, records, and documents.
7.35 Administrative operations.
7.36 Implementation.
7.37 Applicability.
7.38 Retention of authority.

Authority: Secs. 4 and 8 of the Soil Conservation and Domestic Allotment Act, as amended; 49 Stat. 164 and 1149, as amended (16 U.S.C. 590d and 590h).

§ 7.1 Administration.

(a) The regulations of this part are applicable to the election and functions of community and county Agricultural Stabilization and Conservation ("ASC") committee and the functions of State ASC committees ("community", "county", and "State committees", respectively). State, county, and community committees shall be under the general supervision of the Administrator, Agricultural Stabilization and Conservation Service ("ASCS").

(b) State, county, and community committees, and representatives and employees thereof, do not have authority to modify or waive any of the provisions of this part.

(c) The State committees shall take any action required by these regulations which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with this part, or

(2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No provision or delegation herein to a State or county committee shall preclude the Administrator, ASCS, or a designee of the Administrator, from determining any question arising under this part, or from reversing or modifying any determination made by a State or county committee.

§ 7.2 General.

State, county, and community committees shall, as directed by the Secretary of a designee of the Secretary, carry out the programs and functions of the Secretary.

§ 7.3 Definitions.

The terms defined in Part 719 of this title governing the reconstitution of farms shall also be applicable to this part.

§ 7.4 Selection of committee members.

State committee members shall be selected by the Secretary and shall serve at the pleasure of the Secretary. County and community committee members shall be elected in accordance with § 7.9 of this part.

§ 7.5 Eligible voters.

(a) Voters eligible to participate in:

(1) The direct election of county committee members and

(2) Community committee elections shall be persons who meet the requirements of paragraphs (b) and (c) of this section.

(b) Any person, regardless of race, color, religion, sex, age, or national origin, who has an interest in a farm as owner, operator, tenant, or sharecropper and who is of legal voting age in the State in which the farm is located, and any person not of such legal voting age who is in charge of the supervision and conduct of the farming operations on an entire farm, shall be eligible to vote for direct election of county committee members or community committee members if such person is eligible to participate with respect to the farm in any program administered by the county committee.

(c) In any State having a community property law, the spouse of a person who is eligible to vote in accordance with paragraph (b) of this section shall also be eligible to vote.

(d) If an eligible voter is an entity other than an individual, the eligible voter's vote may be cast by a duly authorized representative of such entity, as determined by the Deputy Administrator, State and County Operations, ASCS ("Deputy Administrator").

(e) Each county office shall have a list of eligible voters for each community within the county available for public inspection in advance of the community committee election.

(f) Each eligible voter shall be entitled to only one ballot in any election held in any one local administrative area. If the eligible voter has an interest in land located in more than one community in the county, such voter shall not be entitled to vote in more than one community in the county. There shall be no voting by proxy.

§ 7.6 Determination of elective areas.

(a) *Local administrative areas and communities.* (1) Except as provided in paragraph (b) of this section, there shall be three local administrative areas in each county. With respect to Alaska, the term "county" shall be the area so designated by the State committee.

(2) Each local administrative area shall have at least one community committee consisting of three members.

(3) The boundaries of the communities and local administrative areas shall be determined by the State committee after considering recommendations by the county committee.

(b) *Exceptions to general rule.* (1) A local administrative area may have more than one community committee if the county had more than three community committees on December 23, 1985.

(2) In counties with less than 150 producers, the county committee may reduce the number of communities to one.

(3) The Deputy Administrator may include more than one county or parts of different counties in a community if it is determined that there is an insufficient number of producers in an area to establish a slate of candidates for a community committee and hold an election.

(4) In counties which had less than three communities on December 23, 1985, the county committee may establish one community for the county.

(5) In any county where there is only one community, the community committee shall be the county committee.

(c) The county committee shall give public notice of the community boundaries in advance of the election.

§ 7.7 Calling of elections.

(a) Each election of community committee members shall be held on a date, or within a specified period of time, determined by the Deputy Administrator. Such date or period of time shall fall within a period beginning on or after July 1 and ending not later than December 30 each year. Each such election shall be held in accordance with instructions issued by the Deputy Administrator which shall be available for examination in each county office.

(b) If the number of eligible voters voting in any election of community committee members is so small that the State committee determines that the result of the election does not represent the views of a substantial number of eligible voters, the State committee shall declare the election void and call a new election. If it is determined by the State committee that the election for any position on a community committee has not been held substantially in accordance with official instructions, the State committee shall declare such election void and call a new election.

§ 7.8 Conduct of community committee elections.

(a) The county committee serving at the time shall be responsible for the conduct of community committee elections in accordance with instructions issued by the Deputy Administrator.

(b) Elections shall not be associated with, or held in conjunction with, any other election or referendum conducted for any other purpose.

(c) The county committee shall give advance public notice of how, when, and where eligible voters may vote; when and where the votes will be counted; and the right to witness the vote counting.

(d) All nominees shall be notified in writing of the outcome of the election by the county executive director.

§ 7.9 Election of community committee members, delegates to local administrative area and county conventions, and county committee members.

(a) Where there are three local administrative areas as provided in § 7.6 of this part there shall be an election of community committee members and alternates for a term of three years, or until such person's successor is elected and qualified, in one of the local administrative areas so that the term of office of the community committee members and alternates within one of the local administrative areas will expire each year.

(b) Except as provided in paragraph (d) of this section, the eligible voters in a community shall elect every three years a community committee composed of three members and shall elect first and second alternates to serve as acting members of the community committee in the order elected in case of the temporary absence of a member, or to become a member of the community committee in the order elected in case of the resignation, disqualification, removal, or death of a member. An acting member of the community committee shall have the same duties and the same authority as a regular member of such committee. The election shall be conducted by mail ballot in all counties, except that the Deputy Administrator may authorize use of the meeting or polling place method in a specific county where such is deemed justified. Where elections are by mail or by polling place, the county committee shall give advance public notice that nominations may be made by petition. Election shall be by secret ballot and by plurality vote with each eligible voter having the option of writing in the names of candidates. Except as provided in paragraph (d) of this section and § 7.10(c) of this part, the three regular members of the community committee shall be the delegates to the local administrative area and county conventions and the first and second alternates to community committee shall also be, in that order, alternate delegates to the local administrative area and county conventions. A person may not serve as delegate if such person has been a member of the county committee for that county during the 90 days preceding the community committee election. Failure to elect the prescribed number of alternates at the regular election shall not invalidate such election or require a special election to elect additional alternates.

(c) In any county where there is only one local administrative area, the community committee shall be the county committee.

(d) Where there is only one community in the county, one committee person shall be elected to hold office for a term of 3 years, or until such person's successor is elected and qualified, so that the term of office of one committee member will expire in each year. There shall also be elected annually a first alternate and second alternate to serve as acting members in the order elected in case of the temporary absence of a member or to become a member in the order elected in the case of resignation, disqualification, removal, or death of any member of the committee. In the event an alternate fills a permanent vacancy on the committee, such person shall assume the unexpired term of the committee member who is replaced and hold office until the end of that unexpired term. An acting member shall have the same duties and authority as a regular member.

(e) In any county where there are three local administrative areas, the delegates elected pursuant to § 7.9 (a) and (b) of this part shall meet in a local administrative area convention held before the close of the same calendar year in which they were elected to elect a county committee member and a first and second alternate. The Deputy Administrator may fix the exact date. Each delegate shall be entitled to only one vote on any ballot, and there shall be no voting by proxy. A majority of the delegates so elected and qualified to vote at the time of the convention shall constitute a quorum. Such convention shall be held to the extent practicable in the manner set forth in § 7.10 of this part and in accordance with instructions by the Deputy Administrator.

§ 7.10 Conduct of county convention.

(a) The county committee serving at the time shall be responsible for designating the place at which the county convention will be held and for the conduct of the convention in accordance with instructions issued by the Deputy Administrator.

(b) The delegates to the county convention shall determine which county committee members shall be the county committee chairperson and county committee vice-chairperson.

(c) Each local administrative area shall have the same number of delegates at the county convention. If a portion of the delegates from a local administrative area are precluded from attending the county convention as the result of the limitation imposed by the preceding sentence, the delegates from such local administrative area shall elect those delegates who shall attend the county convention.

(d) County conventions shall not be associated with or held in conjunction with any other election or referendum conducted for any other purpose.

(e) The county committee shall give advance public notice of the county convention which shall be open to the public.

(f) The county executive director shall notify in writing all newly elected county committee members, alternates, and county committee members with unexpired terms of the election results.

§ 7.11 County committee members.

(a) County committee members elected in accordance with § 7.9 of this part shall hold office for a term of three years or until a successor is elected and qualified. A first and second alternate shall serve as acting members of the committee in the order elected in case of the temporary absence of a member, or to become a member in the order elected in case of the resignation, disqualification, removal, or death of a member of the county committee. In the event an alternate fills a permanent vacancy on the county committee, that person shall assume the unexpired term of the county committee member who was replaced. An acting member of the county committee shall have the same duties and authority as a member.

(b) The county committee shall select a secretary who shall be the county executive director, other employee of the county committee, or the county agricultural extension agent for the county. If the county agricultural extension agent is not selected as secretary to the county committee, that person shall be an ex officio member of the county committee but shall not have the power to vote.

§ 7.12 Tie votes.

(a) Tie votes in community committee elections held by mail or polling place method shall be settled by lot. Tie votes in such elections held by the meeting method which cannot be settled by further balloting on the same day shall be settled by lot. In counties with one local administrative area, a tie vote in determining the chairperson and vice chairperson of the county committee which cannot be settled by further balloting on the same day shall be settled by lot.

(b) In the county or local administrative area convention, tie votes which cannot be settled by further balloting on the same day shall be settled by lot.

§ 7.13 Vacancies.

(a) In case of a vacancy in the office of chairperson of county or community committee, the respective vice chairperson shall become chairperson; in case of a vacancy in the office of vice chairperson, the respective third member shall become vice chairperson; in case of a vacancy in the office of the third member, the respective first alternate shall become the third member; and in case of a vacancy in the office of the first alternate, the respective second alternate shall become the first alternate. When unanimously recommended by the three members of the county committee, as constituted under this paragraph and paragraph (c) of this section, and approved by the State committee, the offices of chairperson and vice chairperson of the county committee may be filled from such membership without regard to the order of succession prescribed in this paragraph or the action of the delegates to the county convention.

(b) In case of a vacancy in the panel of delegates to the local administrative area or county convention, the respective community committee alternates shall act as delegates.

(c) In the event that a vacancy, other than one caused by temporary absence, occurs in the membership of the county committee and no alternate is available to fill the vacancy, the State committee shall call a meeting of the delegates of the appropriate community committees to elect persons to fill such vacancies as exist in the membership of the county committee and in the panel of alternates, except as provided in § 7.28 of this part.

(d) In the event that a vacancy, other than one caused by temporary absence, occurs in the membership of the community committee and no alternate is available to fill the vacany, a special election shall be held to fill such vacancies as exist in the membership and in the panel of alternates.

§ 7.14 Appeals.

(a) Any eligible voter in the county may appeal to the county committee in writing or in person, or both:

(1) The eligibility or ineligibility of a person to vote,

(2) The eligibility of a person to hold office, and

(3) The validity of the community committee elections. Such appeal must be made within 15 days of the election date, except that appeals on a determination of eligibility of a person nominated by petition must be made within 7 days of the date of notification of ineligibility.

(b) Any eligible voter in the county may appeal to the State committee in writing, in person, or both:

(1) A county committee decision on an election appeal. An appeal of a county committee decision must be made within 15 days of the notification of the decision, and

(2) The validity of a county convention. An appeal on the validity of a county convention must be made within 15 days of the county convention.

§ 7.15 Eligibility requirements of county committee members, community committee members, and delegates.

(a) To be eligible to hold office as a county committee member, community committee member, a delegate, or an alternate to any such office, a person must meet the conditions set forth in this section.

(b) Such person must.

(1) Be eligible to vote in the local administrative area in which the election is held if proposed for county committee member or alternate, or in the community in which the election is held if proposed for community committee member or alternate;

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, be residing in the local administrative area in which the election is held if proposed for county committee member or alternate, or be residing in the community in which the election is held if proposed for community committee member or alternate.

(ii) In cases where a State line, a county line, a local administrative area boundary, or a community boundary runs through a farm, eligible persons residing on such farm may hold office in the county or community in which the farm has been determined to be located for program participation purposes. In cases where a candidate has no farming

interests in the local administrative area or community in which the person resides or only a token amount, as determined by the State committee, an eligible person may hold office when such person resides in the county and has farming interests in the local administrative area or community in which the person is a candidate.

(3) Not be ineligible under § 7.27 of this part.

(4) Not have been dishonorably discharged from any branch of the armed services; removed for cause from any public office; convicted of any fraud, larceny, embezzlement, or felony, unless any such disqualification is waived by the State committee or the Deputy Administrator;

(5) Not have been removed as a county committee member, community committee member, delegate, alternate to any such office, or as an employee for: Failure to perform the duties of the office; committing, attempting, or conspiring to commit fraud; incompetence; impeding the effectiveness of any program administered in the county; refusal to carry out or failure to comply with the Department's policy relating to equal opportunity and civil rights, including the equal employment policy, or interfering with others in carrying out such policy; or for violation of official instructions, unless any such disqualification is waived by the State committee or the Deputy Administrator;

(6) Not have been disqualified for future service because of a determination by a State committee that during previous service as a county committee member, community committee member, delegate, alternate of any such office, or as an employee of the county committee such person has: Failed to perform the duties of such office or employment; committed, attempted, or conspired to commit fraud; impeded the effectiveness of any program administered in the county; in the course of their official duties, refused to carry out or failed to comply with the Department's policy relating to equal opportunity and civil rights, including the equal employment policy, or interfered with others in carrying out such policy; or violated official instructions, unless any such disqualification is waived by the State committee or the Deputy Administrator;

(7) During the term of office, not be a full-time employee of the U.S. Department of Agriculture;

(8) If the office is that of county committee member, not be a sales agent or employee of the Federal Crop Insurance Corporation during the term of office;

(9) If the office is that of delegate to the local administrative area or county convention, not have been a county committee member for that county during the 90 days preceding the community election;

(10) If the office is that of county committee member, not be serving as a county committee member with one or more years following the current election remaining in the term of office; and

(11) If the office is that of county committee member, not have served three consecutive terms as county committee member just prior to the current election; however, any partial term served by an alternate who filled a permanent vacancy on the county committee, shall not count toward this three term limitation. The tenure of office of any county committee member, community committee member, delegate, or alternate to any such office, shall be terminated as soon as any such person becomes ineligible for office under the provisions of this section.

§ 7.16 Eligibility requirements of all other personnel.

(a) The county executive director and other employees of the county committee must not have been: Dishonorably discharged from any branch of the armed services; removed for cause from any public office; or convicted of any fraud, larceny, embezzlement, or felony, unless any such disqualification is waived by the State committee or the Deputy Administrator.

(b) The county executive director or any other employee of the county committee must not have been removed as a county committee member, community committee member, delegate, alternate to any such office, county executive director, or other employee of the county committee for: Failure to perform the duties of the office; committing, attempting, or conspiring to commit fraud; incompetence; impeding the effectiveness of any program administered in the county; refusal to carry out or failure to comply with the Department's policy relating to equal opportunity and civil rights, including equal employment policy, or interfering with others in carrying out such policy; or for violation of official instructions, unless such disqualification is waived by the State committee or the Deputy Administrator.

(c) The county executive director or any other employee of the county committee must not have been disqualified for future employment because of a determination by a State committee that during previous service as a county committee member, community committee member, delegate, alternate to any such office, or as an employee of the county committee has: Failed to perform the duties of such office or employment; committed, attempted, or conspired to commit fraud; impeded the effectiveness of any program administered in the county; refused to carry out or failed to comply with the Department's policy relating to equal opportunity and civil rights, including the equal employment policy, or interfered with others in carrying out such policy; or violated official instructions, unless such disqualification is waived by the State committee or the Deputy Administrator.

(d) The tenure of employment of any count executive director or other employee of the county committee shall be terminated as soon as any such person becomes ineligible for employment under the provisions of this section.

§ 7.17 Dual office.

(a) *County committee membership.* A member of the county committee may not be at the same time:

(1) A member of a community committee;

(2) A delegate to a local administrative area convention;

(3) A delegate to a county convention;

(4) The secretary to the county committee;

(5) A member of the State committee; or

(6) County executive director or any other county office employee.

(b) *Community committee membership.* A member of the community committee may not be at the same time:

(1) A member of a county committee;

(2) The secretary to the county committee;

(3) A member of the State committee; or

(4) County executive director or regular county office employee.

(c) *Delegate to conventions.* A delegate to the local administrative area or county convention may not be a member of the State committee.

§ 7.18 Terms of office of county and community members.

The term of office of county and community committee members and alternates to such office shall begin on a date fixed by the Deputy Administrator, which shall be after their election and not later than the first day in the next January. Before any such county committee members or alternate county

committee members may take office, such person shall sign an oath of office pledge that they will faithfully, fairly, and honestly perform to the best of their ability all of the duties devolving on them as committee members. A term of office shall continue until a successor is elected and qualified as provided in §§ 7.8 and 7.9 of this part.

§ 7.19 Terms of office of delegates to the conventions.

The terms of office of delegates and alternates to the local administrative area and county conventions shall begin immediately upon their election and shall continue until their respective successors have elected and qualified.

§ 7.20 State committee duties.

The State committee, subject to the general direction and supervision of the Deputy Administrator, shall be generally responsible for carrying out in the State the agricultural conservation program, the production adjustment and price support programs, the acreage allotment and marketing quota programs, the wool and mohair incentive payment program, and any other program or function assigned by the Secretary or a designee of the Secretary.

§ 7.21 County committee duties.

(a) The county committee, subject to the general direction and supervision of the State committee, and acting through community committee members and other personnel, shall be generally responsible for carrying out in the county the agricultural conservation program, the production adjustment and price support programs, the acreage allotment and marketing quota programs, the wool and mohair incentive payment program, and any other program or function assigned by the Secretary or a designee of the Secretary.

(b) The county committee shall:

(1) Enter into leasing agreements for such office space as needed in accordance with official instructions.

(2) Employ the county executive director, subject to standards and qualifications furnished by the State committee, to serve at the pleasure of the county committee, except that incumbent directors shall not be removed other than in accordance with the provisions of § 7.28 of this part until all members of the county committee have been in office for at least 90 days. There shall be no employment discrimination due to race, religion, color, sex, age, or national origin. The county executive director may not be removed for advocating or carrying out the Department's policy on equal opportunity and civil rights, including the equal employment policy. In the event it is claimed that dismissal is for such reasons, the dismissal shall not become effective until the State committee and the Deputy Administrator have determined that dismissal was not because of such reasons;

(3) Direct the activities of the local committees elected in the county;

(4) Pursuant to official instructions, review, approve, and certify forms, reports, and documents requiring such action in accordance with such instructions;

(5) Recommend to the State committee needed changes in boundaries of community and local administrative areas;

(6) Make available to farmers and the public, information concerning the objectives and operations of the programs administered through the county committee;

(7) Make available to agencies of the Federal Government and others information with respect to the county committee activities in accordance with official instructions issued;

(8) Give public notice of the designation and boundaries of each community within the county not less than 50 days prior to the election of community committee members and delegates;

(9) Direct the giving of notices in accordance with applicable regulations and official instructions;

(10) Recommend to the State committee desirable changes in or additions to existing programs;

(11) Conduct such hearings and investigations as the State committee may request; and

(12) Perform such other duties as may be prescribed by the State committee.

§ 7.22 Community committee duties.

(a) The community committee shall be subject to the general direction and supervision of the county committee.

(b) The community committee shall:

(1) Serve as an advisor and consultant to the county committee;

(2) Periodically meet with the county committee and State committee to be informed on farm program issues;

(3) Communicate with producers on issues or concerns regarding farm programs;

(4) Report to the county committee, the State committee, and other interested persons on changes to, or modification of, farm programs recommended by producers;

(5) Perform such other functions as are required by law or as the Secretary or a designee of the Secretary may specify.

§ 7.23 Chairperson of the county committee duties.

The chairperson of the county committee or the person acting as the chairperson shall preside at meetings of the county committee, certify such documents as may require the chairperson's certification, and perform such other duties as may be prescribed by the State committee.

§ 7.24 Chairperson of the community committee duties.

The chairperson of the community committee or the person acting as the chairperson shall preside at meetings of the community committee, and perform such other duties as may be assigned by the county committee.

§ 7.25 County executive director duties.

(a) The county executive director shall execute the policies established by the county committee and be responsible for the day-to-day operations of the county office.

(b) The county executive director shall:

(1) In accordance with standards and qualifications furnished by the State committee, employ the personnel of the county office to serve at the pleasure of the county executive director. There shall be no employment discrimination due to race, religion, color, sex, age, or national origin. An employee may not be removed under this paragraph for advocating or carrying out the Department's policy on equal opportunity and civil rights, including the equal employment policy. In the event it is claimed that the dismissal is for such reason, the dismissal shall not become effective until the State committee and the Deputy Administrator have determined that dismissal was not because of such reason;

(2) Receive, dispose of, and account for all funds, negotiable instruments, or property coming into the custody of the county committee;

(3) Serve as counselor to the local administrative area and county convention chairperson on election procedures; and

(4) Supervise, under the direction of the county committee, the activities of the communitiy committees elected in the county.

§ 7.26 Private business activity and conflicts of interest.

(a) No county committee member, community committee member, delegate, alternate to any such office, or county office employee shall at any time use such office or employment to promote any private business interest.

(b) County committee members, community committee members, delegates, or alternates, and any person employed in the county office shall be subject to the official instructions issued with respect to conflicts of interest and proper conduct.

§ 7.27 Political activity.

(a) No person may be a member of the county governing body or hold a Federal, State, or county office filled by an election held pursuant to law or be employed by any such office and also hold office as a county committee member, community committee member, delegate, alternate to such office, or be employed in any capacity, except, that members of school boards, soil conservation district boards, weed control district boards, or of similar boards are not eligible to hold office or employment under this paragraph soley because of membership on such boards.

(b) No person may be a candidate for membership on the county governing body or for any Federal, State, or county office filled by an election held pursuant to law and hold office as a county committee member, community committee member, delegate, alternate to any such office, or be employed in any capacity, except, that candidates for school boards, soil conservation district boards, irrigation district boards, drainage district boards, weed control district boards, or for similar boards are not ineligible to hold office or employment under this subsection solely because of candidacy for such boards.

(c) No person may be an officer, employee, or delegate to a convention of any political party or political organization and hold office as a county committee member, community committee member, delegate, alternate to any such office, or be employed in any capacity.

(d) The tenure of office of any county committee member, community committee member, delegate, alternate to any such office, or the employment of any employee, shall be automatically terminated as soon as any such person becomes ineligible for office of employment under the provisions of paragraph (a), (b), or (c) of this section.

(e) No county committee member, community committee member, delegate, or alternate to any such office, or any employee shall at any time engage in the following political activities:

(1) Solicit or receive any contributions (including the sale of tickets) for political party organizations or for a candidate for political office or for any other political purpose in any room or building used for the transaction of any Federal official business, or at any place from any other county committee member, community committee member, delegate, or alternate to any such office or employee.

(2) Use official authority or influence to discharge, remove, demote, or promote any employee, or threaten or promise to so do, for withholding or giving contributions (including the buying or the refusal to buy tickets) for political purposes, or for supporting or opposing any candidate or any political organization in any primary, general, or special election for political office.

(3) Use or direct or permit the use of any official space, equipment, materials, supplies, or personal services either to support or oppose any political office holder, candidate or party, or for any other political purpose.

(f) A county committee member or alternate to such office, an employee on any day when entitled to receive pay for services in performance of duties, or an employee who serves during a continuous period of 90 days or more and has a regular tour of duty established in advance at any time, shall not solicit, collect, receive, disburse, or otherwise handle contributions of money, pledges, gifts, or anything of value (including the sale of tickets) made for:

(1) Political party organizations;

(2) A candidate for political office in any primary, general, or special election, but excluding such activities on behalf of individual candidates in township and municipal elections; or

(3) Any other political purpose.

§ 7.28 Removal from office or employment for cause.

(a) Any county committee member, community committee member, delegate to the local administrative area convention or the county convention, an alternate to any such office, county executive director, or any other county employee who: Fails to perform the duties of office; commits or attempts, or conspires to commit fraud; is incompetent; impedes the effectiveness of any program administered in the county; violates the provisions of § 7.27(e) or (f) of this part; refuses to carry out or fails to comply with the equal opportunity and civil rights, including the equal employment policy, or who interferes with others in carrying out such policy; or violates official instructions, shall be suspended from office or employment. Any person who is under formal investigation for any of the above-cited reasons may be suspended. The suspension action may be taken by the county executive director with respect to any other employee, or by the county committee or State committee with respect to the county executive director or any other county employee and by the State committee with respect to any county committee member, community committee member, delegate to the local administrative area convention or the county convention, or any alternate to any such office. Any person suspended shall be given a written statement of the reasons for such action and be allowed 15 days from the date of mailing of the notice of suspension in which to advise the county committee, or the State committee if it made the suspension, in writing, in person, or both, why such person should be restored to duty.

(b) The county committee or the county executive director, or the State committee if it made the suspension, following such further investigation as is deemed necessary shall restore to duty or remove the suspended person. The county committee or county executive director may not restore a suspended person to duty without prior written approval of the State committee, and, if such approval is denied, shall promptly remove such person. Upon refusal or failure of the county committee or the county executive director to remove promptly the suspended person, the State committee shall remove such person. In the event further investigation develops reasons for the action taken, in addition to those disclosed in the suspension notice, the suspended person shall be given written notification of such additional reasons and allowed 15 days from the date of mailing of the notice of additional reasons for the suspension in which to advise why such person should be restored to duty. In the event a person under suspension submits a resignation, acceptance thereof shall not prevent a determination by the county committee or State committee that such person would have been removed had the person remained in the position. Such determination shall constitute removal within the meaning of §§ 7.27 (e) and 7.28(c) of this part. The person so removed shall be given written notification of any such determination and the reasons therefor.

(c) Any incumbent or former county committee member, community committee member, delegate to the local administrative area convention or the county convention, an alternate to any such office, county executive director, or any other county employee who during a term of employment: Fails or failed to perform the duties of employment; committed, attempted, or conspired to commit fraud; was incompetent;

impeded the effectiveness of any program administered in the county; violated the provisions of § 7.27 (e) or (f) of this part; refused to carry out or failed to comply with the Department's policy relating to equal opportunity and civil rights, including the equal employment policy; or violated official instructions, may be disqualified for future service or employment by the State committee. Before any such disqualification determination is made, the State committee shall undertake such investigation as it deems necessary, after which the State committee shall give the affected person a written statement of the determination for the proposed disqualification action. Such person shall have 15 days from the date of receipt of such determination to advise in writing, in person or both, why the action should not be taken. If any further investigation develops substantial additional reasons for disqualification, the person involved shall be given a written statement of such reasons and 15 days from the date of mailing in which to respond. The State committee may remove the disqualification for future service or employment only with prior approval of the Deputy Administrator.

(d) Any county committee member, community committee member, delegate to the local administrative area convention or the county convention, or any alternate to any such office, county executive director, or any other county employee, who, prior to taking such persons's present office: Committed, or attempted or conspired to commit fraud; or impeded the effectiveness of any program administered in the county, may be suspended. Any such person who is under formal investigation for any reason set forth in this section may be suspended. The proceedings under this paragraph shall be applied the same as provided in paragraph (a) of this section.

(e) If in the event of suspensions or vacancies there are less than two members, including alternates, available to serve on the county committee, the State committee shall designate a person to administer the programs in the county pending the exoneration or removal of those persons under investigation and, if removed, pending the election of new county committee members and alternates. Such person may be the remaining member or alternate member of the committee if available. Any person named by the State committee to serve in such capacity shall have full authority to perform all duties regularly performed by a duly elected county committee.

§ 7.29 Delegation of authority to Deputy Administrator.

Notwithstanding the authority vested by this part in a State committee, a county committee, and the county executive director, the Deputy Administrator shall have authority to suspend and/or remove or disqualify for future service or employment, any county committee member, community committee member, delegate to the local administrative area convention or the county convention, an alternate to any such office, county executive director, or other county employee, for any and all of the reasons and causes authorizing such suspension, removal, and disqualification by the State committee, the county committee, or the county executive director. Any person suspended, removed or disqualified pursuant to this section shall be given a written statement of the reason for such action and shall be advised of the right of review as provided in § 7.30 of this part.

§ 7.30 Right of review.

Any person dissatisfied with a determination of the county committee or county executive director may appeal in writing or in person or both, such determination to the State committee. Any person dissatisfied with a determination of the State committee may appeal such determination in writing to the Deputy Administrator. Any person dissatisfied with the determination of the Deputy Administrator made under § 7.29 of this part may request a reconsideration of such determination by the Deputy Administrator. Any such appeal or request for reconsideration shall be made within 15 days from the date of the mailing of the determination with respect to which the appeal or request is filed. Except as provided in § 7.31 of this part, such appeals and requests for reconsideration shall be determined on an informal basis. The person filing the appeal or request for reconsideration may present reasons, in writing or in person, or both, why the determination should be reversed or modified. Within 60 days after the reasons have been presented, such person shall be notified of the determination on appeal or reconsideration. The notification shall clearly set forth the basis for the determination. The determination of the Deputy Administrator is final and not subject to further administrative review.

§ 7.31 Hearing in connection with appeals and requests for reconsideration to Deputy Administrator.

Any person (the "appellant") filing an appeal with the Deputy Administrator, or a request for reconsideration of a determination made by the Deputy Administrator under § 7.29 of this part, is entitled, at such person's election, to a hearing in connection therewith. If the appellant does not request a hearing, the appeal or reconsideration shall be handled in accordance with § 7.30 of this part. If the appellant desires a hearing, such person shall so advise the Deputy Administrator. The hearing shall be conducted by the Deputy Administrator, or a designee of the Deputy Administrator, who shall serve as a hearing officer. The hearing shall be held at the time and place designated by the hearing officer. The appellant may appear personally or through or accompanied by a representative. The hearing officer shall conduct the hearing so as to bring out pertinent facts, including the production of pertinent documents. Rules of evidence shall not be applied strictly, but the hearing officer shall exclude irrelevant or unduly repetitious evidence. Information having a bearing on the issues shall be received in evidence. Both the appellant and the agency representatives are entitled to produce witnesses and the appellant and agency representative shall be given an opportunity to cross-examine witnesses. The hearing officer shall inform the witnesses that they are subject to a fine of not more than $10,000 or imprisonment for not more than 5 years, or both, for making any false statements (18 U.S.C. 1001). The hearing officer shall cause a transcript to be made of the hearing and it shall be made available to the appellant at actual costs.

§ 7.32 Findings, analysis, and recommendations of hearing officer.

If the hearing has been conducted by a designee of the Deputy Administrator, the hearing officer shall, within 60 days from date of receipt of the transcript transmit to the Deputy Administrator:

(1) The record of the hearing;

(2) The findings and analysis of the hearing officer; and

(3) A recommended determination.

§ 7.33 Determination of the Deputy Administrator.

Within 30 days after receipt of the findings, analysis, and recommendations of the hearing officer that are made under § 7.32 of this part, or within 60 days from the date of receipt of the transcript prepared under such section if the Deputy Administrator conducted the hearing, the Deputy Administrator shall make a final determination. The notification shall clearly set forth the basis for the determination. The

determination of the Deputy Administrator is final and not subject to further administrative review.

§ 7.34 Custody and use of books, records, and documents.

(a) All books, records, and documents of or used by the county committee in the administration of programs assigned to it, or in the conduct of elections, shall be the property of the Commodity Credit Corporation or the United States Department of Agriculture, as applicable, and shall be maintained in good order in the county office.

(b) For polling and mail type elections, ballots shall remain in sealed boxes until the prescribed date for counting. Following the counting of ballots in all types of elections, the ballots shall be placed in sealed containers and retained for 30 days unless otherwise determined by the State committee.

(c) The books, records, and documents referred to in paragraph (a) shall be available for use and examination:

(1) At all times by authorized representatives of the Secretary; the Administrator, or a designee of the Administrator.

(2) By state, county, and community committee members, and authorized employees of the State and county office in the performance of duties assigned to them under this part, subject to instructions issued by the Deputy Administrator;

(3) At any reasonable time to any program participant insofar as such person's interests under the programs administered by the county committee may be affected, subject to instructions issued by the Deputy Administrator; and

(4) To any other person only in accordance with instructions issued by the Deputy Administrator.

§ 7.35 Administrative operations.

The administrative operations of county committees including but not limited to the following, shall be conducted, except as otherwise provided in these regulations, in accordance with official instructions issued: annual, sick, and other types of employee leave; location and use of the county committee office; the calling, and conduct of elections; and the maintenance of records of county and local committee meetings.

§ 7.36 Implementation.

Unless specifically provided in this part, the Deputy Administrator, State and County Operations, or the Deputy Administrator, Management, ASCS, is authorized to issue the instructions and procedures referred to herein which implement the provisions of this part.

§ 7.37 Applicability.

This part shall apply to each State of the United States.

§ 7.38 Retention of authority.

Nothing in this part shall preclude the Secretary, the Administrator, or the Deputy Administrator from administering any or all programs or exercising other functions delegated to the community committee, county committee, State committee, or any employee of such committees. In exercising this authority, the Secretary, the Administrator, or the Deputy Administrator may designate for such period of time as deemed necessary a person or persons of their choice to be in charge will full authority to carry on the programs or other functions without regard to the normal duties of such committees or employees.

Signed at Washington, DC on December 4, 1987.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 87-29410 Filed 12-22-87; 8:45 am]

BILLING CODE 3410-05-M

Farmers Home Administration

7 CFR Part 1955

Property Management

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule; correction.

SUMMARY: The Farmers Home Administration (FmHA) corrects a final rule published December 18, 1986 (51 FR 45433). In this final rule, a portion of the paragraph in 7 CFR Part 1955, § 1955.10(a)(1) was inadvertently omitted. The intent of the action is to replace the missing sentence and clarify the paragraph.

EFFECTIVE DATE: December 23, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas Baden, Senior Loan Officer, Farm Real Estate and Production Division, USDA, Room 5437, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, telephone (202) 475-4008.

SUPPLEMENTARY INFORMATION:

List of Subjects in 7 CFR Part 1955

Agriculture, Government property, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing, Rural areas.

As corrected, 7 CFR Part 1955 is amended as follows:

PART 1955—[AMENDED]

1. The authority citation for Part 1955 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart A—Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property

2. Section 1955.10(a)(1) is revised to read as follows:

§ 1955.10 Voluntary conveyance of real property by the borrower to the Government.

* * * * *

(a) * * *

(1) *Loans to individuals.* The County Supervisor and District Director are authorized to accept a voluntary conveyance if the total indebtedness against the property (including prior and junior liens) does not exceed the respective loan approving authority for the type of loan (or combination of types) involved as outlined in Exhibits A through E of FmHA Instruction 1901-A (available in any FmHA office). The State Director is authorized to approve voluntary conveyances regardless of amount of indebtedness.

* * * * *

Date: June 3, 1987.

Vance L. Clark,

Administrator, Farmers Home Administration.

[FR Doc. 87-29293 Filed 12-22-87; 8:45 am]

BILLING CODE 3410-07-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 574

[No. 87-1242]

Acquisition of Control of Insured Institutions; Procedural Requirements

Date: December 11, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; revision of filing procedures and revision of time frames for public notification and sufficiency determinations.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is revising the procedural requirements applicable to applications, notices and rebuttal filings filed pursuant to 12 CFR Part 574 by changing certain filing procedures, modifying the time frames for public notification, and revising the time

frames that apply to the FSLIC's determination that an application or notice is sufficent.

EFFECTIVE DATE: December 23, 1987.

FOR FURTHER INFORMATION CONTACT: Kevin A. Corcoran, Deputy Director for Corporate, (202) 377-6962, Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The Board, as operating head of the FSLIC, is revising the procedural requirements applicable to applications, notices, and rebuttal filings filed pursuant to 12 CFR Part 574 by changing certain filing procedures, modifying the time frames for public notification, and revising the time frames that apply to the FSLIC's determination that an application or notice is sufficient. The amendments are intended to expedite the processing of filings under 12 CFR Part 574 and to simplify the calculation of critical dates in the processing of applications and notices. In particular, the amendments are intended to conform various timeframes employed in Part 574 as closely as practicable to the FSLIC's recently adopted general guidelines for processing applications. *See* 52 FR 39064 (Oct. 20, 1987), *to be codified at*, 12 CFR 571.12. We note that such guidelines address such issues as multiple filings, automatic approval timeframes, and the exclusion of FSLIC-assisted cases from automatic approval timeframes.

The Board has amended the filing procedures set forth at § 574.6(b) to provide that copies of filings sent to the Board are to be sent directly to each office processing such filings. This change from the previous procedure (under which applicants are required to send all copies of filings to the Office of the Secretariat, marked to the attention of the appropriate offices) is intended to expedite the staff's processing of filings by ensuring that delays are not encountered when documents are forwarded from one office to another.

In addition, the Board has modified the procedures applicable to applications and notices filed under 12 CFR Part 574 in a number of ways. First, published notification of filing must occur no earlier than three calendar days before, and no later than three calendar days after, filing of an application or notice. The published notification must state the date, or the expected date, of filing. Second, the public comment period, which remains twenty calendar days long, subject to extension for up to an additional twenty calendar days, now commences on the date of filing, rather than on the date of publication.

Third, the amendments require the Corporation to determine whether the acquiror's application or notice is sufficient within thirty calendar days of the filing date. Within such period of time the Corporation also must determine whether to require information in cases where an acquiror has requested a waiver of required information. In addition, the review period will be extended for the same number of days by which the public comment period is extended.

Fourth, the Corporation has revised the period during which the Corporation must evaluate the sufficiency of the acquiror's response from ten business days to fifteen calendar days.

Finally, the first sentence of § 574.6(b) has been clarified by eliminating the phrase "or provided for" after the initial phrase "Any application required".

The foregoing changes are effective December 23, 1987, and are applicable to applications and notices in process as well as those filed after such date.

Because these changes are nonsubstantive, the Board finds that observance of the notice and comment procedure pursuant to 5 U.S.C. 553(b) and 12 CFR 508.11 and the 30-day delay of effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14 is unnecessary and contrary to the public interest.

List of Subjects in 12 CFR Part 574

Administrative practice and procedure, Holding companies, Savings and loan associations, Securities.

Accordingly, the Board hereby amends Part 574, Subchapter D, Chapter V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 574—ACQUISITION OF CONTROL OF INSURED INSTITUTIONS

1. The authority citation for Part 574 continues to read as follows:

Authority: Sec. 407, 48 Stat. 1260, as amended (12 U.S.C. 1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a).

2. Amend § 574.6 by revising the first and fourth sentences of paragraph (b)(1); by revising paragraphs (b)(2), (b)(3), and (b)(5); by revising the second sentence of paragraph (b)(6); by revising the last sentence of paragraph (c)(1); by revising the second, third, and fourth sentences of paragraph (c)(2); by revising the first sentence of paragraph (d)(1); by revising paragraph (d)(2); and by revising the second sentence of paragraph (e) to read as follows:

§ 574.6 Procedural requirements.

* * * * *

(b) *Filing requirements*—(1) *Applications.* Any application required of a company shall be filed with the Corporation as follows: Where an application is not eligible to be processed under delegated authority under § 574.8(a), the company shall file three complete copies including exhibits and other pertinent papers and documents: one with the Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552 labelled "Dockets Copy;" one with the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, Washington, DC 20552; and one with the Office of Regulatory Policy, Oversight and Supervision, 900 Nineteenth Street NW., Washington, DC 20006; and shall transmit a fourth complete copy including exhibits and other pertinent papers and documents to the Principal Supervisory Agent of the district in which the insured institution, or institutions involved in the acquisitions have their home offices.* * * Where a company believes its application is eligible to be processed under delegated authority under § 574.8(a), the company shall file one copy with the Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552, and shall transmit two copies to the Principal Supervisory Agent and shall also transmit, together with all copies of its application, a brief summary of the proposed transaction including a statement as to why the company asserts the application may be processed under delegated authority, inlcuding an affirmative statement that none of the factors specified in § 574.8(a)(1) that would preclude action under delegated authority are present.* * *

(2) *H-(e)4. Information filing.* Any information filing required to be made to claim that a reorganization is exempt from prior written approval of the Corporation under § 574.3(c)(1)(ii) shall be filed as follows: one copy shall be filed with the Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552, labelled "Dockets Copy;" one copy shall be filed with the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, Washington, D.C. 20552; and a third copy shall be filed with the appropriate Principal Supervisory Agent for the institution to be acquired. Such a filing shall be clearly labeled "H-(e)4 Information Filing."

(3) *Notice.* (i) Any notice required to be filed by a person or persons shall be filed with the Corporation as follows: Where a notice is not eligible to be processed under delegated authority pursuant to § 574.8(a), the person shall file three complete copies of the notice, including exhibits and other pertinent papers and documents: one with the Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552, labelled "Dockets Copy;" one with the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, Washington, DC 20552; and one with the Office of Regulatory Policy, Oversight and Supervision, 900 Nineteenth Street NW., Washington, DC 20006; and shall transmit a fourth complete copy of the application and exhibits filed to the appropriate Principal Supervisory Agent.

(ii) At least one copy of the notice filed with each noted office shall be manually signed. Where a person believes his notice is eligible to be processed under delegated authority under § 574.08(a), the person shall file one copy with the Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552, labelled "Dockets Copy," and shall transmit two copies to the Principal Supervisory Agent and shall also transmit, together with all copies of his notice, a brief summary of the proposed transaction including a statement as to why the person asserts the notice may be processed under delegated authority, including an affirmative statement that none of the factors specified in § 574.8(a)(1) that would preclude action under delegated authority are present. Such statement shall be clearly labelled "Statement Regarding Eligibility for Processing Under Delegated Authority." If the person subsequently becomes aware of additional information or changed circumstances that would alter the eligibility of the notice for processing under delegated authority, the person shall promptly so advise the Principal Supervisory Agent in writing. In addition, an acquiror filing a notice of the acquisition of a state-chartered institution shall file an additional copy with the Principal Supervisory Agent, indicated, "State Supervisor Copy."

* * * * *

(5) *Rebuttal filing.* In order to apply to rebut a determination or presumption pursuant to § 574.4(e) of this part, copies shall be submitted as follows: Where a rebuttal filing is not eligible to be processed under delegated authority under § 574.8(a), the acquiror shall transmit three complete copies: one to the Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552, labelled "Dockets Copy;" one (manually signed) to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, Washington, DC 20552; and one to the appropriate Principal Supervisory Agent. Where an acquiror believes the rebuttal filing is eligible to be processed under delegated authority under § 574.8(a), the acquiror shall transmit only two copies: one to the Office of the Secretariat, Federal Home Loan Bank Board, Washington DC 20552, labelled "Dockets Copy;" and one (manually signed) to the appropriate Principal Supervisory Agent; and shall also transmit, together with all copies of its rebuttal filing, a brief summary of the proposed transaction including a statement as to why the acquiror asserts the rebuttal filing may be processed under delegated authority, including an affirmative statement that none of the factors specified in § 574.8(a)(2), which would preclude action under delegated authority are present. Such statement shall be clearly labelled "Statement Regarding Eligibility for Processing Under Delegated Authority." If the acquiror subsequently becomes aware of additional information or changed circumstances that would alter the eligibility of the rebuttal filing for processing under delegated authority, the acquiror shall promptly so advise the Principal Supervisory Agent in writing.

(6) *Safe-harbor filing.* * * *. Three copies shall be submitted: one to the Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552, labelled "Dockets Copy;" one (manually signed) to the Corporate and Securities Division, Office of General Counsel, Federal Home Loan Bank Board, Washington, DC 20552; and one to the Office of Regulatory Policy, Oversight and Supervision, 900 Nineteenth Street NW., Washington, DC 20006. A fourth copy shall be transmitted to the appropriate Principal Supervisory Agent.

* * * * *

(c) *Sufficiency and waiver.* (1) * * *. Failure by an applicant to respond completely to a written request by the Corporation for additional information within 30 calendar days of the date of such request may be deemed to constitute withdrawal of the application, notice, or rebuttal filing or may be treated as grounds for denial of an application, issuance of a notice of disapproval of a notice, or rejection of a rebuttal.

(2) * * *. The Corporation shall notify an acquiror within 30 calendar days after proper filing of an application or notice as to whether an application or notice—

(i) Is sufficient;

(ii) Is insufficient, and what additional information is requested in order to render the application or notice sufficient; or

(iii) Is materially deficient and will not be processed;

Provided, That if the public comment period specified in paragraph (e) of this section is extended, the 30 day period shall be extended for the same number of days the public comment period is extended. The Corporation also shall notify an acquiror within 15 calendar days after proper filing of any additional information furnished in response to a specific request by the Corporation as to whether the application or notice is thereby deemed to be sufficient. If the Corporation fails to notify an acquiror within such times, the application or notice shall be deemed to be sufficient as of the expiration of the application period.

* * * * *

(d) *Publication.* (1) An acquiror shall publish a notification as provided in this section no earlier than three calendar days before and no later than three calendar days after filing an application under § 574.3(a) or notice under § 574.3(b) and shall mail a copy of the notification to the institution whose stock is sought to be acquired. * * *

(2) Notice published pursuant to paragraph (d) of this section shall be published in a manner that is conspicuous to the average reader and shall be made in substantially the following form:

Notice of Filing of Application or Notice for Acquisition of an Insured Institution

This is to inform the public that under § 574.3 of the Federal Home Loan Bank Regulations for Acquisitions of Insured Institutions [Acquiror] [has filed/intends to file] an [application/notice] with the Federal Savings and Loan Insurance Corporation for permission to acquire control of [insured institution], located in [location], on [date or intended date of filing].

Anyone may write in favor of or protest against the application and in so doing may submit such information as he deems relevant. Copies of all submissions must be sent to the Principal Supervisory Agent, Federal Home Loan Bank of [give name and address] [and in the case of applications or notices not delegated to the Principal Supervisory Agent under § 574.8(a), one copy to each of the following offices: Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552, labeled "Dockets Copy;" Corporate and Securities Division,

Office of General Counsel, Federal Home Loan Bank Board, Washington, DC 20552; and the Office of Regulatory Policy, Oversight and Supervision, 900 Nineteenth Street NW., Washington, DC 20006] within 20 calendar days of the filing of the [application/notice]. Up to an additional 20 calendar days to submit comments may be obtained upon a showing of good cause if a written request is received by the Principal Supervisory Agent within the initial 20-day period.

You may inspect the non-confidental portion of the [application/notice] and non-confidential portions of all comments filed at the Federal Home Loan Bank of _____ [and in the case of applications and notices not delegated to the Principal Supervisory Agent, by contacting the Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, Washington, DC 20552.] If you have any questions concerning these procedures, contact the Federal Home Loan Bank of _____, at ( ) _____, [and the Information Service Section at (202) 377-_____.]

* * * * *

(e) * * *. Within 20 calendar days of the date of filing (or up to 40 calendar days after such date if an extension is requested in writing within the initial 20-day period) anyone may file comments in favor of or in protest of the application or notice and in so doing may submit such information as he deems relevant. * * *

* * * * *

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-29400 Filed 12-22-87; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-ASW-47]

Amendment of Transition Area; Venice, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule will amend the transition area located at Venice, LA. The development of a new LORAN C Area Navigation (LORAN RNAV) special instrument approach procedure (SIAP) to several heliports located in the vicinity of Venice, LA, has made this amendment necessary. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing this new LORAN RNAV SIAP to these various heliports.

EFFECTIVE DATE: 0901 UTC, January 25, 1988.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On October 5, 1987, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by amending the transition area located at Venice, LA (52 FR 38785).

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

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will amend the transition area located at Venice, LA. The development of a new LORAN RNAV SIAP to various heliports located in the Venice, LA, area has necessitated this amendment. The LORAN RNAV SIAP is a point in space approach and will not be associated with a particular heliport. Aircraft executing this approach will proceed by visual flight rules (VFR), weather conditions permitting, after the missed approach point (MAP) to either the Chevron Heliport or the PHI Heliport. Additional heliports may become associated with this SIAP in the future. The intended effect of this amendment will provide adequate controlled airspace for aircraft executing this new LORAN RNAV SIAP to the respective heliports.

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

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Venice, LA [Amended]

By adding to the last sentence: and within a 7-mile radius of a point in space located at Latitude 29°15'30.70" N., Longitude 89°21'10.40" W.

Issued in Fort Worth, TX, on December 2, 1987.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 87-29357 Filed 12-22-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

International Trade Administration

15 CFR Parts 371 and 399

[Docket No. 71263-7263]

Carbon Thermal Insulating Materials; Eligibility for Export Under General License GFW

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: General License GFW authorizes exports of certain low-level dual use items to most free world countries. The performance characteristics of these items generally are such that the United States may authorize exports of these items to controlled countries with only notification to other COCOM governments, although other criteria may be applied when appropriate.

This rule authorizes the export under General License GFW of low density, rigid, carbon-bonded, fibrous or non-fibrous carbon thermal insulating

materials described in entry 1734A of the Commodity Control List.

EFFECTIVE DATE: This rule is effective December 23, 1987.

FOR FURTHER INFORMATION CONTACT: Jeff Tripp, Capital Goods Technology Center, Office of Technology and Policy Analysis, Export Administration, Telephone: (202) 377–5695.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final Regulatory Impact Analysis has to be or will be prepared.

2. This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 371 and 399

Exports, Reporting and recordkeeping requirements.

Accordingly, the Export Administration Regulations (15 CFR Parts 368–399) are amended as follows:

1. The authority citations for Parts 371 and 399 continue to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981 and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

PART 371—[AMENDED]

2. In § 371.23, paragraph (a) is revised and paragraph (c) is amended by inserting a new sentence after the second sentence, as follows:

§ 371.23 General License GFW; low-level exports to certain countries.

(a) *Scope.* A general license designated GFW is established authorizing exports of certain low-level commodities subject to national security controls. In most cases, these commodities have performance characteristics that permit the United States to approve exports to controlled countries with only notification to other COCOM governments.

* * * * *

(c) * * * (Some entries may use other criteria; for example, see ECCN 1734A.) * * *

* * * * *

PART 399—[AMENDED]

3. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 7 (Chemicals, Metalloids, Petroleum Products and Related Materials), ECCN 1734A is amended by adding a *GFW Eligibility* paragraph immediately after the *Special Licenses Available* paragraph, reading as follows:

* * * * *

GFW Eligibility: All commodities covered by this entry regardless of end-use, subject to the prohibitions contained in § 371.2(c).

* * * * *

Dated: December 17, 1987.

Vincent F. DeCain,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 87–29325 Filed 12–22–87; 8:45 am]

BILLING CODE 3510–DT–M

15 CFR Part 399

[Docket No. 71023–7223]

Amendment of Validated License Controls on Stored Program Wire Bonders

AGENCY: Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Export Administration maintains the Commodity Control List (CCL), which specifies those items subject to Department of Commerce export controls. This rule amends the validated export license controls on certain "stored program controlled" wire bonders described in paragraph (b)(5)(ii) of the "List of Equipment Controlled by ECCN 1355" in ECCN 1355 on the CCL (Supplement No. 1 to 15 CFR 399.1). This action is in accordance with a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended. All "stored program controlled" wire bonders will now require a validated license for export only to destinations in Country Groups Q, S, W, Y, and Z, the People's Republic of China, and Afghanistan for national security reasons. For Country Group T and V, except the People's Republic of China and Afghanistan, a validated license is required only for wire bonders that are described in the "Validated License Required" paragraph of ECCN 1355.

Notice of the foreign availability determination on this equipment was published in the **Federal Register** on September 16, 1987 (52 FR 34976).

EFFECTIVE DATE: December 23, 1987.

FOR FURTHER INFORMATION CONTACT: John R. Pastore, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377–5953.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. Because this rule concerns a foreign and military affairs function of the United States, it is not a rule or regulation within the meaning of section 1(a) of Executive Order 12291, and it is not subject to the requirements of that Order. Accordingly, no preliminary or final regulatory impact analysis has been or will be prepared.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) including those requiring publication of a notice of

proposed rulemaking, and opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Further, no other law requires that a notice of proposed rulemaking and opportunity for public comment be given for this rule. Accordingly, it is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Written comments (six copies) should be submitted to: Joan Maguire, Regulations Branch, Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final regulatory flexibility analysis has to be or will be prepared.

4. This rule involves a collection of information that is subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0625–0001.

List of Subjects in 15 CFR Part 399

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 399 of the Export Administration Regulations (15 CFR Parts 368–399) is amended as follows:

PART 399—[AMENDED]

1. The authority citation for Part 399 continues to read as follows:

Authority: Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97–145 of December 29, 1981, and by Pub. L. 99–64 of July 12, 1985; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95–223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99–440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*), and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 399.1 [Amended]

2. In Supplement No. 1 to § 399.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1355A is amended by revising the *"Validated License Required"* paragraph and by adding a Technical Note following the *"Validated License Required"* paragraph to read as follows:

1355A Equipment for the manufacture or testing of electronic components and materials; and specially designed components, accessories and "specially designed software" therefor.

Controls for ECCN 1355A

* * * * *

Validated License Required: Country Groups QSTVWYZ. Wire bonders controlled by paragraph (b)(5)(ii) and that are not described below require a validated license only for Country Groups QSWYZ, the People's Republic of China, and Afghanistan. A validated license continues to be required to Country Groups QSTVWYZ for "stored program controlled" wire bonders that are specially designed and enabled to be integrated into a "totally automated (semiconductor) manufacturing facility" or have all of the following characteristics:

(a) Bonding wire that is less than 0.0007 inches (17.5 micrometers) diameter;

(b) Bond to bonding pads (on semiconductor circuits and devices) that are 0.0015 inches × 0.0015 inches (37.5 micrometers × 37.5 micrometers) or less and spaced closer than 0.0025 inches (62.5 micrometers) from center to center; and

(c) Have a bond cycle time of 100 ms or less per wire (bond cycle time measured with 1.5 mm distance between bonds).

Technical Note: A *"totally* automated (semiconductor) manufacturing facility" is one in which all equipment controls and all materials handling operations from the blank polished wafer through encapsulation and electronic test are performed without human intervention in the production of semiconductor circuits and devices. This is distinguished from an "automated (semiconductor) manufacturing facility" in which individual pieces of equipment, used in the production of semiconductor circuits and devices are: (a) Controlled from a host computer; and (b) associated with facilities to supply material and remove processed material without human intervention.

* * * * *

Dated: December 18, 1987.

Dan Hoydysh,

Director, Office of Technology and Policy Analysis.

[FR Doc. 87–29395 Filed 12–22–87; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 18

[T.D. 8167]

Income Taxes; Taxable Years of Certain Entities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the requirement that certain entities generally conform their taxable years to the taxable years of their owners. In addition, the text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the proposed rules section of this issue of the **Federal Register**. Changes to the applicable law were made by the Tax Reform Act of 1986. The regulations affect personal service corporations, partnerships, and S corporations (and owners of those entities) and provide them with the guidance needed to comply with the law.

EFFECTIVE DATE: The temporary regulations are effective for taxable years beginning after December 31, 1986.

FOR FURTHER INFORMATION CONTACT: Arthur E. Davis III of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224 (Attention CC:LR:T), (202) 566–3238, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR Part 1) to provide temporary regulations interpreting section 806 of the Tax Reform Act of 1986 (the 1986 Act), Pub. L. 99–514, 100 Stat. 2362, which amended sections 441, 706(b) and 1378 of the Internal Revenue Code of 1986. In general, section 806 of the 1986 Act requires personal service corporations (PSCs), partnerships and S corporations to conform their taxable years to the taxable years of their owners. These temporary regulations provide guidance on the amendments to section 441, relating to (a) the definition of a PSC (section 441(i)), and (b) the special rules for applying a 52–53-week taxable year in the case of a partnership, S corporation, personal service corporation or the owners of such entities (section 441(f)). In addition, the

temporary regulations provide special rules for the application of the amendments to sections 706(b) and 1378 with respect to the spread of income and expense items ratably over a 4-year period in the case of partners and shareholders of S corporations required in one taxable year to take into account items from more than one taxable year of a partnership or S corporation. Furthermore, the temporary regulations make conforming changes to the general provisions regarding taxable years under section 441.

Explanation of Provisions

Taxable Year of a Personal Service Corporation

Section 441(i)(1) provides that a PSC must use the calendar year as its taxable year unless the PSC establishes, to the satisfaction of the Secretary, a business purpose for using a different period as its taxable year. The temporary regulations provide that the taxable year of a PSC is the calendar year, unless the PSC's annual accounting period is a fiscal year and the PSC obtains the approval of the Commissioner to have such a fiscal year as its taxable year.

Approval of the Commissioner is not required in the case of a PSC changing its taxable year to the calendar year. For this purpose, a 52–53-week taxable year of a PSC ending with reference to the month of December will be treated as if it were the calendar year. In the case of a change to the calendar year, the PSC should notify the Internal Revenue Service of the change, in accordance with the applicable revenue procedure, such as, for example, Rev. Proc. 87–32, 1987–28 I.R.B. 14.

Approval of a fiscal year by the Commissioner requires the PSC to demonstrate a business purpose. For example, a PSC which demonstrates that the desired fiscal year coincides with its natural business year, as defined in section 4.01(1) of Rev. Proc. 87–32, is deemed to have established a business purpose to the satisfaction of the Secretary. In this regard, taxpayers should review Announcement 87–82, 1987–37 I.R.B. 30, for modifications to Rev. Proc. 87–32 extending the due date for PSCs requesting the Commissioner's approval to establish a business purpose.

Definition of a Personal Service Corporation

Under the temporary regulations, a taxpayer is a PSC for a taxable year only if: (a) The taxpayer is a C corporation; (b) the principal activity of the taxpayer during the testing period for the taxable year is the performance of personal services; (c) the personal services are substantially performed by employee-owners; and (d) employee-owners hold more than 10 percent of the fair market value of the outstanding stock in the taxpayer as of the last day of the testing period for the taxable year.

Under the temporary regulations, the testing period for a taxable year is generally the taxable year preceding such taxable year. For example, a corporation that has been using June 30 as its taxable year will use the taxable year ended June 30, 1987, as the testing period for the taxable year beginning July 1, 1987.

With respect to a corporation whose first taxable year begins after December 31, 1986, the temporary regulations provide that the testing period for the corporation's first taxable year is the period beginning on the first day of the taxable year and ending on the earlier of (a) the last day of such taxable year, or (b) the last day of the calendar year in which the taxable year began.

Performance of Personal Services

During the course of drafting the temporary regulations, the Service considered many different approaches for determining whether an activity should be treated as the performance of a personal service. The approaches considered ranged from a narrow definition (*e.g.*, only activities described in section 448(d)(2)(A), relating to limitations on the use of the cash method of accounting) to a broad definition (*e.g.*, all activities except selling tangible property). After evaluating the various approaches, the Service concluded that the narrow definition of personal services provided in section 448(d)(2)(A) will apply for purposes of section 441(i).

Thus, under the temporary regulations any activity described in section 448(d)(2)(A) is treated as the performance of personal services. An activity not described in section 448(d)(2)(A) is not treated as the performance of personal services under the temporary regulations.

It should be noted, however, that although the temporary regulations provide that an activity is treated as the performance of personal services by reference to section 448(d)(2)(A), the definition of the term "personal service corporation" under these temporary regulations is different from the definition of the term "qualified personal service corporation" under section 448(d)(2). The principal differences relate to ownership requirements and the necessary percentage of personal service activities.

Principal Activity

The temporary regulations provide that the corporation's principal activity during the testing period will be the performance of personal services if the total amount of the corporation's compensation cost for such taxable year that is attributable to its personal service activities exceeds 50 percent of the corporation's total compensation cost. Compensation cost is defined as (a) salaries and wages, and (b) other amounts attributable to services rendered in the course of employment. However, compensation cost does not include amounts attributable to a plan, qualified under section 401(a) or 403(a), or defined in section 408(k).

Services Substantially Performed by Employee-Owners

The temporary regulations provide that the personal services performed by a corporation during a testing period will be treated as substantially performed by employee-owners of the corporation if more than 20 percent of the corporation's compensation cost with respect to personal services is attributable to employee-owners. Such determination is to be made by the taxpayer in any reasonable and consistent manner.

In the process of drafting the temporary regulations, the Service received many informal comments relating to the appropriate percentage for determining "substantially performed." Most of the commentators suggested that the term "substantially" should be interpreted as "substantially all." "Substantially all" would imply a very high percentage of services performed by employee-owners whereas "substantially" would imply a lower percentage. Given that the term "substantially" is used in the Code rather than the term "substantially all," the temporary regulations use 20 percent as the threshold for determining whether services are substantially performed by employee-owners.

Temporary regulations (§ 1.441–3T) issued under the authority to prescribe rules relating to the 52–53-week taxable year were published February 5, 1987 (52 FR 3615). Those temporary regulations interpreted the phrase "substantially performed by employee-owners" by using a 10 percent time test. That test was limited to taxpayers that desired to use a 52–53-week taxable year for a short taxable year ending on or before January 5, 1987. Upon further review, the Service determined that the 10 percent

time test is inappropriate for purposes of interpreting section 441(i), because that test does not adequately weight the relative contributions of the various employees, in particular the employee-owners. For example, under the time test, an hour billed at $100/hour by an employee-owner of a law firm (that is a C corporation) is treated the same as an hour of a junior associate that may be billed at $40/hour. A compensation test, however, provides a weighted approach to measure relative performance of personal services. In addition to changing the measurement base from time spent to compensation, these temporary regulations differ from the 10 percent time test provided in § 1.441–3T by (a) increasing the percentage from 10 percent to 20 percent, and (b) including the compensation cost for all employees involved in the corporation's personal service activity in the 20 percent calculation rather than including only compensation cost that is "directly and intrinsically related" to the providing of personal services.

Under the temporary regulations, a person is an employee-owner if that person is an employee on any day of the testing period, and the person owns any stock of the corporation on any day of the testing period. Attribution rules in section 318, as modified, apply for purposes of determining stock ownership. In addition, any person who is an owner and performs services for or on behalf of the corporation shall be treated as an employee for purposes of this rule, even if the legal form of that person's relationship to the corporation is such that he or she would be considered an independent contractor for other purposes.

52–53-Week Taxable Year

Section 441(f)(3) provides that the Secretary may by regulation provide terms and conditions for the application of the rules relating to the 52–53-week taxable year of a partnership, S corporation, personal service corporation, or any owner of such an entity.

The temporary regulations provide rules for cases in which the taxable year of a partnership and a partner, or an S corporation and an S corporation shareholder, or a personal service corporation and an employer-owner, end with or with reference to the same calendar month. Under the temporary regulations, in certain cases the taxable year of a partner, S corporation shareholder, or employee-owner will be deemed to end on the last day of the partnership's, S corporation's, or PSC's taxable year. For example, a calendar year partner in a 52–53-week partnership with a January 3, 1988 year end will be required to include in his 1987 income tax return his distributive share of partnership income for the taxable year ended January 3, 1988.

4-Year Spread

The temporary regulations provide that partners and S corporation shareholders may spread items of income and expense if (a) the items of income and expense are attributable to a partnership or S corporation that is required under section 806 of the 1986 Act to change its taxable year for the first taxable year beginning after December 31, 1986, and (b) the partner or S corporation would be required under the temporary regulations to include in one taxable year the items from more than one taxable year of the partnership or S corporation. The temporary regulations define the terms "income items" and "expense items" and provide other guidance with respect to section 806 of the 1986 Act.

Special Analyses

The Commissioner of Internal Revenue has determined that this temporary rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis therefore is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for temporary regulations. Accordingly, the temporary regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Drafting Information

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

List of Subjects

26 CFR 1.441–1—1.483–2

Income taxes, Accounting, Deferred compensation plans.

26 CFR 1.701—1.771–1

Income taxes, Partnerships.

26 CFR Part 18

Sale of residence, Income taxes.

Amendments to the Regulations

For the reasons set out in the preamble, Subchapter A, Parts 1 and 18 of Title 26, Chapter 1 of the Code of Federal Regulations is amended as set forth below:

Income Tax Regulations

PART 1—[AMENDED]

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

Authority: 26 U.S.C. 7805. * * * Section 1.441–2T also issued under 26 U.S.C. 441(f).

Par. 2. Section 1.441–1 is redesignated as § 1.441–1T and amended by revising the caption, revising paragraphs (b), (f), and (g), and adding a new paragraph (h) to read as follows:

§ 1.441–1T Period for computation of taxable income (temporary).

* * * * *

(b) *Taxable year*—(1) *Definition of taxable year*—(i) *In general.* Except as otherwise provided in this paragraph (b)(1), the term "taxable year" means—

(A) The taxpayer's annual accounting period if it is a calendar year or a fiscal year; or

(B) The calendar year if section 441(g) (relating to taxpayers who keep no books or have no accounting period) applies. Except as provided in administrative provisions of the Internal Revenue laws, a taxable year may not cover a period of more than 12 calendar months. If a return is made under section 443 for a period of less than 12 months (a "short period"), the taxable year is the short period for which the return is made.

(ii) *Special rules for certain entities.* The general rule provided in paragraph (b)(1)(i) of this section may be modified by the Internal Revenue laws or regulations. For example, special rules are provided for the following taxpayers—

(A) In the case of personal service corporations, the applicable rules are contained in § 1.441–4T.

(B) In the case of partnerships, the applicable rules are contained in § 1.706–1T.

(C) In the case of S corporations, the applicable rules are contained in section 1378.

(D) In the case of members of an affiliated group which makes a consolidated return, the applicable rules are contained in § 1.1502–76 and paragraph (d) of § 1.442–1.

(E) In the case of trusts, the applicable rules are contained in section 645.

(F) In the case of real estate investment trusts, the applicable rules are contained in section 859.

(G) In the case of real estate mortgage investment conduits, the applicable rules are contained in section 860D(a)(5).

(H) In the case of FSCs or DISCs, the applicable rules are contained in section 441(h).

(2) *Adoption of taxable year.* A new taxpayer adopts a taxable year on or before the time prescribed by law (not including extensions) for the filing of the taxpayer's first return and may adopt, without prior approval, any taxable year that satisfies the requirements of section 441 and this section.

(3) *Change in taxable year*—(i) *General rule.* After a taxpayer has adopted a taxable year, such year must be used in computing taxable income and making returns for all subsequent years unless prior approval is obtained from the Commissioner to make a change or unless a change is otherwise permitted or required under the Internal Revenue laws or regulations. See section 442 and § 1.442–1. Also see paragraph (b)(4) of this section.

(ii) *Change in taxable year required by the Tax Reform Act of 1986.* Procedures for entities (certain personal service corporations, partnerships and S corporations) required to change their taxable year under section 806 of the Tax Reform Act of 1986, Pub. L. 99–514, 100 Stat. 2362, are provided in Rev. Proc. 87–32, 1987–28 I.R.B. 14, or successor revenue procedures.

(4) *Retention of taxable year*—(i) *In general.* In certain cases, taxpayers will be required under the Internal Revenue laws or regulations to change their taxable year unless they establish a business purpose for retaining their current taxable year. For example, corporations electing to be S corporations, corporations that are personal service corporations for the first time, and certain partnerships with new partners may be required to change their taxable year unless they establish a business purpose for retaining their current taxable year.

(ii) *Section 806 of the Tax Reform Act of 1986.* Rev. Proc. 87–32 provides (and any successor revenue procedure would provide) procedures for certain entities (i.e., personal service corporations, partnerships and S corporations) requesting the Commissioner's approval to retain a fiscal year when such entity would otherwise be required to change its taxable year under section 806 of the Tax Reform Act of 1986. In addition, personal service corporations should see Announcement 87–82, 1987–37 I.R.B. 30, for modifications to Rev. Proc. 87–32 extending the due date for personal service corporations requesting the Commissioner's approval to establish a business purpose.

(f) *Election of year consisting of 52–53 weeks.* For rules relating to the 52–53-week taxable year, see §§ 1.441–2T, 1.441–3T, and 1.441–4T.

(g) *No books kept; no accounting period.* Except as otherwise provided in the Internal Revenue laws or regulations, the taxpayer's taxable year shall be the calendar year if—

(1) The taxpayer keeps no books;

(2) The taxpayer does not have an annual accounting period (as defined in section 441(c) and paragraph (c) of this section); or

(3) The taxpayer has an annual accounting period, but such period does not qualify as a fiscal year (as defined in section 441(e) and paragraph (e) of this section).

For the purposes of paragraph (g)(1) of this section, the keeping of books does not require that records be bound. Records which are sufficient to reflect income adequately and clearly on the basis of an annual accounting period will be regarded as the keeping of books. A taxpayer whose taxable year is required to be a calendar year under section 441(g) and this paragraph (g) may not adopt a fiscal year without obtaining prior approval from the Commissioner. See section 442 and § 1.442–1T(a)(2).

(h) *Effective date.* This section is effective for taxable years beginning after December 31, 1986. See 26 CFR 1.441–1 (revised as of April 1, 1987) for rules applicable to taxable years beginning before January 1, 1987.

Par. 3. Section 1.441–2 is redesignated as § 1.441–2T and amended by revising the caption and paragraph (e) to read as follows:

§ 1.441–2T Election of year consisting of 52–53 weeks (temporary).

* * * * *

(e) *Partnerships, S corporations, and personal service corporations*—(1) *In general.* Paragraph (e) of this section applies if a partnership, partner, S corporation, S corporation shareholder, personal service corporation (within the meaning of § 1.441–4T(d)), or employee-owner (within the meaning of § 1.441–4T(h)) uses a 52–53-week taxable year.

(2) *Treatment of taxable years ending with reference to the same calendar month*—(i) *Timing of partners taking into account partnership items.* If the taxable year of a partnership and a partner end with reference to the same calendar month, then for purposes of determining the taxable year in which a partner takes into account—

(A) Items described in section 702, and

(B) Items that are deductible by the partnership (including items described in section 707(c)) and includible in the income of the partner, the partner's taxable year will be deemed to end on the last day of the partnership's taxable year.

(ii) *Timing of S shareholders taking into account S corporation items.* If the taxable year of an S corporation and a shareholder end with reference to the same calendar month, then for purposes of determining the taxable year in which a shareholder takes into account—

(A) Items described in section 1366(a), and

(B) Items that are deductible by the S corporation and includible in the income of the shareholder, the shareholder's taxable year will be deemed to end on the last day of the S corporation's taxable year.

(iii) *Personal service corporations and employee-owners.* If the taxable year of a personal service corporation and an employee-owner end with reference to the same calendar month, then for purposes of determining the taxable year in which an employee-owner takes into account items that are deductible by the personal service corporation and includible in the income of the employee-owner, the employee-owner's taxable year will be deemed to end on the last day of the personal service corporation's taxable year.

(3) *Automatic approval for partnerships and S corporations.* If a partnership or S corporation is required to use a taxable year ending with respect to the last day of a particular month and the partnership or S corporation desires to use a 52–53-week taxable year with reference to such month, the partnership or S corporation is granted automatic approval to use such 52–53-week taxable year. See § 1.441–4T(b)(2)(ii) for a similar rule for personal service corporations.

(4) *Examples.* The provisions of paragraph (e)(2) of this section may be illustrated by the following examples.

Example (1). ABC Partnership uses a 52–53-week taxable year that ends on the Sunday nearest to December 31, and its partners, A, B, and C, are individual calendar year taxpayers. Assume that, for ABC's taxable year ending January 3, 1988, each partner's distributive share of ABC's taxable income is $10,000. Under section 706(a) and paragraph (e)(2)(i) of this section, for the taxable year ending December 31, 1987, A, B, and C each must include $10,000 in income with respect to the ABC year ending January 3, 1988. Similarly, if ABC makes a guaranteed payment to A on January 2, 1988, A must include the payment in income for his or her taxable year ending December 31, 1987.

Example (2). X, a personal service corporation, uses a 52–53-week taxable year that ends on the Sunday nearest to December 31, and all of the employee-owners of X are individual calendar year taxpayers. Assume that, for its taxable year ending January 3,

1988. X pays a bonus of $10,000 to each employee-owner. Under paragraph (e)(2)(iii) of this section, each employee-owner must include the bonus in income for the taxable year ending December 31, 1987.

(5) *Effective date.* Paragraph (e) of this section applies to taxable years beginning after December 31, 1986.

Par. 4. Section 1.441–2T is amended by revising the heading and text of paragraph (f) to read as follows:

§ 1.441–2T Election of year consisting of 52–53 weeks (temporary).

* * * * *

(f) *Special rules for 1986 and subsequent years.* For special rules relating to certain adoptions of, or changes to or from, a 52–53-week taxable year ending in 1986 or 1987, see § 1.441–3T. For special rules relating to a 52–53-week taxable year beginning after December 31, 1986, see § 1.441–2T(e).

Par. 5. Section 1.441–4T is added in the appropriate place.

§ 1.441–4T Taxable year of a personal service corporation (temporary).

(a) *Taxable year.* The taxable year of a personal service corporation (as defined in paragraph (d) of this section) is—

(1) The calendar year, or a "short period" (as provided in § 1.441–1T(b)(1)(i)) ending December 31; or

(2) A fiscal year, or a short period (other than a short period provided in paragraph (a)(1) of this section), if the corporation obtains the approval of the Commissioner (in accordance with paragraph (c) of this section) for using such fiscal year.

(b) *Change in taxable year required*—(1) *In general.* For any taxable year beginning after December 31, 1986, a taxpayer that is a personal service corporation for such taxable year must—

(i) Use a taxable year described in paragraph (a) of this section; or

(ii) Change to such a taxable year by using a short taxable year that ends on the last day of a taxable year described in paragraph (a) of this section.

(2) *Approval not required for change to a calendar year*—(i) *In general.* A personal service corporation may change its taxable year to the calendar year without the approval of the Commissioner. In such cases, however, the taxpayer should notify the Internal Revenue Service of the change in accordance with the provisions of the applicable revenue procedure. See, for example, section 5.02(1) of Rev. Proc. 87–32, 1987–28 I.R.B. 14.

(ii) *Special rule for 52–53-week taxable year ending with reference to the month of December.* For purposes of this section, a 52–53-week taxable year of a personal service corporation ending with reference to the month of December shall be treated as the calendar year. In order to assist in the processing of the retention or change in taxable year, taxpayers should refer to this special rule by either typing or legibly printing the following statement at the top of page 1 of the income tax return: "FILED UNDER § 1.441–4T(b)(2)(ii)." See § 1.441–2T(e) for special rules regarding 52–53-week taxable years for personal service corporations.

(3) *Examples.* The provisions of paragraph (b) of this section may be illustrated by the following examples.

Example (1). X corporation's last taxable year beginning before January 1, 1987, ends on January 31, 1987. In addition, X is a personal service corporation for its taxable year beginning February 1, 1987, and does not obtain the approval of the Commissioner for using a fiscal year. Thus, under paragraph (b)(1) of this section, X is required to change its taxable year to the calendar year by using a short taxable year that begins on February 1, 1987, and ends on December 31, 1987. Under paragraph (b)(2)(i) of this section, X may change its taxable year without the consent of the Commissioner, but should notify the Internal Revenue Service of the change in accordance with section 5.02(1) of Rev. Proc. 87–32.

Example (2). Assume the same facts as in example (1), except that for its taxable year beginning February 1, 1987, X obtains the approval of the Commissioner to change its annual accounting period to a fiscal year ending September 30. Under paragraph (b)(1) of this section, X must file a tax return for the short period from February 1, 1987, through September 30, 1987.

Example (3). Assume the same facts as in example (1), except that the first taxable year for which X is a personal service corporation is the taxable year that begins on February 1, 1990. Thus, for taxable years ending before that date, this section does not apply with respect to X. For its taxable year beginning on February 1, 1990, however, X will be required to comply with paragraph (b) of this section. If X does not obtain the approval of the Commissioner to use a fiscal year, X will be required to change its taxable year to the calendar year by using a short taxable year that ends on December 31, 1990.

Example (4). Assume the same facts as in example (1), except that X desires to change to a 52–53-week taxable year ending with reference to the month of December. Pursuant to paragraphs (b)(2)(i) and (b)(2)(ii) of this section, X may change its taxable year to a 52–53-week taxable year ending with reference to the month of December without the consent of the Commissioner, but should notify the Internal Revenue Service of the change in accordance with paragraph (b)(2)(ii) of this section.

(c) *Approval of a fiscal year.* A personal service corporation must establish to the satisfaction of the Commissioner a business purpose for using a fiscal year under paragraph (a)(2) of this section. Business purpose is established to the satisfaction of the Commissioner in the case of a personal service corporation that—

(1) Requests to use, or is using, a fiscal year that coincides with its natural business year, as defined in section 4.01(1) of Rev. Proc. 87–32, or successor revenue procedures, or

(2) Receives permission from the Commissioner to use the fiscal year by establishing a business purpose for the fiscal year under section 6.01 of Rev. Proc. 87–32, or successor revenue procedures. See also Rev. Rul. 87–57, 1987–28 I.R.B. 7. See Announcement 87–82 for modifications to Rev. Proc. 87–32 regarding due dates for personal service corporations filing applications and income tax returns for certain short taxable years beginning after December 31, 1986.

(d) *Personal service corporation for a taxable year*—(1) *In general.* For purposes of this section, a taxpayer is a personal service corporation for a taxable year only if—

(i) The taxpayer is a C corporation (as defined in section 1361(a)(2)) for the taxable year;

(ii) The principal activity of the taxpayer during the testing period for the taxable year is the performance of personal services;

(iii) During the testing period for the taxable year, such services are substantially performed by employee-owners; and

(iv) Employee-owners, as defined in paragraph (h) of this section, own (as determined under the attribution rules of section 318, except that "any" shall be substituted for "50 percent" in section 318(a)(2)(C)) more than 10 percent of the fair market value of the outstanding stock in the taxpayer on the last day of the testing period for the taxable year.

(2) *Testing period*—(i) *In general.* Except as otherwise provided in paragraph (d)(2)(ii) of this section, the testing period for a taxable year is the taxable year preceding such taxable year.

(ii) *New corporations.* The testing period for a taxpayer's first taxable year is the period beginning on the first day of such taxable year and ending on the earlier of—

(A) The last day of such taxable year; or

(B) The last day of the calendar year in which such taxable year begins.

(3) *Examples.* The provisions of paragraph (d)(2) of this section may be illustrated by the following examples.

Example (1). Corporation A has been in existence since 1980 and has used a January 31 taxable year for all taxable years beginning before 1987. For purposes of determining whether A is a personal service corporation for the taxable year beginning February 1, 1987, A's testing period under paragraph (d)(2)(i) of this section is the taxable year ending January 31, 1987.

Example (2). B corporation's first taxable year begins on June 1, 1987, and B desires to use a September 30 taxable year. However, if B is a personal service corporation, it must obtain the Commissioner's approval to use a September 30 taxable year. Pursuant to paragraph (d)(2)(ii) of this section, B's testing period for its first taxable year beginning June 1, 1987, is the period June 1, 1987 through September 30, 1987. Thus, if, based upon such testing period, B is a personal service corporation, B must obtain the Commissioner's permission to use a September 30 taxable year.

Example (3). The facts are the same as in Example (2), except that B desires to use a March 31 taxable year. Pursuant to paragraph (d)(2)(ii) of this section, B's testing period for its first taxable year beginning June 1, 1987, is the period June 1, 1987, through December 31, 1987. Thus, if, based upon such testing period, B is a personal service corporation, B must obtain the Commissioner's permission to use a March 31 fiscal year.

(e) *Determination of whether an activity during the testing period is treated as the performance of personal services*—(1) *Activities described in section 448(d)(2)(A).* For purposes of this section, any activity of the taxpayer described in section 448(d)(2)(A) or the regulations thereunder will be treated as the performance of personal services. Therefore, any activity of the taxpayer that involves the performance of services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting (as such fields are defined in the regulations interpreting section 448) will be treated as the performance of personal services for purposes of this section.

(2) *Activities not described in section 448(d)(2)(A).* For purposes of this section, any activity of the taxpayer not described in section 448(d)(2)(A) or the regulations thereunder will not be treated as the performance of personal services.

(f) *Principal activity*—(1) *General rule.* For purposes of this section, the principal activity of a corporation for any testing period will be considered to be the performance of personal services if the cost of the corporation's compensation (the "compensation cost") for such testing period that is attributable to its activities that are treated as the performance of personal services under paragraph (e) of this section exceeds 50 percent of the corporation's total compensation cost for such testing period.

(2) *Compensation cost.* For purposes of this section, the compensation cost of a corporation for a taxable year is equal to the sum of the following amounts allowable as a deduction, allocated to a long-term contract, or otherwise chargeable to a capital account by the corporation during such taxable year—

(i) Wages and salaries, and

(ii) Any other amounts attributable to services performed for or on behalf of the corporation by a person who is an employee of the corporation (including an owner of the corporation who is treated as an employee under paragraph (h)(2) of this section) during the testing period. Such amounts include, but are not limited to, amounts attributable to deferred compensation, commissions, bonuses, compensation includible in income under section 83, compensation for services based on a percentage of profits, and the cost of providing fringe benefits that are includible in income. However, for purposes of this section, compensation cost does not include amounts attributable to a plan qualified under section 401(a) or 403(a), or to a simplified employee pension plan defined in section 408(k).

(3) *Attribution of compensation cost to personal service activity*—(i) *Employees involved only in the performance of personal services.* The compensation cost for employees involved only in the performance of activities that are treated as personal services under paragraph (e) of this section, or employees involved only in supporting the work of such employees, shall be considered to be attributable to the corporation's personal service activity.

(ii) *Employees involved only in activities that are not treated as the performance of personal services.* The compensation cost for employees involved only in the performance of activities that are not treated as personal services under paragraph (e) of this section, or for employees involved only in supporting the work of such employees, shall not be considered to be attributable to the corporation's personal service activity.

(iii) *Other employees.* The compensation cost for any employee who is not described in either paragraph (f)(3)(i) or paragraph (f)(3)(ii) of this section ("a mixed activity employee") shall be allocated as follows—

(A) *Compensation cost attributable to personal service activity.* That portion of the compensation cost for a mixed activity employee that is attributable to the corporation's personal service activity equals the compensation cost for such employee multiplied by the percentage of the total time worked for the corporation by such employee during the year that is attributable to activities of the corporation that are treated as the performance of personal services under paragraph (e) of this section. Such percentage shall be determined by the taxpayer in any reasonable and consistent manner. Time logs are not required unless maintained for other purposes;

(B) *Compensation cost not attributable to personal service activity.* That portion of the compensation cost for a mixed activity employee that shall not be considered to be attributable to the corporation's personal service activity is the compensation cost for such employee less the amount determined in paragraph (f)(3)(iii)(A) of this section.

(g) *Services substantially performed by employee-owners*—(1) *General rule.* Personal services are substantially performed during the testing period by employee-owners of the corporation if more than 20 percent of the corporation's compensation cost for such period attributable to its activities that are treated as the performance of personal services (within the meaning of paragraph (e) of this section), is attributable to personal services performed by employee-owners.

(2) *Compensation cost attributable to personal services.* For purposes of paragraph (g)(1) of this section—

(i) The corporation's compensation cost attributable to its activities that are treated as the performance of personal services shall be determined under paragraph (f)(3) of this section; and

(ii) The portion of the amount determined under paragraph (g)(2)(i) of this section that is attributable to personal services performed by employee-owners shall be determined by the taxpayer in any reasonable and consistent manner.

(3) *Examples.* The provisions of paragraph (g) of this section may be illustrated by the following examples.

Example (1). For its taxable year beginning February 1, 1987, Corporation A's testing period is the taxable year ending January 31, 1987. During such testing period, A's only activity was the performance of personal services. The total compensation cost of A (including compensation cost attributable to employee-owners) for the testing period was $1,000,000. The total compensation cost attributable to employee-owners of A for the testing period was $210,000. Pursuant to paragraph (g)(1) of this section, the employee-owners of A substantially performed the personal services of A during the testing period because the compensation cost of A's

employee-owners was more than 20 percent of the total compensation cost for all of A's employees (including employee-owners).

Example (2). Corporation B has the same facts as corporation A in example (1), except that during the taxable year ending January 31, 1987, B also participated in an activity that would not be characterized as the performance of personal services under this section. The total compensation cost of B (including compensation cost attributable to employee-owners) for the testing period was $1,500,000 ($1,000,000 attributable to B's personal service activity and $500,000 attributable to B's other activity). The total compensation cost attributable to employee-owners of B for the testing period was $250,000 ($210,000 attributable to B's personal service activity and $40,000 attributable to B's other activity). Pursuant to paragraph (g)(1) of this section, the employee-owners of B substantially performed the personal services of B during the testing period because more than 20 percent of B's compensation cost during the testing period attributable to its personal service activities was attributable to personal services performed by employee-owners ($210,000).

(h) *Employee-owner defined*—(1) *General rule.* For purposes of this section, a person is an employee-owner of a corporation for a testing period if—

(i) The person is an employee of the corporation on any day of the testing period, and

(ii) The person owns any outstanding stock of the corporation on any day of the testing period.

(2) *Special rule for independent contractors who are owners.* Any person who is an owner of the corporation within the meaning of paragraph (h)(1)(ii) of this section and who performs personal services for or on behalf of the corporation shall be treated as an employee for purposes of this section, even if the legal form of that person's relationship to the corporation is such that he or she would be considered an independent contractor for other purposes.

(i) *Special rules for affiliated group filing consolidated return*—(1) *In general.* For purposes of applying this section to the members of an affiliated group of corporations filing a consolidated return for the taxable year—

(i) The members of the affiliated group shall be treated as a single corporation;

(ii) The employees of the members of the affiliated group shall be treated as employees of such single corporation; and

(iii) All of the stock, of the members of the affiliated group, that is not owned by any other member of the affiliated group shall be treated as the outstanding stock of such corporation.

(2) *Examples.* The provisions of this paragraph (i) may be illustrated by the following examples.

Example (1). The affiliated group AB, consisting of corporation A and its wholly owned subsidiary B, filed a consolidated Federal income tax return for the taxable year ending January 31, 1987, and AB is attempting to determine whether it is affected by this section for its taxable year beginning February 1, 1987. During the testing period (i.e., the taxable year ending January 31, 1987), A did not perform personal services while B's only activity was the performance of personal services. On the last day of the testing period, employees of A did not own any stock in A while some of B's employees own stock in A. In the aggregate, B's employees own 9 percent of A's stock on the last day of the testing period. Pursuant to paragraph (i)(1) of this section, this section is effectively applied on a consolidated basis to members of an affiliated group filing a consolidated Federal income tax return. Since the only employee-owners of AB are the employees of B and since B's employees do not own more than 10 percent of AB on the last day of the testing period, AB is not subject to the provisions of this section. Thus, AB is not required to determine on a consolidated basis whether, during the testing period, (a) its principal activity is the providing of personal services, or (b) the personal services are substantially performed by employee-owners.

Example (2). The facts are the same as in example (1), except that on the last day of the testing period A owns only 80 percent of B. The remaining 20 percent of B is owned by employees of B. The fair market value of A, including its 80 percent interest in B, as of the last day of the testing period, is $1,000,000. In addition, the fair market value of the 20 percent interest in B owned by B's employees is $5,000 as of the last day of the testing period. Pursuant to paragraph (d)(1)(iv) and paragraph (i)(1) of this section, AB must determine whether the employee-owners of A and B (*i.e.*, B's employees) own more than 10 percent of the fair market value of A and B as of the last day of the testing period. Since the $14,000 [($100,000.09) + $5,000] fair market value of the stock held by B's employees is greater than 10 percent of the $105,000 ($100,000 + $5,000) aggregate fair market value of A and B as of the last day of the testing period, AB may be subject to this section if, on a consolidated basis during the testing period, (a) the principal activity of AB is the performance of personal services and (b) the personal services are substantially performed by employee-owners.

(j) *Effective date.* This section applies to taxable years beginning after December 31, 1986.

Par. 6. Section 1.702–3T is added in the appropriate place.

§ 1.702–3T 4-year spread (temporary).

(a) *Applicability.* This section applies to a partner in a partnership if—

(1) The partnership is required by section 806 of the Tax Reform Act of 1986 (the 1986 Act), Pub. L. 99–514, 100 Stat. 2362, to change its taxable year for the first taxable year beginning after December 31, 1986 (partnership's year of change); and

(2) As a result of such change in taxable year, items from more than one taxable year of the partnership would, but for the provisions of this section, be included in the taxable year of the partner with or within which the partnership's year of change ends.

(b) *Partner's treatment of items from the partnership's year of change*—(1) *In general.* Except as provided in paragraph (c) of this section, if a partner's share of "income items" exceeds the partner's share of "expense items," the partner's share of each and every income and expense item shall be taken into account ratably (and retain its character) over the partner's first 4 taxable years beginning with the partner's taxable year with or within which the partnership's year of change ends.

(2) *Definitions*—(i) *Income items.* For purposes of this section, the term "income items" means the sum of—

(A) The partner's distributive share of taxable income (exclusive of separately stated items) from the partnership's year of change,

(B) The partner's distributive share of all separately stated income or gain items from the partnership's year of change, and

(C) Any amount includible in the partner's income under section 707(c) on account of payments during the partnership's year of change.

(ii) *Expense items.* For purposes of this section, the term "expense items" means the sum of—

(A) The partner's distributive share of taxable loss (exclusive of separately stated items) from the partnership's year of change, and

(B) The partner's distributive share of all separately stated items of loss or deduction from the partnership's year of change.

(c) *Electing out of 4-year spread.* A partner may elect out of the rules of paragraph (b) of this section by meeting the requirements of § 5h.5 (temporary regulations relating to elections under the Tax Reform Act of 1986).

(d) *Special rules for a partner that is a partnership or S corporation*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, a partner that is a partnership or S corporation may, if otherwise eligible, use the 4-year spread (with respect to partnership interests owned by the partner) described in this section.

(2) *Certain partners prohibited from using 4-year spread*—(i) *In general.*

Except as provided in paragraph (d)(2)(ii) of this section, a partner that is a partnership or S corporation may not use the 4-year spread (with respect to partnership interests owned by the partner) if such partner is also changing its taxable year pursuant to section 806 of the 1986 Act.

(ii) *Exception.* If a partner's year of change does not include any income or expense items with respect to the partnership's year of change, such partner may, if otherwise eligible, use the 4-year spread (with respect to such partnership interest) described in this section even though the partner is a partnership or S corporation. See examples (13) and (14) in paragraph (h) of this section.

(e) *Basis of partner's interest.* The basis of a partner's interest in a partnership shall be determined as if the partner elected not to spread the partnership items over 4 years, regardless of whether such election was in fact made. Thus, for example, if a partner is eligible for the 4-year spread and does not elect out of the 4-year spread pursuant to paragraph (c) of this section, the partner's basis in the partnership interest will be increased in the first year of the 4-year spread period by an amount equal to the excess of the income items over the expense items. However, the partner's basis will not be increased again, with respect to the unamortized income and expense items, as they are amortized over the 4-year spread period.

(f) *Effect on other provisions of the Code.* Except as provided in paragraph (e) of this section, determinations with respect to a partner, for purposes of other provisions of the Code, must be made with regard to the manner in which partnership items are taken into account under the rules of this section. Thus, for example, a partner who does not elect out of the 4-year spread must take into account, for purposes of determining net earnings from self-employment under section 1402(a) for a taxable year, only the ratable portion of partnership items for that taxable year.

(g) *Treatment of dispositions*—(1) *In general.* If a partnership interest is disposed of before the last taxable year in the 4-year spread period, unamortized income and expense items that are attributable to the interest disposed of and that would be taken into account by the partner for subsequent taxable years in the 4-year spread period shall be taken into account by the partner as determined under paragraph (g)(2) of this section. For purposes of this section, the term "disposed of" means any transfer, including (but not limited to) transfers by sale, exchange, gift, and by reason of death.

(2) *Year unamortized items taken into account*— (i) *In general.* If, at the end of a partner's taxable year, the fraction determined under paragraph (g)(2)(ii) of this section is—

(A) Greater than ⅔, the partner must continue to take the unamortized income and expense items into account ratably over the 4-year spread period;

(B) Greater than ⅓ but less than or equal to ⅔, the partner must, in addition to its ratable amortization, take into account in such year 50 percent of the income and expense items that would otherwise be unamortized at the end of such year (however, this paragraph (g)(2)(i)(B) is only applied once with respect to a partner's interest in a particular partnership); or

(C) Less than or equal to ⅓, the partner must take into account the entire balance of unamortized income and expense items in such year.

(ii) *Determination of fraction.* For purposes of paragraph (g)(2)(i) of this section, the numerator of the fraction is the partner's proportionate interest in the partnership at the end of the partner's taxable year and the denominator is the partner's proportionate interest in the partnership as of the last day of the partnership's year of change.

(h) *Examples.* The provisions of this section may be illustrated by the following examples.

Example (1). Assume that P1, a partnership with a taxable year ending September 30, is required by the 1986 Act to change its taxable year to a calendar year. All of the partners of P1 are individual taxpayers reporting on a calendar year. P1 is required to change to a calendar year for its taxable year beginning October 1, 1987, and to file a return for the short taxable year ending December 31, 1987. Based on the above facts, the partners of P1 are required to include the items from more than one taxable year of P1 in income for their 1987 taxable year. Thus, under paragraph (b) of this section, if a partner's share of income items exceeds the partner's share of expense items, the partner's share of each and every income and expense item shall be taken into account ratably by such partner in each of the partner's first four taxable years' beginning with the partner's 1987 taxable year, unless such partner elects under paragraph (c) of this section to include all such amounts in his 1987 taxable year.

Example (2). Assume the same facts as in example (1), except P1 is a personal service corporation with all of its employee-owners reporting on a calendar year. Although P1 is required to change to a calendar year for its taxable year beginning October 1, 1987, neither P1 nor its employee-owners obtain the benefits of a 4-year spread. Pursuant to section 806(e)(2)(C) of the 1986 Act, the 4-year spread provision is only applicable to short taxable years of partnerships and S corporations required to change their taxable year under the 1986 Act.

Example (3). Assume the same facts as example (1) and that I is one of the individual partners of P1. Further assume that I's distributive share of P1's taxable income for the short taxable year ended December 31, 1987 (*i.e.*, P1's year of change), is $10,000. In addition, I has $8,000 of separately stated expense from P1's year of change. Since I's income items (*i.e.*, $10,000 of taxable income) exceed I's expense items (*i.e.*, $8,000 of separately stated expense) attributable to P1's year of change, I is eligible for the 4-year spread provided by this section. If I does not elect out of the 4-year spread, I will recognize $2,500 of taxable income and $2,000 of separately stated expense in his 1987 calendar year return. Assuming I does not dispose of his partnership interest in P1 by December 31, 1989, the remaining $7,500 of taxable income and $6,000 of separately stated expense will be amortized (and retain its character) over I's next three taxable years (*i.e.*, 1988, 1989 and 1990).

Example (4). Assume the same facts as example (3), except that I disposes of his entire interest in P1 during 1988. Pursuant to paragraph (g) of this section, I would recognize $7,500 of taxable income and $6,000 of separately stated expense in his 1988 calendar year return.

Example (5). Assume the same facts as in example (3), except that I disposes of 50 percent of his interest in P1 during 1989. Pursuant to paragraph (g) of this section, I would recognize $3,750 of taxable income in his 1989 calendar year return ($2,500 ratable portion for 1989 plus 50 percent of the $2,500 of income items that would otherwise be unamortized at the end of 1989). I would also recognize $3,000 of separately stated expense items in 1989 ($2,000 ratable portion for 1989 plus 50 percent of the $2,000 of separately stated expense items that would otherwise be unamortized at the end of 1989).

Example (6). Assume the same facts as in example (1), except that X, a personal service corporation as defined in section 441(i), is a partner of P1. X is a calendar year taxpayer, and thus is not required to change its taxable year under the 1986 Act. The same result occurs as in example 1 (*i.e.*, unless X elects to the contrary, X is required to include one fourth of its share of income and expense items from P1's year of change in the first four taxable years of X beginning with the 1987 taxable year).

Example (7). Assume the same facts as in example (6), except that X is a fiscal year personal service corporation with a taxable year ending September 30. X is required under the 1986 Act to change to a calendar year for its taxable year beginning October 1, 1987, and to file a return for its short year ending December 31, 1987. Based on the above facts, X is not required to include the items from more than one taxable year of P1 in any one taxable year of X. Thus, the provisions of this section do not apply to X, and X is required to include the full amount of income and expense items from P1's year of change in X's taxable income for X's short year ending December 31. Under section 443

of the Code, X is required to annualize the taxable income for its short year ending December 31, 1987.

Example (8). Assume that P2 is a partnership with a taxable year ending September 30. Under the 1986 Act, P2 would have been required to change its taxable year to a calendar year, effective for the taxable year beginning October 1, 1987. However, P2 properly changed its taxable year to a calendar year for the year beginning October 1, 1986, and filed a return for the short period ending December 31, 1986. The provisions of the 1986 Act do not apply to P2 because the short year ending December 31, 1986, was not required by the amendments made by section 806 of the 1986 Act. Thus, the partners of P2 are required to take all items of income and expense for the short taxable year ending December 31, 1986, into account for the taxable year with or within which such short year ends.

Example (9). Assume that P3 is a partnership with a taxable year ending March 31 and I, a calendar year individual, is a partner in P3. Under the 1986 Act, P3 would have been required to change its taxable year to a calendar year. However, under Rev. Proc. 87–32, P3 establishes and changes to a natural business year beginning with the taxable year ending June 30, 1987. Thus, P3 is required to change its taxable year under section 806 of the 1986 Act, and I is required to include items from more than one taxable year of P3 in one of her taxable years. Furthermore, I's share of P3's income items exceeds her share of P3's expense items for the short period April 1, 1987 through June 30, 1987. Accordingly, under this section, unless I elects to the contrary, I is required to take one fourth of her share of items of income and expense from P3's short taxable year ending June 30, 1987 into account for her taxable year ending December 31, 1987.

Example (10). Assume that P4 is a partnership with a taxable year ending March 31. Y, a C corporation, owns a 51 percent interest in the profits and capital of P4. Y reports its income on the basis of a taxable year ending March 31. P4 establishes and changes to a natural business year beginning with the taxable year ending June 30, 1987, under Rev. Proc. 87–32. Under the above facts, P4 is not required to change its taxable year because its March 31 taxable year was the taxable year of Y, the partner owning a majority of the partnership's profits and capital. Therefore, the remaining partners of P4 owning 49 percent of the profits and capital are not permitted the 4-year spread of the items of income and expense with respect to the short year, even though they may be required to include their distributive share of P4's items from more than one taxable year in one of their years.

Example (11). Assume that X and Y are C corporations with taxable years ending June 30. Each owns a 50-percent interest in the profits and capital of partnership P5. P5 has a taxable year ending March 31. Assume that P5 cannot establish a business purpose in order to retain a taxable year ending March 31, and thus P5 must change to a June 30 taxable year, the taxable year of its partners. Furthermore, assume that X's share of P5's income items exceeds its share of P5's expense items for P5's short taxable year ending June 30, 1987. Unless X elects out of the 4-year spread, the taxable year ending June 30, 1987, is the first of the four taxable years in which X must take into account its share of the items of income and expense resulting from P5's short taxable year ending June 30, 1987.

Example (12). Assume that I, an individual who reports income on the basis of the calendar year, is a partner in two partnerships, P6 and P7. Both partnerships have a taxable year ending September 30. Neither partnership can establish a business purpose for retaining its taxable year. Consequently, each partnership will change its taxable year to December 31, for the taxable year beginning October 1, 1987. The election to avoid a 4-year spread is made at the partner level; in addition, a partner may make such elections on a partnership-by-partnership basis. Thus, assuming I is eligible to obtain the 4-year spread with respect to income and expense items from partnerships P6 and P7, I may use the 4-year spread with respect to items from P6, while not using the 4-year spread with respect to items from P7.

Example (13). I, an individual taxpayer using a calendar year, owns an interest in P8, a partnership using a taxable year ending June 30. Furthermore, P8 owns an interest in P9, a partnership with a taxable year ending March 31. Under section 806 of the 1986 Act, P8 will be required to change to a taxable year ending December 31, while P9 will be required to change to a taxable year ending June 30. As a result, P8's year of change will be July 1 through December 31, 1987, while P9's year of change will be from April 1 through June 30, 1987. Since P9's year of change does not end with or within P8's year of change, paragraph (d)(2) of this section does not prevent P8 from obtaining a 4-year spread with respect to its interest in P9.

Example (14). The facts are the same as in example (13), except that P9 has a taxable year ending September 30, and under the 1986 Act P9 is required to change to a taxable year ending December 31. Therefore, P9's year of change will be from October 1, 1987 through December 31, 1987. Although P8's year of change from July 1, 1987 through December 31, 1987 includes two taxable years of P9 (*i.e.*, October 1, 1986 through September 30, 1987 and October 1, 1987 through December 31, 1987), paragraph (d)(2) of this section prohibits P8 from using the 4-year spread with respect to its interest in P9, because P9's year of change ends with or within P8's year of change.

PART 18—[AMENDED]

Par. 7. The authority for Part 18 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

§§ 18.1366–1 through § 18.1366–4 [Reserved].

Par. 8. Sections 18.1366–1, 2, 3 and 4 are added and reserved and § 18.1366–5 is added in the appropriate place.

§ 18.1366–5 4-year spread.

(a) *Applicability.* This section applies to a shareholder in an S corporation if—

(1) The S corporation is required by section 806 of the Tax Reform Act of 1986 (the 1986 Act), Pub. L. 99–514, 100 Stat. 2362, to change its taxable year for the first taxable year beginning after December 31, 1986 (S corporation's year of change);

(2) As a result of such change in taxable year, items from more than one taxable year of the S corporation would, but for the provisions of this section, be included in the taxable year of the shareholder with or within which the S corporation's year of change ends; and

(3) The corporation was an S corporation for a taxable year beginning in 1986.

(b) *Shareholder's treatment of items from the S corporation's year of change*—(1) *In general.* Except as provided in paragraph (c) of this section, if a shareholder's share of "income items" exceeds the shareholder's share of "expense items," the shareholder's share of each and every income and expense item shall be taken into account ratably (and retain its character) over the shareholder's first 4 taxable years beginning with the shareholder's taxable year with or within which the S corporation's year of change ends.

(2) *Definitions*—(i) *Income items.* For purposes of this section, the term "income items" means the sum of—

(A) The shareholder's pro rata share of the nonseparately computed income from the S corporation's year of change, and

(B) The shareholder's pro rata share of the items of income (including tax-exempt income), from the S corporation's year of change, the separate treatment of which items of income could affect the liability for tax of any shareholder.

(i) *Expense items.* For purposes of this section, the term "expense items" means the sum of—

(A) The shareholder's pro rata share of the nonseparately computed loss from the S corporation's year of change, and

(B) The shareholder's pro rata share of the items of loss and deduction from the S corporation's year of change, the separate treatment of which items of loss and deduction could affect the liability for tax of any shareholder.

(c) *Electing out of 4-year spread.* A shareholder may elect out of the rules of paragraph (b) of this section by meeting the requirements of § 5h.5 (temporary regulations relating to elections under the Tax Reform Act of 1986).

(d) *Basis of shareholder's interest.* The basis of a shareholder's interest in an S corporation shall be determined as if the S corporation shareholder elected not to spread the partnership items over

4 years, regardless of whether such election was in fact made. Thus, for example, if an S corporation shareholder is eligible for the 4-year spread and does not elect out of the 4-year spread pursuant to paragraph (c) of this section, the shareholder's basis in the S corporation interest will be increased in the first year of the 4-year spread period by an amount equal to the excess of the income items over the expense items. However, the shareholder's basis will not be increased again, with respect to the unamortized income and expense items, as they are amortized over the 4-year spread period.

(e) *Effect on other provisions of the Code.* Except as provided in paragraph (d) of this section, determinations with respect to a shareholder, for purposes of other provisions of the Code, must be made with regard to the manner in which S corporation items are taken into account under the rules of this section. Thus, for example, a shareholder who does not elect out of the 4-year spread must take into account, for purposes of determining his or her charitable contribution deduction limitations for a taxable year, only the ratable portion of S corporation items for that taxable year.

(f) *Treatment of dispositions*—(1) *In general.* If S corporation stock is disposed of before the last taxable year in the 4-year spread period, unamortized income and expense items that are attributable to the interest disposed of and that would be taken into account by the shareholder for subsequent taxable years in the 4-year spread period shall be taken into account by the shareholder as determined under paragraph (f)(2) of this section. For purposes of this section, the term "disposed of" means any transfer, including (but not limited to) transfers by sale, exchange, gift, and by reason of death.

(2) *Year unamortized items taken into account*—(i) *In general.* If, at the end of a shareholder's taxable year, the fraction determined under paragraph (f)(3)(ii) of this section is—

(A) Greater than ⅔, the shareholder must continue to take the unamortized income and expense items into account ratably over the 4-year spread period;

(B) Greater than ⅓ but less than or equal to ⅔, the shareholder must, in addition to its ratable amortization, take into account in such year 50 percent of the income and expense items that would otherwise be unamortized at the end of such year (however, this paragraph (f)(2)(i)(B) is only applied once with respect to an S shareholder's interest in a particular S corporation); or

(C) Less than or equal to ⅓, the shareholder must take into account the entire balance of unamortized income and expense items in such year.

(ii) *Determination of fraction.* For purposes of paragraph (f)(2)(i) of this section, the numerator of the fraction is the shareholder's proportionate interest in the S corporation at the end of the shareholder's taxable year and the denominator is the shareholder's proportionate interest in the S corporation as of the last day of the S corporation's year of change.

(g) *Examples.* The provisions of this section may be illustrated by the following examples.

Example (1). Assume that S1, an S corporation with a taxable year ending September 30, is required by the 1986 Act to change its taxable year to a calendar year. All of the shareholders of S1 are individual taxpayers reporting on a calendar year. S1 is required to change to a calendar year for its taxable year beginning October 1, 1987, and to file a return for the short taxable year ending December 31, 1987. Based on the above facts, the shareholders of S1 are required to include the items from more than one taxable year of S1 in income for their 1987 taxable year. Thus, under paragraph (b) of this section, if a shareholder's share of income items exceeds the shareholder's share of expense items, the shareholder's share of each and every income and expense item shall be taken into account ratably by such shareholdler in each of the shareholder's first four taxable years beginning with the shareholder's 1987 taxable year, unless such shareholder elects under paragraph (c) of this section to include all such amounts in his 1987 taxable year.

Example (2). Assume the same facts as in example (1), except S1 is a personal service corporation with all of its employee-owners reporting on a calendar year. Although S1 is required to change to a calendar year for its taxable year beginning October 1, 1987, neither S1 nor its employee-owners obtain the benefits of a 4-year spread. Pursuant to section 806(e)(2)(C) of the 1986 Act, the 4-year spread provision is only applicable to short taxable years of partnerships and S corporations required to change their taxable year under the 1986 Act.

Example (3). Assume the same facts as example (1) and that I is one of the individual shareholders of S1. Further assume that I's share of the nonseparately computed income from S1's taxable income for the short taxable year ended December 31, 1987 (*i.e.*, S1's year of change) is $10,000. In addition, I has $8,000 of nonseparately computed loss from S1's year of change. Since I's income items (*i.e.*, $10,000 of taxable income) exceed I's expense items (*i.e.*, $8,000 of loss) attributable to S1's year of change, I is eligible for the 4-year spread provided by this section. If I does not elect out of the 4-year spread, I will recognize $2,500 of taxable income and $2,000 of loss in his 1987 calendar year return. Assuming I does not dispose of his S corporation interest in S1 by December 31, 1989, the remaining $7,500 of taxable income and $6,000 of loss will be amortized (and retain its character) over I's next three taxable years (*i.e.*, 1988, 1989 and 1990).

Example (4). Assume the same facts as in example (3), except that I disposes of his entire interest in S1 during 1988. Pursuant to paragraph (f) of this section, I would recognize $7,500 of taxable income and $6,000 of loss in his 1988 calendar year return.

Example (5). Assume the same facts as in example (3), except that I disposes of 50 percent of his stock in S1 during 1989. Pursuant to paragraph (f) of this section, I would recognize $3,750 of taxable income in his 1989 calendar year return ($2,500 ratable portion for 1989 plus 50 percent of the $2,500 of income items that would otherwise be unamortized at the end of 1989). I would also recognize $3,000 of separately stated expense items in 1989 ($2,000 ratable portion for 1989 plus 50 percent of the $2,000 of separately stated expense items that would otherwise be unamortized at the end of 1989).

Example (6). Assume that S2 is an S corporation with a taxable year ending September 30. Under the 1986 Act, S2 would have been required to change its taxable year to a calendar year, effective for the taxable year beginning October 1, 1987. However, S2 properly changed its taxable year to a calendar year for the year beginning October 1, 1986, and filed a return for the short period ending December 31, 1986. The provisions of the Act do not apply to S2 because the short year ending December 31, 1986 was not required by the amendments made by section 806 of the 1986 Act. Thus, the shareholders of S2 are required to take all items of income and expense for the short taxable year ending December 31, 1986, into account for the taxable year with or within which such short year ends.

Example (7). Assume that S3 is an S corporation with a taxable year ending March 31 and I, a calendar year individual, is a shareholder in S3. Under the 1986 Act, S3 would have been required to change its taxable year to a calendar year. However, under Rev. Proc. 87–32, S3 establishes and changes to a natural business year beginning with the taxable year ending June 30, 1987. Thus, S3 is required to change its taxable year under section 806 of the 1986 Act, and I is required to include items from more than one taxable year of S3 in one of her taxable years. Furthermore, I's share of S3's income items exceeds her share of S3's expense items for the short period April 1, 1987 through June 30, 1987. Accordingly, under this section, unless I elects to the contrary, I is required to take one-fourth of her share of items of income and expense from S3's short taxable year ending June 30, 1987, into account for her taxable year ending December 31, 1987.

Example (8). Assume that S4 is an S corporation with a taxable year ending March 31. I, an individual, owns 51 percent of the stock of S4. I reports her income on the basis of a taxable year ending March 31. S4 establishes and changes to a natural business year beginning with the taxable year ending June 30, 1987, under Rev. Proc. 87–32. Under the above facts, S4 is not required to change its taxable year because its March 31 taxable

year is allowed pursuant to Rev. Proc. 87–32. Therefore, the remaining shareholders of S4 owning 49 percent of the stock are not permitted the 4-year spread of the items of income and expense with respect to the short year, even if they are required to include their share of S4's items of income and expense from more than one taxable year in one of their years.

Example (9). Assume that C and D are individuals with a taxable year ending June 30. Each owns 50 percent of the stock of corporation S5, an S corporation. S5 has a taxable year ending March 31. S5 cannot establish a business purpose in order to retain a taxable year ending March 31, and thus S5 must change to either a calendar year or a June 30 taxable year (the taxable year of more than 50 percent of its shareholders). Assume that S5 changes to a June 30 taxable year. Furthermore, assume that C's share of S5's income items exceeds C's share of S5's expense items for S5's short taxable year ending June 30, 1987. Unless C elects out of the four-year spread, C's taxable year ending June 30, 1987, is the first of the four taxable years in which C must take into account its share of the items of income and expense resulting from S5's short taxable year ending June 30, 1987.

Example (10). Assume that I, an individual who reports income on the basis of the calendar year, is a shareholder in two S corporations, S6 and S7. Both S corporations have a taxable year ending September 30. Neither S corporation can establish a business purpose for retaining its taxable year. Consequently, each S corporation will change its taxable year to December 31, for the taxable year beginning October 1, 1987. The election to avoid a 4-year spread is made at the shareholder level; in addition, a shareholder may make such elections on an S corporation-by-S corporation basis. Thus, assuming I is eligible to obtain the 4-year spread with respect to income and expense items from S corporations S6 and S7, I may use the 4-year spread with respect to items from S6, while not using the 4-year spread with respect to items from S7.

Example (11). Corporation S8 elected subchapter S status for its taxable year beginning July 1, 1986 and had a short taxable year for the period July 1 through December 31, 1986. S8's shareholders use a calendar year. The shareholders of S8 are not entitled to a 4-year spread with respect to S8's short taxable year ended December 31, 1986, because (a) S8 was not required to change its taxable year for the first taxable year beginning after December 31, 1986, and (b) S8's shareholders did not have items from more than one taxable year of S8 included in their 1986 taxable year.

Example (12). The facts are the same as in example (12), except S8 elected subchapter S status for its taxable year beginning July 1, 1987 and will have a short taxable year for the period July 1 to December 31, 1987. The shareholders of S8 are not entitled to a 4-year spread with respect to S8's short taxable year ended December 31, 1987, because (a) S8's shareholders did not have items from more than one taxable year of S8 included in their 1987 return, and (b) S8 was not an S corporation for a taxable year beginning in 1986.

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason it is impracticable to issue the Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

Approval: December 16, 1987.

O. Donaldson Chapoton,

Assistant Secretary of the Treasury.

[FR Doc. 87–29381 Filed 12–18–87; 3:21 pm]

BILLING CODE 4830–01–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

Election Procedures

AGENCY: National Labor Relations Board.

ACTION: Clarification of the Supplementary Information statement to the final rule.

SUMMARY: This revision eliminates the suggested informal procedure whereby the Board's Regional Offices would orally remind employers of their notice-posting obligations and substitutes in place thereof a second written notice to employers. It also clarifies the procedure by specifically indicating that failure of a Board agent to so notify will constitute neither grounds for an election objection nor a defense thereto.

EFFECTIVE DATE: December 23, 1987.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue NW., Room 701, Washington, DC 20570, Telephone: (202) 254–9430.

SUPPLEMENTARY INFORMATION: On July 6, 1987, a final rule was published in the **Federal Register** (52 FR 25213–25215) wherein the Board amended its rules to include a provision requiring employers to post a notice of election 3 full working days before an election is conducted.

The Supplementary Information accompanying the final rule stated that the Regional Offices would provide both a written notification to the employer of its notice-posting obligations and an oral reminder. It was anticipated that the written notice would be accomplished by amending the cover letter accompanying the service of an election petition to refer specifically to the employer's notice-posting obligations. Thereafter, the Board agent was to orally remind the employer of the notice-posting rule shortly before the notices were mailed and to indicate such reminder by initialing the Election Order Sheet (Form 700).

Upon further consideration, the Board has decided that a second written notification to the employer, rather than an oral reminder, is a preferable way to apprise employers of their notice-posting obligations. Accordingly, instead of giving an oral reminder, Board Regional Offices will undertake to send out a second written reminder of the notice-posting requirement by attaching a copy of the rule to the Decision and Direction of Election or the approved election agreement at the time these documents are mailed to the employer. For those Regions which send a cover letter with the Decision or election agreement, the letter may be amended to include a reference to the attachment. In those instances where it is unnecessary to mail an election agreement, as the parties have already been given a copy of the agreement at the Regional Office, the Region may mail (or otherwise provide) a copy of the rule to the employer as a separate document.

This second reminder, sent at the time of the Decision and Direction of Election or election agreement, together with the first written notification given in the cover letter accompanying the service of the election petition, will help ensure that employers are reminded of their notice-posting obligations. The Board wishes to clarify, however, that both of these reminders are merely an effort by the Board to keep employers apprised of their obligations under the notice-posting rule and in no event will the failure of the Board or its agents to provide such notice be the basis for an election objection or constitute a defense to an election objection based on an employer's failure to post election notices or otherwise perform its obligations as set forth in the Board's rule. The rule itself is not amended or changed in any way by this revision to the Supplementary Information.

Dated, Washington, DC, December 18, 1987.

By direction of the Board.

National Labor Relations Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 87–29383 Filed 12–22–87; 8:45 am]

BILLING CODE 7545–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No. 79; FRL-3289-1]

Approval and Promulgation of Implementation Plans; Revision to the State of New Jersey Implementation Plan for Lead

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This notice announces that the Environmental Protection Agency is approving a revision to the New Jersey State Implementation Plan (SIP) for lead. This revision consists of material prepared by the New Jersey Department of Environmental Protection (NJDEP) pursuant to a SIP commitment to conduct studies and implement appropriate actions to maintain the ambient air quality standard for lead in the vicinity of two facilities: Delco Remy in New Brunswick and Heubach Inc. in Newark. Among the actions approved are specific revised emission limitations for Delco Remy and Heubach.

DATES: This action will be effective January 22, 1988.

ADDRESSES. Copies of the SIP revision are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, Room 1005, 26 Federal Plaza, New York, New York 10278

Public Information Reference Unit, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

New Jersey Department of Environmental Protection, Division of Environmental Quality, 401 East State Street, Trenton, New Jersey 08625

FOR FURTHER INFORMATION CONTACT: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Room 1005, 26 Federal Plaza, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

Background

On November 25, 1986 (51 FR 42565) the Environmental Protection Agency (EPA) approved (with the exception of one small geographic area) the New Jersey State Implementation Plan (SIP) for the attainment and maintenance of the national ambient air quality standard for lead. As a part of its control strategy, the State committed in its SIP to conduct studies of lead emissions in the vicinity of facilities owned by Delco Remy (New Brunswick) and Heubach (Newark) and to implement appropriate actions to maintain the standard in both areas. These studies, known as "reasonably available control technology (RACT)-plus" studies, were designed to determine what control measures in addition to RACT, if any, were needed to attain and maintain the ambient standard for lead.

The State Submittal

To meet its SIP commitment, on December 1, 1986 the State of New Jersey sent EPA a draft SIP revision for Delco Remy and Heubach and requested that EPA conduct its approval process concurrent with the State's.

Following this, New Jersey published in the March 2, 1987 issue of the *New Jersey Register* a public announcement requesting comments on this SIP submittal. The State received no comments and, on May 8, 1987, informed EPA that its December 1, 1986 submittal should be considered final. As a result, on May 14, 1987 (52 FR 18244) EPA published a **Federal Register** notice proposing approval of New Jersey's submittal. No comments were received on this notice. Today's action finalizes EPA's May 14 proposal. As such, it only discusses the adequacy and approvability of the New Jersey lead SIP with respect to the Delco Remy and Heubach facilities.

The specific revision submitted by the New Jersey Department of Environmental Protection (NJDEP) and the results of EPA's review are discussed as follows:

NJDEP submitted to EPA its "RACT-plus" study report on Heubach in February 1986 and on Delco Remy in June 1986. The reports conclude that stack test emission rates were less than the allowable emission rate under existing emission limitations, predicted concentrations from dispersion modeling of actual stack and fugitive emissions were below the lead standard, and monitored ambient lead concentrations near the facilities are below the ambient lead standard. However, for maintenance of the ambient standard for lead, NJDEP has revised the facilities' operating permits to reflect only the lower, current actual lead emission rates at these facilities. For the Delco Remy facility, the permits were revised to specify an overall allowable emission reduction of sixty percent and, for the Heubach facility, an overall reduction of eighty percent. EPA finds that these lower allowable emissions limits for these two facilities will insure continued maintenance of the lead standard at these locations. These permits are already in effect and both Delco Remy and Heubach are in compliance with the revised emission limits. NJDEP will continue to monitor the air in the vicinity of the two facilities. This will be done at least until the end of September 1988, or until such time that NJDEP and EPA mutually agree that ambient monitoring is no longer necessary.

Conclusion

EPA is approving the revision pertaining to the Delco Remy and Heubach facilities as a part of the New Jersey SIP. Today's action expressly incorporates the lead emission limitations in the State permits for Delco Remy and Heubach into the SIP for the State of New Jersey. Such limitations presented in Table A of today's notice may only be revised by appropriate procedures under the Clean Air Act. This revision has been found to fulfill the commitment made by New Jersey in its lead SIP to study the facilities and to implement additional control measures, if necessary.

TABLE A.—REVISED ALLOWABLE EMISSION LIMITS CONTAINED IN PERMITS

NJ Stack No.	Allowable lead emission rate (lbs/hr)
Delco Remy:	
005	0.050
006	.150
009	.160
014	.150
020	.850
026	.120
031	.099
042	.290
043	.350
050	.110
052	.240
053	.110
054	.120
055	.120
056	.120
057	.120
058	.120
060	.200
065/062	.305
Heubach:	
004	.520
012	.033
013	.003
014	.003
015	.048
016	.050
017	.064
018	.048
023	.008
025	.030
026	.008
035	.002
036	.008

This notice is issued as required by section 110 of the Clean Air Act, as amended. The Administrator's decision regarding the approval of this plan revision is based on its meeting the requirements of section 110 of the Clean Air Act and 40 CFR Part 51.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of publication. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Lead, Incorporation by reference.

Note.—Incorporation by reference of the State Implementation Plan for the State of New Jersey was approved by the Director of the Federal Register on July 1, 1982.

Date: September 29, 1987.

Lee M. Thomas,

Administrator, Environmental Protection Agency.

Title 40, Chapter I, Subchapter C, Part 52, Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart FF—New Jersey

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

Authority: 42 U.S.C. 7401–7642.

2. Section 52.1570 is amended by adding new paragraph (c)(41) to read as follows:

§ 52.1570 Identification of plan.

* * * * *

(c) * * *

(41) A revision to the New Jersey State Implementation Plan (SIP) for lead was submitted on December 1, 1986, by the New Jersey Department of Environmental Protection.

(i) Incorporated by reference:

(A) The following operating permit amendments for the Delco Remy facility in New Brunswick:

Permit amendment numbers	Permit amendment dates
286–1166 through 286–1184.	All permits effective 9/24/86.

(B) The following operating permit amendments for the Heubach Inc. facility in Newark:

Permit amendment numbers	Permit amendment dates
286–0523 through 286–0531.	All permits effective 4/30/86.
286–0286, 286–0287, 286–0289, 286–0290.	All permits effective 2/26/86.

(ii) Additional material:

(A) Technical documentation of ambient modeling and monitoring for lead in the vicinity of Delco Remy, New Brunswick.

(B) Technical documentation of ambient modeling and monitoring for lead in the vicinity of Heubach Inc., Newark.

[FR Doc. 87–25900 Filed 12–22–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[OPP–00251; FRL–3305–3]

Pesticide Tolerances for Benomyl; Technical Amendment and Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment and correction.

SUMMARY: This technical amendment clarifies duplicative amendatory language in an amendment to 40 CFR 180.294 by setting out the section in its entirety. No new regulatory requirements are added. Also, a correction of a typographical error is made in the entry for rutabagas in § 180.294(a).

EFFECTIVE DATE: December 23, 1987.

FOR FURTHER INFORMATION CONTACT: Hoyt Jamerson, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)–557–2310.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 2, 1987 (52 FR 33238), EPA amended 40 CFR 180.294 by designating the existing text as paragraph (a) and adding a new paragraph (b). In the **Federal Register** of October 7, 1987 (52 FR 37454), EPA amended 40 CFR 180.294 to add a commodity, watercress, to paragraph (b). The second amendment, which appeared as item 3 on page 37454, inadvertently repeated components of the amendment of September 2, 1987; 52 FR 33238, i.e., designating the existing text as paragraph (a) and adding new paragraph (b). This technical amendment clarifies § 180.294 by republishing it. No new regulatory requirements are being set forth, and advance notice and public comment are not necessary.

In addition, the entry for rutabagas in § 180.294(a) is corrected to read 0.2. The preamble to the rule published in the **Federal Register** of November 12, 1981 (46 FR 55693), which added the entry, specifies that the tolerance is 0.2, but a typographical error caused it to be listed as 0. in the table to § 180.294 (46 FR 55695). This document corrects that typographical error.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 16, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.294 is revised in its entirety, to read as follows:

§ 180.294 Benomyl; tolerances for residues.

(a) Tolerances are established for the combined residues of the fungicide benomyl (methyl 1-(butylcarbamoyl)-2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the following raw agricultural commodities:

Commodities	Parts per million
Almond hulls	1.0
Apples (pre- and post-H)	7.0
Apricots (pre- and post-H)	15.0
Avocados	3.0
Bananas (pre- and post-H) (NMT 0.2 ppm (N) shall be present in the pulp after peel is removed and discarded)	1.0
Barley, grain	0.2
Barley, straw	0.2
Beans	2.0
Bean vine forage	50.0
Beets, sugar, roots	0.2
Beets, sugar, tops	15.0
Blackberries	7.0
Blueberries	7.0
Boysenberries	7.0
Broccoli	0.2
Brussels sprouts	15.0

Commodities	Parts per million
Cabbage	0.2
Carrots	0.2
Cattle, fat	0.1
Cattle, meat	0.1
Cattle, mbyp	0.1
Cauliflower	0.2
Celery	3.0
Cherries (pre- and post-H)	15.0
Chinese cabbage	10.0
Citrus fruit (pre-and post-H)	10.0
Collards	0.2
Corn, fresh (inc. sweet K+CWHR)	0.2
Corn, sweet, fodder and forage	0.2
Cucumbers	1.0
Currants	7.0
Dandelions	10.0
Dewberries	7.0
Eggplants	0.2
Eggs	0.1
Garlic	0.2
Goats, fat	0.1
Goats, meat	0.1
Goats, mybp	0.1
Grapes	10.0
Hogs, fat	0.1
Hogs, meat	0.1
Hogs, mbyp	0.1
Horses, fat	0.1
Horses, meat	0.1
Horses, mbyp	0.1
Kale	0.2
Kohlrabi	0.2
Koganberries	7.0
Mangoes	3.0
Melon	1.0
Milk	0.1
Mushrooms (pre-and post-H)	10.0
Mustard greens	0.2
Nectarines (pre- and post-H)	15.0
Nuts	0.2 (N)
Oats, grain	0.2
Oats, straw	0.2
Papayas	3.0
Peaches (pre- and post-H)	15.0
Peanuts	0.2
Peanut forage	15.0
Peanut hay	15.0
Peanut hulls	2.0
Pears (pre-and post-H)	7.0
Peppers	0.2
Pineapples (post-H)	35.0
Plums (including fresh prunes) (pre- and post-H)	15.0
Poultry, fat	0.1
Poultry, liver	0.2
Poultry, meat	0.1
Poultry, mbyp	0.1
Pumpkins	1.0
Raspberries	7.0
Rice	5.0
Rice straw	15.0
Rutabagas	0.2
Rye, grain	0.2
Rye, straw	0.2
Sheep, fat	0.1
Sheep, meat	0.1
Sheep, mbyp	0.1
Soybeans	0.2
Spinach	0.2
Squash, summer	1.0
Squash, winter	1.0
Strawberries	5.0
Sweet potatoes	0.2
Tomatoes	5.0
Turnips, roots	0.2
Wheat, grain	0.2
Wheat, straw	15.0

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of the fungicide benomyl (methyl 1-[butylcarbamoyl]-2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodities.

Commodities	Parts per million
Turnip greens	6.0
Watercress	10.0

[FR Doc. 87-29367 Filed 12-22-87; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 180

[PP 7E3467/R908; FRL-3305-7]

Pesticide Tolerance for Benomyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the fungicide benomyl in or on the raw agricultural commodity pistachios. The Interregional Research Project No. 4 (IR-4) petitioned for this tolerance.

EFFECTIVE DATE: December 23, 1987.

ADDRESS: Written objections, identified by the document control number, [PP 7E3467/R908], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1806.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of July 29, 1987 (52 FR 28313), in which it was announced that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NY 08903, had submitted pesticide petition 7E3467 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Station of California.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the combined residues of the fungicide benomyl (methyl 1-[butylcarbamonyl]-2-benzimidazolecarbamate) and its metabolites containing the benzimidazole moiety (calculated as benomyl) in or on the raw agricultural commodity pistachios at 0.2 part per million (ppm). The petitioner proposed that this use of benomyl on pistachios be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 16, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.294 is amended by adding and alphabetically inserting the listing for the raw agricultural commodity pistachios in paragraph (b), to read as follows:

§ 180.294 Benomyl; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
* * * * *	
Pistachios	0.2
* * * * *	

[FR Doc. 87-29366 Filed 12-22-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 4E3100/R925; FRL-3305-5]

Pesticide Tolerance for Fluazifop-Butyl

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the herbicide fluazifop-butyl in or on the raw agricultural commodity sweet potatoes. The Interregional Research Project No. 4 (IR-4) petitioned for this tolerance.

EFFECTIVE DATE: December 23, 1987.

ADDRESS: Written objections, identified by the document control number, [PP 4E3100/R925], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt Jamerson, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-2310.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 6, 1987 (52 FR 42684), in which it was announced that the Interregional Reearch Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 4E3100 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR-4 Project, and the Agricultural Experiment Stations of Florida, North Carolina, and Louisiana.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for the residues of the herbicide [R]-2-[4-[[5-(trifluoromethyl-2-pyridinyl]oxy]phenoxy]propanoic acid (fluazifop), both free and conjugated, and of butyl [R]-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]p ropanoate(fluazifop-P-butyl), all expressed as fluazifop, in or on the raw agricultural commodity sweet potatoes at 0.5 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 16, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.411(c) is amended by adding and alphabetically inserting the listing for the raw agricultural commodity sweet potatoes, to read as follows:

§ 180.411 Fluazifop-butyl; tolerances for residues.

* * * * *

(c) * * *

Commodity	Parts per million
* * * * *	
Sweet potatoes	0.5

[FR Doc. 87-29368 Filed 12-22-87; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 180

[PP 6E3425/R924; FRL-3305-6]

Pesticide Tolerance for N-(Mercaptomethyl) Phthalimide S- (O,O-Dimethyl Phosphorodithioate)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes a tolerance for residues of the insecticide *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorodithioate) (referred to in this document as phosmet) and its oxygen analog in or on the raw agricultural commodity pistachios. The Interregional Research Project No. 4 (IR-4) petitioned for this tolerance.

EFFECTIVE DATE: December 23, 1987.

ADDRESS: Written objections, identified by the document control number, [PP 6E3425/R924], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Donald R. Stubbs, Emergency Response and Minor Use Section (TS-767C), Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1806.

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of November 6, 1987 (52 FR 42685), in which it was announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 6E3425 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Station of California.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of a tolerance for cholinesterase-inhibiting residues of the insecticide phosmet and its oxygen analog *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorothioate in or on the raw agricultural commodity pistachios at 0.1 par per million (ppm).

The petitioner proposed that the use of phosmet on pistachios be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's Registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 16, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows:

Authority: 21 U.S.C. 346a.

2. Section 180.261 is amended by designating the current text and list of tolerances as paragraph (a), by revising the introductory text of designated paragraph (a), and by adding new paragraph (b) to read as follows:

§ 180.261 N-(Mercaptomethyl) phthalimide S-(O,O-dimethyl phosphorodithioate) and its oxygen analog; tolerances for residues.

(a) Tolerances are established for the sum of the residues for the insecticide *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorodithioate) and its oxygen analog *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorothioate) in or on the following raw agricultural commodities:

* * * * *

(b) Tolerances with regional registration, as defined in § 180.1(n), are established for the sum of the residue for the insecticide *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorodithioate) and its oxygen analog *N*-(mercaptomethyl) phthalimide *S*-(*O,O*-dimethyl phosphorothioate) in or on the following raw agricultural commodity:

Commodity	Parts per million
Pistachios	01

[FR Doc. 87–29369 Filed 12–22–87; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Part 180

[PP 6E3360/R894; FRL–3305–8]

Pesticide Tolerances for Permethrin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes tolerances for the combined residues of the insecticide permethrin and the sum total of its metabolites DCVA and 3–PBA in or on the raw agricultural commodities collards, turnip greens, and turnip roots. The regulation to establish maximum permissible levels for residues of the insecticide in or on the commodities was requested in a petition by the Interregional Research Project No. 4 (IR–4).

EFFECTIVE DATE: Effective on December 23, 1987.

ADDRESS: Written objections, identified by the document control number, [PP 6E3360/R894], may be submitted to: Hearing Clerk (A–110), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail:

Donald R. Stubbs, Emergency Response and Minor Use Section (TS–767C), Registration Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Office location and telephone number: Rm. 716H, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–557–1806).

SUPPLEMENTARY INFORMATION: EPA issued a proposed rule, published in the **Federal Register** of June 3, 1987 (52 FR 20753), which announced that the Interregional Research Project No. 4 (IR–4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition 6E3360 to EPA on behalf of Dr. Robert H. Kupelian, National Director, IR–4 Project, and the Agricultural Experiment Stations of Georgia, Florida, North Carolina, Oklahoma, and Texas.

The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, propose the establishment of tolerances for the combined residues of the insecticide permethrin [(3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)2-,2-dimethylcyclopropane carboxylate] and the sum of its metabolites 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxyphenyl) methanol (3–PBA) in or on the following raw agricultural commodities: collards and turnip greens at 20 parts per million (ppm) and turnip roots at 1 ppm.

There were no comments or requests for referral to an advisory committee

received in response to the proposed rule.

The data submitted in the petition and all other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. Such objections should specify the provisions of the regulation deemed objectionable and the grounds for the objections. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 16, 1987.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR Part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for Part 180 continues to read as follows.

Authority: 21 U.S.C. 346a.

2. Section 180.378 is amended by adding new paragraph (d) to read as follows:

§ 180.378 Permethrin; tolerances for residues.

* * * * *

(d) Tolerances with regional registration, as defined in § 180.1(n), are established for residues of permethrin [(3-phenoxyphenyl)methyl-3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropane carboxylate] and the sum of its metabolites 3-(2,2-dischloroethenyl(-2,2-dimethylcyclopropane carboxylic acid (DCVA) and (3-phenoxypheny!)methanol (3–PBA) in or on the following raw agricultural commodities:

Commodities	Parts per million
Collards	20
Turnip greens	20
Turnip roots	1

[FR Doc. 87–29370 Filed 12–22–87; 8:45 am]

BILLING CODE 6560–50–M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–38

[FPMR Temp. Reg. G–48, Supp. 1]

Federal Motor Vehicle Expenditure Control

AGENCY: Federal Supply Service, GSA.

ACTION: Temporary regulation.

SUMMARY: FPMR Temp. Reg. G–48, dated August 6, 1986, established policy, procedures, and reporting requirements concerning the implementation of Subtitle C—Federal Motor Vehicle Expenditure Control, Pub. L. 99–272, Consolidated Omnibus Budget Reconciliation Act of 1985. This supplement advises agencies that the performance of a study to consolidate agency-owned vehicles into the Interagency Fleet Management System (IFMS) will not satisfy the cost comparison study requirements of subparagraph 8d unless consolidation occurs. GSA will consider agency plans for the performance of studies required by subparagraph 8d prior to beginning new consolidation studies. This supplement also specifies that GSA, with the assistance of the using agencies, will conduct the studies comparing the cost of IFMS vehicles, including newly consolidated vehicles, with the cost of vehicles obtained from the commercial sector and other alternatives. These revisions require the owning agency to perform any cost comparison studies for its own vehicles. The revisions ensure that all vehicle resources are included in the cost comparison study process to determine the Government's most cost-effective and efficient motor vehicle fleet operation.

DATES: *Effective date:* December 23, 1987.

Expiration date: June 30, 1988.

Comment date: Comments must be received on or before January 29, 1988.

ADDRESS: Comments should be addressed to the General Services Administration (FBF), Washington, DC 20406.

FOR FURTHER INFORMATION CONTACT: Mr. William Rivers, Fleet Management Division (703) 557–1278.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this is not a major rule for the purposes of E.O. 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in cost to consumers or others; or significant adverse effects. Therefore, a Regulatory Impact Analysis has not been prepared. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and the consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Part 101–38

Government property management, Motor vehicles.

PART 101–38—[AMENDED]

The authority citation for Part 101–38 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).

In 41 CFR Ch. 101, the following supplement to FPMR Temp. Reg. G–48 is added to the appendix at the end of Subchapter G to read as follows:

Federal Property Management Regulations, Temporary Regulation G–48, Supplement 1

December 14, 1987.

To: Heads of Federal agencies.

Subject: Federal motor vehicle expenditure control.

1. *Purpose.* This supplement amends FPMR Temporary Regulation G–48 to revise the requirements for conducting the cost comparison studies referenced in subparagraphs 8d and 9b and to add a new subparagraph 9f to specify a new General Services Administration (GSA) responsibility to perform cost comparison studies of Interagency Fleet Management System (IFMS) operations.

2. *Effective date.* This supplement is effective upon publication in the **Federal Register.**

3. *Expiration date.* This supplement expires June 30, 1988, unless sooner superseded or canceled.

4. *Explanation of changes.* a. Subpar. 8d is revised to remove the exception of agency vehicles which are being studied for consolidation into the IFMS and to add that GSA will perform the private sector cost comparison of agency vehicles provided from the IFMS as follows:

d. Each executive agency shall conduct or have conducted a comprehensive and detailed study to compare the agency's current motor vehicle operations with: (1) use of the IFMS, (2) contracting with a qualified private fleet management firm or other private contractor, and (3) use of any other means less costly to the Government. In performing a study, an agency shall consider all agency-owned and leased motor vehicles as defined in attachment A, with the exception of vehicles provided from the IFMS. The IFMS vehicles shall be compared with alternatives (2) and (3) above by GSA, as set forth in subpar. 9f, with the assistance of the agency if requested by GSA. Studies conducted pursuant to this subpar shall compare the full costs (accrual based, of the cost elements specified in attachment B), benefits, and feasibility of relying on the alternatives described above in (1), (2), and (3) if available, to meet the agency's fleet requirements. Agencies should consider the provisions of OMB Circular A–76, Performance of Commercial Activities, when performing the studies required by this subpar.

b. Subpar. 9b is revised to indicate that performance of a fleet consolidation study will not satisfy the comprehensive and detailed study requirements of subpar. 8d and to indicate that GSA will perform the cost comparsion study focusing on the private sector if consolidation occurs as follows:

b. GSA will continue to review and identify interagency opportunities for the consolidation of motor vehicles, related equipment, and facilities. GSA will also consolidate those functions relating to the administration and management of such vehicles, equipment, and facilities to reduce the size and cost of the Government's motor vehicle fleet in accordance with the provisions of section 211 of the Federal Property and Administrative Services Act, as amended (40 U.S.C. 491). Where one or more agencies request to consolidate their vehicles with the GSA IFMS fleet, either into an existing or new Fleet Management Center, and the action is mutually agreeable, the study process required by section 211 will be conducted by GSA and the requesting agencies. If consolidation would result in a cost savings, that action can be taken and GSA will perform the cost comparison segment focusing on the private sector, as set forth in subpar. 9f. Performance of a consolidation study will not exempt an agency from performing the other study segments of subpar. 8d unless consolidation occurs. In identifying consolidation opportunities, GSA will consider agency plans for the performance of studies required by subpar. 8d. At locations where an agency has scheduled the study required by subpar. 8d, that study shall take precedence over the performance of a section 211 consolidation study.

c. Subpar. 9f is added to indicate GSA will perform cost comparison studies focusing on the private sector for IFMS vehicles as follows:

f. GSA, with the assistance of the agencies utilizing IFMS vehicles, will conduct comprehensive and detailed studies to compare the full costs (accrual based, of the cost elements specified in attachment B) and benefits of the IFMS operations with the costs, benefits, and feasibility of entering into contracts with qualified private fleet management firms, other private contractors, or any other means less costly to the Government, if available, to meet its fleet requirements. The performance of these studies should consider the provisions of OMB Circular A–76.

5. *Comments.* Comments or inquiries concerning the impact of this regulation should be submitted to the General Services Administration (FBF), Washington, DC 20406, not later than January 29, 1988, for consideration and possible incorporation into a permanent regulation.

T.C. Golden,

Administrator of General Services.

[FR Doc. 87–29319 Filed 12–22–87; 8:45 am]

BILLING CODE 6820–34–M

Proposed Rules

Federal Register
Vol. 52, No. 246
Wednesday, December 23, 1987

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 86-ASW-39]

Airworthiness Directives; Hercules; Lenair Corporation; Smith Helicopters; and West Coast Fabrications; Model UH-1E, UH-1L, and TH-1L Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require repetitive inspections and impose a maximum service life on certain rod end bearing assemblies in the flight control system on Model UH-1E, UH-1L, and TH-1L helicopters (modified by Hercules; Lenair Corporation; Smith Helicopters; and West Coast Fabrications).

The proposed AD is needed to preclude possible failure of the main rotor assembly and possible loss of the helicopter.

DATES: Comments must be received on or before February 1, 1988.

ADDRESSES: Comments on the proposal may be mailed in duplicate to: Office of the Regional Counsel, FAA, Southwest Region, Forth Worth, Texas 76193-0007, or delivered in duplicate to: Office of the Regional Counsel, FAA Southwest Region, Room 158, Building 3B, 4400 Blue Mound Road, Fort Worth, Texas. Comments delivered must be marked: Docket No. 86-ASW-39. Comments may be inspected in Room 158, Building 3B, Office of the Regional Counsel, Southwest Region, between 8 a.m. and 4 p.m., weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Tom Henry, Helicopter Certification Branch, ASW-170, Federal Aviation Administration, Fort Worth, Texas 76193-0170, telephone (817) 624-5168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Director before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket, Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, Texas, for examination by interested persons. A report summarizing each FAA-public contact, concerned with the substance of the proposed AD, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 86-ASW-39." The postcare will be date/time stamped and returned to the commenter.

The U.S. military has ordered corrective actions on certain rod end bearings on their "Cobra" and "Huey" series helicopters. A few aircraft from the affected models have been certified under subparagraph 21.25(a)(2) of the Federal Aviation Regulations as civil, restricted category helicopters.

The FAA was informed by U.S. Army Aviation System Command Message 142140Z, November 1986, that the Army had ordered the reduction in service life of rod end bearing assemblies on military AH-1, TH-1, UH-1C, and UH-1H helicopters from 1650 to 600 hours' time in service. A rod end bearing assembly, Bell Helicopter Textron, Inc. (BHTI) Part Number (P/N) 204-076-428-5, on an AH-1 helicopter failed in fatigue at 790 hours' time in service, due to a crack which originated near a staking mark on the bearing housing.

The FAA was also informed by Message 082043Z, May 87, from the Pensacola Naval Aviation Depot that the U.S. Navy would require review of service life history on the P/N 204-076-428 rod end bearing assemblies for all UH-1E, UH-1L, TH-1L, and HH-1K helicopters. Bearings with 600 or more hours' time in service were to be replaced when serviceable parts became available.

The bearing assemblies involved in these actions are BHTI P/N's 204-076-428-1, -3, and -5. The -1 and -3 bearings are not serialized and the service history is therefore not documented. In addition, until recently the service history of the serialized improved design -5 bearing may not have been recorded. Thus, the time in service of many of the affected 204-076-428 bearings may be unknown.

Since this condition is likely to exist on FAA Certified UH-1E, UH-1L, and TH-1L helicopters of the same military design, the AD would require repetitive inspections of the rod end bearing assembly to check for cracks and would establish a 600 hours service life on newly added parts.

The manager of Military Spares Administration at BHTI informed the FAA that an 11 month lead time is required to supply the part to civilian operators of surplus military helicopters. Therefore, the inspection/replacement intervals have been adjusted accordingly.

The FAA has determined that this proposed regulation involves approximately 19 aircraft, with an estimated cost of approximately $6,500 per aircraft and would not exceed $26,000 per operator. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT."**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

THE PROPOSED AMENDMENT

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

PART 39—[AMENDED]

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

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

§ 39.13 [Amended]

2. By adding the following new AD:

Hercules; Lenair Corporation; Smith Helicopters; and West Coast Fabrications; Applies to Model UH–1E, UH–1L, and TH–1L helicopters modified by Hercules; Lenair Corporation; Smith Helicopters, and West Coast Fabrications certified in any category that have P/N 204–076–428–1, –3, or –5 rod end bearing assemblies installed.

Compliance is required as indicated, unless already accomplished.

To detect possible cracks in the collective and cyclic rod end bearing assemblies, P/N 204–076–428–1, –3, or –5, installed on Model UH–1E, UH–1L, and TH–1L helicopters, accomplish the following:

(a) Prior to the next flight after the effective date of this AD and thereafter at intervals not to exceed 10 hours' time in service from the last inspection, visually inspect the rod end bearing assemblies for cracks. Perform the visual inspections by disconnecting the cyclic and collective control tube assemblies from the swashplate horns and the collective pitch control lever.

(b) Whenever the rod end bearing assemblies are removed for any reason, inspect for cracks using a fluorescent penetrant or equivalent method.

Note: Inspections specified by paragraphs (a) and (b) above are not required on rod end bearing assembly P/N 204–076–428–5 having documented time in service of less than 600 hours.

(c) If a crack is found during these inspections replace the rod end bearing with a serviceable part prior to further flight.

(d) Replace rod end bearing assemblies, P/N 204–076–428–1 or –3 within 11 calendar months from the effective date of this AD with rod end bearing assembly, P/N 204–076–428–5, having a documented known service life of less than 600 hours' time in service.

(e) Replace rod end bearing assembly P/N 204–076–428–5, not having a documented known service life, or those with greater than 600 hours' time in service, within 11 calendar months from the effective date of this AD with rod end bearing assembly P/N 204–076–428–5 having a documented service life of less than 600 hours' time in service.

(f) Retire from service rod end bearing assembly, P/N 204–076–428–5 at 600 hours' time in service or less after initial replacement described in paragraphs (d) and (e).

(g) An alternate method of compliance which provides an equivalent level of safety with this AD may be used when approved by the Manager, Helicopter Certification Branch, Federal Aviation Administration, Fort Worth, Texas, 76193–0170.

Issued in Fort Worth, Texas on December 1, 1987.

Don P. Watson,

Acting Director, Southwest Region.

[FR Doc. 87–29358 Filed 2–22–87; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 852–3213]

Sun Industries, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Jonesboro, AR, manufacturer and seller of tanning devices and related products from misrepresenting that the use of a tanning device does not pose a risk of any harmful side effects to users. Respondent would be required to include a warning statement in any ads and promotional materials for its tanning devices.

DATE: Comments must be received on or before February 22, 1988.

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

FOR FURTHER INFORMATION CONTACT: FTC/S–4002, C. Lee Peeler, Washington, DC 20580, (202) 326–3090.

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

List of Subjects in 16 CFR Part 13

Suntanning devices, Trade practices.

Before Federal Trade Commission

[File No. 852–3213]

Agreement Containing Consent Order To Cease and Desist

In the Matter of Sun Industries, Inc., a corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Sun Industries, Inc., a corporation, hereinafter sometimes referred to as proposed respondent, and it now appearing that the proposed respondent is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Sun Industries, Inc., by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Sun Industries, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Arkansas, with its office and principal place of business located at 2409 Industrial Drive, P.O. Box 2026, Jonesboro, Arkansas 72403–2026.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of the complaint attached hereto.

3. Proposed respondent waives:

(a) Any further procedural steps;

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

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

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

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

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

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

Order

Definition

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

"Tanning device" means any product designed to incorporate one or more ultraviolet lamps and intended for irradiation of any part of the living human body by ultraviolet radiation to induce skin tanning.

I

It is ordered that respondent Sun Industries, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, through the use of the word safe or any other word or words of similar meaning, that use of any such tanning device does not pose a risk of any harmful side effect to the user.

II

It is further ordered that respondent Sun Industries, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication, that:

a. Use of any such device does not increase the risk of developing skin cancer; and

b. Protective eye wear is not needed when using any such device.

III

It is further ordered that for one year after the date of service of this Order respondent Sun Industries, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from failing to prominently disclose in any print advertisement, film, video tape or any other promotional material the following statement:

Notice.—Read the mandatory FDA warning label found on every tanning machine for important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

The above-required language shall be included in printed material printed in a typeface and color that are clear and conspicuous, and, in multipage documents, shall appear on the cover or first page; and in any film, video tape, or slide promotional material shall be included either orally or visually in a manner designed to ensure clarity and prominence; provided, further, that nothing contrary to, inconsistent with, or in mitigation of the above-required statement shall be used in any advertising or promotional materials.

IV

It is further ordered that commencing one year after the date of service of this Order respondent Sun Industries, Inc., a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any tanning device, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making in any print advertisement, film, video tape or any other promotional material any representation, directly or by implication, that the tanning device is safe or safer than other devices or methods of tanning or that the device has health benefits unless the following statement is given:

Notice.—Read the mandatory FDA warning label found on every tanning machine for important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

The above-required language shall be included in printed material printed in a typeface and color that are clear and conspicuous, and, in multipage documents, shall appear on the cover or first page; and in any film, video tape, or slide promotional material shall be included either orally or visually in a manner designed to ensure clarity and prominence; provided, further, that nothing contrary to, inconsistant with, or in mitigation of the above-required statement shall be used in any advertising or promotional materials.

V

It is further ordered that respondent Sun Industries, Inc., its successors and assigns and its officers, agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, offering for sale, sale, or distribution of any product for personal or household use, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from making, directly or by implication, any health or safety representation unless, at the time of such representation, respondent

possesses and relies upon a reasonable basis for each such representation, consisting of reliable and competent scientific evidence that substantiates such representation; provided however, that to the extent such evidence of a reasonable basis consists of scientific or professional tests, analyses, research, studies or any other evidence based on expertise of professionals in the relevant area, such evidence shall be "reliable and competent" only if those tests, analyses, research, studies, or other evidence are conducted and evaluated in an objective manner by persons qualified to do so, and using procedures generally accepted in the profession to yield accurate and reliable results.

VI

It is further ordered that respondent shall distribute a copy of this Order to each current officer, employee, agent and/or representative having sales or promotional responsibilities with respect to the subject matter of this Order, and to each dealer, distributor, and purchaser or lessee for commercial use, of its tanning devices (such as health clubs, tanning salons, beauty salons, catalogue houses, and tanning device retailers) known through existing company records to be in operation on the effective date of this order.

VII

It is further ordered that for three (3) years from the date that the respesentations to which they pertain are last disseminated, respondent, its successors and assigns shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials relied upon to substantiate any claim or representation covered by this Order; and

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

VIII

It is further ordered that for ten (10) years after the date of service of this Order respondent, its successors and assigns shall maintain for three (3) years from the last date of dissemination of the material a copy of each nonidentical form of promotional and training material disseminated by respondent and upon request make such material available to the Federal Trade Commission or its staff for inspection and copying.

IX

It is further ordered that for ten (10) years after the date of service of this Order respondent, its successors and assigns shall maintain, for three (3) years and upon request make available to the Federal Trade Commission for inspection and copying records of the name and last known address of each dealer, distributor and purchaser or lessee for commercial use of respondent's sunlamp products.

X

It is further ordered that respondent, its successors and assigns shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising out of the Order.

XI

It is further ordered that respondent shall, within sixty (60) days after service of this Order upon it and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied or intends to comply with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted subject to final approval an agreement to a proposed consent order from Sun Industries, Inc. (Sun Industries).

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

This matter concerns advertisements for Sun Industries' tanning devices which use lamps emitting ultraviolet (UV) radiation to cause tanning of the user's skin.

The Commission's complaint in this matter charges Sun Industries with disseminating advertisements containing false and unsubstantiated representations regarding the safety of its tanning devices. According to the complaint, advertisements for Sun Industries' tanning devices falsely claimed that the devices can be used without risking the harmful side effects associated with exposure to the sun, including the risk of developing skin cancer, and that the devices could safely be used without eye protection. The complaint alleges that these claims are, in fact, false and that Sun Industries' tanning devices cannot be used without risking the harmful side effects associated with the sun, including skin cancer, and that the devices cannot be safely used without eye protection.

The complaint also alleges that the advertisements contained false representations that Sun Industries had a reasonable basis for the claims that its devices could be used without the risk of the harmful side effects associated with exposure to the sun and that its devices could safely be used without eye protection when, in fact, Sun Industries did not have a reasonable basis for these representations.

The consent order contains provisions designed to remedy the advertising violations charged as well as to prevent Sun Industries from engaging in similar acts and practices in the future. Part I of the consent order prohibits Sun Industries from misrepresenting, directly or by implication, through the use of the word "safe" or any other word or words of similar meaning, that use of its tanning devices does not pose a risk of any harmful side effect to the user.

Part II of the consent order prohibits Sun Industries from misrepresenting, directly or by implication, that its devices do not increase the user's risk of skin cancer and that protective eye wear is not needed when using the devices.

Part III of the consent order requires that for one year Sun Industries include in all advertisements and promotional materials a notice statement alerting users to read the mandatory FDA warning label for important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

Part IV of the consent order requires that commencing one year after the date of service of this order Sun Industries include a notice statement in any advertisement making a claim that its tanning devices are safe or safer than other devices or methods of tanning or that the device has health benefits. The statement alerts users to read the mandatory FDA warning label for important information on potential eye injury, skin cancer, skin aging and photosensitive reactions.

Part V of the consent order requires Sun Industries to have reliable and

competent scientific evidence to support any health or safety representations contained in an advertisement.

Part VI of the consent order requires Sun Industries to send a copy of the consent order to each of its dealers and distributors and to each entity which has purchased or leased its devices for commercial use (such as health clubs, tanning salons, beauty salons, catalogue houses, and retail outlets) known through existing company records to be in operation on the effective date of the consent order.

Parts VII through XI of the consent order are standard order provisions requiring Sun Industries to retain certain business records, report to the Commission certain corporate changes and provide a report to the Commission on its compliance with the provisions of the consent order.

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

Emily H. Rock,

Secretary.

[FR Doc. 87-29360 Filed 12-22-87; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 18

[LR-45-87]

Income Taxes; Taxable Years of Certain Entities

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to taxable years of personal service corporations, partnerships and S corporations (and owners of those entities). Changes to the applicable law were made by the Tax Reform Act of 1986. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: Written comments and requests for a public hearing must be mailed or delivered by February 22, 1988. The amendments are proposed to be effective for taxable years beginning after December 31, 1986.

ADDRESS: Send comments and requests for public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR-45-87) Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Arthur E. Davis III of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:LR:T), (202) 566-3238, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations (designated by a "T" following the section citation) in the Rules and Regulations portion of this issue of the **Federal Register** amend Part 1 of Title 26 of the Code of Federal Regulations. These amendments are proposed to conform the regulations to the requirements of section 806 of the Tax Reform Act of 1986 (Pub. L. 99-514), 100 Stat. 2362. For the text of the temporary regulations, see FR Doc. (T.D. 8167) published in the Rules and Regulations portion of this issue of the **Federal Register**. The preamble to the temporary regulations provides a discussion of the rules. The final regulations, which this document proposes to base on those temporary regulations, would amend Part 1 of Title 26 of the Code of Federal Regulations.

Special Analysis

The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291. Accordingly, a Regulatory Impact Analysis is not required. Although this document is a notice of proposed rulemaking that solicits public comments, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

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

List of Subjects

26 CFR 1.441-1—1.483-2

Income taxes, Accounting, Deferred compensation plans.

26 CFR 1.701—1.771-1

Income taxes, Partnerships.

26 CFR Part 18

Sale of residence, Income taxes.

Lawrence B. Gibbs,

Commissioner of Internal Revenue.

[FR Doc. 87-29382 Filed 12-18-87; 3:21 pm]

BILLING CODE 4830-01-M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1150

Practice and Procedures for Compliance Hearings

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board proposes to amend its regulations regarding the informal resolution of complaints by allowing the Board to make a rebuttable presumption of jurisdiction in those cases in which jurisdictional information is not timely provided by the persons or agencies responsible for the alleged violation. The amendment is designed to promote the expeditious processing of complaints.

DATES: Comments must be received by February 22, 1988.

ADDRESSES: Comments should be sent to the Office of General Counsel, Architectural and Transportation Barriers Compliance Board, 330 C Street SW., Room 1010, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Nicholas Chiarkas, General Counsel at

(202) 245–1591 or FTS 245–1591 (voice or TDD). This proposed rule is available at the above address on cassette for persons with visual impairments.

SUPPLEMENTARY INFORMATION: The current regulations set forth procedures to ensure compliance with standards issued under the Architectural Barriers Act of 1968, 42 U.S.C. 4151 *et seq.* The regulation provides for an informal resolution period of one hundred and eighty (180) days. Complaints are deemed informally resolved if the persons or agencies responsible for the alleged violation (the respondents) either demonstrate to the Executive Director that no violation has occurred, or alternatively that compliance action will be taken to correct an existing violation. The threshold determination that must be made in resolving any complaint is whether the Board has jurisdiction over the facility in question. The proposed rule allows the Board to make a rebuttable presumption of jurisdiction in those cases in which the respondents do not provide, within sixty (60) days of a written request, the information necessary to resolve the jurisdictional issue.

The proposed rule was adopted by the Board at its September 1987 meeting in the interest of enhancing the speed and efficiency of the ATBCB's complaint processing function.

List of Subjects in 36 CFR Part 1150

Administrative practice and procedure, Buildings, Handicapped.

For the reasons set forth in the preamble, the ATBCB proposes to amend 36 CFR Part 1150 as follows:

PART 1150—PRACTICE AND PROCEDURES FOR COMPLIANCE HEARINGS

1. The authority citation for Part 1150 is revised to read as follows:

Authority: 29 U.S.C. 792(b).

2. Section 1150.41 is proposed to be amended by revising paragraph (e) to read as follows:

§ 1150.41 Informal resolution.

* * * * *

(e) Complaints should be resolved informally and expeditiously, by the interested persons or agencies.

(1) If the interested persons or agencies fail to provide, within sixty (60) days of a written request, the information necessary for the Executive Director or his/her designee to determine whether the ATBCB has jurisdiction over a particular complaint, then the Executive Director or his/her designee will make a rebuttable presumption of jurisdiction and proceed accordingly.

(2) If compliance with the applicable standards is not achieved informally or an impasses concerning the allegations of compliance or noncompliance is reached, the Executive Director will review the matter, including previous attempts by agencies to resolve the complaint, and take actions including, but not limited to, surveying and investigating buildings, monitoring compliance programs of agencies, furnishing technical assistance, such as standard interpretation, to agencies, and obtaining assurances, certifications, and plans of action as may be necessary to ensure compliance.

* * * * *

Thomas E. Harvey,

Chairperson, Architectural and Transportation Barriers Compliance Board.

[FR Doc. 87–29352 Filed 12–22–87; 8:45 am]

BILLING CODE 6820-BP-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–41

Prepayment Transportation Audit Procedures

AGENCY: Federal Supply Service, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the Federal Property Management Regulations for the purpose of implementing Pub. L. 99–627 relating to prepayment audits of selected transportation bills. This rule also prescribes procedures, conditions, and limitations relevant to any delegation of authority to another agency for the purpose of conducting prepayment audits.

DATE: Written comments must be received no later than 4:00 p.m. February 22, 1988.

ADDRESS: Comments should be sent to the General Services Administration (FWCP), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: John W. Sandfort, Collections, Accounts, and Procedures Division, Office of Transportation Audits, (202) 786–3065 or FTS 786–3065.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. Therefore, a regulatory impact analysis has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Paperwork Reduction Act of 1980: This regulation requires no recordkeeping or reporting beyond that which is usual and customary for the ordinary conduct of business.

Initial Regulatory Flexibility Analysis

In accordance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 603), the following initial regulatory flexibility analysis is provided:

(a) A description of the reasons why action by GSA is being considered is provided by the "Background" paragraphs of this proposed rule.

(b) The objective of the proposed rule is set forth in the "Summary" paragraph. The legal basis is provided by law, 31 U.S.C. 3726. Activities conducted pursuant to this proposed rule will be cost-effective or otherwise in the public interest.

(c) This rule may affect all transportation firms doing business with the United States Government to the extent that their bills are selected for prepayment audit by either GSA or its designee. For the most part, it is not expected that the effect will be either adverse or noticeable. There is, however, the distinct possibility that prepayment audit activity could occasionally delay otherwise proper payments to carriers. On those occasions, the Government is obligated to pay interest in accordance with provisions of the Prompt Payment Act. Delegations may involve any mode of transportation and/or type of bill, and in particular instances, may affect a lesser or greater number of similar entities, possibly including, small general commodity or other freight trucking, trip lease or forwarding firms; small air carriers/forwarders of freight and/or passengers; small domestic household goods carriers/forwarders (including office and electronic movers).

(d) No recordkeeping or reporting is required beyond that which is usual and customary for the ordinary conduct of business.

(e) There are no known Federal rules which duplicate, overlap, or conflict with the proposed rule.

(f) The only known alternative to the proposed rule is not to publish it. This alternative may result in the Government initially paying more for a transportation service than what it is legally required to do. Providing exemptions from the rule would be discriminatory and counterproductive.

Background

Public Law 99–627, dated November 7, 1986, amended section 3726 of Title 31 of the United States Code to provide the Administrator of General Services with authority to audit selected transportation bills prior to payment, and to allow the delegation of any authority conferred by section 3726 to another agency or agencies if the Administrator determined that such a delegation would be "cost-effective or otherwise in the public interest."

Since 1975, GSA's Office of Transportation Audits has had Governmentwide responsibility for the postpayment audit of all freight and passenger transportation invoices and recovery of charges paid by Federal agencies that are not based on the lowest applicable rates. Prior to 1975, the General Accounting Office (GAO) performed the Government's rate audit function.

Historically, there were significant delays from the date of the transportation service to the date the Government made payment, because of the time required by GAO to perform the very intricate rate audit. In the 1940's, in reaction to industry complaints, Congress directed agencies to pay bills for transportation services upon presentation by the carrier, with audit after payment.

Determining whether a transportation charge is correct is a complex process. An auditor must possess a thorough knowledge of tariffs (published commercial rates), tenders (special, lower Government rates), contracts (negotiated rates for specific shipments or groups of shipments), and other rate authorities, to properly audit a carrier's bill.

During fiscal year 1986, GSA's Office of Transportation Audits identified $50.9 million in rate overcharges. GSA employs 187 professional and support staff members to handle the large volume of transportation invoices paid by civilian and military activities.

While GSA, for the most part, intends to exercise its prepayment audit authority primarily in those selected instances where the failure to do so may prevent the Government from subsequently collecting overcharges, GSA may exercise its prepayment audit authority over selected bills on behalf of itself and other individual agencies.

Many agencies believe that a prepayment audit would prevent overpayments. However, knowledgeable of the complexities of auditing transportation payments, GSA concludes that prepayment audit authority should be delegated only to those agencies which clearly demonstrate they are capable of performing a timely, accurate, and cost-effective audit within the requirements of the Prompt Payment Act. Further, GSA is of the opinion that it is the intention of the Congress that prepayment audit rely on automation rather than a duplication of GSA's staffing and operations as a prerequisite to any delegation of authority. Consequently, GSA will require that any request for the delegation of prepayment audit authority foster the use of automation.

It is not GSA's intention to relinquish its postpayment audit or oversight role.

List of Subjects in 41 CFR Part 101–41

Air carriers, Accounting, Claims, Freight, Freight forwarders, Government property management, Maritime carriers, Moving of household goods, Passenger services, Railroads, Transportation.

GSA proposes to amend Part 101–41 as follows:

PART 101–41—TRANSPORTATION DOCUMENTATION AND AUDIT

1. The authority citation for 41 CFR Part 101–41 continues to read:

Authority: 31 U.S.C. 3726, and 40 U.S.C. 486(c).

2. The table of contents for Part 101–41 is amended by adding § 101–41.103 and revising § 101–41.401 as follows:

Sec.

* * * * *

101–41.103 Procedures, conditions, and limitations relevant to the delegation of authority to perform prepayment audits of selected transportation bills.

101–41.401 Payment of transportation bills.

Subpart 101–41.1—General

3. Section 101–41.101 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 101–41.101 Examination of payments, settlement of claims, and review of requirements.

Section 322 of the Transportation Act of 1940, as amended (31 U.S.C. 3726), permits transportation bills to be paid prior to audit by the Administrator of General Services or his/her designee in accordance with regulations that the Administrator shall prescribe.

(a) The authority vested in the Administrator of General Services by 31 U.S.C. 3726, as amended, enables the Administrator, or his/her designee, to:

(1) Audit selected transportation bills prior to payment;

(2) Examine, settle, and adjust accounts involving payment for transportation and related services for the account of the United States;

(3) Adjudicate and settle transportation claims by and against the United States;

(4) Deduct the amount of any overcharge by any carrier or forwarder from any amount subsequently found to be due such carrier or forwarder; and

(5) Delegate any authority conferred on the Administrator to another agency or agencies if the Administrator determines that such a delegation would be cost-effective, accurate, timely, or otherwise in the public interest.

* * * * *

4. Section 101–41.103 is added to read as follows:

§ 101–41.103 Procedures, conditions, and limitations relevant to the delegation of authority to perform prepayment audits of selected transportation bills.

(a) Requests for a delegation of authority from the Administrator of General Services to conduct prepayment audits shall be accompanied by a specific and complete description of the organization to perform the audit, the character of the bills to be audited, and the manner whereby the audit will be conducted. Such requests shall demonstrate cost-effectiveness or other public benefits.

(b) Unless prepayment audit of certain bills is required under § 101–41.401, prepayment audits by GSA on behalf of itself and/or other agencies, will not be approved by the Administrator unless he finds that the official responsible for such audits meets the same requirements as specified in this paragraph for GSA's designees.

(c) Requests shall include a detailed model of the audit process from receipt of carrier bills to disbursement and the submission of paid vouchers to GSA for postpayment audit. The model shall evidence use of automated techniques as a means of performing the audit process.

(d) The proponent shall demonstrate the capability not only to complete an accurate audit within 15 calendar days of receipt of a carrier's bill, but also evidence the ability to generate an accurate notice to the carrier which specifically describes the reason for any

full or partial rejection of the carrier's charges, citing the rate authority applicable thereto.

(e) The proposal shall contain a mechanism to report savings, on a monthly basis, and in a manner acceptable to GSA, accomplished by identifying overcharges/overbillings through prepayment audit.

(f) Public notice of delegated authorities will be effected by publication in the **Federal Register** Notices section. Such Notices will specify the type of bills that are subject to prepayment audit; the Government department/agency whose bills are subject to such audit; and the organization or command, i.e., the authority, which will conduct such audits.

(g) Authority delegated in accordance with this section is subject to complete oversight by GSA. This oversight and a test of accuracy will normally be made through the postpayment audit process.

(h) Except as provided in § 101–41.604–2, when a prepayment audit results in a reduction to a properly presented invoice, interest penalties will be paid if required by the Prompt Payment Act. The designee must approve for payment the amount he deems to be proper.

(i) Should GSA receive information that any carrier is bankrupt or is otherwise in such economic condition that its ability to pay debts owing to the Government is questionable, then GSA may request that amounts approved for payment after prepayment audit shall be remitted to GSA in lieu of payment to the carrier.

(j) All forms utilized by the designee or its audit authority in performing the prepayment audit must be approved by GSA (Attn: FWC) prior to usage, and no rules or procedures relative to the prepayment audit may be published by them without GSA approval.

(k) The designee and any audit authority under him is required to follow Comptroller General decisions and GSA Federal Property Management Regulations, instructions and precedents regarding substantive and procedural matters.

(l) The designee may utilize contractors to accomplish the prepayment audit, but contractors are subject to all of the requirements that apply to the designee and its audit authority.

Subpart 101–41.4—Standards for the Payment of Charges for Transportation Services Furnished for the Account of the United States

5. Section 101–41.401 is amended by revising paragraph (a) to read as follows:

§ 101–41.401 Payment of transportation bills.

(a) Unless GSA's Office of Transportation Audits determines that a prepayment audit is necessary, each agency or department shall pay any properly documented bill (claim) for freight or passenger transportation charges that is not excepted by the provisions of § 101–41.604–2.

* * * * *

Subpart 101–41.6—Claims Against the United States Relating to Transportation Services

6. Section 101–41.604–1 is amended by revising the introductory paragraph to read as follows:

§ 101–41.604–1 Transportation claims payable by agencies.

Unless GSA's Office of Transportation Audits determines that a prepayment audit is necessary, each agency or department shall pay any properly documented bill (claim) for freight or passenger transportation charges that is not excepted by the provisions of § 101–41.604–2, provided the following guidelines are observed:

* * * * *

7. Section 101–41.604–2 is amended by adding paragraph (b)(7) to read as follows:

§ 101–41.604–2 Transportation claims not payable by agencies.

* * * * *

(b) * * *

(7) Irreconcilable claims disputing prepayment audit positions of agencies subject to a delegation of authority by the Administrator under § 101–41.103. All claims protesting an audit authority's prepayment audit position will be addressed to that authority. The authority shall promptly acknowledge the claim in writing and stamp it with its date of receipt. The authority must adjudicate the claim within 30 days of receipt, but if the authority fails to approve all or any portion of the carrier's claim, it shall make a final decision providing a clear, specific and detailed written explanation of its position. If the carrier is dissatisfied with the authority's final decision, it may appeal that decision to GSA, providing a copy of all documentation involved in the record, including a copy of the audit authority's decision. All such appeals shall be forwarded by the carrier to GSA, Attn: FWC (Code PA), Washington, DC 20405.

Dated: October 16, 1987.

Donald C.J. Gray,

Commissioner, Federal Supply Service.

[FR Doc. 87–28601 Filed 12–22–87; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF DEFENSE

48 CFR Parts 228 and 252

Federal Acquisition Regulation Supplement; Separate Bid Bonds for Construction

AGENCY: Department of Defense (DOD).

ACTION: Proposed rule and request for public comment.

SUMMARY: The Defense Acquisition Regulatory Council has approved proposed revisions to the DOD FAR Supplement Parts 228 and 252. A clause is proposed at 252.228–7007 which permits submission of separate bid bonds vice separate bid guarantees for construction contracts. If adopted, the revisions will require that DOD prime contractors furnish a separate bid bond by the time set for opening of bids.

DATE: Interested parties are invited to submit written comments on or before February 22, 1988, to the Executive Secretary, DAR Council, at the address below, to be considered in formulation of a final rule. Please cite DAR Case 84–149D in all correspondence related to this subject.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, Attn: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, OASD (P)/DARS, c/o OASD (A&L) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

On May 27, 1987, the Department of Defense (DOD), General Services Administration and National Aeronautics and Space Administration published Federal Acquisition Circular (FAC) 84–26. Within that FAC was a change to the Federal Acquisition Regulation (FAR), Part 28, which permitted only separate bid guarantees in connection with construction

contracts. However, the FAR further allows agencies to specify that only separate bid bonds are acceptable in connection with construction. The rationale for the FAR coverage is to permit agencies the latitute to avoid the additional risk and burden of safekeeping an asset pledged as a bid guarantee and in returning it to the contractor. Accordingly, DOD proposes to amend the DFARS to continue DOD's past practices.

B. Regulatory Flexibility Act Information

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it merely continues a DoD policy which has been in effect since May 6, 1968. An initial regulatory flexibility analysis has therefore not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 87–610D in correspondence.

C. Paperwork Reduction Act Information

The Paperwork Reduction Act (Pub. L. 99–511) does not apply because the proposed rule does not impose any additional recordkeeping or information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 228 and 252

Government procurement.

Charles W. Lloyd,

Executive Secretary, Defense Acquisition Regulatory Council.

Therefore, it is proposed that 48 CFR Parts 228 and 252 be amended as follows:

1. The authority citation for 48 CFR Part 228 and 252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

PART 228—BONDS AND INSURANCE

2. Sections 228.101, 228.101–1 and 228.101–3 are added to read as follows:

228.101 Bid guarantee.

228.101–1 Policy on use.

(b) Only separate bids bonds are acceptable for construction contracts.

228.101–3 Contract clause.

(b) The contracting officer shall insert the clause at 252.228–7007, Bid Bond, in lieu of FAR clause 52.228–1, in solicitations and contracts for construction.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSE

3. Section 252.228–7007 is added to read as follows:

252.228–7007 Bid bond.

As prescribed in 228.101–3(b), insert the following clause in solicitations and contracts:

Bid Bond ( )

(a) The offeror (bidder) shall furnish a separate bid bond, in the proper form and amount, by the time set for opening of bids. Failure to do so may be cause for rejection of the bid.

(b) If the successful bidder, upon acceptance of its bid by the Government within the period specified for acceptance, fails to execute all contractual documents or give a bond(s) as required by the solicitation within the time specified, the Contracting Officer may terminate the contract for default.

(c) Unless otherwise specified in the bid, the bidder will (1) allow 60 days for acceptance of its bid and (2) give bond within 10 days after receipt of the forms by the bidder.

(d) In the event the contract is terminated for default, the bidder is liable for any cost of acquiring the work that exceeds the amount of its bid, and the bid bond is available to offset the difference.

(End of clause).

[FR Doc. 87–29371 Filed 12–22–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Navy

48 CFR Parts 5215 and 5252

Navy Acquisition Regulations Supplement; Policy Concerning Use of Cost and Pricing Data and Cost Analysis Where Adequate Price Competition Exists

AGENCY: Department of the Navy, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy is adding language to Parts 5215 and 5252 of the Navy Acquisition Regulations Supplement (NARSUP) to the Federal Acquisition Regulations (FAR). Part 5215 of the NARSUP is being supplemented to clarify existing language contained in FAR Part 15 on Adequate Price Competition, and on the type of cost data and cost analysis that might be required when there is adequate price competition. A provision is also being added to Part 5252 of the NARSUP for use in all solicitations where it is anticipated that an award will be based on adequate price competition.

DATE: Public comments are solicited and should be received by January 22, 1988.

ADDRESS: Interested parties should submit written comments to: Office of the Assistant Secretary of the Navy (Shipbuilding & Logistics), Contracts and Business Management, Washington DC 20361, ATTN: Ms. Linda E. Greene or Mr. Dick Moye.

FOR FURTHER INFORMATION CONTACT: The telephone is 202–692–3324 for Ms. Greene and 202–692–3558 for Mr. Moye.

SUPPLEMENTARY INFORMATION:

A. Background

As a result of the passage of the Competition in Contracting Act of 1984, competition has become the rule of doing business in DoD; negotiations supported by detailed cost analysis have become the exception. Competition has become the cornerstone of Navy acquisition policy. As a result, the Navy has found that not only does competition generate more favorable prices, but significant time and effort can be saved by relying on the forces of competition to establish prices, as opposed to the use of detailed cost analysis.

Even though the Navy has been a strong advocate of competition, there is still a tendency for some contracting officers to require the submission of cost or pricing data when there is an expectation that adequate price competition will result, or has resulted on a given procurement. Both the Assistant Secretary of the Navy, Shipbuilding and Logistics (ASN) (S&L) and the Deputy Assistant Secretary of Defense, Procurement (DASD)(P), issued memorandums stating that contracting officers were not to require certified cost or pricing data, other than selected data for cost realism analysis purposes, when adequate price competition is anticipated. This practice undermines the competitive process, increases bid and proposal costs, unnecessarily burdens the government support offices with requirements for detailed audit and proposal reviews, and extends procurement lead time.

The principal cause of this problem is a failure to distinguish between requiring detailed cost and pricing data necessary in the sole source situation to negotiate a fair and reasonable price versus a requirement for only that data necessary to conduct a cost realism analysis in a competition for the purposes of determining the realism of the offeror's price. The current coverage offers little guidance to distinguish between these two types of situations. The clarifying language provides needed guidance.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because although most contracts are awarded to small entities on a competitive basis, the dollar value of these contracts is usually under $100,000, which has been the threshold at which the detailed cost or pricing data has been erroneously required.

Paperwork Reduction Act Analysis

Because the majority of small businesses generally do not receive contracts where the requirement to submit the detailed cost or pricing data would be applicable ($100,000 or greater), the Paperwork Reduction Act analysis is not applicable. However, for those small businesses that would reach or exceed the $100,000 threshold, there will be a significant beneficial impact because the requirement to submit detailed cost or pricing data in a competitive procurement would be further limited.

List of Subjects in 48 CFR Parts 5215 and 5252

Government procurement.

For the reasons set out in the preamble, Chapter 52 of Title 48 of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 5215 is added to read as follows:

PART 5215—CONTRACTING BY NEGOTIATION

Subpart 5215.4—Solicitation and Receipt of Proposals and Quotations

Sec.

5215.402 General.
5215.407 Solicitation provisions.

Subpart 5215.6—Source Selection.

5215.605 Evaluation factors.
5215.608 Proposal evaluations.

Subpart 5215.8—Price Negotiation.

5215.804–3 Exemptions from or waiver of submission of certified cost of pricing data.
5215.805–5 Field pricing support.

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35.

Subpart 5215.4—Solicitation and Receipt of Proposals and Quotations

5215.402 General.

(a) Competition is the cornerstone of Navy acquisition policy. As such, the preferred and predominant method of pricing in the Navy is through the use of competition, without the need for cost and pricing data and cost analysis. This approach is not only consistent with the Competition in Contracting Act (CICA), but it affords the opportunity for significant efficiencies and reduction of procurement leadtime as a result of minimizing the requirement for cost and pricing data and associated audit reports. As competition is increasingly relied upon and the need for cost and pricing data is reduced, there is a corresponding requirement for performing a cost realism analysis for many competitive procurements to guard against unrealistically low prices which can lead to quality deficiencies, late deliveries, performance shortfalls, and cost overruns. In performing cost realism analysis, only the minimum selected data to perform the cost realism analysis is to be obtained, as opposed to full cost and pricing data which would be required when it is necessary to perform cost-based negotiations.

5215.407 Solicitation provisions.

(S–90) During acquisition planning, an asssessment shall be made as to the likelihood that adequate price competition will exist. If it is anticipated that an award will be based on adequate price competition, the solicitation shall include the provisions at 5252.215–9000. If the procurement schedule is critical, this provision with its Alternate I shall be used so that there will be a minimum delay in the event that adequate price competition does not materalize and it is necessary to obtain cost and pricing data. Contracting officers must be judicious in the use of the Alternate I provision, and it may cause offerors to incure certain costs in preparing standby cost and pricing data in anticipation that it may be subsequently requested.

SUBPART 5215.6—Source Selection

5215.605 Evaluation factors.

(a) When a cost realism analysis will be performed in accordance with 5215.805–5(S–90), it shall be evaluated and scored as a part of the source selection evaluation criteria.

(b) Technical criteria may include quality standards that are based on either a minimally acceptable approach or a cost/benefit approach. When the quality desired is that necessary to meet minimum needs, proposals should be evaluated for acceptability and award made to the lowest priced, technically acceptable offer. When the quality desired is the highest affordable or that representing the best value, proposals should be evaluated on a cost/benefit basis that would permit an award based on paying appropriate premiums for measured increments of quality. When a cost/benefit approach is used, cost must carry a weight of not less than 40% unless thoroughly justified.

5215.608 Proposal evaluation

(a) When a cost realism analysis will be performed in accordance with 5215.805–5(S–90), it shall be evaluated and scored as a part of the source selection evaluation criteria.

Subpart 5215.8—Price Negotiation

5215.804–3 Exemptions from or waiver of submission of certified cost or pricing data.

(a) General. As explained in 5215.402, certified cost and pricing data would not normally be obtained in the Navy because the predominant portion of Navy procurements are awarded on the basis of adequate price competition.

(b)(1)(iii) Adequate price competition may also exist where price is a secondary factor in the evaluation of proposals, as long as price is a substantial factor (at least 20%). Price, as used herein, means cost plus any fee or profit applicable to the contract price. Thus, in competitive acquisitions where adequate price competition is contemplated, the contracting officer shall not require the submission of cost and pricing data, as defined in FAR 15.801, regardless of the type of contract.

(b)(3) Examples of contract awards for which prices may be based on adequate price competition and/or to have been established by adequate price competition are:

(i) Contracts for items in production for which there are a limited number of sources and the prices at which award will be made are within a reasonable amount of each other and compare favorably with independent Government estimates and with prior prices paid; and

(ii) Any contract, including cost-type contracts, when cost is a significant evaluation factor (at least 20%).

5215.805-5 Field pricing support.

(S-90) Cost realism analysis.

(1) Cost realism analysis involves a summary level review of the cost portion (excluding profit/fee) of the offerors' proposals to determine if the overall costs proposed are realistic for the work to be performed. Cost realism analysis differs from the detailed cost analysis usually undertaken in a noncompetitive procurement to determine the reasonableness of the various cost elements and profit/fee to arrive at a fair and reasonable price.

(2) The purpose of cost realism analysis is to:

(i) Verify the offeror's understanding of the requirements;

(ii) Assess the degree to which the cost/price proposal reflects the approaches and/or risk assessments made in the technical proposal; and

(iii) Assess the degree to which the end cost included in the cost/price proposal accurately represents the work effort included in the technical proposal.

(3) Some examples of data and information that may be obtained to perform cost realism analysis are:

(i) Manloading (quantity and mix of labor hours); and

(ii) Engineering, labor and overhead rates.

A price analysis approach where there is adequate price history may also be a suitable and efficient means to assess cost realism. The amount of data required will be dependent upon the complexity of the procurement and the data already obtained by the contracting officer (e.g. information on recent Forward Pricing Rate Agreements (FPRAs)).

(4) Cost realism analysis shall be performed as a part of the proposal evaluation process (see 5215.605) for all competitive solicitations where a cost reimbursement contract is contemplated. For competitive solicitations contemplating a fixed price type contract, a cost realism analysis would be the exception and not the rule, although its use may be appropriate where the proposal evaluation process will encompass both a cost/price evaluation and a technical evaluation. Also, where the contracting officer suspects a "buy-in" (see FAR 3.501) or a misunderstanding of the requirements as a result of reviewing the initial offers, data and information should be obtained and a cost realism analysis performed.

(5) When cost realism data are required, the contracting officer shall not request a formal field pricing report but rather, shall request a review of only those specific areas of information necessary to allow the contracting officer to perform a cost realism analysis. For example, the contracting officer may only need to know the current or FPRA labor and/or overhead rates. In these instances, the request for information may be oral or written.

PART 5252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. The authjority citation for Part 5252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35.

3. Section 5252.215-9000 is added to read as follows:

5252.215-9000 Submission of Cost or Pricing Data.

As prescribed at 5215.407, insert the following provision:

Submission of Cost or Pricing Data (Nov. 1987)

(a) In is expected that this contract will be awarded based upon a determination that there is adequate price competition and therefore the offeror is not required to submit or certify cost or pricing data (SF 1411) with its proposal.

(b) If the contracting officer, after receipt of the proposals, determines that adequate price competition does not exist, the offeror shall, upon request, submit such cetified cost and pricing data deemed necessary by the contracting officer.

(End of Clause)

Alternate I (Nov. 1987). As prescribed at 5215.407, substitute the following paragraph (b):

(b) If after receipt of the proposals, the contracting officer determines that adequate price competition does not exist, the offeror shall provide certified cost and pricing data as requested by the contracting officer. The offeror shall provide the requested data within [1] _____ calendar days from the date of the contracting officer's request.

Date: December 15, 1987

W.R. Babington, Jr.,

Commander, JAGC, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 87-29336 Filed 12-22-87; 8:45 am]

BILLING CODE 3810-AE-M

[1] To be completed by the contracting officer.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Finding on Northern Spotted Owl Petition

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The Service announces its 12-month finding on the petition to list the northern spotted owl as an endangered species. A finding was made that listing of the owl throughout its range is not warranted. Additional data will be reviewed to monitor the owl's population status.

DATE: The finding announced in this notice was made on December 17, 1987.

ADDRESS: Information, comments or questions should be submitted to the Regional Director, Region 1, U.S. Fish and Wildlife Service, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232. The petition, finding, supporting data and comments are available for public inspection, by appointment, during normal business hours at the Service's Endangered Species Division at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne White, Chief, Division of Endangered Species, at the above address (503/231-6131 or FTS 429-6131).

SUPPLEMENTARY INFORMATION:

Background

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) requires a finding to be made within 12 months of a petition receipt for any petition accepted for review in accordance with section 4(b)(3) of the Act. In accordance with the Act, this finding determines whether or not the action requested in a petition is warranted in light of the Service's status review and all other information in our administrative record.

A petition was submitted by Green World of Cambridge, Massachusetts, requesting the listing of the northern spotted owl (*Strix occidentalis caurina*) as an endangered species. This petition was dated November 28, 1986, but was not received by the Service until January 28, 1987. A second petition requesting the listing of this species was received on August 4, 1987, from the Sierra Club Legal Defense Fund, Inc. The Service's policy is to treat subsequent petitions as comments to be considered in the

process of evaluating the original petitioned action, and it has done so.

The Service made a preliminary finding July 23, 1987, that substantial data were available to indicate that the petitioned action may be warranted. The Service announced this finding and initiated a status review of the owl with a notice in the **Federal Register** (52 FR 34396; September 11, 1987). In addition, the Service's Portland Regional Office solicited information from over 800 sources. Most of the biological data on the owl's status were submitted by the Bureau of Land Management, the U.S. Forest Service, the fish and wildlife agencies of the States of Washington, Oregon, and California, and independent researchers.

The Service has conducted a thorough evaluation of the currently available data regarding the status of the northern spotted owl. The status review report was completed December 14, 1987. This review considered information presented by the petitioners, from commentors, from the affected land management agencies (both biological and management data), and from biologists studying the owl. Based upon this comprehensive study of the owl's status, the Service finds that the northern spotted owl does not warrant listing at this time. However, the Service intends to continue to utilize all of its existing authorities to help to ensure that the species does not decline to the point where listing would be warranted. The majority of the owl's habitat occurs on Federally managed lands and the Service has been working with these resource agencies for some time to monitor and protect the northern spotted owl. The Service believes that through proper management a viable population of northern spotted owls will be maintained throughout its present range.

Three subspecies of spotted owls are currently recognized by the American Ornithological Union: The northern spotted owl, the California spotted owl, and the Mexican spotted owl. For purposes of this finding the terms owl or spotted owl will refer to the northern spotted owl. The range of the northern spotted owl extends over western Washington and Oregon and south to the San Francisco Bay area in northern California. The owl has most often been found in old-growth or mature forests. The petition cited habitat destruction from commercial timber harvesting as the primary threat to the owl. As with most wildlife species, the owl has suffered habitat losses, but it is unknown how this habitat loss is affecting the subspecies' overall population or long-term viability. Though data indicate a reduction in the number of owls in areas previously logged, the owl still occurs over a large range and more owls are being found within its range due to the increase in the inventory effort.

It is undetermined how many acres of suitable owl habitat exist, since owls are being found with more frequency in a wider array of habitat types. Of the 5 to 6 million acres of old-growth and mature forest in Washington and Oregon, about 2 million acres are reserved from timber harvesting with the remainder scheduled for harvest at about 1.5 percent per year. Although exact figures are not available, the situation is similar for California. Figures are not available on acreages of younger growth forest that may be suitable habitat or may become so over time.

Fragmentation, isolation, and reduction of existing forest have resulted from timber harvesting practices. Population trend data do not yet exist to assess the long-term impacts of habitat fragmentation or reduction on the owl population. Though it is assumed that there has been a reduction in the overall numbers of birds within the northern population in relation to habitat loss within its range, historic figures do not exist and a direct correlation between habitat loss and population reduction cannot be accurately made. The potential isolation of the Olympic Peninusla habitat is a concern, although owls have been observed in the intervening lands and more data are necessary to determine the effect on the overall population. With proper management, corridors can be maintained between the Olympic Peninsula and other populations.

Questions over the recent variability in reproductive outcome and juvenile survivorship raise concerns, but insufficient data exist to determine if these are different than expected for a long-lived species. Data collected during recent poor reproductive years may affect the sensitivity of trend analyses. Population viability projections indicate that the population may be stable to declining over the long-term. The Service believes that more accurate projections can be made with the additional data which are needed and which are presently being collected. It is not felt that variability in reproduction and juvenile suvivorship are presently determinative of instability in the inventoried spotted owl population.

The Service recognizes that key data gaps exist with regard to the northern spotted owl. Competition impacts of the barred owl *(Strix varia)*, whose range is expanding into that of the northern spotted owl, are unknown and need to be studied further. Trend data are needed to determine long-term population viability. Specific biological and habitat requirements of the bird are also not completely understood, leading to wide interpretations of present data. Research and monitoring efforts have been initiated by biologists and resource agencies in recent years to gather the information to better address these issues. This information is needed as the basis for future direction in habitat management.

The U.S. Forest Service administers the largest percentage (approximately 70 percent) of the lands that are either currently occupied by or presently considered as suitable habitat for the northern spotted owl. The Forest Service's planning regulations require the agency to maintain viable populations of existing native vertebrates within National Forest areas. The agency is currently planning for the management of habitats on National Forest System lands to provide for a distribution of an adequate number of spotted owls to insure the continued existence of a well-distributed population within its present range. It is also carrying out habitat and population inventories, research, and monitoring studies on the owl, as part of the Forest Service's Spotted Owl Research, Development, and Application Program. This information will be vital to determine more clearly the long-term status of this owl and to assess and direct future habitat management efforts.

The Forest Service is preparing a final Supplemental Environmental Impact Statement concerning its management of the northern spotted owl. The preferred alternative identified through this document will guide the agency's owl management efforts. Individual forest plans are to be brought into compliance with the preferred alternative. The Fish and Wildlife Service is assigning a biologist to review the draft forest plans specifically for spotted owl concerns.

The Forest Service entered into an Interagency Agreement with the U.S. Fish and Wildlife Service on December 1, 1987, by which both agencies have agreed to coordinate efforts to support the common goal of ensuring population viability for the spotted owl. The agreement commits the Forest Service to continue efforts to inventory and monitor the owl population and requires an annual report by both agencies on the status of this species. This mutual effort will help decide future planning activities and will provide close scrutiny

of the northern spotted owl's status. The agreement provides for emergency action if the owl's situation deteriorates, allowing for the immediate invocation of Endangered Species Act protections, including emergency listing, if necessary.

The National Park Service and the Bureau of Land Management also administer portions of the owl's habitat. National Park Service policies and practices are compatible with owl preservation. The Bureau of Land Management has instituted a plan to manage and monitor habitat to support owls. All of the involved resource agencies have been and will continue to be encouraged to work closely with the Service to develop comprehensive studies and plans for research and protection of the spotted owl. For example, the Fish and Wildlife Service will initiate interagency coordination with the Forest Service and the National Park Service to address owl habitat and biology questions for the Olympic Peninsula physiographic province.

In 1982, the Service undertook a status review of the northern spotted owl and concluded that listing it as an endangered species was not then warranted. Based on the 1987 status review conducted by the Service's Portland Regional Office, the Service continues to find that the currently available date do not support listing the owl at this time. The Service is committed to cooperation and leadership in plans and actions that will reduce the likelihood of any species becoming endangered. Based on the 1987 status review, the northern spotted owl merits continued attention and monitoring by the Service and resource management agencies. If at any time new data indicate a decline in the owl's overall population status, the Service can then use its authorities under the Endangered Species Act to increase the owl's protection status.

Finding

A finding is made that a proposed listing of the northern spotted owl is not warranted at this time. Due to the need for population trend information and other biological data, priority given by the Service to this species for further research and monitoring will continue to be high. Interagency agreements and Service initiatives support continued conservation efforts. This finding will be published in the **Federal Register** and the petitioner will be notified.

Author

This notice was prepared by Robyn Thorson, U.S. Fish and Wildlife Service, Endangered Species Division, 500 NE. Multnomah Street, Suite 1692, Portland, Oregon 97232 (503/231–6131 or FTS 429–6131).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.;* Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L:. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411).

List of Subjects in 50 CFR Part 17

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

Dated: December 18, 1987.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 87–29479 Filed 12–22–87; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 52, No. 246
Wednesday, December 23, 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

Forms Under Review by Office of Management and Budget

December 18, 1987.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

Extension

• Agricultural Marketing Service
Regulations Governing the Inspection and Grading of Manufactured or Processed Dairy Products
Recordkeeping
Businesses or other for-profit; 676 recordkeepers; 1,954 hours; not applicable under 3504(h)
Robert G. Semerad, (202) 447–7473
• Agricultural Marketing Service
Application for Plant Variety Protection Certificate and Objective Description of Variety
LS–470 and LS–470 series
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Small businesses or organizations; 315 responses; 586 hours; not applicable under 3504(h)
Kenneth H. Evans, (301) 344–2518
• Foreign Agricultural Service
Regulations-Financing Commercial Sales of Agricultural Commodities Under Title I, Pub. L. 480
Recordkeeping; On occasion
Businesses or other for-profit; 1,236 responses; 1,072 hours; not applicable under 3504(h)
James Chase, (202) 447–5780

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 87–29409 Filed 12–22–87; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Boards

[Docket No. 44–87]

Proposed Foreign-Trade Zone, Anchorage, AK; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Municipality of Anchorage, Alaska, requesting authority to establish a general-purpose foreign-trade zone in Anchorage, within the Anchorage Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 15, 1987. The City is authorized to make the proposal under section 45.77.010 of the Alaska Statutes.

The proposal requests general-purpose zone status for eight parcels, totalling 994 acres, at two sites.

Site 1 (Port of Anchorage—3 parcels) would be located at the marine facilities of the Port of Anchorage and will consist of (a) 8.5 acres on Lot 12–B within the Port Industrial Park, (b) 30,000 square feet within the Port of Anchorage Transit Shed, and (c) 6,000 square feet within the Port of Anchorage Administration building.

Site 2 (Achorage International Airport—5 parcels) would consist of (a) 320 acres at the North Air Park Area, west of Postmark Drive and east of the North-South runway, (b) 135 acres at the North Apron Area, south of International Airport Road and north of the East-West runways, (c) 295 acres at the West Air Park area, west of the North-South runway and north of the East-West runways, (d) 120 acres at the South Air Park, south of the East-West runway and north of Raspberry Road, and (e) 115 acres south of Raspberry Road.

The application contains evidence of the need for zone services in the Anchorage area. Thus far, several firms have indicated an interest in using zone procedures for warehousing/distribution activity involving computer components, recreational boats, and automobiles. Manufacturing approvals would be requested from the Board on a case-by-case basis as proposed activities arise.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Duane Oveson, District Director, U.S. Customs Service, Pacific Region, 620 East 10th Avenue, Suite 101, Anchorage, Alaska 99501; and, Colonel Wilbur T. Gregory, Jr., District Engineer, U.S. Army Engineer District Alaska, P.O. Box 898, Anchorage, Alaska 99506–0898. The examiners are being assisted by Richard Lenahan, District Director, U.S. Department of Commerce, 701 C St., Anchorage, Alaska 99513.

As part of its investigation, the examiners committee will hold a public hearing on February 3, 1988 beginning at 10 a.m. (AST), in the Anchorage Municipal Assembly Chambers, Loussac

Library, 3600 Denali St., Anchorage, Alaska.

Interested parties are invited to present their views at the hearing. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by January 22, 1988. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through March 7, 1988.

A copy of the application and accompanying exhibits will be available during this time for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 701 C Street, Anchorage, Alaska 99513

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: December 18, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-29393 Filed 12-22-87; 8:45 am]

BILLING CODE 3510-DS-M

[Docket No. 43-87]

Proposed Foreign-Trade Zone, St. Paul, AK; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of St. Paul, Alaska, requesting authority to establish a general-purpose foreign-trade zone on St. Paul Island. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on December 14, 1987. The City is authorized to apply for a foreign-trade zone under section 45.77.010 of the Alaska Statutes.

The municipality of St. Paul encompasses St. Paul Island, one of the two inhabitated Pribilof Islands in the Bering Sea, off the southwest coast of Alaska, some 275 miles northwest of the City of Unalaska (Dutch Harbor). The island covers 44 square miles and has a population of 750 people. The St. Paul Municipal Airport was designated a "user fee" airport by the U.S. Customs Service in September 1987.

The proposal requests general-purpose zone status for four sites (629 acres). Site 1 (Harbor Site—386 acres) adjoins Village Cove Harbor and the Salt Lagoon. Site 2 (Gravel Pit Site—93 acres) adjoins the Harbor Site, on its north. Site 3 (Airport Site—70 acres) is immediately adjacent to the west side of the St. Paul Municipal Airport. Site 4 (LORAN Site—80 acres) is located on the Airport road on a site adjoining the base camp of ARCO, Exxon and Amoco, near the LORAN navigation facility.

The application contains evidence of the need for a zone to assist the City in its economic development efforts. Several firms have indicated an interest in using zone procedures for warehousing/distribution activity involving ships stores, spare parts for vessels, and oil and gas production equipment. Also, the City is engaged in discussions with two foreign firms interested in establishing fish processing plants primarily for export operations, if they can operate under foreign zone procedures. Zone procedures would be used mainly to obtain exemption from Customs duties on the ingredients and packaging materials used in processing fish for export (foreign-trade zones are subject to the Nicholson Act). Requests for manufacturing approvals would be made to the Board on a case-by-case basis as other proposed activities arise.

In accordance with the Board's regulations, an examiners committee has been appointed to investigate the application and report to the Board. The committee consists of: John J. Da Ponte, Jr. (Chairman), Director, Foreign-Trade Zones Staff, U.S. Department of Commerce, Washington, DC 20230; Duane Oveson, District Director, U.S. Customs Service, Pacific Region, 620 East 10th Avenue, Suite 101, Anchorage, Alaska 99501; and, Colonel Wilbur T. Gregory, Jr., District Engineer, U.S. Army Engineer District Alaska, P.O. Box 898, Anchorage, Alaska 99506-0898. the examiners are being assisted by Richard Lenahan, District Director, U.S. Department of Commerce, 701 C St., Anchorage, Alaska 99513.

As part of its investigation, the examiners committee will hold a public hearing on February 2, 1988, beginning at 10 a.m. (AST), at the Anchorage Legislative Affairs Office, 3111 C St., Anchorage, Alaska. The hearing will be conducted under a simultaneous teleconference format, which will allow St. Paul Island residents to participate in the proceeding at the City Manager's Office, City Hall, St. Paul. There will also be a teleconference connection to the hearing from Room 121, Capitol Bldg., Juneau, Alaska 99811.

Interested parties are invited to present their views at the hearing, including comments as to whether a Customs "user-fee" airport may be considered the equivalent of a port of entry under the FTZ Act and as to environmental impact. Persons wishing to testify should notify the Board's Executive Secretary in writing at the address below or by phone (202/377-2862) by January 22, 1988. Instead of an oral presentation, written statements may be submitted in accordance with the Board's regulations to the examiners committee, care of the Executive Secretary, at any time from the date of this notice through March 4, 1988.

Copies of the application and accompanying exhibits will be available during this time for pubic inspection at each of the following locations:

City Manager's Office, City Hall, St. Paul, Alaska

U.S. Department of Commerce, District Office, 701 C Street, Room B-116, Anchorage, Alaska 99513

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 1529, 14th and Pennsylvania Avenue, NW., Washington, DC 20230

Dated: December 18, 1987.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 87-29394 Filed 12-22-87; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; Lawrence Berkeley Laboratory 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.: 86-304R-2. *Applicant:* Lawrence Berkeley Laboratory, Division of Biology and Medicine, 1 Cyclotron Road, Berkeley, CA 94720. *Instrument:* Circular Dichroism Spectropolarimeter, Model J-600A. *Manufacturer:* JASCO, Japan. Original notice of this resubmitted application was published in the **Federal Register** of May 14, 1987.

Docket No.: 87–104R. *Applicant:* Boston University, Department of Chemistry, 390 Commonwealth Avenue, Boston, MA 02215. *Instrument:* Rapid Kinetics Accessory for UV-Visible Spectrophotometer, Model SFA–11. *Manufacturer:* Hi-Tech Scientific, United Kingdom. Original notice of this resubmitted application was published in the **Federal Register** of March 13, 1987.

Docket No.: 87–105R. *Applicant:* University of Texas at Austin, Department of Chemistry, Austin, TX 78716. *Instrument:* CD and LD Spectropolarimeter, Model J–600. *Manufacturer:* Jasco Inc., Japan. Original notice of this resubmitted application was published in the **Federal Register** of March 13, 1987.

Docket No.: 87–140R. *Applicant:* Rutgers University, Department of Psychology, New Brunswick, NJ 08903. *Instrument:* Magnetic Field-Sensor Coil Eye Movement Monitoring Instrument, Model 3000. *Manufacturer:* Skalar Instrumenten B.V., The Netherlands. Original notice of this resubmitted application was published in the **Federal Register** of April 15, 1987.

Docket No.: 87–211R. *Applicant:* Princeton University, Chemistry Department, Princeton, NJ 08544. *Instrument:* Surface Science Facility and Accessories. *Manufacturer:* University of Waterloo, Canada. Original Notice of this resubmitted application was published in the **Federal Register** of July 17, 1987.

Docket No.: 88–034. *Applicant:* Bethesda Eye Institute, St. Louis University School of Medicine, 3655 Vista Ave., St. Louis, MO 63110. *Instrument:* Electron Microscope, Model JEM–1200EX. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used for the study of the substructural morphology of ocular tissues including the retina, choroid, vitreous body, lens and cornea. *Application Received by Commissioner of Customs:* November 13, 1987.

Docket No.: 88–035. *Applicant:* University of Utah, Department of Geology and Geophysics, 719 William Browning Building, Salt Lake City, UT 84112. *Instrument:* Electron Microprobe, Model CAMEBAX SX 50. *Manufacturer:* Cameca, France. *Intended Use:* Studies of rocks, minerals, natural glass, and synthetic inorganic compounds. The data obtained with this instrument forms the basis for studying the formation of the various rocks and minerals on the Earth and in ore deposits and other mineral occurrences. In addition, the instrument will be used in the course "Electron Microprobe Analysis" to teach the students the proper techniques for performing analyses on their individual specimens which they are investigating. *Application Received by Commissioner of Customs:* November 13, 1987.

Docket No.: 88–036. *Applicant:* University of Oklahoma, 660 Parrington Oval, Norman, OK 73109. *Instrument:* Scanning Electron Microscope and Accessories, Model JSM–880. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used to examine biological, ceramic, chemical, geological and metallurgical specimens to determine their superficial characteristics and elemental composition. In addition, the instrument will be used for classroom and laboratory instruction, video-taped instruction, experiments and supervised hands-on equipment usage in various botany courses. *Application Received by Commissioner of Customs:* November 13, 1987.

Docket No.: 88–037. *Applicant:* California State University, Chico, College of Natural Sciences, Department of Biology, Chico, CA 95929. *Instrument:* Electron Microscope, Model H–300. *Manufacturer:* Hitachi Scientific Instruments, Japan. *Intended Use:* The instrument will be used for science-related educational purposes in the following courses: Bio 295: Electron Microscopy, Bio 395: Electron Microscope Operation Laboratory, Bio 396: Biological Preparations for Electron Microscopy Preparation and Bio 399T: Master's Thesis. *Application Received by Commissioner of Customs:* November 16, 1987.

Docket No: 88–038. *Applicant:* University of California, Lawrence Livermore National Laboratory, P.O. Box 5012, L–650, Livermore, CA 94550. *Instrument:* Streak Camera, Model Imacon 500. *Manufacturer:* Hadland Photonics, United Kingdom. *Intended Use:* The instrument will be used to study the picosecond response times of photoconductors, laser diode bandwidth in the 2–6 GHz range, properties of lithium niobate integrated optical waveguides and material dispersion in optical waveguides/optical fibers. *Application Received by Commissioner of Customs:* November 17, 1987.

Docket No.: 88–039. *Applicant:* U.S. Department of Energy, Argonne National Laboratory, 9700 South Cass Avenue, Argonne, IL 60439–4812. *Instrument:* Stopped-flow Spectrophotometer, Model SU–40A. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used for studies of the 5f-transition elements, U, Np, Pu, Am, and Cm. The primary objectives of these studies are to provide data which will expand the phenomenological base of actinide ion oxidation-reduction and substitution reactions. In addition, linear free energy relationships will be explored within the theoretical basis of the Moreus formalism. *Application Received by Commissioner of Customs:* November 18, 1987.

Docket No: 88–040. *Applicant:* New York University, Department of Chemistry, 4 Washington Place, New York City, NY 10003. *Instrument:* Stopped Flow Module, Model SFM–3. *Manufacturer:* Bio-Logic, France. *Intended Use:* The instrument will be used for studies of nucleic acids and proteins during experiments which involve solvent transfers from D_20 to H_20 to detect exchange of proteins. *Application Received by Commissioner of Customs:* November 19, 1987.

Docket No: 88–041. *Applicant:* University of Arizona, Tuscon, AZ 85721. *Instrument:* Stopped-Flow Sample Handling Unit, Model SF–51. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used to measure the kinetic properties of proteins. The systems to be studied are the kinetics of electron transfer between biological redox proteins with the goal of understanding the mechanism and kinetics of ATP hydrolysis by cardiac myosin from normal and diseased tissue. The goal of these studies is to understand the molecular basis of the physiological alterations induced by heart disease. *Application Received by Commissioner of Customs:* November 19, 1987.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 87–29396 Filed 12–22–87; 8:45 am]

BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

Endangered Species; Proposed Modification of Permit; Southwest Fisheries Center NMFS (P77#18)

Notice is hereby given that the Southwest Fisheries Center, National Marine Fisheries Service, P.O. Box 271, La Jolla, California 92038, has requested a modification of Permit No. 555 issued on June 27, 1987 (51 FR 23456), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216) and the regulations governing

endangered species permits (50 CFR Parts 217 through 222).

The Permit Holder is requesting authorization to test temporary and permanent marking techniques. For temporary marking purposes the Holder proposes to test commercial hair lighteners and commercial livestock dyes or paint. For permanent marking, the Holder proposes to test different tags for their retention, durability, and legibility over time. Cryogenic marking will also be tested.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this proposed modification 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 Modification would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above modification 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., Rm 805, Washington, DC; and

Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731–7415.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: December 15, 1987.

[FR Doc. 87–29355 Filed 12–22–87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Horizons West Ltd. d.b.a. Marine Life Aquarium (P158C)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:*

a. *Name:* Horizons West Ltd.

b. *Address:* Keystone Route Box 365, Rapid City, South Dakota 57701.

2. *Type of Permit:* Public Display.

3. *Name and Number of Marine Mammals:* Atlantic bottlenose dolphin *(Tursiops truncatus)*—2.

4. *Type of Take:* Capture/Maintain.

5. *Location of Activity:* West Coast of Florida.

6. *Period of Activity:* 2 Years.

The arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been inspected by a licensed veterinarian, who has certified that such arrangements and facilities are adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, DC 20235, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

The Permit is available for review by interested persons in following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1825 Connecticut Avenue NW., Rm 805, Washington, DC;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington, 98115.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

Date: December 15, 1987.

[FR Doc. 87–29356 Filed 12–22–87; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Proposed Permit Modification: The North Wind Undersea Institute (P339A)

Notice is hereby given that the North Wind Undersea Institute, 610 City Island Avenue, City Island, New York 10464 has requested a modification of Permit No. 541 issued on February 19, 1986 (51 FR 7485), 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. 541 authorized the taking of three (3) rehabilitated beached/stranded harbor seals (*Phoca vitulina*) for public display.

The Permit Holder is requesting authorization to conduct a comprehensive research program that will measure and document the cognitive and behavioral skills of the three harbor seals held under the Permit, and their ability to perform useful functions under realistic conditions. The Applicant anticipates that during this research the seals eventually will be acclimated to, and that research would be conducted for short periods of time in, open water.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this modification 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 Modification would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this modification 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 modification 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., Rm 805, Washington, DC; and

Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street,

Federal Building, Gloucester, Massachusetts 01930–3799.

Date: December 15, 1987.

Dr. Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 87–29379 Filed 12–22–87; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade; Proposed Amendments Relating to the GNMA Futures Contract and a Proposal To Recommence Trading in That Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") has submitted for the GNMA futures contract a number of proposed changes in the standards and procedures relating to the selection of the coupons used as the basis for cash settlement of the contract and to the listing of contract months. In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis ("Division") of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that these proposals are of major economic significance. In addition, the CBT has submitted a proposal to recommence trading in the GNMA futures contract, which now is dormant within the meaning of Commission Regulation 5.2.[1] On behalf of the Commission, the Division is requesting comment on these proposals.

DATE: Comments must be received on or before January 22, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the CBT GNMA futures contract.

FOR FURTHER INFORMATION CONTACT: Naomi Jaffe, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254–7227.

[1] The GNMA (CDR) futures contract is currently listed for trading at the CBT.

SUPPLEMENTARY INFORMATION: The Exchange submitted proposed amendments to the GNMA futures contract that would:.

(1) Limit the number of contract months listed to five consecutive months, rather than the current contract provisions for listing seven consecutive months and the March quarterly cycle months for a 42-month period;

(2) Change the last day of trading to the Friday before the third Wednesday of the delivery month from the Monday before the third Wednesday of the delivery month;

(3) Specify that the designated coupon will be that coupon trading closest to but not greater than par, instead of that coupon which a majority of the surveyed GNMA dealers specifies as the coupon trading nearest to par;

(4) Provide for procedures under which the Exchange, on a monthly basis, prior to listing contracts expiring two, three, and four months later, would select the coupon that will be used for determining the cash settlement price of such contracts, instead of listing contract months and subsequently selecting the coupon for each contract month at least 45 days prior to cash settlement;

(5) Since more than one coupon futures may be trading for a single contract month, clarify that, for each contract month, futures contracts based on different coupons will be settled under the cash settlement procedures on the same day, that is, the last day of trading;

(6) Change the price basis to a single GNMA coupon rather than the average of two coupons;

(7) Amend the cash settlement pricing procedures to use the median instead of the average of the fifteen quoted prices;

(8) Empower the Board or its designated Committee to conduct an extraordinary coupon determination in addition to regularly scheduled determinations;

(9) Change the name of the contract to mortgage-backed futures;

(10) Modify contract language to permit the Exchange to trade during the evening session.

With regard to these proposals to amend the contract, the CBT noted that:

> The proposed revisions are intended to enhance the usefulness of the futures for hedging by cash market participants. Basing the settlement on a single coupon provides the cash market with a risk shifting tool that incorporates as few distortions as possible. Cash market traders, investors and mortgage banking operations all deal in specific securities and futures with transparent pricing should allow them to hedge with a much clearer basis relationship.
>
> Many mortgage bankers and dealers conduct their business in the coupon trading right around par. The present proposal will assure that the so-called current coupon is available for trading and will be available for a long period to provide for orderly liquidation of hedges.

The GNMA futures contract is not currently listed for trading and is dormant under Commission Regulation 5.2. Under Regulation 5.2, an exchange must submit for Commission review and approval, pursuant to section 5a(12) of the Commodity Exchange Act (Act) and CFTC Regulation 1.41(b), an appropriate bylaw, rule, regulation or resolution to recommence trading in a dormant contract. Accordingly, the Exchange has submitted, pursuant to section 5a(12) of the Act and Commission Regulation 1.41(b), a proposal to list additional months in the contract.

The Commission is seeking comment on the proposed amendments and with respect to the CBT's proposal to recommence trading in the contract.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the amended terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)). Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC, by the specified date.

Issued in Washington, DC, on December 18, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87–29402 Filed 12–22–87; 8:45 am]

BILLING CODE 6351–01–M

Minneapolis Grain Exchange; Proposed Amendments Relating to the High Fructose Corn Syrup-55 Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Minneapolis Grain Exchange ("MGE" or "Exchange") has proposed major rule amendments for the High Fructose Corn Syrup-55 (HFCS–55) futures contract. The principal proposed amendments include the following changes: A redefinition of the par delivery area; a modification of delivery procedures; a provision for delivery at the seller's plant at the buyer's election; an increase in the number of trading months listed per year; a decrease in the daily premium charge for outstanding shipping certificates; a change in the specification of the trading unit; and amendments to the criteria governing the acceptability of approved bulk break stations and HFCS–55 production plants.

In accordance with section 5a(12) of the Commodity Exchange Act ("Act") and acting pursuant to the authority delegated by Commission Regulation 140.96, the Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposals are of major economic significance and that, accordingly, publication of the proposals is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before January 22, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the MGE HFCS–55 futures contract rule amendments.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 (202) 254–7303.

SUPPLEMENTARY INFORMATION: The MGE is proposing to modify the specifications regarding futures delivery of HFCS–55. MGE rules specify that delivery must be made at approved bulk break stations located within the Chicago "Intrastate, Industrial, Commercial and Terminal Area," or within the city limits of Gary or Hammond, Indiana. All deliveries are at par. Delivery costs to approved bulk break stations must be pre-paid by the seller.[1]

The proposed amendments would give the buyer two means of taking futures delivery. The buyer could require the seller to deliver HFCS–55 to an address designated by the buyer within Cook County, Illinois,[2] or the buyer could choose to accept HFCS–55 f.o.b. at the seller's production facility. Deliveries at the seller's production facilities would be subject to a discount of $0.25 per pound.

The MGE indicates that the proposed amendments will increase the number of marketing options available to the buyer of HFCS–55 shipping certificates and will ensure the acceptability to soft drink bottlers of HFCS–55 delivered against HFCS–55 shipping certificates. The Exchange also states that the proposal would "rectify a dual price and dual quality problem" in a recent delivery period. According to the MGE, "the f.o.b. bulk break stations delivery created a dual tier of HFCS–55 pricing on the board."

The MGE's proposed amendments also would provide for the listing for trading months for all calendar months up to eighteen months out from the current spot month. Currently, the trading months for HFCS–55 futures contracts are: March, May, July, September, and December up to eighteen months out from the current month.

According to the Exchange, industry participants indicated that the current trading month cycle which corresponds to "corn months" is not always adequate for the HFCS Market. It was noted that "often times quarterly pricing negotiations which take place in the cash market tend to negate the efficacy of the futures pricing mechanism rather than supplement its efficient development. This is due to the fact that bottlers are often booked forward for 90 days and this creates particular problems for March delivery, May delivery, September delivery and occasionally in December. Bottlers have indicated a preference for delivery months that complement their cash negotiating periods more closely."

The MGE also is proposing amendments to its rules governing the acceptability of bulk break stations and production plants for delivery. Current rules require that HFCS–55 delivered at bulk break stations meet certain quality standards, and that the bulk break stations be located in the par delivery area, handle HFCS–55, and meet basic health standards. The proposals would require, in addition, that product delivered at HFCS–55 production facilities and HFCS–55 delivered through bulk break stations to locations in Cook County be acceptable to 75 percent of the Chicago soft drink market. The MGE proposes to poll major soft drink bottlers in Chicago on an annual basis to ensure that all eligible delivery facilities meet this standard.

The MGE proposes to change the HFCS–55 trading unit from 48,000 pounds, commercial basis, to 37,000 pounds, dry basis.[3] In conjunction with this change, the MGE is proposing to change the minimum price fluctuation from $0.01 per hundredweight ($4.80 per contract) to $0.02 per hundredweight ($7.40 per contract). The futures contract's maximum daily price fluctuation trading limits would not be changed. However, since the pricing basis would be stated on a "dry" rather than a "commercial" basis, the value of a limit move would be reduced to $370 from $480 per contract.

The MGE noted that the purpose for this amendment is to change the trading unit to more correctly correspond to the cash market practice of quoting prices on a dry solids weight basis rather than the present commercial basis. The Exchange further noted that industry participants have noted that this might be a beneficial change to the contract and would help trading of the contract given that the main users of 55–HFCS are bottlers who quote all their purchases in the cash market on a dry weight basis.

The MGE is proposing to decrease the daily premium for an outstanding shipping certificate from $0.0003 per pound to $0.00015 per pound. The Exchange justified this proposal by stating that:

> * * * [Buyers] felt that such a charge was prohibitive from their standpoint, because there is presently no such penalty in the cash market. They would be discouraged from

[1] Under certain conditions, the buyer may declare a destination other than an approved bulk break station in Chicago, Illinois. To be eligible for this delivery alternative, the buyer and seller must negotiate a freight charge for delivery to the location other than Chicago, Illinois, within two business days of the cancellation of the shipping certificates. Otherwise, delivery will be made to approved break stations in Chicago, Illinois.

[2] The contract would continue to provide for the negotiation of another destination as described in footnote 1 above.

[3] 48,000 pounds, commercial basis, of HFCS–55 is equivalent to one tank truck filled with HFCS–55. The par (or average) solids content for HFCS–55 is 77 percent. Thus, the approximate dry basis equivalent of 48,000 pounds, commercial basis, is 37,000 pounds, dry weight.

trading if they had to take delivery and pay $14.40 per contract per day which over 30 days amounted to $432.00 per truck or at [$]12.00/cwt. HFCS would amount to a loss of 13.33% ($5,760=worth of contract truck) of the total value of their contract per delivery period * * *. Although it is a disincentive to buy side participation, sellers noted that storage in a jumbo rail tanker costs them somewhere in the neighborhood of $700.00 per month or $175.00 per tank truck (although tank trucks do not act as storage tanks, 4 tank trucks are the equivalent of one jumbo). Sellers felt that .015/cwt was reasonable as a "cost of storage premium" as it calculates out $700.00=one jumbo/mo. divided by 4=$175.00 divided by 30 days=[$]5.83/day per truck. This is slightly less than [$]7.20 or [$].015/cwt/day.

The MGE is also proposing a requirement that all tank trucks used in futures contract deliveries of HFCS–55 must be sealed in accordance with commercial practices. The Exchange stated that the purpose for this proposed provision is "to provide a clearer understanding and guarantee to the buyer by ensuring that normal commercial quality practices regarding tank truck and rail tanker seals follows through into futures deliveries."

The MGE proposes to implement the proposed amendments on a date specified by the MGE Board of Directors following Commission approval. The proposed amendments will apply only to delivery months which have no open interest at the time the amendments are implemented.

The Commission has determined that publication of the proposed amendments is in the public interest, will assist it in considering the view of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

Copies of the proposed amendments to the terms and conditions of the HFCS–55 futures contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW. Washington, DC 20581. Copies of the terms and conditions may be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314. Other materials submitted by the MGE in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent that they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before January 22, 1988.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the MGE HFCS–55 futures contract rule amendments.

FOR FURTHER INFORMATION CONTACT: Fred Linse, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254–7303.

SUPPLEMENTARY INFORMATION: The MGE is proposing to modify the specifications regarding futures delivery of HFCS–55. MGE rules specify that delivery must be made at approved bulk break stations located within the Chicago "Intrastate, Industrial, Commercial and Terminal Area," or within the city limits of Gary or Hammond, Indiana. All 2033 K Street NW., Washington, DC, 20581, by the specified date.

Issued in Washington, DC, on December 16, 1987.

Paula A. Tosini,

Director, Division of Economic Analysis.

[FR Doc. 87–29403 Filed 12–22–87; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense 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). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collect and Form Number, if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Extension

Department of Defense Industrial Facility Survey Industrial Preparedness Planning Program (DD Form 1519–2)

The DD Form 1519–2 is used by Department of Defense officials to record production capabilities and physical properties of privately owned facilities. The data obtained is used to plan for effective utilization of the plant during mobilization.

Responses: 15,700.

Burden hours: 31,400.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mrs. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Mrs. Pearl Rascoe-Harrison at WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 87–29391 Filed 12–22–87; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense 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). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collect and Form Number, if applicable; (3) Abstract statement of the need for the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact

from whom a copy of the information proposal may be obtained.

Extension

Department of Defense Industrial Preparedness Program Production Planning Schedule (DD Form 1519).

The DD Form 1519 is used by Department of Defense officials to record production capabilities and physical properties of privately owned facilities. The data obtained is used to plan for effective utilization of the plant during mobilization.

Responses: 22,700.

Burden hours: 56,750.

OMB Desk Officer: Mr. Edward Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Edward Springer at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mrs. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from Mrs. Pearl Rascoe-Harrison at WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

Linda Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

December 18, 1987.

[FR Doc. 87–29392 Filed 12–22–87; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Record of Decision; Site Selection for Binary Munitions Chemical Facilities

AGENCY: Department of the Army, DOD.

ACTION: Availability of Decision Memorandum.

SUMMARY: This announces the availability of a Decision Memorandum regarding the site selection for construction and operation of binary munitions chemical facilities at Pine Bluff Arsenal (PBA), Pine Bluff, Arkansas. The memorandum is the Record of Decision regarding the Final Supplemental Environmental Impact Statement on the Binary Chemical Munitions Program QL and DC Production Facilities.

SUPPLEMENTARY INFORMATION: On December 16, 1987 the Under Secretary of the Army approved the selection of PBA as the site for production of chemicals which are used in binary munitions manufacturing and are not available in quantity from commercial sources. These chemicals will be used in manufacturing three binary munition systems: An artillery projectile, a multiple launch rocket warhead and an aerial bomb. The two chemicals for which production plants are needed are methylphosphonic dichloride (DC), a feedstock used in making methylphosphonic difluoride (DF), the binary precursor for the projectile and rocket warhead; and O–[2–diisopropylaminoethyl] O'–ethylmethylphosphonite (QL), a precursor for the bomb. DF production will be continued at PBA in an existing Army plant. The Army is establishing a production base to fulfill its mission of acquiring, storing and maintaining binary munitions to meet the national security requirement to modernize our chemical warfare deterrent stockpile. The range of alternatives considered in the Army's decision analysis included five candidate sites for DC. Three of these sites were also considered for QL production. Industry, as a part of the Army's solicitation process, was allowed to nominate other environmentally suitable and commercially visable sites. The other sites considered were:

—Lake chalres (LC), Louisiana, a commercial site for DC. LC was withdrawn by the owner-operator for business reasons.

—Phosphate Development Works (PDW), Muscle Shoals, Alabama, a government site for DC, located on a Tennessee Valley Authority installation. PDW was withdrawn by TVA for business reasons.

—West Helena (WH), Arkansas, a commercial site for DC and OL. WH was withdrawn by the owner-operator for business reasons.

—Newport Army Ammunition Plant (NAAP), Indiana, a government site for DC and QL. This site was found to be environmentally suitable but was not the best choice from a program management perspective. No additional commercial alternative sites were identified as a result of the Army's solicitation process. A "No Action" alternative was eliminated because the Army's mission could not be accomplished. Pine Bluff Arsenal was selected because it is environmentally suitable and has significant advantages for government management including a less complicated management chain; a reduced cost growth and schedule delay risk; lesser requirements for transportation of materials in the public domain; and opportunities for better coordinated use resources and labor.

The Decision Memorandum summarizes the environmental and acquisition management factors considered and measures planned to minimize environmental effects. Interested individuals may obtain copies of this Decision Memorandum by contacting the Office of the Project Manager for Binary Munitions. ATTN: Mr. George T. Balunis (AMCPEO–CNB), Aberdeen Proving Ground, MD 21010–5401. Telephone (301) 671–3351.

Robert A. Stern,

Washington Representative, Program Executive Officer, Chemical/Nuclear.

[FR Doc. 87–29377 Filed 12–22–87; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 12 and 13 January 1988.

Times of Meetings:

0900–1630 hours, 12 January 1988
0800–1715 hours, 13 January 1988

Place: Bldg. 305 at CNVEO, Ft. Belvoir, VA.

Agenda: The Army Science Board Ad Hoc Subgroup for Focal Plane Array (FPA) will meet for briefings on the DOD FPA Initiative, the Services and SDIO requirements for FPA, and the Army position on the seven Terms of Reference. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

Sandra F. Gearhart,

Acting Administrative Officer, Army Science Board.

[FR Doc. 87–29324 Filed 12–22–87; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee will meet on January 20–22,

1988. The meeting will be held at offices of the Commander-in-Chief, U.S. Pacific Fleet, Pearl Harbor, Hawaii. The meeting will commence at 8:00 a.m. and terminate at 5:00 p.m. on January 20; commence at 8:00 a.m. and terminate at 3:30 p.m. on January 21; and commence at 8:00 a.m. and terminate at 12:00 noon on January 22, 1988. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings and tours for the committee members on command and control systems capabilities. The agenda will include technical briefings, tours and discussions addressing C2 and communications and interoperability issues. These briefings, tours and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Synder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217–5000, Telephone Number: (202) 696–4870.

Date: December 16, 1987.

Jane Virga,

Lieutenant, JAGC, U.S. Navy Reserve, Federal Register Liaison Officer.

[FR Doc. 87–29335 Filed 12–22–87; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Representative Average Unit Costs of Energy

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: In this notice, the Department of Energy is forecasting the representative average unit costs of five residential energy sources for the year 1988. The five sources are electricity, natural gas, No. 2 heating oil, propane and kerosene. The representative unit costs of these energy sources are used in the Energy Conservation Program for Consumer Products established by the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act and by the National Appliance Energy Conservation Act.

EFFECTIVE DATE: The representative average unit costs of energy contained in this notice will become effective January 22, 1988 and will remain in effect until further notice.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Forrestal Building, Mail Station CE–132, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–12, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

Section 323 of the Energy Policy and Conservation Act (Pub. L. 94–163), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) and by the National Appliance Energy Conservation Act (Pub. L. 100–12), (Act) [1] requires that the Department of Energy (DOE) prescribe test procedures for the determination of the estimated annual operating cost and other measures of energy consumption for certain consumer products specificed in the Act. DOE has prescribed test procedures for the major household products listed in section 322(a) of the Act. These test procedures are found in 10 CFR Part 430, Subpart B.

Section 323(b) of the Act requires that the estimated annual operating cost of a covered product be computed from measurements of energy use in a representative average-use cycle and from representative average unit costs of the energy needed to operate such product during such cycle. The section further requires DOE to provide information regarding the representative average unit costs of energy for use wherever such costs are needed to perform calculations in accordance with the test procedures. Most notably, these costs are used under the Federal Trade Commission labeling program established by section 324 of the Act and in connection with advertisements of appliance energy used and energy costs which are covered by section 323(c) of the Act.

DOE last published representative average unit costs of residential energy for use in the Energy Conservation Program for Consumer Products on April 2, 1987 (52 FR 10606). Effective January 22, 1988, the cost figures published on April 2, 1987, will be superseded by the cost figures set forth in this notice.

DOE's Energy Information Administration (EIA) has develped the 1988 representative average unit costs of electricity, natural gas and No. 2 hearing oil found in this notice. These costs were taken from the October 1987 "EIA Short-Term Energy Outlook," DOE/EIS–0202 (87/4Q), which forecasts the retail cost of selected energy products based on changes in world oil prices, wellhead natural gas prices, seasonal patterns in retail prices and established trends in margins and operating expenses. The development of these costs is discussed in detail in the October 1987 issue of this report, which is EIA's quarterly Publication of historical and forecasted energy consumption and prices. The costs appear in Table 5 of "EIA Short-Term Energy Outlook." Copies of this report are available at the National Energy Information Center, Forrestal Building, Room 1E–190, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6020.

In the cases of kerosene and propane, the 1988 representative average unit costs found in this notice were developed by other means since EIA's "Short-Term Energy Outlook" does not provide a forecast of the retail costs of these fuels. However, historical refiner and gas plant operator sales prices for kerosene and propane, and residential prices for No. 2 heating oil are available from another EIA publication, "Petroleum Marketing Monthly," DOE/EIA–0380. Referring to Table 2 and Table 15 of the June 1987 issue of "Petroleum Marketing Monthly," DOE obtained refiner and gas plant operator average sales prices to end users for kerosene and No. 2 heating oil prices to residential consumers for 1986. To forecast a 1988 representative average change in 1988 from the 1986 annual average (last complete year of available data) for No. 2 heating oil prices to residential customers also would be applied to kerosene. Propane prices were assumed to change at the same rate as the residential price of natural gas. The 1986 annual average residential natural gas prices appear in Table 4 of EIA's June 1987 issue of "Natural Gas Monthly," DOE/EIA–0130. Refiner and gas plant operator prices to end users for kerosene and propane were used

[1] References to the "Act" refer to the Energy Policy and Conservation Act, as amended by the National Energy Conservation Policy Act and by the National Appliance Energy Conservation Act.

since, of the comparable recent data available, these are believed to be most representative of prices to residential consumers. On the basis of this assumption, DOE computed the relative difference between the 1988 representative average unit cost of No. 2 hearing oil (taken from the October 1987 issue of "Short-Term Energy Outlook") and the average annual residential price for No. 2 heating oil for 1986. DOE then applied this computed value to the average annual refiner and gas plant operator sales prices to end users for kerosene for 1986 to forecast its 1988 representative average unit cost. For propane, the same method was used except that the price forecast was based on changes in the residential price of natural gas, rather than heating oil. The price change of propane to the residential customer reflects more closely the residential price change of natural gas rather than that of No. 2 heating oil.

The 1988 representative average unit costs stated in Table 1 are provided pursuant to section 323(b)(4) of the Act and will become effective Janaury 22, 1988. They will remain in effect until further notice.

Issued in Washington, DC. December 10, 1987.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

TABLE 1.—REPRESENTATIVE AVERAGE UNIT COSTS OF ENERGY FOR FIVE RESIDENTIAL ENERGY SOURCES

[1988]

Type of energy	In common terms	As required by test procedure	Dollars per million Btu[1]
Electricity	8.04¢/kWh[2,3]	$0.0804/KWh	$23.56
Natural Gas	56.2¢/therm[4] or $5.80/MCF[5,6]	0.0000562/Btu	5.62
No. 2 Heating Oil	$0.83/gallon[7]	0.0000598/Btu	5.98
Propane	70¢/gallon[8]	0.0000769/Btu	7.69
Kerosene	$0.78/gallon[9]	0.0000578/Btu	5.78

[1] Btu stands for British thermal units
[2] KWh stands for kilowatt hour
[3] 1 kWh = 3,412 Btu
[4] 1 therm = 100,000 Btu
[5] MCF stands for 1,000 cubic feet
[6] For the purposes of this table, one cubic foot of natural gas has an energy equivalence of 1,032 Btu.
[7] For the purposes of this table, one gallon of No. 2 heating oil has an energy equivalence of 138,700 Btu.
[8] For the purposes of this table, one gallon of liquid propane has an energy equivalence of 91,000 Btu.
[9] For the purposes of this table, one gallon of kerosene has an energy equivalence of 135,000 Btu.

[FR Doc. 87-29397 Filed 12-22-87; 8:45 am]
BILLING CODE 6450-01-M

Economic Regulatory Administration

[ERA Docket No. 87-59-NG]

LOUTEX Energy Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on October 23, 1987, of an application filed by LOUTEX Energy Inc. (LOUTEX) for blanket authorization to import Canadian natural gas for sale to purchasers in the United States, on a short-term, spot basis, including pipelines, local distribution companies and commercial and industrial end-users. Authorization is requested to import up to 500 MMcf of natural gas per day and a maximum of 182.5 Bcf annually for a term of two years beginning on the date of first delivery. LOUTEX, a Louisiana corporation and wholly owned subsidiary of LEDCO Inc., intends to utilize existing facilities of U.S. and Canadian pipelines for the transportation of its imported gas supplies. LOUTEX proposes to file quarterly reports with the ERA.

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 January 22, 1988.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA-076, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8233.
Michael T. Skinker, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E-042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that this import arrangement is competitive. Parties opposing the arrangement bear the burden of overcoming this assertion. 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.

It is also requested that the authorization be granted on an expedited basis.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the

proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate 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 GA076, 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.s.t., January 22, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of LOUTEX's application is available for inspection and copying in the Natural Gas Division Docket Room, GA–076–A at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 15, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Program, Economic Regulatory Administration.

[FR Doc. 87–29398 Filed 12–22–87; 8:45 am]

BILLING CODE 6450–01–M

Economic Regulatory Administration

[ERA Docket No. 87–64–NG]

Poco Petroleum, Inc.; Application To Import Natural Gas From Canada

AGENCY: Economic Regualtory Administration, DOE.

ACTION: Notice of application for blanket authorization to import natural gas.

SUMMARY: The Economic Regualtory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt on November 18, 1987, of an application filed by Poco Petroleum, Inc. (Poco), requesting that the blanket authorization previously granted in DOE/ERA Opinion and Order No. 103, issued on Jaunaury 17, 1986 (ERA Docket No. 85–33–NG), be amended to extend the blanket authorization for a term of two years beginning on January 21, 1988. Poco requests authorization to import up to a maximum of 150 Bcf during the two-year period, either for its own account or as an agent for U.S. purchasers and/or Canadian suppliers. Poco intends to utilize the existing facilities of U.S. pipelines. Poco will continue to file quarterly reports with the ERA. Poco's prior quarterly reports filed with the ERA indicate that approximately 16.5 Bcf of natural gas were imported under Order No. 103 as of September 30, 1987.

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 or 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 January 22, 1988.

FOR FURTHER INFORMATION CONTACT:

Frank Duchaine, Natural Gas Division, Economic Regulatory Administration, Forrestal Building, Room GA–076, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8233.

Diane Stubbs, Natural Gas and Mineral Leasing, Office of General Counsel, U.S. Department of Energy, Forrestal Building, Room 6E–042, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6667.

SUPPLEMENTARY INFORMATION: The decision on this application will be made consistent with the DOE's gas import policy guidelines, under which the competitiveness of an import arrangement in the markets served is the primary consideration in determining whether it is in the public interest (49 FR 6684, February 22, 1984). Parties that may oppose this application should comment in their responses on the issue of competitiveness as set forth in the policy guidelines. The applicant asserts that the extension of its import arrangement is competitive. Parties opposing the arrangment bear the burden of overcoming this assertion.

Public Comment Procedures

In response to this notice, any person may file a protest, motion to intervene or notice of intervention, as applicable, and written comments. Any person wishing to become a party to the proceeding and to have the written comments considered as the basis for any decision on the application must, however, file a motion to intervene or notice of intervention, as applicable. The filing of a protest with respect to this application will not serve to make the protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate procedural action to be taken on the application. All protests, motions to intervene, notices of intervention, and written comments must meet the requirements that are specified by the regulations in 10 CFR Part 590. They should be filed with the Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration, Room GA–076, RG–23, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. They must be filed no later than 4:30 p.m. e.s.t., January 22, 1988.

The Administrator intends to develop a decisional record on the application through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference or a

trial-type hearing. A request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, how that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, the ERA will provide notice to all parties. If no party requests additional procedures, a final opinion and order may be issued based on the official record, including the application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

A copy of Poco's application is available for inspection and copying in the Natural Gas Division Docket Room, GA-076-A, at the above address. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC December 18, 1987.

Constance L. Buckley,

Director, Natural Gas Division, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 87-29572 Filed 12-22-87; 10:46 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. CI88-108-000 et al.]

J. Cleo Thompson and James Cleo Thompson, Jr. et al.; Natural Gas Companies; Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates [1]

December 17, 1987.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and petitions which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 30, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price Per Mcf	Pressure Base
C188-108-000, B, Nov. 9, 1987.	J. Cleo Thompson & James Cleo Thompson, Jr., 4500 Republic Bank Tower, Dallas, Texas 75201.	Northern Natural Gas Company, Division of Enron Corp., Bailey "B" Lease Ozona N.E. Field, Crockett County, Texas.	(1)	
C188-109-000, B, Nov. 9, 1987.	.....do.....	Addie Clayton Lease Ozona N.E. Field, Crockett County, Texas.	(2)	
C186-735-001, C186-741-001, B, Sept. 17, 1987.	Diamond Shamrock Offshore Partners Limited Partnership, 2001 Ross Avenue—Suite 1400, Dallas, Texas 75201-2916.	Trunkline Gas Company	(3)	
C160-215-003, D, Dec. 7, 1987.	Chevron U.S.A. Inc., P.O. Box 7309, San Francisco, Calif. 94120-7309.	Riceville Field, Vermilion Parish, Louisiana.	(4)	
G-16218-004, D, Dec. 7, 1987.	.....do.....	Transwestern Pipeline Company, Laverne Field, Beaver County, Oklahoma.	(5)	
G-11174-000, D, Dec. 7, 1987.	.....do.....	Colorado Interstate Gas Company, Laverne Field, Harper County, Oklahoma.	(6)	
G-5766-002, D, Dec. 3, 1987.	Conoco Inc., P.O. Box 2197, Houston, Texas 77252.	El Paso Natural Gas Company, Jalmat-Langlie-Mattix Fields, Lea County, New Mexico.	(7)	
G-6342-013, D, Dec. 8, 1987.	.....do.....	Monument Area, Lea County, New Mexico.	(8)	
G-3812-001, D, Nov. 27, 1987.	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas 75221-2880.	Slaughter Field, Hockley County, Texas.	(9)	
CI88-155-000, (G-10836), B, Nov. 27, 1987.	Mobile Producing Texas & New Mexico Inc., Nine Greenway Plaza—Suite 2700, Houston, Texas 77046-0957.	Trunkline Gas Company, Columbus Field, Colorado County, Texas.	(10)	
CI63-411-001, D, Dec. 1, 1987.	Sohio Petroleum Company, P.O. Box 4587, Houston, Texas 77210.	Northern Natural Gas Company, Division of Enron Corp., Fox "A" Unit, Ellis County, Oklahoma.	(11)	

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price Per Mcf	Pressure Base
CI88-156-000, (CI67-560), B, Nov. 27, 1987.	Union Oil Company of California, P.O. Box 7600, Los Angeles, Calif. 90051.	Panhandle Eastern Pipe Line Company, Belva V Field, Woods County, Oklahoma.	[12]	
G-10354-003, D, Dec. 1, 1987.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Dallas, Texas 75221.	Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Tabasco Field, Hidalgo County, Texas.	[13]	
CI88-159-000, (CI69-413), B, Nov. 30, 1987.	Mitchell Energy Corporation, *et al.*, P.O. Box 4000, The Woodland, Texas 77387-4000.	Texas Eastern Transmission Corporation, Chapa Area Field, Live Oak County, Texas.	[14]	
CI88-144-000, B, Nov. 24, 1987. [16]	Lincoln Rock Corporation, P.O. Box 8438, Northfield, Illinois 6093.	Cimarron Transmission Company, North Marietta Field, Enville, Area, Love County, Oklahoma.	[15]	

[1] Applicant requests permanent abandonment with three-year pregranted abandonment for any sales for resale in interstate commerce under its small producer certificate in Docket No. CS67-24.

In support of its application Applicant states the gas contract will not expire until July, 1990. However, Applicant and purchaser have entered into a release agreement. Deliverability is approximately 58 Mcf/d. The gas is NGPA section 104 post-1974 gas. Applicant desires to sell gas in the spot market.

[2] Applicant requests permanent abandonment with three-year pregranted abandonment for any sales for resale in interstate commerce under its small producer certificate in Docket No. CS67-24.

In support of its application Applicant states the gas contract expired in 1984. Applicant and purchaser have entered into a release agreement. Deliverability is approximately 781 Mcf/d. The gas is NGPA section 104 1973-1974 biennium gas and flowing gas.

[3] Applicant requests amendment of its existing LTA to reflect that NGPA section 109 gas is incuded since all jurisdictional gas is covered by the release agreement with Trunkline.

[4] Acreage has been assigned to Bass Enterprises Production Company, effective 10-1-87.

[5] Acreage has been assigned to Tidemark Enterprises Inc., effective 11-1-86.

[6] Acreage has been assigned to Chesapeake Production Company, effective 9-1-87.

[7] By Partial Assignment executed 4-3-87, effective 12-1-86, Conoco Inc. conveyed unto Santa Fe Energy Company certain acreage.

[8] A portion of the acreage subject to Rate Schedule No. 85 was conveyed unto Santa Fe Exploration Company, effective 12-1-86.

[9] Sun assigned its interest in Property No. 529758, Mallet Land & Cattle, to Flag-Redfern Oil Co., effective 7-1-86.

[10] By Assignment executed 6-20-86, effective April 1, 1986, MPTM assigned to Cities Service Oil and Gas Corporation all of its right, title and interest in certain acreage.

[11] By Assignment effective 10-1-87, Sohio Petroleum Company assigned certain acreage to Maynard Oil Company.

[12] Union Oil Company of California assigned a certain lease under Docket No. CI67-560 to Vance Production Company, effective 9-1-87.

[13] ARCO sold certain acreage covered by Rate Schedule No. 148 to Essenjay Petroleum Coporation, effective 8-29-83. Certain other acreage has been released effective 5-1-84.

[14] On 2-5-86, Mitchell assigned its interest in the leases that are under the 5-15-68 contract to Mr. David Dilger.

[15] Applicant alleges that the wells are not capable of dellvering gas into Cimarron's gathering system at the pressure maintained by Cimarron at the delivery point. The price paid by Cimarron to Lincoln Rock under their Agreement for the six-month period beginning 7-1-87 and ending 12-31-87 is 95% of 88 cents/Mcf (at 1,000 Btu), less a treating charge of 2 cents/Mcf. At that price, Lincoln Rock alleges that it cannot continue to bear the compression costs.

[16] Additional material received December 8, 1987.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 87-29334 Filed 12-22-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES88-24-000]

Cambridge Electric Light Co.; Application

December 17, 1987.

Take notice that on December 9, 1987, Cambridge Electric Light Company filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue not more than $40,000,000 of short-term debt and other borrowings on or before December 31, 1989, with maturities on or before December 31, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 30, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29328 Filed 12-22-87; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ES88-23-000]

Commonwealth Electric Co.; Application

December 17, 1987.

Take notice that on December 9, 1987, Commonwealth Electric Company (Applicant) filed an application with the Federal Energy Regulatory Commission seeking authority, pursuant to section 204 of the Federal Power Act, to issue not more than $125,000,000 of short-term debt and other borrowings on or before December 31, 1989, with maturities on or before December 31, 1990.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before December 30, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29329 Filed 12-2-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI88-154-000 and CI88-157-000]

Conoco Inc.; Application

December 17, 1987.

Take notice that on November 27, 1987, Conoco Inc. (Conoco), P.O. Box 2197, Houston, Texas 77252, filed an application pursuant to sections 4 and 7 of the Natural Gas Act (15 U.S.C. 717c and f) and Part 157 of the Commission's Regulations under the Natural Gas Act (18 CFR Part 157), for authorization to permanently abandon certificates of public convenience and necessity issued to Conoco heretofore authorizing the sales of natural gas to United Gas Pipe Line Company (United) under various contracts covering gas sales subject to the Commission's Natural Gas Act jurisdiction as shown on Exhibit A. Conoco additionally requests the issuance of a permanent blanket certificate with pregranted abandonment authorizing sales for resale of natural gas in interstate commerce from sources formerly committed to United. Conoco also requests abandonment of individual sales made pursuant to the requested blanket certificate upon expiration of the term of such sales.

Conoco states that these authorities are necessary to enable Conoco to implement a comprehensive settlement agreement between Conoco and United to settle, compromise and release certain claims arising from various contractual relationships. Part of the settlement is the mutual understanding and agreement to rescind, terminate and cancel as of October 31, 1987 the contracts covering sales for which abandonment authorization is requested.

Any person desiring to be heard or to make any protest with reference to said applications should, on or before December 31, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

EXHIBIT A

Docket No.	Conoco Inc. FERC gas rate schedule No.	Location	Estimated deliverability	NGPA category
G-6354	106	Eugene Island Area, Offshore, Louisiana	325 Mcfd	104 Replacement/ Recompletion
CI80-286	465	South Timbalier, Block 146, Offshore Louisiana	3,985 Mcfd	102(d)
CI87-1736	329	Weeks Island Field, Iberia Parish, Louisiana	90 Mcfd	104 Replacement/ Recompletion
G-16228	164	Ridge and North Leroy Fields, Lafayette and Vermilion Parishes, Louisiana	180 Mcfd	106(a)
G-15989	247	Theall Field, Vermilion Parish, Louisiana	80 Mcfd	102(c)
G-11707	143	Maxie and Pistol Ridge Fields, Forrest, Lamar and Pearl River Counties, Mississippi	5 Mcfd	108
G-6352	207	Cabeza Creek Field, Goliad County, Texas	335 Mcfd	106(a) (30%); 103 (70%)
G-5892	79	North Pettus and Burnell Fields, Karnes, Bee and Goliad Counties Texas	1,090 Mcfd	104 Flowing Gas (92%); 103 (8%)

[FR Doc. 87-29330 Filed 12-22-87; 8:4

BILLING CODE 6717-01-M

[Docket No. RP85-125-003]

Distrigas of Massachusetts Corp.; Proposed Changes in FERC Gas Tariff

December 16, 1987.

Take notice that on December 8, 1987, Distrigas of Massachusetts Corporation ("DOMAC") tendered for filing the below listed tariff sheets to be a part of its FERC Gas Tariff, First Revised Volume No. 1:

Original Sheet No. 16
Substitute Eighth Revised Sheet No. 17
Substitute Second Revised Sheet No. 17A
Sheet No. 18
Substitute Fourth Revised Sheet No. 19
Substitute Original Sheet No. 20
Sheet No. 21
Substitute First Revised Sheet No. 22
Substitute First Revised Sheet No. 23
Substitute First Revised Sheet No. 24

DOMAC states that the tariff sheets were submitted in compliance with the Commission's Opinion No. 291 issued November 23, 1987 in Docket No. RP85-125-000. DOMAC also states that the submission of this compliance filing is without prejudice to DOMAC's rights to seek rehearing of the November 23, 1987 Opinion or to any position DOMAC may take in further proceedings.

A copy of the filing was mailed to DOMAC's jurisdictional customers and all parties set out on the official service list at Docket No. RP85-125-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 384.214 and 385.211. All such motions or protests must be filed on or before December 23, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29326 Filed 12-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP86-69-007, TA87-3-15-001 and RP88-15-001]

Mid Louisiana Gas. Co.; Compliance Filing

December 18, 1987.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on December 15, 1987, tendered for filing as a part of First Revised Volume No. 1 of its FERC Gas Tariff the following Tariff Sheets:

To become effective September 1, 1987:

Sixtieth Revised Sheet No. 3a
Third Revised Sheet No. 3a.1
Sixth Revised Sheet No. 23a
Second Revised Sheet No. 26g

To become effective November 1, 1987:

Sixty-first Revised Sheet No. 3a
Fourth Revised Sheet No. 3a.1

Mid Louisiana states that the purpose of the filing of the revised Tariff Sheets to become effective September 1, 1987, is to comply with the Commission's Orders issued in Docket Nos. RP86-69-000 *et al.*, and TA87-3-15-000.

Mid Louisiana further states that the purpose of the filing of the revised Tariff Sheets to become effective November 1, 1987, is to incorporate the changes resulting from the compliance filing with its annual charge adjustment (ACA) clause approved by the Commission in Docket No. RP88-15-000.

Copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before December 28, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29405 Filed 12-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-143-002]

MIGC, Inc.; Compliance Filing

December 18, 1987.

Take notice that on December 14, 1987, MIGC, Inc. ("MIGC") tendered for filing Substitute Second Revised Sheet No. 39, Fourth Revised Sheet No. 102, Fourth Revised Sheet No. 140, and First Revised Sheet No. 250, all to MIGC's FERC Gas Tariff, Original Volume No. 1. These tariff sheets are proposed to become effective October 1, 1987.

MIGC states that the instant filing is being submitted in further compliance with Commission Order No. 472-B and the Commission's October 16, 1987 Order which accepted MIGC's ACA filing in this docket effective October 1, 1987. MIGC further states that the additional revisions to its initial ACA filing which are reflected in the instant submission broaden the applicability of MIGC's ACA charge to certain individually certificated rate schedules which were inadvertently excluded in its earlier filings in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests should be filed on or before December 28, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29406 Filed 12-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-41-000]

Northwest Pipeline Corp.; Filing Annual Compliance Report

December 18, 1987.

Take notice that on December 15, 1987, Northwest Pipeline Corporation ("Northwest") tendered for filing Twenty-First Revised Sheet No. 10-A to be a part of its FERC Gas Tariff, First Revised Volume No. 1. Such tariff sheet reflects Northwest's Annual Compliance Report and Cost-of-Service Study pursuant to sections 13 and 14 of its Rate Schedudle T-1.

Northwest proposes a change in its Rate Schedule T-1 Facility Charge effective February 1, 1988, in accordance with section 13 of Rate Schedule T-1, as supported by its Cost-of-Service Study and to implement an Amortizing Adjustment effective February 1, 1988, in accordance with section 14 of Rate Schedule T-1.

Copies of this filing have been served on Pacific Interstate Transmission Company and all jurisdictional customers and affected state agencies.

Any persons desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before December 28, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29407 Filed 12-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ES88-25-000]

PacificCorp, Application

December 17, 1987.

Take notice that on December 11, 1987, PacifiCorp doing business as Pacific Power & Light Company (Pacific) filed its application with the Federal Energy Regulatory Commission, pursuant to section 204 of the Federal Power Act, seeking an order (1)

authorizing it to borrow the proceeds of up to $165,000,000 of Pollution Control Revenue Bonds to be issued severally by the Counties of Sweetwater and Converse, Wyoming (the "Counties") and the Cities of Forsyth, Montana and Gillette, Wyoming (the "Cities"), (2) authorizing it to enter into such agreements or arrangements with the Counties and the Cities and with other entities as may be reasonably necessary to effect the borrowing and provide credit enhancement for the said Bonds, (3) authorizing it to replace or modify, from time to time, existing letters of credit supporting the Bonds and other Pollution Control Revenue Bonds and (4) exempting the transactions from competitive bidding pursuant to 18 CFR 34.2(b)(2). The borrowings will be in connection with the refunding of outstanding Pollution Control Revenue Bonds that were issued to finance certain air and water pollution control and solid waste disposal facilities at the Jim Bridger, Dave Johnston, Colstrip and Wyodak Generating Plants.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protects should be filed on or before December 31, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29331 Filed 12-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-17-001]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 18, 1987.

Take notice that on December 14, 1987, Southern Natural Gas Company (Southern) tendered for filing the following tariff sheets to its FERC Gas Tariff, Sixth Revised Volume No., 1, to be effective December 1, 1987:

First Revised Sheet Nos. 30M-300
First Revised Sheet Nos. 30R-30AA
First Revised Sheet Nos. 30EE-30GG
First Revised Sheet Nos. 30JJ-30TT
First Revised Sheet Nos. 45R.9-45R.15
First Revised Sheet No. 45R.19
First Revised Sheet Nos. 45R.22-45R.25
First Revised Sheet Nos. 45R.27-45R.28
First Revised Sheet Nos. 53I.30-53I.31
First Revised Sheet No. 53I.33
First Revised Sheet No. 53I.40
First Revised Sheet Nos. 53I.46-53I.47
First Revised Sheet No. 53I.49
First Revised Sheet Nos. 53I.56

Southern states that on October 30, 1987, it filed in this proceeding revisions to its FERC Gas Tariff to establish as part of its Tariff Rate Schedules FT and IT, the General Terms and Conditions for Rate Schedules FT and IT, and Forms of Service Agreement under Rate Schedules FT and IT. On November 27, 1987, the Commission issued its Order Accepting Filing and Suspending Tariff Sheets, Subject to Refund and Conditions, Convening Technical Conference and Granting Late Interventions (Order). Ordering paragraph (A) required Southern to file within 15 days of the date of the issuance of the Order to make revisions prescribed by the Order. Accordingly, Southern has submitted the revised tariff sheets listed above and has requested a waiver of the Commission's Regulations to make the revised sheets effective December 1, 1987.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before December 28, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 87-29408 Filed 12-22-87; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CI88-87-000 and CI88-88-000]

Sun Exploration and Production Co. et al.; Applications for Permanent Abandonment and Blanket Limited-Term Certificate With Pregranted Abandonment

December 17, 1987.

Take notice that on November 2, 1987, as supplemented on November 23 and December 7, 1987, Sun Exploration and Production Company, *et al.*[1] (Sun, *et al.*), P.O. Box 2880, Dallas, TX 75221-2880 filed applications in Docket No. CI88-88-000 requesting permanent abandonment of sales of gas to ANR Pipeline Company from various fields located in Oklahoma and Louisiana, and requesting in Docket No. CI88-87-000 a three-year blanket limited-term certificate with pregranted abandonment for sales for resale in interstate commerce of the released gas to other purchasers.

Sun, *et al.* state expedited relief is sought for the reason that takes of gas under the terms of the gas purchase contracts have been substantially reduced and ANR has entered into a settlement agreement to, among other things, release from these contracts all NGA gas listed in the Appendix. Deliverability for Sun's interest in 12,821 Mcf per day. The gas is NGPA section 106(a) gas (86.3%) and 104 flowing (6.9%), replacement (0.1%), 1973-1974 biennium (1.5%) and post-1974 (5.2%) gas. Sales have been made under Sun, *et al.*'s certificates and FERC Gas Rate Schedules listed in the attached Appendix. Applicants request that their applications be considered on an expedited basis under procedures established by Order No. 436, Docket No. RM85-1-000, at 18 CFR 2.77.[2]

Since Sun, *et al.*, have requested that their applications be considered on an expedited basis, all as more fully described in the applications which are on file with the Commission and open to

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[1] The *et al.* parties are listed in the attached Appendix. Sun Exploration and Production Company operates under the listed FERC Gas Rate Schedules and is filing jointly with the listed co-owners which are selling under these rate schedules.

[2] The United States Court of Appeals for the District of Columbia vacated the Commission's Order No. 436 on June 23, 1987. In vacating Order No. 436, the Court rejected challenges to the Commission's statement of policy in § 2.77 of its Regulations. Section 2.77 states that the Commission will consider on an expedited basis applications for certificate and abandonment authority where the producers assert they are subject to substantially reduced takes without payment or where the parties have entered into a take-or-pay buy-out pursuant to § 2.76.

public inspection, any person desiring to be heard or to make any protest with reference to said applications should on or before 15 days after the date of publication of this notice in the **Federal Register**, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Sun, *et al.*, to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Rate schedule No.	Docket No.	Field/county/state	Owners
86	G-12972	Laverne/Harper/OK	Sun Exploration and Production Co., Mabee Petroleum Corp., F.A. Gillespie & Sons Co., James A. Gillespie, Sidney J. Gillespie, Geraldine G. Lucas Trust, Mrs. Gloria G. Parker, Bernadette G. Wolfswinkle, Nolan Adams, Est. of Wm. Freeman Houser, J.R. Atkinson Trust, Thomas D. Berry, Melinda Berry Fischer, Carl Mason & George S. Mason, L.C. Neeley, Josephine Uri Stowe, Templeton Energy Income Corp., O.G. Zoldoske-Umi, Peppers' Family Trust, Landmark Exploration Co.
130	CI61-992	Lovedale/Harper/OK	Sun Exploration and Production Co.
146	CI62-1111	Laverne/Harper/OK	Sun Exploration and Production Co.
148	CI61-1102	Woodward/Major & Woodward/OK	Sun Exploration and Production Co.
295	G-5180	Flores/Beaver/OK	Sun Exploration and Production Co.
365	G-18630	Laverne/Harper/OK	Sun Exploration and Production Co., Landmark Exploration Co.
392	CI61-1147	Cedardale/Woodward & Major/OK	Sun Exploration and Production Co.
393	CI61-1201	S. Edith/Harper/OK	Sun Exploration and Production Co.
430	CI65-1228	Kings Bayou/Cameron/LA	Sun Exploration and Production Co.
443	CI66-864	Woodward/Woodward/OK	Sun Exploration and Production Co.
481	CI65-1327	Laverne/Harper/OK	Sun Exploration and Production Co., Gallaspy Oil Properties, Peppers' Trust.
501	CI72-183	Laverne/Harper/OK	Sun Exploration and Production Co.
510	CI72-724	N.E. Boiling Springs/Woodward/OK	Sun Exploration and Production Co.
528	CI74-679	Woodward/Woodward/OK	Sun Exploration and Production Co., PC Mee.
557	CI75-223	Laverne/Harper/OK	Sun Exploration and Production Co.
558	CI75-235	Lenora/Dewey/OK	Sun Exploration and Production Co.
578	CI75-497	N.E. Seiling/Woodward/OK	Sun Exploration and Production Co.
580	CI76-233	Laverne/Beaver/OK	Sun Exploration and Production Co.
618	CI80-102	Cheyenne, S.W./RogerMills/OK	Sun Exploration and Production Co.
693	CI61-996	Cedardale/Woodward/OK	Sun Exploration and Production Co.
696	CI65-1196	Dacoma & S. E. Dacoma/Alfalfa/OK	Sun Exploration and Production Co.
751	CI82-293	Laverne/Harper/OK	Sun Exploration and Production Co., JR Atkinson Trust, Thomas D. Berry, Melinda Berry Fischer, Carl Mason & George S. Mason, L.C. Neeley, Josephine Uri. Stowe, Templeton Energy Income Corp., O.G. Zoldoske-UMI.

[FR Doc. 87-29333 Filed 12-22-87; 8:45 am]

BILLING CODE 6717-01

[Docket No. CI88-143-000 and CI88-146-000]

Texaco Inc. and Texaco Producing Inc.; Application

December 17, 1987.

Take notice that on November 20, 1987, Texaco Inc. and Texaco Producing Inc. (Applicant), of P.O. Box 52332, Houston, Texas 77052, filed applications pursuant to section 7 (b) and (c) of the Natural Gas Act and §§ 157.23 and 157.30 of the Commission's Regulations thereunder, requesting (1) permanent abandonment of sales to Natural Gas Pipeline Company of America (NGPL) of gas produced from various fields in Louisiana, Oklahoma, Texas and New Mexico, as more fully described on Exhibit "A" attached hereto, and (2) a three-year blanket limited-term certificate with pregranted abandonment in order to make sales for resale in interstate commerce of the abandoned gas, without market restrictions. Applicant also seeks authorization to include sales by co-interest owners in the same wells to the extent the joint owners agree.

In support of its applications Applicant states that the authorizations being sought are as a result of a comprehensive settlement agreement with NGPL dated June 1, 1987. Under the settlement agreement Applicant and NGPL agreed to terminate the contracts or portions thereof listed on Exhibit "A" effective the date abandonment authorization is received. Deliverability is approximately 5,330 Mcf/d of section 104 minimum rate gas, 8,400 Mcf/d of section 102(d) gas, and 10,000 Mcf/d of section 109 gas.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 31, 1987, file with the Federal Energy Regulatory Commission, Washington, DC 20426 a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Lois D. Cashell,

Acting Secretary.

Exhibit "A"

Previously certificated gas sales of Texaco Inc. and Texaco Producing Inc. to Natural Gas Pipeline Company from various fields in Louisiana, New Mexico, Oklahoma and Texas.

Certificate Docket No.	GRS No.	Field	County	State
Texaco Inc.:				
CI62-335	249	Knox	Stephens	OK
CI65-589	354	Indian Basin	Eddy	NM
CI68-912	411	Lorena West	Texas	OK
CI79-634	594	Tiger Shoal	Offshore	LA
CI83-149 [1]	610	South Marsh Is. Block 236	Offshore	LA
Texaco Producing Inc.:				
CI64-974	133	Putnam/Thomas Plant	Custer, Dewey	OK
CI69-1003	173	Nine Mile Point	Aransas	TX
CI66-69, CI66-107	[2]345	Camrick	Beaver, Texas	OK
CI66-768	354	South Taloga	Dewey	OK

[1] Limited to 28% of Texaco's interest previously dedicated to NGPL.
[2] Includes additional interest in properties acquired by assignment from BHP Petroleum (Americas) Inc. and certificated in Docket CI66-107 (BHP GRS-80).

[FR Doc. 87-29332 Filed 12-22-87; 8:45 am]
BILLING CODE 6714-01-M

[Docket No. RP88-39-000]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

December 16, 1987.

Take notice that on December 11, 1987, Williams Natural Gas Company (WNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets:

Revised Original Sheet No. 6A
Revised First Revised Sheet Nos. 11, 14 and 29

The proposed effective date of these tariff sheets is January 1, 1988. WNG states that the purpose of these sheets is to include in its currently effective firm sales rate schedules (Rate Schedules F and P) a Standby Charge to recover costs associated with standing by to serve its firm sales customers that do not reduce their full requirements service or contract demand where such customers obtain and have transported on WNG's system gas abandoned by WNG's producers under the Good Faith Negotiation procedures in § 270.201 of the Commission's Regulations as promulgated in Order No. 451.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 23, 1987. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 87-29327 Filed 12-22-87; 8:45 am]
BILLING CODE 6717-01-M

Office of Hearings and Appeals

Extension of Deadline for Filing Crude Oil Refund Claims

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Extension of deadline for filing crude oil refund claims.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces that the deadline for filing applications for crude oil refunds in all crude oil refund proceedings implemented to date under the DOE's Modified Statement of Restitutionary Policy (the MSRP), 51 FR 27889 (August 4, 1986), has been extended. The new filing deadline will be no earlier than June 30, 1988.

ADDRESS: Applications for refund should be addressed to: Subpart V Crude Oil Refunds, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director, Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-2094 (Mann); 586-2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: In *A. Tarricone, Inc.*, 15 DOE § 85,495 (1987), 52 FR 13291 (April 22, 1987), the OHA established refund proceedings for alleged crude oil violation amounts received form 42 firms. *Tarricone* set December 31, 1987 as the deadline for filing refund applications for claims against those 42 accounts. A similar deadline was established in all of the other crude oil refund proceedings implemented to date under the MSRP. A list of these cases is set forth in the Appendix to the Supplemental Order reproduced below.

In the Supplemental Order, issued December 14, 1987, the OHA announced that the former December 31, 1987 deadline for filing crude oil refund applications has been extended by at least six months. OHA's decision cited the need to give consumers injured by crude oil overcharges sufficient notice of the opportunity to file refund claims as the main reason for the extension. A new filing deadline—no earlier than June 30, 1988—will be established by the OHA in a future crude oil refund decision. All applications for refund should be sent to the address indicated above.

Dated: December 16, 1987.

George B. Breznay,
Director, Office of Hearings and Appeals.

December 14, 1987.

Decision and Order of the Department of Energy

Supplemental Order

Name of Petitioner: A. Tarricone, Inc., *et al.*
Date of Filing: December 9, 1987.
Case Number: KFX-0047.

On July 7, 1986, the United States District Court for the District of Kansas approved an historic settlement in *In re: The Department of Energy Stripper Well Exemption Litigation*, MDL No. 378 (D. Kan. 1987) (hereinafter referred to as the Settlement Agreement). The Settlement Agreement required the Department of Energy (DOE) to modify its prior restitutionary policy, and implement a refund process for crude oil overcharges based on the procedural regulations codified at 10 CFR Part 205, Subpart V. As required by the agreement, the DOE issued a Modified Statement of

Restitutionary Policy in Crude Oil Cases (the MSRP) on August 4, 1986. 51 Fed. Reg. 27899 (1986).

The DOE's Office of Hearings and Appeals (OHA) is applying the MSRP in all cases involving crude oil overcharges. *See* Order Implementing the MSRP, 51 FR 29689 (August 20, 1986). OHA also issued a Notice on April 6, 1987, which discussed the general procedures the OHA would follow in crude oil refund proceedings. 52 FR 11737 (April 10, 1987) (the OHA Notice). The OHA Notice stated that standards and procedures governing the evaluation of crude oil refund claims would be contained in Final Decisions and Orders issued in specific refund proceedings. *Id.*

On April 15, 1987, the OHA established refund proceedings for funds received from A. Tarricone, Inc. and 41 other firms listed in the Appendix to that determination. *A. Tarricone, Inc.*, 15 DOE ¶ 85,495 (1987) (hereinafter referred to as *Tarricone*). All of these proceedings involve alleged crude oil violations, and the *Tarricone* decision permitted persons to file one refund application for claims against all 42 funds. The *Tarricone* decision established December 31, 1987, as the deadline for filing refund applications for claims against the 42 accounts.[1] For the reasons explained below, we have concluded that the December 31, 1987 filing deadline should be extended.

First, the influx of crude oil refund applications has generated an unprecedented workload for OHA as the deadline approaches. In the first week of December alone, the OHA received more than 2,400 crude oil claims. The inflow of crude oil claims needs to be spread out over a longer period.

Second, and more importantly, sufficient notice must be given to injured parties of the opportunity to file crude oil refund claims. Although we have received over 16,000 crude oil claims to date, there is a much larger total nationwide pool of potential refund applicants, which includes small businesses, farmers, and local governmental entities such as cities, counties, and school districts. They should be given every reasonable opportunity to apply. Many efforts have been made to notify them of the refund process. For example, notices have been published in the Federal Register, press releases have been issued, trade associations and all 535 congressional offices have been informed about the refund process, and thousands of information packets have been mailed to interested parties. Nevertheless, OHA's experience with the oil overcharge refund process indicates that it often takes a long time—well over a year—for information to reach potential applicants, especially those who have no prior knowledge of the Department's program for restitution of oil overcharges. Representative Bill Shuette, a Michigan Congressman with many farmers in his district, recently has requested that the Department extend the deadline. Writing to alert the Secretary to "an unfair situation that has developed," Mr. Schuette says:

> Only recently have many of the possible recipients of the crude oil overcharge claims been made aware of this settlement for which applications are presently due in your Office of Hearings and Appeals by December 31, 1987. This deadline does not allow damaged Michigan consumers an adequate opportunity to file claims for their intended restitution * * *
>
> December 8, 1987 Letter from Rep. Bill Schuette to the Secretary of Energy.

Finally, there are a number of large crude oil refund proceedings in which refund procedures are about to be established. For ease of administration, and to avoid confusion, a similar filing deadline should be established. For example, in *Ernest A. Allerkamp, et al.*, Case Nos KFX–0033, *et al.*, (Proposed Decision issued October 19, 1987), 52 F.R. 39988 (October 26, 1987), OHA has proposed procedures for refunding an additional $119 million in principal, plus $68.2 million in interest. *Allerkamp* has also proposed to implement the "full policy" volumetric refund calculation discussed in the OHA notice, and for purposes of administrative efficiency, to combine the volumetric refund amounts of all the crude oil subject to the December 31, 1987 deadline.

Under these circumstances, we believe that good cause exists for extending the filing deadline. *See generally* 10 CFR Part 205, Subpart V. In order to alleviate workload problems, provide better notice to interested parties, and to implement final refund procedures in *Allerkamp*, we will extend the filing deadline beyond December 31, 1987 to correspond to the deadline to be established in the final *Allerkamp* decision. The new deadline will be no earlier than June 30, 1988.

It is therefore ordered that:

The filing deadline for crude oil refund applications submitted pursuant to *A. Tarricone, Inc.* and the other cases listed in the Appendix to this Decision will be extended. The new deadline will be established by the Office of Hearings and Appeals in the final decision issued in *Ernest A. Allerkamp, et al.*, and will be no earlier than June 30, 1988.

George B. Breznay,

Director, Office of Hearings and Appeals.

Date: December 14, 1987.

Appendix

Crude Oil Refund Proceedings To be subject to the new *Allerkamp* Filing Deadline:
A. Terricone, Inc., 15 DOE ¶ 85,495 (1987)
Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986)
MAPCO, Inc., 15 DOE ¶ 85,097 (1986)
Kent Oil & Trading Co., 15 DOE ¶ 85,100 (1987)
O.B. Mobley, Jr., 16 DOE ¶ 85,006 (1987)
Berry Holding Co., 16 DOE ¶ 85,405 (1987)

[FR Doc. 87–29399 Filed 12–22–87; 8:45 am]

BILLING CODE 6450–01–M

[1] The December 31, 1987 deadline was also applied to the other crude oil refund proceedings in which OHA has issued final orders authorizing the submission of claims. *See* Mountain Fuel Supply Co., 14 DOE ¶ 85,475 (1986); MAPCO, Inc., 15 DOE ¶ 85,097 (1986); Kent Oil & Trading Co., 15 DOE ¶ 85,100 (1987); O.B. Mobley, Jr., 16 DOE ¶ 85,006 (1987); and Berry Holding Co., 16 DOER ¶ 85,405 (1987).

ENVIRONMENTAL PROTECTION AGENCY

[PF–490; FRL–3305–4]

Pesticide Tolerance Petition; Abbott Laboratories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the filing of a pesticide petition by Abbott Laboratories proposing an exemption from the requirement of a tolerance for the insecticide thuringiensin or Beta-exotoxin (2-O-(4'-O-5-L-deoxyadenosine-5'-yl-beta-O-glucopyransyl)-4-O-phospho-O-allaric acid) for use in chicken manure under poultry cages for control of flies.

ADDRESS: By mail, submit written comments to:

Information Services Section, Program Management and Support Division (TS–757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, bring comments to: Rm. 236, CM#2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Phil Hutton, Product Manager (PM) 17, Registration Division (TS–767C), Environmental Protection Agency, Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 200, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–557–2690.

SUPPLEMENTARY INFORMATION: EPA gives notice that the Abbott Laboratories, 14th and Sheridan Rd., North Chicago, IL 60064, has submitted a

pesticide petition (PP 7H3492) proposing to amend 40 CFR Part 180 by establishing an exemption from the requirement of a tolerance for thuringiensin or Beta-exotoxin for use in chicken manure under poultry cages to control flies.

EPA issued a related notice on thuringiensin or Beta-exotoxin for an exemption from the requirement of a tolerance for all raw agricultural commodities, which appeared in the **Federal Register** of May 14, 1987 (52 FR 18280).

Authority: 21 U.S.C. 346a.

Dated: December 14, 1987.

Edwin F. Tinsworth,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 87-29372 Filed 12-22-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-180748; FRL-3305-9]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 10 States listed below and two crisis exemptions were initiated by the Texas Department of Agriculture. The exemptions, issued during the months of August and September, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific or crisis exemption for its effective dates.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person: By mail:

Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Rm. 716, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-1806).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arkansas State Plant Board for the use of dicamba to control redvine on land for plant back of cotton; September 17, 1987, to December 1, 1987. (Gene Asbury)

2. California Department of Food and Agriculture for the use of propargite on avocadoes to control avocado brown mite and six-spotted mite; September 3, 1987, to December 1, 1987. (Libby Pemberton)

3. California Department of Food and Agriculture for the use fenamiphos on plums and prunes to control nematodes; September 11, 1987, to September 1, 1988. (Stan Austin)

4. California Department of Food and Agriculture for the use of sodium chlorate on dry edible beans as desiccant/harvest aid; September 21, 1987, to December 31, 1987. (Robert Forrest)

5. California Department of Food and Agriculture for the use fenamiphos on kiwi fruit to control nematodes; August 14, 1987, to July 30, 1988. (Stan Austin)

6. Delaware Department of Agriculture for the use of glyphosate on marshes to control phragmites; September 24, 1987, to October 30, 1987. (Libby Pemberton)

7. Florida Department of Agriculture for the use of sodium chlorate on southern peas as desiccant/harvest aid; September 21, 1987, to December 15, 1987. (Robert Forrest)

8. Florida Department of Agriculture and Consumer Services for the use of anilazine on watercress to control leaf spot; September 23, 1987, to August 31, 1988. (Stan Austin)

9. Florida Department of Agriculture and Consumer Services for the use of thiobencarb on celery and lettuce to control parslane and barnyardgrass; September 2, 1987, to August 31, 1988. (Jim Tompkins)

10. Louisiana Department of Agriculture for the use of paraquat on grain sorghum to control regrowth vegetation; September 30, 1987, to November 15, 1987. (Gene Asbury)

11. Mississippi Department of Agriculture for the use of dicamba to control redvine on land to be planted back to cotton; September 17, 1987, to December 1, 1987. (Gene Asbury)

12. Missouri Department of Agriculture for the use of thiabendazole on stored corn in temporary storage to control fungus; September 17, 1987, to January 1, 1988. (Jim Tompkins)

13. Missouri Department of Agriculture for the use of sodium chlorate on southern peas as desiccant/harvest aid; September 24, 1987, to December 31, 1987. (Robert Forrest)

14. Oklahoma Department of Agriculture for the use of botran on peanuts to control sclerotinia blight; August 20, 1987, to September 30, 1987 (Stan Austin)

15. Oregon Department of Agriculture for the use of fenamiphos on blueberries to control nematodes; September 28, 1987, to March 15, 1988. (Stan Austin)

16. Texas Department of Agriculture for the use of cyromazine on peppers (bell, chili, and jalapeno) to control vegetable leafminers; September 17, 1987, to June 30, 1988. Texas had initiated a crisis exemption for this use. (Robert Forrest)

Crisis exemptions were initiated by the:

1. Texas Department of Agriculture on September 18, 1987, for the use of sodium chlorate on southern peas as preharvest aid. The need for this program has ended. (Donald Stubbs)

2. Texas Department of Agriculture on September 4, 1987, for the use of permethrin on kale, kohlrabi, mustard greens, and turnip greens to control cabbage looper. Since it was anticipated that this program would be needed for more that 15 days, Texas has requested a specific exemption to continue it. The need for this program is expected to last until March 31, 1988. (Libby Pemberton)

Authority: 7 U.S.C. 136.

Dated: December 14, 1987.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 87-29373 Filed 12-22-87; 8:45 am]

BILLING CODE 6560-50-M

[OPP-30000/54A; FRL-3306-1]

EPN, Decision Not To Initiate a Special Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; decision not to initiate special review.

SUMMARY: On July 21, 1987, EPA issued a Proposed Decision Not to Initiate a Special Review of EPN. The proposed decision was based on the fact that there were no remaining viable registrations for EPN. Since EPA received no comments on the Proposed Decision Not to Initiate Special Review, EPA is today, publicly announcing its decision not to initiate a Special Review of EPN.

FOR FURTHER INFORMATION CONTACT: By mail: Ron Cannarella, Special Review Branch, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460.

Office location and telephone number: Rm. 1006, Crystal Mall Building #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-5488).

SUPPLEMENTARY INFORMATION: On March 26, 1987, the Environmental Protection Agency (EPA, Agency) sent a written notice to the registrants of O-

Ethyl O-(p-nitrophenyl) phenylphosphonothioate (EPN) pursuant to 40 CFR 154.21 in which the registrants were informed that the Agency was planning to initiate a Special Review of EPN based on data showing that EPN causes delayed neurotoxic effects in laboratory animals. On April 30, 1987, EPA issued a Registration Standard for EPN in which it announced its decision to initiate the Special Review based on the determination that the risk criterion for delayed neurotoxic effects set forth in 40 CFR 154.7(a)(2) had been met. Subsequent to that time, all registrations of technical EPN and formulated products containing EPN have been voluntarily cancelled. Under section 6(a)(1) of The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended (7 U.S.C. 136, *et seq.*) the sale and use of existing stocks of a cancelled pesticide are permitted under such terms as the Administrator may prescribe. EPA has allowed the sale, distribution, and use of such existing stocks until August 31, 1988. After that date, all remaining stocks must be disposed of as permitted by state law.

Since there were no remaining viable registrations for EPN, on July 21, 1987, the Agency issued a Proposed Decision Not To Initiate a Special Review (52 FR 27453) pursuant to 40 CFR 154.23. The 30 day comment period provided for in that Notice has expired. No comments were submitted to EPA. Accordingly, this Notice is being issued pursuant to 40 CFR 154.25 to publicly announce EPA's decision not to initiate a Special Review of EPN.

Dated: December 11, 1987.

John A. Moore,

Assistant Administrator, Office of Pesticides and Toxic Substances.

[FR Doc. 87-29374 Filed 12-22-87; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL HOME LOAN BANK BOARD

[No. 87-1254]

FSLIC Insurance Premium

Date: December 14, 1987.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board, as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the Corporation ordered the assessment against each insured institution of an additional premium for FSLIC insurance in an amount equal to one thirty-second of one percent of the total amount of the accounts of the insured members of each insured institution determined as of September 30, 1987.

EFFECTIVE DATE: December 23, 1987.

FOR FURTHER INFORMATION CONTACT: Mary A. Creedon, Director, Insurance Division, Office of the FSLIC, (202) 254-2029; or JoAnne Morris, Attorney, Office of General Counsel (202) 377-7396, Federal Home Loan Bank Board, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Whereas, The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), may authorize the Corporation, pursuant to section 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c) (1982), to assess against each institution the accounts of which are insured by the Corporation pursuant to Section 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution"), additional premiums of such insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation, *provided* that the total amount so assessed in any one year against any insured institution shall not exceed one eighth of one per centum of the total amount of the accounts of the insured members of such institution and *provided further* that the amount of the additional premium for the year 1987 may not exceed 5/48 of one percentum of the total amount of the accounts of the insured members of such institution unless the Bank Board determines that severe pressures on the Corporation exist which necessitate an infusion of additional funds; and

Whereas, The Bank Board, as operating head of the Corporation, by Resolution No. 85-142, dated February 22, 1985, by Resolution No. 85-437, dated June 5, 1985, by Resolution No. 85-770, dated August 27, 1985, by Resolution No. 85-1142, dated December 9, 1985, by Resolution No. 86-213, dated March 6, 1986, by Resolution No. 86-582, dated June 10, 1986, by Resolution No. 86-941, dated September 2, 1986, by Resolution No. 86-1253, dated December 15, 1986, by Resolution No. 87-281 dated March 16, 1987, by Resolution No. 87-610 dated May 27, 1987, and by Resolution No. 87-950 dated September 9, 1987, ordered assessments against each insured institution of an additional premium for insurance in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984, for the first assessment, as of March 31, 1985, for the second, as of June 30, 1985, for the third, as of September 30, 1985, for the fourth, as of December 31, 1985, for the fifth, as of March 31, 1986, for the sixth, as of June 30, 1986, for the seventh, as of September 30, 1986, for the eighth, as of December 31, 1986, for the ninth, as of March 31, 1987, for the tenth, and as of June 30, 1987, for the eleventh; and

Whereas, The total insurance premiums assessed for the first three quarters of 1987 equal four and one half forty-eights of one percentum of the total amount of the accounts of the insured members of the insured institutions; and

Whereas, The Bank Board has considered memoranda of the Corporate Accounting Branch and the Chief Financial and Administrative Officer, Office of the FSLIC, (a copy of which memoranda are in the Minute Exhibit file), describing the impact of the collection of the additional premiums for insurance assessed pursuant to Resolution No. 85-142, dated February 22, 1985, Resolution No. 85-437, dated June 5, 1985, Resolution No. 85-770, dated August 28, 1985, Resolution No. 85-1142, dated December 9, 1985, Resolution No. 86-213, dated March 6, 1986, Resolution No. 86-582, dated June 10, 1986, Resolution No. 86-941, dated September 2, 1986, Resolution No. 86-1253, dated December 15, 1986, Resolution No. 87-281, dated March 16, 1987, Resolution No. 87-610 dated May 27, 1987, and Resolution No. 87-950 dated September 9, 1987, upon the Corporation's insurance reserves:

Now, therefore, it is resolved, That on the basis of the administrative record, the Bank Board finds and determines that the Corporation has incurred substantial losses during calendar years 1981 through 1986 and the first three quarters of 1987; and

Resolved further, That the Bank Board finds and determines that:

1. Losses and expenses incurred by the Corporation, as defined in Resolution No. 85-142, require the assessment of additional insurance premiums pursuant to section 404(c) of the NHA in addition to the additional insurance premiums assessed pursuant to Resolutions No. 85-142, No. 85-437, No. 85-770, No. 85-1142, No. 86-213, No. 86-582, No. 86-941, No. 86-1253, No. 87-281, No. 87-610, and No. 87-950, in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. Severe pressures on the Corporation exist which necessitate an infusion of additional funds;

3. Postponement of a reduction in the assessment of an additional premium, as provided in section 404(c)(2) of the NHA, will improve the financing environment for selling obligations of the Financing Corporation organized pursuant to the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987;

4. It is appropriate, therefore, to provide for the assessment of an additional insurance premium at this time, pursuant to section 404(a)(2) and 404(c)(1) of the NHA, by order of the Corporation; and

Resolved further, That the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance for the fourth quarter of 1987, in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of such insured institution determined as of September 30, 1987; and

Resolved further, That the additional insurance premium assessed pursuant to this Resolution shall be payable on or about December 31, 1987; and

Resolved further, That the Executive Director or a Deputy Director of the FSLIC, or a designee of either of them ("Director"), shall determine the amount of the additional premium due to be paid on December 31, 1987, by each insured institution and shall notify each insured institution of such amount at least fifteen (15) days prior to the date such amount is due; and

Resolved further, That the Director, on behalf of the Corporation, is hereby authorized to take all other actions necessary or appropriate to determine and collect the additional insurance premium authorized and ordered by this Resolution; and

Resolved further, That the Secretary shall forward this Resolution for publication in the **Federal Register.**

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 87-29401 Filed 12-22-87; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Edward Belfer; Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 15, 1988.

A. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Edward Belfer*, Sherman Oaks, California, to acquire 75 percent of the voting shares of Peoples State Bank of Meeker, Meeker, Colorado.

Board of Governors of the Federal Reserve System, December 17, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-29314 Filed 12-22-87; 8:45 am]

BILLING CODE 6210-01-M

The Mitsubishi Ban Limited; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 15, 1988.

A. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Mitsubishi Ban Limited*, Tokyo, Japan, and BanCal Tri-State Corporation, San Francisco, California, to engage *de novo* in commercial and mortgage lending, sales finance and factoring pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 17, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-29315 Filed 12-22-87; 8:45 am]

BILLING CODE 6210-01-M

St. Joseph Bancorporation, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 8, 1988.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *St. Joseph Bancorporation, Inc.*, South Bend, Indiana; to acquire 100 percent of the voting shares of Citizens Bank, Indianapolis, Indiana.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *WeBanc, Inc.*, Wedowee, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Wedowee, Wedowee, Alabama.

Board of Governors of the Federal Reserve System, December 17, 1987.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 87-29316 Filed 12-22-87; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 87F-0361]

The Dow Chemical Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Dow Chemical Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1,6-hexanediol; 1,4-cyclohexanedimethanol; *alpha*-hydro-*omega*-hydroxy poly(oxy-1,4-butanediyl); methyl oxirane polymer with oxirane; and methyl oxirane polymer with 1,2,3-propanetriol as reactants, and tetrakis[methylene(2,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)]methane as an optional adjuvant in the production of polyurethane resins for use in contact with dry bulk food.

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4038) has been filed by The Dow Chemical Co., Midland, MI 48674, proposing that § 177.1680 *Polyurethane resins* (21 CFR 177.1680) be amended to provide for the safe use of 1,6-hexanediol; 1,4-cyclohexanedimethanol; *alpha*-hydro-*omega*-hydroxy poly(oxy-1,4-butanediyl); methyl oxirane polymer with oxirane; and methyl oxirane polymer with 1,2,3-propanetriol as reactants, and tetrakis[methylene (2,5-di-*tert*-butyl-4-hydroxyhydrocinnamate)]methane as an optional adjuvant in the production of polyurethane resins for use in contact with dry bulk food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 10, 1987.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 87-29313 Filed 12-22-87; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory bodies scheduled to meet during the month of January 1988:

Name: National Advisory Council on Health Professions Education.

Date and Time: January 20, 22, 1988, 9:00 a.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on January 20, 9:00 a.m.-5:00 p.m.

Closed on January 22, 9:00 a.m.-5:00 p.m.

Purpose: The Council advises the Secretary with respect to the administration of programs of Financial assistance for the health professions and makes recommendations based on its review of applications requesting such assistance. This also involves advice in the preparation of regulations with respect to policy matters.

Agenda: The open portion of the meeting will cover welcome and opening remarks, report of the Administrator, Health Resources and Services Administration, report of the Director, Bureau of Health Professions, financial management update, discussion on Council issues and priorities, and update on: Minority initiatives, a report on Osteopathic medical education, a report on Pharmacy education and future agenda items. The meeting will be closed January 22, 1988, for the review of grant applications for the Family Medicine Residency Training and Area Health Education Center programs. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92-463.

Anyone requiring information regarding the subject Council should contact Mr. Robert Belsley, Executive Secretary, National Advisory Council on Health Professions Education, Room 8C-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6880.

Name: National Advisory Council on Nurse Training.

Date and Time: January 20, 22, 1988, 9:00 a.m.

Place: Conference Room G, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on January 20, 9:00 a.m.-12:00 p.m.

Closed for remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources and Services Administration, concerning general regulations and policy matters arising in the administration of the Nurse Education Amendments of 1985 (Pub. L. 99-92). The Council also preforms final review of grants applications for Federal Assistance, and makes recommendations to the Administrator, HRSA.

Agenda: The open portion of the meeting will cover announcements; considerations of minutes of previous meeting; report by the Director, Bureau of Health Professions, the Director, Division of Nursing and staff reports. The meeting will be closed to the public on January 20, at 12:30 p.m. for the remainder of the meeting for the review of grant applications for Advance Nurse Education applications, Nurse Practitioner/Nurse Midwifery applications, and Special Project Grants applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C. Code, and the Determination by the

Administrator, Health Resources and Services Administration, pursuant to Pub. L. 92–463.

Anyone requiring information regarding the subject Council should contact Dr. Mary S. Hill, Executive Secretary, National Advisory Council on Nurse Training, Room 5C–14, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6193.

Name: Joint Meeting of the National Advisory Council on Health Professions Education and the National Advisory Council on Nurse Training.

Date and Time: January 21, 1988, 9:00 a.m.

Place: Room 800, Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

The entire meeting is open.

Purpose: The Councils advise the Secretary concerning general regulations and policy matters arising in the administration of Title VII and VIII of the Public Health Service Act. The Council also perform final reviews of grant applications for Federal assistance and make recommendations to the Secretary.

Agenda: The morning session will be devoted to administrative and special reports, including reports from the National Center for Nursing Research, the Presidents Commission on AIDS and the council on Graduate Medical Education. The afternoon session will include discussions of reimbursement and financing health care delivery.

Agenda Items are subject to change as priorities dictate.

Date: December 17, 1987.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 87–29312 Filed 12–22–87; 8:45 am]

BILLING CODE 4160–15–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection Submitted for Review

The proposal for the collection of information listed 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 information collection requirements 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 within thirty (30) days 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: 25 CFR, Subchapter E, § 31.7—Federal Schools for Indians.

Abstract: For their mutual benefit, Bureau-funded schools may enter into a cooperative agreement with a local public school district to fund and operate a school, including shared facilities, staff, transportation, etc. The information requested includes curriculum, staffing, accreditation status, funding sources, facilities operation, and support services.

Frequency: Annually.

Description of Respondents: Public School Administrators and School Boards.

Annual Responses: 1.

Annual Burden Hours: 8 hours.

Bureau Clearance Officer: Cathie Martin, (202) 343–3577.

Farrell L. LeGarde,

Acting Deputy to the Assistant Secretary/Director—Indian Affairs (Indian Education Programs).

[FR Doc. 87–29361 Filed 12–22–87; 8:45 am]

BILLING CODE 4310–02–M

Bureau of Land Management

[AA–250–08–4321–02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

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 information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau of Land Management's (BLM) clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the BLM's clearance officer and the Office of Management and Budget's reviewing official at (202) 395–7340.

Title: 43 CFR Part 4700 Protection, Management, and Control of Wild Free-Roaming Horses and Burros.

Abstract: Respondents furnish documentation about the following:

1. Removal of wild horses and burros from private land (non form item).

2. Qualifications of applicants related to adoption of 1 to 4 wild horses or burros (form 4710–10).

3. Qualifications of applicants related to adoption of 5 or more wild horses or burros (non form item).

The request for removal of animals from private land is necessary to determine the need for removing wild horses and burros from these lands. The documentation about adoption allows the BLM to determine if an applicant will be given the opportunity to adopt wild horses or burros. Adoption applicants provide information about their qualifications and capability to provide humane care and treatment for wild horses and burros under conditions specified by Federal regulations. Applicants for adoption of more than 4 wild horses or burros are requested to provide additional information related to their capability to provide proper care for the number of wild horses or burros requested.

Bureau Form Numbers: "Application for Adoption of Wild Horse(s) and Burro(s), Form 4710–10.

Frequency: On occasion.

Description of Respondents: Landowners requesting the BLM to remove wild horses or burros from their property. Applicants desiring to adopt wild horses or burros.

Annual Response: 40,250.

Annual Burden Hours: 6,893.

Bureau Clearance Officer: Richard Iovaine, (202) 653–8853.

Date: December 14, 1987.

Guy E. Baier,

Acting Assistant Director for Land and Renewable Resources.

[FR Doc. 87–29362 Filed 12–22–87; 8:45 am]

BILLING CODE 4310–84–M

[AA–620–08–4211–12–24–10]

Information Collection Submitted to Office of Management and Budget for Review Under Paperwork Reduction Act

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 information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer and to the Office of Management and Budget desk office, at (202) 395–7340.

Title: Geothermal Resources Leasing.

Abstract: Respondents supply information which will be used to determine the highest qualified bonus bid submitted for a competitive lease

(Form 3000–2) and enable the Bureau of Land Management to complete environmental reviews in compliance with the National Environmental Policy Act of 1969 (Form 3200–9). The information supplied allows the Bureau of Land Management to determine whether a bidder is qualified to hold a lease and to conduct geothermal resource operation under the terms of the Mineral Leasing Act of 1920 and the Geothermal Steam Act of 1970.

Bureau Form Number: 3000–2, 3200–9.

Frequency: On Occasion.

Description of Respondents: General public, small business, and oil companies.

Annual Responses: 443.

Annual Burden Hours: 886.

Bureau Clearance Officer: Rick Iovaine, (202) 653–8853.

Date: December 14, 1987.

George F. Brown,

Deputy Assistant Director, Energy and Mineral Resources.

[FR Doc. 87–29320 Filed 12–22–87; 8:45 am]

BILLING CODE 4310–84–M

[WY–920–08–4111–15; W–84937]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

December 15, 1967.

Pursuant to the provisions of Pub. L. 97–451, 96 Stat. 2462–2466, and Regulation 43 CFR 3108.2–3(a) and (b)(l), a petition for reinstatement of oil and gas lease W–84937 for lands in Johnson County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lesses have agreed to the amended lease terms for rentals and royalties at rates of $7 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessees have paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessees have met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease W–84937 effective July 1, 1987, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,

Chief, Leasing Section.

[FR Doc. 87–29323 Filed 12–22–87; 8:45 am]

BILLING CODE 4310–22–M

[ID–020–08–4212–13; I–22486]

Malad Hills Management Framework Plan; Private Exchange; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given in accordance with 43 CFR 1610.2 (c) that the Burley District is proposing to amend the Malad Hills Management Framework Plan to allow the exchange of the following public and private lands:

T.14S., R.30E., Boise Meridian

Section 16: N½—320 acres (private land).

T.15S., R.30E., Boise Meridian

Section 4: SE¼SW¼, NE¼NW¼, NW¼SE¼, NE¼SE¼, SW¼SE¼, Part of SE¼SE¼—220 acres (public land).

The general location of the private lands is about 20 miles southeast of Malta, Idaho and three miles northeast of Juniper, Idaho (Exit I–84). The public lands are located four miles south of the private lands.

A Land Use Plan Amendment Document and Land Report will be prepared for the subject lands. The documents will be reviewed by the Bureau of Land Management Interdisciplinary Resouce Specialists. Public participation will involve the publication of this notice in the **Federal Register** and local newspapers. The adjoining landowners, grazing permittees, County Commissioners, the Burley District Grazing Advisory Board members and Advisory Council members, and the Idaho Fish and Game Department will be asked for comments. As public controversy is anticipated to be low for the proposed action, no public meetings, hearing, or conferences are planned.

The main issue that is anticipated for the exchange is whether it is in the public interest to exchange 220 acres of public land having potential for dry farming, for 320 acres of private land having value of livestock grazing, wildlife habitat, and public access values.

The existing land use plan and maps are available for review at the Deep Creek Resource Area Office in Malad, Idaho.

The public may obtain additional information about this exchange proposal by contacting the Bureau of Land Management, Attn: John R. Crhistensen, Deep Creek Resource Area Office in Malad, Idaho, 83252, (208) 766–4766.

Date: December 14, 1987.

John S. Davis,

District Manager.

[FR Doc. 87–29321 Filed 12–22–87; 8:45 am]

BILLING CODE 4310–GG–M

[NV–930–08–4212–14; N–47766]

Realty Action; Battle Mountain District, Tonopah Resource Area; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; Noncompetitive sale of federal lands in Nye County, NV.

SUMMARY: In response to a request from the Nye County Board of County Commissioners, the following described Federal lands have been identified as suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 at not less than the appraised fair market value.

Mount Diablo Meridian

Section 24, S½SW¼SW¼

A parcel of land containing 20 acres.

Nye County plans to use these lands for an expansion of the Beatty Airport.

These lands are not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this area and would be in the public interest. No conflicts with State or local plans have been identifed. The grazing lessee will be given the two-year notification prescribed in section 402(g) of the Federal Land Policy and Management Act of 1976.

Minimum bid for this parcel will be fair market value which will be determined by an appraisal and which will be made available prior to the sale.

The lands described in the Notice will not be offered for sale until all required environmental, archaeological, and mineral clearances are completed. Under no circumstances will these lands be sold sooner than 60 days after publication of this notice.

Segregation: Upon publication of this Notice in the **Federal Register** the above-described Federal lands will be segregated from all forms of appropriation under the public land laws, including locations under the mining laws, except as to application under mineral leasing laws.

Comments: For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, NV 89820. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date: December 11, 1987.

Terry L. Plummer,

District Manager, Battle Mountain, Nevada.

[FR Doc. 87-29318 Filed 12-22-87; 8:45 am]

BILLING CODE 4310-HC-M

Minerals Management Service

Information Collection Submitted for 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 Jeane Kalas at 303-231-3046. Comments and suggestions on the requirements should be made directly to the Bureau Clearance Officer at the telephone number listed below and to the Office of Management and Budget Interior Department Desk Officer, Washington DC 20503, telephone 202-395-7340.

Title: Production Accounting and Auditing System Oil and Gas Reports.

Abstract: Production Accounting and Auditing System information is needed to provide comprehensive production and disposition data on oil and gas produced from Federal onshore and offshore leases, and from Indian leases. The Minerals Management Service (MMS) uses the date to monitor production, for audits, and to compare reported production with sales data reported in the MMS Auditing and Financial System. Lessees, lease operators, and plan operators are affected.

Bureau Form Number: MMS-3160 and MMS-3160A, MMS-4051, MMS-4052, MMS-4053, MMS-4054-A,B,C, MMS-4055, MMS-4056-A,B,C, MMS-4057, MMS-4058, MMS-4061.

Frequency: Monthly, annually.

Description of Respondents: Companies producting and processing oil and gas from Federal onshore and offshore leases, and from Indian leases.

Annual Responses: 244,289.

Annual Burden Hours: 163,973.

Bureau Clearance Officer: Dorothy Christopher, 703-435-6213.

Dated: September 11, 1987.

Jerry D. Hill,

Associate Director for Royalty Management.

[FR Doc. 87-29363 Filed 12-22-87; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Availability of Investigation Report

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that an investigation report of structural failures that occurred on oil and gas facilities located on the Outer Continental Shelf is available to the public upon request.

ADDRESSES: Copies of the report may be obtained from Minerals Management Service; Offshore Rules and Operations Division, Mail Stop 646; 12203 Sunrise Valley Drive; Reston, Virginia 22091, or Public Information Section; Gulf of Mexico OCS Region; Minerals Management Service; 1420 Elmwood Park Boulevard; New Orleans, Louisiana 70123; Telephone (504) 736-2519, (FTS) 680-9519.

FOR FURTHER INFORMATION CONTACT: Mr. Price McDonald, Chief, Offshore Rules and Operations Division; Minerals Management Service; 12203 Sunrise Valley Drive, Mail Stop 646; Reston, Virginia 22091; Telephone (703) 648-7813, (FTS) 959-7813.

SUPPLEMENTARY INFORMATION: The available accident investigation report is identified as follows:

Open file No.	Event and date	Area & Block	Region
87-0075	Structural failures October 27-28, 1987.	South Timbalier, Block 86; South Pelto, Block 19.	Gulf of Mexico

Dated: December 10, 1987.

John B. Rigg,

Associate Director for Offshore Minerals Management.

[FR Doc. 87-29364 Filed 12-22-87; 8:45 am]

BILLING CODE 4310-MR-M

Outer Continental Shelf; Availability, Proposed Notice of Sale, Chukchi Sea, Oil and Gas Lease Sale 109

The proposed Notice of Sale for Sale 109, Chukchi Sea, may be obtained by written request to the Alaska Outer Continental Shelf (OCS) Region, Minerals Management Service, Room 544, 949 East 36th Avenue, Anchorage, Alaska 99508-4302, or by telephone (907) 261-4691.

The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is scheduled for May 1988.

With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, as amended, has provided the affected States the opportunity to review the proposed Notice of Sale.

Comments should be submitted to the Minerals Management Service, 18th and C Streets, NW., Room 4230 (MS-645), Washington DC 20240, no later than 60 days after signature of this Notice.

This Notice of Availability is hereby published pursuant to 30 CFR 256.29, as amended (51 FR 37177 on October 20, 1986), as a matter of information to the public.

Date: December 18, 1987.

Wm. D. Bettenberg,

Director, Minerals Management Service.

[FR Doc. 87-29419 Filed 12-22-87; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-272]

Certain Electronic Chime Modules; Commission Decision Not To Review an Initial Determination Terminating Investigation on the Basis of a Settlement Agreement

AGENCY: International Trade Commission.

ACTION: Nonreview of an initial determination (ID) terminating the above-captioned investigation on the basis of a settlement agreement.

SUMMARY: The Commission has determined not to review an ID terminating the investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Tim Yaworski, Esq., telephone (202) 523-0311, Office of the General Counsel, U.S. International Trade Commission.

SUPPLEMENTARY INFORMATION: On June 30, 1987, complainant Lectron Products, Inc., and respondents Modu-Tronics Inc. and Aimco, Inc., the only remaining respondents in the investigation, filed a joint motion (Motion No. 272-3) to terminate the investigation on the basis of a settlement agreement between the parties. The presiding administrative law judge (ALJ) issued an ID (Order No. 3) granting the motion on November 17,

1987. No petitions for review of the ID were received, nor were any comments received from other government agencies or the public.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and Commission rule 210.53 (19 CFR 210.53).

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002.

By order of the Commission.

Issued: December 16, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–29413 Filed 12–22–87; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 337–TA–253]

Certain Electrically Resistive Monocomponent Toner and "Black Powder" Preparations Therefor; Commission Determination To Extend the Deadline

AGENCY: International Trade Commission.

ACTION: Notice is hereby given that the U.S. International Trade Commission has determined to extend until February 22, 1988, the deadline for deciding whether to review an initial determination (ID) finding a violation of section 337 in the above-captioned investigation. The parties to the investigation are requested to file written submissions on specified issues pertaining to violation of section 337 and on the issues of remedy, the public interest, and bonding.

SUMMARY: On November 10, 1987, the presiding administrative law judge (ALJ) issued an ID finding that there is a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation and sale of electrically resistive monocomponent toner compatible with the Canon NP 210—NP 500 line of photocopiers (ERMT), consisting of disparagement of competing toners as "pirate" by respondents in such a manner as to restrain or monopolize trade or commerce in the United States. The ID found no violation of section 337 with respect to numerous other alleged unfair acts or methods of competition.

On November 23, 1987, complainant Aunyx Corp. (Aunyx) and the Commission investigative attorney (IA) filed petitions for review of the ID. On November 25, 1987, respondents Canon, Inc. and Canon U.S.A., Inc. (the Canon respondents) also filed a petition for review. Responses to the petitions for review were filed by the Canon respondents on December 4, 1987, and by Aunyx and the IA on December 7, 1987. Government agency comments are not due until December 22, 1987. The previous deadline for deciding whether to review the ID was December 28, 1987. The statutory deadline for completion of this investigation is February 22, 1988.

Authority: This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and §§ 210.54–210.58 of the Commission's Rules of Practice and Practice and Procedure (19 CFR 210.54–210.58).

FOR FURTHER INFORMATION CONTACT: Edwin J. Madaj, Jr., Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–523–0148.

SUPPLEMENTARY INFORMATION: If the Commission reviews the ID and affirms the ID's conclusion that a violation of section 337 has ocurred, or finds that other violations have occurred, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair acts or methods of competition in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of relief, if any, that should be ordered.

If the Commission concludes that some form of relief is appropriate, it must consider the effect of that relief upon the public health and welfare, competitive conditions in the U.S. economy, the U.S. production of articles that are like or directly competitive with those that are subject to investigation, and U.S consumers. The Commission is therefore interested in receiving written submission concerning the effect, if any, that granting relief would have on the enumerated public interest factors.

If the Commission orders belief, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving written submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested Government agencies and other persons are requested to file written submissions on the issues of remedy, the public interest, and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The parties are also requested to brief the following specific issues relevant to the question of whether a violation of section 337 has occurred:

(1) Is there a sufficient nexus between importation or sale of ERMT and the unfair act or method of competition found to exist in this case to warrant the exercise of jurisdiction under section 337;

(2) Cite any cases which have considered whether reference to a competitor in terms such as "pirate," or reference to a competitor's product in terms such as "pirated," is an actionable business tort or antitrust violation;

(3) Cite any cases which have considered whether disparagement by a monopolist, apart from any other antitrust violation, such as conspiracy to monopolize, was found to be sufficient for liability under the antitrust laws;

(4) The ID appears to assume that Canon can be held responsible for the fact that "the terms 'pirate toner' and 'toner pirates' pervaded the entire distribution system for the Canon copiers in question." ID at 170–71. What facts in the record support this finding? As a matter of law, can Canon be held liable for any disparagement committed by others, such as Canon's dealers?

(5) Cite and discuss specific evidence in the record, if any, that indicates that a domestic industry composed of all U.S. producers of ERMT, not just Aunyx, is efficiently and economically operated; and

(6) Cite and discuss specific evidence in the record indicating that a domestic industry composed of all U.S. producers of ERMT was destroyed or substantially injured, or prevented from being established. Would such evidence be sufficient to prove an effect or tendency to destroy, substantially injure or prevent the establishment of that industry? Would such evidence be sufficient if information with respect to Aunyx cannot be considered as a result of the sanctions imposed on Aunyx for failure to obey discovery orders?

Interested Government agencies may also file written submissions on these questions, to the extent such submissions are feasible without access to the confidential record.

Written submissions on these issues, and on the issues of remedy, the public interest, and bonding must be filed by the parties no later than the close of business on December 31, 1987. Reply submissions must be filed by the parties no later than the close of business on January 7, 1988. Interested Government agencies must file any written submissions by no later than the close of business on January 7, 1988. Interested persons other than the parties and Government agencies may file written submissions addressing the issues of remedy, the public interest, and bonding. Such submissions must be filed not later than the close of business on January 7, 1988. No further submissions will be permitted.

Commission Hearing: The Commission does not plan to hold a public hearing, and denies the request filed by the Canon respondents for oral argument.

Additional Information: Persons submitting written submissions must file the original document and 14 clear copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or a portion thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a statement of the reasons why the Commission should grant such treatment. Documents containing confidential information approved by the Commission for confidential treatment will be treated accordingly. All nonconfidential submissions will be available for public inspection at the Office of the Secretary.

Copies of the nonconfidential version of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202–523–0161. Hearing-impaired by contacting the Commission's TDD terminal on 202–742–0002.

All interested persons are hereby notified that effective January 11, 1988, the Commission's address will be 500 E Street, SW., Washington, DC 20436.

By order of the Commission.

Issued: December 18, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87–29414 Filed 12–22–87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-377 (Final)]

Internal Combustion Engine Industrial Fork-Lift Trucks From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–377 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of internal combustion engine industrial fork-lift trucks provided for in item 692.40 of the Tariff Schedules of the United States (TSUS),[1] that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Commerce will make its final LTFV determination not later than April 7, 1988 [2] and the Commission will make its final injury determination by May 23, 1988 (see sections 735(a) and 735(b) of the act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: November 24, 1987.

FOR FURTHER INFORMATION CONTACT: Lawrence Rausch (202–523–0300), Office of Investigations, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–724–0002. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–523–0161.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of certain internal combustion engine fork-lift trucks from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the act (19 U.S.C. 1673). The investigation was requested in a petition filed on April 22, 1987, by Hyster Company of Portland, OR, a U.S. producer of internal combustion engine fork-lift trucks, the Independent Lift Truck Builders Union, the International Association of Machinists and Aerospace Workers, the International Union, Allied Industrial Workers of America (AFL–CIO), and the United Shop and Service Employees. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (52 FR 23725, June 24, 1987).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

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[1] The products covered by this investigation are certain internal combustion engine industrial fork-lift trucks, with lifting capacity of 2,000 to 15,000 pounds. For purposes of this investigation, "internal combustion engine industrial fork-lift trucks" include both assembled, not assembled, and less than complete, finished and not finished, operator-riding fork-lift trucks, powered by gasoline, propane, or diesel fuel internal combustion engines, of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less than complete fork-lift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts.

[2] Commerce extended the date for its final determination in response to a request by respondents, pursuant to section 735(a)(2)(A) of the Act. Commerce's formal notice concerning the date for its final determination will be published in the **Federal Register**.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Staff Report

A public version of the prehearing staff report in this investigation will be placed in the public record on March 29, 1988, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on April 13, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on April 5, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on April 8, 1988, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is April 8, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonconfidential summary and anaylsis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedure described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of section 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on April 20, 1988. In addition, any person who has not entered on appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 20, 1988.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for confidential business data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which confidential treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

Authority

This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to §207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Issued: December 15, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-29415 Filed 12-22-87; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 751-TA-14]

Liquid Crystal Display Television Receivers From Japan

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 751(b) of the Tariff Act of 1930 (19 U.S.C. 1675(b)), not to modify or revoke the antidumping order with regard to liquid crystal display television receivers (LCD TV's) from Japan.

Background

On April 28, 1987, the Commission received a request from counsel on behalf of Casio Computer Co., Ltd.; Casio, Inc.; Citizen Watch Co., Ltd.; Hitachi, Ltd.; Hitachi Sales Corp. of America; Hitachi Sales Corp. of Hawaii, Inc.; Matsushita Electrical Industrial Co., Ltd.; Matsushita Electric Corp. of America; NEC Corp.; NEC Home Electronics (U.S.A.), Inc.; Seiko Epson Corp.; Sharp Corp.; Sharp Electronics Corp.; Toshiba Corp.; and Toshiba America, Inc.; to modify T.D. 71-76 to exclude LCD TV's from the scope thereof. After consideration of the request for review and of responses to a **Federal Register** notice inviting comments (52 FR 21630), the Commission instituted investigation No. 751-TA-14 effective August 20, 1987, for the purpose of reviewing the Commission's affirmative determination in Television Receiving Sets from Japan, investigation No. AA1921-66 (T.C. Pub. No. 367 (1971)). Notice of the investigation and the Commission's hearing was published in the **Federal Register** of August 20, 1987 (52 FR 31454). A hearing was held in the Commission's hearing room on November 12, 1987, at which time all interested parties were afforded the opportunity to present information for consideration by the Commission.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 16, 1987. The views of the Commission are contained in USITC Publication 2042 (December 1987), entitled "Liquid Crystal Display Television Receivers from Japan: Determination of the Commission in Investigation No. 751-TA-14 Under the Tariff Act of 1930, Together With the Information Obtained in the Investigation."

By order of the Commission.

Issued: December 17, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-29416 Filed 12-22-87; 8:45 am]

BILLING CODE 7020-02-M

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[1] The record is defined in § 207.2(i) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(i)).

[2] Chairman Liebeler and Vice Chairman Brunsdale determine that an industry in the United States would not be materially injured or threatened with material injury, and the establishment of an industry in the United States would not be materially retarded, by reason of imports of LCD TV's from Japan if the antidumping order regarding such merchandise were to be modified.

[Investigation No. 337-TA-267]

Certain Minoxidil Power, Salts and Compositions for Use in Hair Treatment; Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above-captioned investigation terminating the following respondent on the basis of a settlement agreement: Health International Laboratories, Inc.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon the parties on December 14, 1987.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 701 E Street NW., Washington, DC 20436, telephone 202-523-0161. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-724-0002.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondent. The original and 14 copies of all such comments must be filed with the Secretary to the Commission, 701 E Street, NW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portion thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone 202-523-0176.

By order of the Commission.
Issued: December 14, 1987.

Kenneth R. Mason,

Secretary.

[FR Doc. 87-29417 Filed 12-22-87; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 473]

Railroad Cost of Capital—1987; Limited Revenue Adequacy Proceeding

AGENCY: Interstate Commerce Commission.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 1987 cost of capital.

SUMMARY: The Commission is instituting a proceeding to determine the railroad industry's cost of capital rate for 1987. The decision solicits comments on: (1) The railroads' 1987 (i.e., current) cost of debt capital; (2) the railroads' 1987 (i.e., current) cost of preferred stock equity capital; (3) the railroads' 1987 cost of common stock equity capital; (4) the 1987 capital structure mix of the railroad industry on a market value basis. With respect to the cost of common equity capital, the decision seeks comment on the use of specific data to estimate the growth rate component of the discounted cash flow methodology.

DATES: Notices of intent to participate are due January 8, 1988. Statements of railroads due February 10, 1988. Statements of other interested parties due March 10, 1988. Rebuttal statements by railroads due March 25, 1988.

ADDRESSES: Send an original and 15 copies of statements and an original and 1 copy of the notice of intent to participate to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20412.

FOR FURTHER INFORMATION CONTACT: Ward L. Ginn, Jr., (202) 275-7489, (TDD for hearing impaired: (202) 275-1721).

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) 289-4357/4359, (DC Metropolitan area). (Assistance for the hearing impaired is available through TDD services (202) 275-1721, or by pick-up from Dynamic Concepts, Inc. in Room 2229 at Commission headquarters.)

This action will not significantly affect either the quality of the human environment or energy conservation. Nor will it have a significant economic impact on a substantial number of small entities.

Authority: 49 U.S.C. 10704(a).

Decided: December 15, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre and Simmons.

Noreta R. McGee,

Secretary.

[FR Doc. 87-29269 Filed 12-22-87; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31136]

Louisville & Jefferson County Riverport Authority and CSX Transportation, Inc.; Construction and Operation Exemption in Jefferson City, KY

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from 49 U.S.C. 10901 the construction by the Louisville & Jefferson County Riverport Authority of 6.7 miles of rail line adjacent to and in the Riverport industrial facility located near Louisville, KY. CSX joined in the petition, and its operation over the line is also exempted. This decision is effective on December 31, 1987.

DATES: Petitions to reopen must be filed by January 12, 1988.

ADDRESS: Petitioners' representative: Betty Jo Christian, Steptoe & Johnson, 1330 Connecticut Avenue NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 [TDD for hearing impaired: (202) 275-1721].

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) 289-4357/4359 (DC Metropolitan area), 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.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: December 16, 1987.

By the Commission, Chairman Gradison, Vice Chairman Lamboley, Commissioners Sterrett, Andre, and Simmons.

Noreta R. McGee,

Secretary

[FR Doc. 87-29354 Filed 12-22-87; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; L & C Europa Contracting Co.

In accordance with departmental policy, 28 CFR 50.7, notice is hereby given that on December 4, 1987, a proposed consent decree in *United States of America v. L & C Europa Contracting Co.*, Civ. No. 86-3463, was lodged with the United States District Court for the District of New Jersey. The complaint filed by the United States sought civil penalties and injunctive relief under the Clean Air Act with respect to alleged violations of the National Emission Standards for Hazardous Air Pollutants ("NESHAP") during a renovation project to remove asbestos from a public school in Patterson, New Jersey.

Under the proposed consent decree, the renovation contractor and the Patterson School Board agree to the entry of an injunction requiring them to comply with the asbestos NESHAP in future projects and to pay a civil penalty of $25,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. L & C Europa Contracting Co.*, D.J. Ref. 90-5-2-1-929.

The proposed consent decree may be examined at the offices of the United States Attorney, Federal Building, 970 Broad Street, Newark, New Jersey 07102, and at the Region II office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278. A copy of the consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. Copies of the proposed consent decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Roger J. Marzulla,

Acting Assistant Attorney General, Land & Natural Resources Division.

[FR Doc. 87-29311 Filed 12-22-87; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 86-94]

Parker Pharmacy; Revocation of Registration

On November 28, 1986, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to East Oglethorpe Pharmacy, Inc., d.b.a Parker Pharmacy (Respondent) proposing to revoke its DEA Certificate of Registration AE8391043 and to deny any pending applications for the renewal of such registration as a retail pharmacy under 21 U.S.C. 823(f). The Order to Show Cause alleged that the continued registration of the pharmacy would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 21 U.S.C. 824(a)(4).

Respondent, through counsel, requested a hearing on the issues raised by the Order to Show Cause and the matter was docketed before Administrative Law Judge Francis L. Young. Following prehearing procedures, a hearing was held before Judge Young in Washington, DC on May 6 and 7, 1987. On September 2, 1987, the Administrative Law Judge issued his opinion and recommended ruling, findings of fact, conclusions of law and decision. Pursuant to 21 CFR 1316.66, both the Government and Respondent filed exceptions to Judge Young's opinion and recommended ruling. On October 27, 1987, the Administrative Law Judge transmitted the record to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.67, hereby issues his final order in this matter, based upon findings of fact and conclusions of law as hereinafter set forth.

In 1976, the Georgia Drugs and Narcotics Agency initiated an investigation of Albany Drug Company, the predecessor to Respondent. The investigation was based on information that the pharmacist-in-charge of Albany Drug Company was ordering large quantities of Dilaudid and morphine sulfate, Schedule II controlled substances. A subsequent audit at the pharmacy conducted by the Georgia Drugs and Narcotics Agency of selected Schedule II controlled substances revealed significant shortages. Jonnie Parker, the pharmacist-in-charge, explained the shortages by stating that they were a result of his taking the substances from the pharmacy for his own personal use. As a result of the audit, Jonnie Parker surrendered his pharmacist license with the Georgia State Board of Pharmacy. Parker also agreed to seek medical help for his drug addiction, however he never received such treatment.

Jonnie Parker's pharmacist license was reinstated on March 31, 1978. On October 6, 1978, Jonnie Parker, as the managing pharmacist, submitted an application for registration as a retail pharmacy with the Georgia State Board of Pharmacy on behalf of Respondent. This registration was subsequently granted.

On May 10, 1983, a reliable informant purchased parafon forte, a non-controlled substance requiring a prescription, from Jonnie Parker, the owner and pharmacist of Respondent, without presenting a prescription for the drug. As a result of this sale, Jonnie Parker was arrested on August 30, 1983. Following his arrest, Jonnie Parker admitted to an agent of the Georgia Drugs and Narcotics Agency that he took Demerol, a Schedule II controlled substance, from Respondent for his own use without any legitimate medical need for the drug.

Subsequent to his arrest, Jonnie Parker agreed to submit to random urine tests. Percy Phillips, who at the time was Director of Pharmacy at an area hospital, was asked by a Georgia Drugs and Narcotics agent to help administer the urine screening program for Jonnie Parker. In November 1984, Percy Phillips stopped notifying the agent of the Georgia Drugs and Narcotics Agency of the results of Jonnie Parker's urine screens. At the time, Percy Phillips was negotiating a business partnership with Jonnie Parker and felt that administration of the screens created a conflict of interest. However, he did not notify the agent that he would no longer send the results of the screens to the agent. During November 1984, Percy Phillips became pharmacist-in-charge of Respondent and obtained 10% of the shares of stock in Respondent.

On November 27, 1984, Jonnie Parker entered into a Consent Order with the Georgia State Board of Pharmacy. Jonnie Parker admitted to taking drugs from Respondent for his own use and expressed a willingness to receive treatment for his drug addiction. The Board ordered that Jonnie Parker's

license to practice pharmacy be suspended until he presented the board with evidence of successful completion of a drug rehabilitation program. The Board further ordered that Jonnie Parker not be on the premises of Respondent during the suspension of the pharmacist license.

On January 24, 1985, Percy Phillips, the pharmacist-in-charge of Respondent, reported an alleged theft of controlled substances from Respondent's narcotics locker. The lock of the locker was forced open, yet there were no signs of forcible entry into the building. Only Percy Phillips and Roseanna Parker, Jonnie Parker's wife, had keys to Respondent at that time.

In January 1985, an investigation by the Georgia Drugs and Narcotics Agency and the Albany Police Department revealed that several prescriptions written for Jonnie Parker for Demerol were altered or forged. Three of these prescriptions were filled by Percy Phillips. Percy Phillips filled these prescriptions even though he knew that Jonnie Parker was addicted to Demerol.

As a result of the altered or forged prescriptions and statements taken from two witnesses which revealed that Jonnie Parker had distributed Demerol to them without a prescription, Jonnie Parker was indicted by a Dougherty County, Georgia, Grand Jury. On April 17, 1985, Jonnie Parker pled guilty to one count of obtaining drugs by misrepresentation and *nolo contendere* to two counts of obtaining drugs by misrepresentation. These are felony offenses relating to controlled substances. Jonnie Parker was sentenced to 24 years probation and ordered to surrender all licenses to the Georgia State Board of Pharmacy, not to reapply for any licenses for seven years, and to divest himself of all interest in Respondent. On November 4, 1985, Jonnie Parker signed a Surrender of Registration document, whereby he complied with the court's order and surrendered his license to practice pharmacy. This surrender was accepted by the Georgia State Board of Pharmacy on November 21, 1985.

On March 31, 1986, the Georgia State Board of Pharmacy entered into a Consent Order with Respondent pharmacy, whereby, *inter alia*, Jonnie Parker was ordered to divest himself of all interest in Respondent pharmacy and ordered not to go on the premises of Respondent. Jonnie Parker gave his wife, Roseanna, his 90% interest in the corporation. He received no compensation for these shares.

Respondent submitted an application for registration as a retail pharmacy with the Georgia State Board of Pharmacy, which listed Percy Phillips as the president and treasurer and Roseanna Parker as secretary. Percy Phillips signed this application on behalf of Respondent on April 3, 1986, as president of the corporation. On April 10, 1986, Jonnie Parker signed, as president of Respondent, the 1986 Annual Registration of Respondent with the State of Georgia, Secretary of State.

On July 29, 1986, the Georgia State Board of Pharmacy accepted a Consent Order which was signed by Percy Phillips on July 10, 1986. The Consent Order states that Percy Phillips knew, or should have known, that certain prescriptions that he filled for Jonnie Parker were altered or forged. The board ordered that Percy Phillips pay a $500 fine and that the Consent Order serve as a public reprimand.

Jonnie Parker is currently unemployed. Roseanna Parker is employed by Respondent as a pharmacy technician and therefore has access to the controlled substances at Respondent. Roseanna Parker however, does not have a key to the pharmacy department, to the narcotics locker, or to the building itself.

The Administrative Law Judge concluded that based on the evidence presented, there is a lawful basis to revoke the pharmacy's DEA Certificate of Registration. The Administrator and his predecessors have consistently held that the registration of a corporate registrant may be revoked upon a finding that a natural person who is an owner, officer or key employee, or who had some responsibility for the operation of the registrant's business, has been convicted of a felony offense relating to controlled substances. See, *Leonard J. Cohen, t/a Senate Drug Store*, Docket No. 72–5, 38 FR 9522 (1973); *Norman Bridge Drug Co., Inc.*, Docket No. 74–22, 41 FR 3108 (1976); *Lawson & Son's Pharmacy and Fenwick Pharmacy*, 48 FR 16140 (1983). Jonnie Parker, Respondent's previous president, owner and pharmacist-in-charge, was convicted of controlled substance related felony offenses, therefore the Administrative Law Judge concluded that pursuant to 21 U.S.C. 824(a)(2), Respondent's registration could be revoked.

The Administrative Law Judge concluded that based on his past history with controlled substances, Jonnie Parker cannot be trusted. Jonnie Parker can still exert considerable influence over Respondent, since his wife, Roseanna, now owns 90% of Respondent. Judge Young further concluded that, "Jonnie Parker's lamentable history with respect to efforts to control his drug abuse problem requires that both he and his wife have absolutely no further connection with this operation." Therefore, the Administrative Law Judge recommended that a final order be entered, effective 90 days after it is published, revoking the subject registration unless, prior to that time, the DEA Field Office having jurisdiction over the pharmacy is satisfied that the pharmacy will continue to operate indefinitely with Percy Phillips as pharmacist-in-charge, and that neither Jonnie nor Roseanna Parker then retains any ownership interest in, or control over Respondent.

Both Government counsel and Respondent's counsel filed exceptions to the Administrative Law Judge's recommended ruling. The Government urged the Administrator to revoke Respondent's registration not only based on the Parkers' relationship with the pharmacy but also due to Percy Phillips' involvement with Respondent. Respondent, in its exceptions, contended that since Jonnie Parker is no longer an owner or pharmacist at Respondent, the problems have been solved and therefore Roseanna Parker should not be deprived of her right to own 90% of Respondent.

The Administrator rejects the recommended decision of the Administrative Law Judge. The Administrator concludes that in addition to the fact that there is a lawful basis to revoke Respondent's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(2), another equally strong basis exists for the revocation of Respondent's registration; that the continued registration of Respondent is inconsistent with the public interest. 21 U.S.C. 824(a)(4). The Administrator bases this conclusion on the fact that Jonnie Parker continues to exert influence over Respondent through his wife's ownership of 90% of the pharmacy. In addition, since 1984, Percy Phillips has had a close working relationship with the Parkers. The Administrator further bases his conclusion on the fact that Percy Phillips, 10% owner and pharmacist-in-charge of Respondent, filled altered and forged prescriptions for Demerol for Jonnie Parker even though he was well aware that Jonnie Parker was addicted to the drug. Therefore, the Administrator concludes that Respondent's registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration AE8391043, previously issued to East Oglethorpe

Pharmacy, Inc., d/b/a Parker Pharmacy, be, and it hereby is, revoked. The Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective January 22, 1988.

Date: December 16, 1987.

John C. Lawn,

Administrator.

[FR Doc. 87-29337 Filed 12-22-87; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL CREDIT UNION ADMINISTRATION

Community Development Revolving Loan Program for Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Proposal to eliminate Community Development Revolving Loan Program for credit unions from coverage under Executive Order 12372.

DATE: Comments must be received on or before February 22, 1988.

ADDRESS: Send comments to Becky Baker, Secretary, NCUA Board, National Credit Union Administration, 1776 G Street, NW., Washington, DC 20456.

FOR FURTHER INFORMATION CONTACT: Hattie M. Ulan, Staff Attorney, Office of General Counsel, at the above address, or telephone (202) 357-1030.

SUPPLEMENTARY INFORMATION: Congress transferred the authority for implementation of the Community Development Revolving Loan Program for Credit Unions (Program) from the Department of Health and Human Services to the National Credit Union Administration in November, 1986. The NCUA promulgated a final rule implementing the Program in September, 1987 (See 12 CFR 705, 52 FR 34891, September 16, 1987). Executive Order 12372 entitled "Intergovernmental Review of Federal Programs" requires that "Federal agencies shall provide opportunities for consultation by elected officials of those state or local governments that would provide the non-Federal funds for, or that would be directly affected by, proposed Federal financial assistance or direct Federal development."

The Office of Management and Budget (OMB) provides oversight for Executive Order 12372. Pursuant to Pub. L. 98-169, the General Services Administration (GSA) publishes annually the Catalog of Federal Domestic Assistance (CFDA) listing all Federal government programs that are to comply with Executive Order 12372. The determination as to the applicability of programs to Executive Order 12372 is made by the Federal agency operating the program as submitted for publication in the CFDA. The Program was added to the CFDA by the Department of Health and Human Services and first appeared in the CFDA in 1987. (See CFDA #44.002.) As explained below, it is the position of the NCUA Board that the Program was mistakenly included in the CFDA and should be deleted.

The Program operates as follows. Credit unions (both federally- and state-chartered) may apply to the NCUA for a loan from the Program of up to $200,000. Loan decisions are made by the NCUA, and state-chartered credit unions that are approved for Program loans must obtain the written concurrence from their respective state regulator. (See 12 CFR 705.8.) State or local governments do not provide non-Federal funds under the Program.

In addition, loans from the Program do not directly affect state or local governments. State-chartered credit unions that receive a loan remain subject to examination and supervision by their state regulators. The fact that state regulators must approve state-chartered credit unions that receive loans pursuant to Part 705 provides state regulatory authorities sufficient notification and control over their state-chartered entities. The impact of the loan directly affects the credit union and its members and not be the state authorities.

Copies of this proposal to delete the Program from coverage of Executive Order 12372 will be sent to all state single points of contact (SPOC's). Any comments received from SPOC's or any other public commenters will be reviewed by the NCUA with input from the Office of Management and Budget before a final decision on this proposed deletion is made.

By the National Credit Union Administration Board on December 17, 1987.

Becky Baker,

Secretary of the Board.

[FR Doc. 87-29380 Filed 12-22-87; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION

Abnormal Occurrence Report; Section 208 Report Submitted to the Congress

Notice is hereby given that pursuant to the requirements of section 208 of the Energy Reorganization Act of 1974, as amended, the Nuclear Regulatory Commission (NRC) has published and issued another periodic report to Congress on abnormal occurrences (NUREG-0090, Vol. 10, No. 2).

Under the Energy Reorganization Act of 1974, which created the NRC, an abnormal occurrence is defined as "an unscheduled incident or event which the Commission (NRC) determines is significant from the standpoint of public health or safety." The NRC has made a determination, based on criteria published in the **Federal Register** (42 FR 10950) on February 24, 1977, that events involving an actual loss or significant reduction in the degree of protection against radioactive properties of source, special nuclear, and byproduct materials are abnormal occurrences.

The report to Congress is for the second calendar quarter of 1987. The report identifies the occurrences or events that the Commission determined to be significant and reportable; the remedial actions that were undertaken are also described. During the report period, there were no abnormal occurrences at the nuclear power plants licensed to operate. There were five abnormal occurrences at the other NRC licensees. Three involved medical misadministrations (two diagnostic and one therapeutic); one involved the issuance of an NRC Order to remove a hospital's radiation safety office due to falsification of certain records; and one involved a significant breakdown in management and procedural controls at an industrial radiography licensee. There was one abnormal occurrence reported by an Agreement State (Idaho). The item involved radiographer overexposures.

The report also contains information updating some previously reported abnormal occurrences.

A copy of the report is available for public inspection and/or copying at the NRC Public Document Room, 1717 H. Street, NW., Washington, DC 20555, or at any of the nuclear power plant Local Public Document Rooms throughout the country.

Copies of NUREG-0090, Vol. 10, No. 2 (or any of the previous reports in this series), may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. A year's subscription to the NUREG-0090 series publication, which consists of four issues, is also available.

Copies of the report may also be purchased from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Dated At Washington, DC, this 17th day of December 1987.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 87-29421 Filed 12-22-87; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on January 7-8, 1988, in Room 1046, 1717 H Street, NW., Washington, DC. Notice of this meeting was published in the **Federal Register** on December 14, 1987.

Thursday, January 7, 1988

8:30 a.m.-8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report briefly regarding items of current interest.

8:45 a.m.-11:00 a.m.: Advanced Boiling Water Reactor (Open)—Briefing by representatives of the General Electric Company regarding the proposed GE Advanced Boiling Water Reactor.

11:15 a.m.-12:30 p.m.: Operating Experience (Open)—Briefing regarding recent operating experience including incidents and transients at nuclear power plants.

1:30 p.m.-3:00 p.m.: Important Safety Related Issues (Open)—Discuss proposed hierarchal structure for important safety-related issues identified by members of the Committee.

3:15 p.m.-5:00 p.m.: ACRS Subcommittee Activities (Open)—Report of ACRS Subcommittee Chairman regarding the status of designated activities, including environmental qualification of nuclear power plant equipment, steam generator tube integrity, and inservice inspection of nuclear power plant systems and components.

5:00 p.m.-6:00 p.m.: Safety Implications of Control Systems (Open)—Discuss proposed ACRS report regarding proposed resolution of this generic matter.

Friday, January 8, 1988

8:30 a.m.-10:00 a.m.: Nuclear Industry Initiatives (Open)—Briefing by representatives of the nuclear industry regarding industry initiatives to improve the operation and regulation of nuclear reactors.

10:15 a.m.-12:15 p.m.: Renewal of Nuclear Power Plant Licenses (Open)—Briefing by representatives of the NRC Staff regarding proposed NRC policy regarding renewal of nuclear power plant licenses.

1:15 p.m.-2:15 p.m.: Analysis and Evaluation of Operational Data (Open/Closed)—Briefing by representatives of NRC Office for Analysis and Evaluation of Operational Data regarding their recent reports.

A portion of this session will be closed as required to discuss Proprietary Information applicable to the matter being discussed.

2:15 p.m.-3:00 p.m.: Anticipated ACRS Activities (Open)—Discuss recent and anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

3:15 p.m.-4:15 p.m.: New ACRS Members (Open/Closed)—Discuss qualifications of ACRS members to be considered for appointment to the Committee.

Portions of this session will be closed as required to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy and information that involves the internal personnel rules and practices of the agency.

4:15 p.m.-6:30 p.m.: Preparation of ACRS Reports (Open)—Discuss proposed reports to the NRC regarding items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 2, 1987 (51 FR 37241). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss information related to the internal personnel rules and practices of the agency (5 U.S.C. 552b(c)(2)), information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)), and Proprietary Information applicable to the matter being discussed (5 U.S.C. 552b(c)(4)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3265), between 8:15 a.m. and 5:00 p.m.

Date: December 18, 1987.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 87-29420 Filed 12-22-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-482]

Receipt of Petition for Director's Decision Under 10 CFR 2.206; Wolf Creek Nuclear Operating Corp., Kansas Gas and Electric Co., and Kansas City Power and Light Co., Kansas Electric Power Cooperative, Inc., Wolf Creek Generating Station

Notice is hereby given that Ms. Stevi Stephens and Robert V. Eye on behalf of Nuclear Awareness Network have requested that the Nuclear Regulatory Commission institute an investigation pursuant to 10 CFR 2.206 to determine whether security is being satisfactorily maintained at the Wolf Creek Generating Station (WCGS) to protect the public from exposure to radiation and to prevent terrorist activities. The alleged basis for this requested action is that members of the public are presently trespassing into restricted WCGS areas to fish at the WCGS cooling lake and that there have been past examples of inadequate security at WCGS.

This petition is being handled as a request for action pursuant to 10 CFR 2.206 of the Commission regulations and, accordingly, appropriate action will be taken on the request within a reasonable time. Copies of the petition are available for inspection in the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555.

Dated at Bethesda, Maryland, this 16th day of December, 1987.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 87-29384 Filed 12-22-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-498]

Exemption; Houston Lighting and Power Co.[1] et al., (South Texas Project, Unit 1)

I

On August 21, 1987, the Commission issued Facility Operating License No. NPF-71 to Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, and City of Austin, Texas (the licensees) for South Texas Project, Unit 1. This license provided, among other things, that the facility is subject to all rules, regulations and Orders of the Commission.

II

Section 50.71(e)(3)(i) of 10 CFR Part 50 requires the licensees of nuclear power reactors to submit an Updated Final Safety Analysis Report (UFSAR) within 24 months of either July 22, 1980, or the date of issuance of the operating license, whichever is later. This would require submittal of the UFSAR for South Texas Project, Unit 1 by August 21, 1989 and would result in an entirely new document from the existing South Texas FSAR.

By letter dated October 5, 1987, the licensees requested an exemption from 10 CFR 50.71(e) which would defer submittal of the UFSAR until one year following receipt of a low-power operating license for South Texas Project, Unit 2. The licensees state that they will continue to maintain the South Texas Project FSAR as a description of both Units 1 and 2. The FSAR will be updated by periodic amendments during the periodic that Unit 2 is under construction, thus assuring that timely information regarding both units is provided.

III

The NRC staff has reviewed the licensees' request for an extension of the South Texas UFSAR submittal date. The 10 CFR 50.34 requires that, until South Texas Unit 2 receives an operating license, the information contained in the FSAR docketed with the operating license application be maintained current. Hence, if an extension to the submittal date for the UFSAR is not granted, the licensees would be required to maintain current both the present FSAR as well as the Unit 1 UFSAR until South Texas Unit 2 is licensed. Maintaining two versions of the same document for the two South Texas units would not serve the underlying purpose of 10 CFR 50.71(e), which is to assure that the final safety analysis report contains the latest material developed. Maintenance of a separate document to satisfy § 50.34 for Unit 2 to support licensing would not provide the NRC with significant additional information and could lead to ambiguities and confusion. Thus, an undue administrative burden would be imposed which results in no measurable gain.

Therefore an extension is needed to eliminate the hardship of maintaining two versions of the same document. Until South Texas Unit 2 receives an operating license, the licensees have committed to maintain the present FSAR current for both units by periodically amending the document. This will assure that the underlying purpose of 10 CFR 50.71(3), i.e., assurance that the safety analysis report contains the latest material developed, continues to be met.

For these reasons, the staff finds that the licensees have shown good cause for the requested extension of the date for submittal of the Updated Final Safety Analysis Report. Therefore, the requested extension to no later than one year after issuance of a low power license for South Texas, Unit 2 is acceptable. This extension will terminate, unless further extended, no later than the end of August 1990.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present justifying the exemption. The application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule in that the licensees have updated the South Texas FSAR in support of licensing South Texas Unit 2 and will continue to update it periodically until Unit 2 is licensed.

Accordingly, the Commission hereby grants an exemption as described in Section III above from § 50.71(e)(3)(i) of 10 CFR Part 50 to extend the date for submittal of the updated FSAR to no later than one year after date of issuance of a low power license for South Texas project, Unit 2. This exemption granting the extension is effective until the end of August 1990.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the environment (52 FR 47805).

This Exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 16th day of December, 1987.

Dennis M. Crutchfield,

Director, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 87-29385 Filed 12-22-87; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-352]

Philadelphia Electric Co.; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-39 issued to Philadelphia Electric Company, for operation of the Limerick Generating Station, Unit No. 1 located in Montgomery County, Pennsylvania.

The proposed amendment would modify Section 6 of the facility Technical Specifications to reflect (I) a new corporate and (II) a new plant staff organizational structure, and (III) a revised composition of the Plant Operations Review Committee, in accordance with the licensee's application for amendment dated November 18, 1987. In connection with this matter the Commission has also issued, by letter dated December 18, 1987, a temporary waiver of compliance with respect to deviations from the organizational structure currently described in Section 6, Administrative Controls, of the Technical Specifications. This letter also permits initiation of implementation of the above proposal on an interim basis pending completion of consideration of the application for amendment.

The licensee's application is submitted as a result of corrective actions taken by the licensee in

[1] Houston Lighting & Power Company is authorized to act for the City Public Service Board of San Antonio, Central Power and Light Company and City of Austin, Texas and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

response to an Order issued by the Nuclear Regulatory Commission (NRC) on March 31, 1987 which required the other nuclear power plant operated by the licensee, the Peach Bottom Atomic Power Station (PBAPS), to be shut down due principally to inattentiveness by control room licensed personnel. The proposed reorganization, particularly the corporate reorganization, is also reflected throughout the licensee's Plan for Restart of Peach Bottom Atomic Power Station, Section I, Corporate Action, (Plan) which was submitted on November 25, 1987. The information in the Plan has been considered by the staff to be supplementary to the licensee's application for amendment. In the Plan the licensee has identified four root causes for the declining performance at the PBAPS, the fourth root cause being: Corporate management failed to recognize the developing severity of the problems at PBAPS and thus, did not take sufficient corrective action. The November 25, 1987 submittal responds to the fourth root cause by describing the Corporate portion of the overall Plan which the licensee submits "will also ensure continued excellence of operations at the Limerick Generating Station (LGS)".

The licensee's Plan states that two concepts underlie its response to the fourth root cause. The first concept is that organization structure, management systems and managerial ability are interdependent elements; each impacts upon the varying degree of effectiveness of the others. The second concept deals with strengthening the licensee's self assessment activities. The proposed organizational structure identified in the licensee's amendment application is a principal factor in attaining the goals associated with both of these objectives.

I. Corporate Organizational Structure

The proposed revisions would reorganize the corporate staff between the plant manager and the senior vice president levels. The current Technical Specification (TS) Figure 6.2–1–1 showing the offices of the Senior Vice President-Nuclear Power, the Vice President (VP)-Electric Production, the Manager-Nuclear Production, the Superintendent-Nuclear Generation Division and the Superintendent-Quality Assurance Division would be revised. Replacing these offices would be a Senior Vice President-Nuclear with four Vice Presidents and a General Manager for Nuclear Quality Assurance reporting to him. This would reduce the organizational chain of command by removing two levels of offsite corporate management. Two of the VP's would be located on the Limerick and the Peach Bottom plant sites thus establishing a corporate office presence onsite. The VPs for Nuclear Services and for Nuclear Engineering would direct staffs who would have responsibility only for nuclear power plant related issues. The licensee indicates that these changes will focus corporate attention on station necessities, will enhance communications between the station organizations and the highest levels of corporate management and will provide better functional grouping of related disciplines.

The proposed position of Vice President-Nuclear Services will include certain responsibilities that were previously within the Offices of the VP-Electric Production Department, the Manager-Nuclear Production, and the Superintendent-Nuclear Services. The office of VP-Nuclear Services would have four organizations: (1) Nuclear Support, for licensing, fuel management, radiation protection, waste management, chemistry, emergency preparedness, security and the Operating Experience Assessment Program, (2) Nuclear Maintenance, for supplemental craft maintenance support, (3) Nuclear Training, for licensed, general employee and crafts training and the professional development programs and (4) Nuclear Administration, for personnel, budget, computer and record management. The benefits attributable to the reorganization of Nuclear Services are discussed in detail in Section 2.6 of the Plan. These benefits generally accrue from the provision of additional resources and the centralization of these functions to support the identification and meeting of needs in these areas in a focused, timely manner.

The proposed office of Vice President-Nuclear Engineering will include certain responsibilities that were previously within the office of the VP-Engineering and Research Department. This office would include four organizations: (1) Engineering, for design, analyses, studies and assistance, (2) Project Management, to manage engineering projects for each station, (3) Engineering Design, for conceptual design support and services, and (4) the Construction Superintendent for Limerick Unit 2. The licensee identifies the benefits of the reorganization of Nuclear Engineering in section 2.5 of its Plan as being (1) the dedication of a significant portion of its corporate engineering resources to the support of nuclear operations exclusively, and (2) establishing single point accountability for the management of engineering projects at appropriate management levels.

The corporate level Nuclear Review Board (NRB) will be revised to provide for an elevated reporting relationship to the office of the Chief Executive Officer on a quarterly basis in addition to reporting regularly to the Senior VP-Nuclear. The NRB chairmanship has been made a full time position and the NRB membership has been broadened by including three members from outside the Philadelphia Electric Company. The licensee states that this will strengthen the experience and expertise of the NRB and will ensure its direct access to the highest corporate management level.

The proposed position of General Manager-Nuclear Quality Assurance will include certain responsibilities that were previously within the offices of the Manager-Nuclear Production, the Superintendent-Nuclear Generation Division and the VP, Engineering and Research Department. This office would include five organizations: Peach Bottom Quality, Limerick Quality, Quality Support, Performance Assessment and the Independent Safety Engineering Group. The licensee states that this consolidation of quality assurance efforts will provide for a more coordinated quality assurance operation resulting in early identification, evaluation and resolution of potential safety concerns.

II. Plant Staff Organizational Structure

The onsite station organizational structure, below the Vice President level, will be expanded horizontally by increasing the number of positions at both the Manager and the Superintendent levels. Figure 6.2–2 would be revised to reflect these changes. The current Superintendent-LGS Plant will be renamed Plant Manager. A Project Manager will be added to provide separate management accountability and authority for plant outages, planning and scheduling, reporting and modifications. A Support Manager will be added to provide strengthened focus and accountability for such activities as security, emergency preparedness, administration and personnel. A Superintendent-Training will be added, reporting to the VP–LGS to ensure more attention to site training needs.

The Plant Manager will manage the positions of Superintendent-Operations, Superintendent-Plant Services, Superintendent-Maintenance and Instrumentation and Controls and Superintendent-Technical. The Superintendent-Operations will be assisted by an Assistant Superintendent-Operations position. The

current shift superintendent, the Shift Technical Advisor, Shift Supervisor and operator positions remain essentially unchanged.

A new position of Operations Support Engineer will report to the Assistant Superintendent-Operations. This position will provide staff support in the areas of regulatory and licensing needs, coordination of shift training and certain administrative functions.

The current position of Superintendent-Plant Services will consolidate the existing chemistry and health physics groups and will also have a new position of radwaste engineer. A new position of Superintendent-Technical will manage a Technical Engineer and a Regulatory Engineer to provide techncial support for modification testing, reactor engineering, plant performance, process computer, regulatory and INPO interfaces, the LER program and commitment tracking. A new position of Superintendent-Maintenance and Instrumentation and Controls will manage several assistant superintendents, engineers and supervisors in the consolidation of these two areas from the current organization.

A Unit 2 Start-up Manager position will be added, reporting to the VP–LGS. This manager, with several superintendents, will be responsible for certain Unit 2 programs prior to fuel loading.

The licensee indicates that these onsite organization changes will establish a separation of responsibility that will better enable onsite management to concentrate their attention on each organizational function and will also delete various administrative duties from the Plant Manager, thereby allowing more focus on daily plant activities. All groups performing onsite activities which currently report to non-station organizations, except those involved in independent corporate assessment and oversight activities, and those involved in the construction of LGS-Unit 2 prior to start-up, will be integrated into the onsite station organization. The licensee states that this will improve communications and coordination among the groups and will provide accountability to the site vice president.

III. Plant Operations Review Committee (PORC)

The licensee proposes revisions to the PORC composition on TS page 6–7. The Superintendent-Operations will replace the Station Superintendent as Chairman. The other three Superintendents reporting to the Plant Manager will also be included as well as the Assistant Superintendent-Operations. The Maintenance Engineer and the Technical Engineer positions will be added to the PORC. The positions of Shift Superintendent and Regulatory Engineer will continue on the PORC.

The licensee indicates that the new representatives on the PORC will be a supervisor of the selected position and that the qualifications, experience and training requirements of previous PORC positions will be maintained. Disciplines previously represented on the PORC will continue to be represented. Relieving the Plant Manager as a member of the PORC will allow him to focus attention on those issues which affect personnel, plant and public safety as well as the efficiency of operations.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

(1) These changes discussed above in section I regarding the corporate organization are proposed to shorten and strengthen the nuclear operations chain of command, provide an onsite corporate presence and ensure that all onsite employees, except independent oversight functions, and Unit 2 construction activities are accountable to the site vice president, establish support and engineering organizations that are focused on nuclear related activities only, enhance and evaluate Quality Assurance's role, strengthen the operating experience assessment program and to strengthen the independent assessment process. Accordingly, these changes are directed at bringing about improvements which will provide additional control of and reduce the probability or consequences of the spectrum of accidents previously evaluated in the Final Safety Analysis Report. For example, the reorganized Quality Assurance function under the General Manager-Nuclear Quality assurance will include an interface of the QA activities at each site with the corporate QA group and the results are provided with a higher level of visability. Independent assessment of operational performance and trend analysis of performance will be performed and will have a higher level of visibility. Therefore, on the bases discussed above and in Section I, the proposed changes will not result in an increase in the probability or consequences of any accident previously evaluated.

(2) The changes discussed above in section I, regarding the corporate organization do not involve any physical modifications in plant hardware, plant design or plant systems operation. For this reason and for the reasons stated above in part (1) the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The objective of the proposed corporate reorganization is to change the organizational structure to increase control, accountability and corporate direction for nuclear operations, to strengthen self-assessment and problem resolution capabilities and to strengthen the independent assessment process. Since the the proposed changes would be directed at providing the improved features and enhancements discussed in part (1) above, they do not involve a significant reduction in a margin of safety.

(4) The changes discussed above in section II regarding the onsite organization are proposed to provide a strong corporate presence onsite; to provide separate management accountability and authority for plant operations through the Plant Manager, and outage management through the Project Manager; to ensure more attention and responsiveness to site training needs through the Superintendent-Training; and to provide strengthened management focus and accountability for critical station support functions through the Support Manager. The licensee states that this will eliminate various administrative responsibilities from the Plant Manager, thereby allowing more focus on daily plant activities. The proposed organization will further provide the Plant Manager with a staff that, as discussed in section II above, will be expanded horizontally to include the Superintendents of Plant Services, Maintenance and Instrumentation and Controls, Technical and Operations. This is directed at establishing a separation of responsibility that will enable concentration on each organizational function. The proposed organization will provide better functional grouping of related

disciplines through the Superintendents of Plant Services and Maintenance, Instrumentation and Controls.

As stated in the licensee's application, the qualifications, education and training requirements for the positions in the organization meet or exceed the requirements of ANSI/ANS-3.1-1978. The changes are implemented by changes to Technical Specification Figures 6.2.1-1 and 6.2.2.-1; by changing the title of the Station Superintendent to Plant Manager on pages 6-1, 6-2, 6-7, 6-8 and 6-13; by adding the Plant Manager as a recipient of reports on pages 6-12 and 6-13; by changing the reporting levels for the Independent Safety Engineering Group on page 6-6; by changing the responsible licensee representative to the Senior Vice President—Nuclear on pages 6-9, 6-11, 6-12; by changing the designee for responsibility for direction of the site training program to reflect a generically titled site trianing organization on page 6-7; by adding additional designees to provide for the adequate control of shift coverage on page 6-2; and by adding the Plant Manager and by providing for an elevated level of reporting on pages 6-8, 6-9, 6-12 and 6-13.

The proposed changes do not involve physical changes in the design or operation of plant structures, systems or components. For this reason and for the reasons discussed above and in section II above, the proposed changes will not result in an increase in the probability or consequences of any accident previously evaluated.

(5) The changes discussed above in section II regarding onsite organization do not involve any physical changes in the design or operation of plant structures, systems or components. For this reason and for the reasons stated in part (4) above the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(6) As discussed in part 4 above, the objective of the proposed onsite organization is to provide resources to strengthen the focus and accountability for plant activities, to provide better functional grouping of related disciplines and to enhance management-operated interaction and improve the professionalism of the operations organizations. For these reasons and as discussed in section II and part 4 above, the proposed changes do not involve a significant reduction in a margin of safety.

(7) The changes discussed above in section III regarding the Plant Operations Review Committee are proposed to increase the role of maintenance and operations; to decrease the role of disciplines not directly involved with operational safety; and to maintain a representation of the required technical disciplines. The proposed PORC composition also reflects the revised titles for certain positions. Therefore, on the bases discussed above and in section III, the proposed changes will not result in an increase in the probability or consequences of any accident previously evaluated.

(8) The changes discussed above in part 7 and section III regarding the PORC do not involve any physical changes in the plant structures, systems and components. For this reason and for the reasons stated in part 7 above the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(9) The objective of the proposed revisions are to reflect the enhancements that have been proposed for the onsite organizations and to increase the emphasis on the roles of maintanance and operations in the PROC reviews. The size of the PROC and the quorum requirements are unchanged. On these bases, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the above discussions in sections, I, II, and III and Parts 1-9 the staff proposes to determine that the requested amendment does not involve a signficant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments should be addressed to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street, NW, Washington, DC.

By January 22, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to

present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amemdment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Indentification Number 3737 and the following message addressed to Walter R. Butler, Director, Project Directorate I–2, Division of Reactor Projects I/II: Petitioner's name and telephone number; date petition was mailed; plant name; and publication data and page number of this Federal Register notice. A copy of the petition should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nonetimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 18, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC 20555, and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Bethesda, Maryland, this 18th day of December 1987.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulations.

[FR Doc. 87–29388 Filed 12–22–87; 8:45 am]
BILLING CODE 7590–01–M

[Docket Nos. 50–277 and 50–278]

Philadelphia Electric Co.; et al; Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards; Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–44 and DPR–56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company for operation of the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, located in York County, Pennsylvania.

The proposed amendments would modify Section 6 of the facility Technical Specifications to reflect (I) a new corporate and (II) a new plant staff organizational structure, (III) a revised composition of the Plant Operations Review Committee and (IV) several administrative changes; in accordance with the licensee's application for amendment dated November 19, 1987. In connection with this matter the Commission has also issued, by letter dated December 18, 1987, a temporary waiver of compliance with respect to deviations from the organizational structure currently described in Section 6, Administrative Controls, of the Technical Specifications. This letter also permits initiation of implementation of the above proposal, on an interim basis pending completion of consideration of the application for amendment.

The licensee's application is submitted as part of its corrective actions in response to an Order issued by the Nuclear Regulatory Commission (NRC) on March 31, 1987 which required the plant to be shut down due principally to inattentiveness by control room licensed personnel. The proposed reorganization is also reflected throughout the licensee's Plan for Restart of Peach Bottom Atomic Power Station, Section I, Corporate Action, (Plan) which was submitted on November 25, 1987. The information in the Plan has been considered by the staff to be supplementary to the licensee's application for amendment. In the Plan the licensee has identified four root causes for the declining performance at the PBAPS and has also identified corrective action objectives in response to the root causes. The November 25, 1987 submittal responds to the fourth root cause by describing the Corporate portion of the overall Plan while a future submittal will provide further descriptions regarding site specific activities.

The licensee states in Section 1.2 of the Plan that two concepts underlie its response to the fourth root cause. The first concept is that organization structure, management systems and material ability are interdependent elements; each impacts upon the varying degree of effectiveness of the others. The second concept deals with strengthening the licensee's self assessment activities. The proposed organizational structure identifed in the licensee's amendment application is a principal factor in attaining the goals associated with both of these objectives.

I. Corporate Organizational Structure

The proposed revisions would reorganize the corporate staff between the plant manager and the senior vice president levels. The current Technical Specification (TS) Figure 6.2–1 showing the offices of the Senior Vice President-Nuclear Power, the Vice President (VP)-Electric Production, the Manager-Nuclear Production, the Superintendent-Quality Assurance Division would be revised. Replacing these offices would be a Senior Vice President-Nuclear with four Vice Presidents and a General Manager for Nuclear Quality Assurance reporting to him. This would reduce the

organizational chain of command by removing two levels of offsite corporate management. Two of the VP's would be located on the Limerick and the Peach Bottom plant sites thus establishing a corporate office presence onsite. The VPs for Nuclear Services and for Nuclear Engineering would direct staffs who would have responsibility only for nuclear power plant related issues. The licensee indicates that these changes will focus corporate attention on station necessities, will enhance communications between the station organizations and the highest levels of corporate management and will provide better functional grouping of related disciplines.

The proposed position of Vice President-Nuclear Services will include certain responsibilities that were previously within the Offices of the VP-Electric Production Department, the Manager-Nuclear Production, the Superintendent-Nuclear Services. The office of VP-Nuclear Services would have four organizations: (1) Nuclear Support, for licensing, fuel management, radiation protection, waste management, chemistry, emergency preparedness, security and the Operating Experience Assessment Program, (2) Nuclear Maintenance, for supplemental craft maintenance support, (3) Nuclear Training, for licensed, general employee and crafts training and the professional development programs and (4) Nuclear Administration, for personnel, budget, computer and record management. The benefits attributable to the reorganization of Nuclear Services are discussed in detail in Section 2.6 of the Plan. These benefits generally accrue from the provision of additional resources and the centralization of these functions to support the identification and meeting of needs in these areas in a focussed, timely manner.

The proposed office of Vice President-Nuclear Engineering will include certain responsibilities that were previously within the office of the VP-Engineering and Research Department. This office would include four organizations: (1) Engineering, for design, analyses, studies and assistance, (2) Project Management, to manage engineering projects for each station, (3) Engineering Design, for conceptual design support, and services, and (4) the Construction Superintendent for Limerick Unit 2. The licensee identifies the benefits of the reorganization of Nuclear Engineering in Section 2.5 of its Plan as being (1) the dedication of a significant portion of its corporate engineering resources to the support of nuclear operations exclusively, and (2) establishing single point accountability for the management of engineering projects at appropriate management levels.

The corporate level Nuclear Review Board (NRB) will be revised to provide for an elevated reporting relationship to the office of the Chief Executive Officer on a quarterly basis in addition to reporting regularly to the Senior VP-Nuclear. The NRB chairmanship has been made a full time position and the NRB membership has been broadened by including three members from outside the Philadelphia Electric Company. The licensee states that this will strengthen the experience and expertise of the NRB and will ensure its direct access to the highest corporate management level.

The proposed position of General Manager-Nuclear Quality Assurance will include certain responsibilities that were previously within the offices of the Manager-Nuclear Production, the Superintendent-Nuclear Generation Division and the VP, Engineering and Research Department. This office would include five organizations: Peach Bottom Quality, Limerick Quality, Quality Support, Performance Assessment and the Independent Safety Engineering Group. The licensee states that this consolidation of quality assurance efforts will provide for a more coordinated quality assurance operation resulting in early identification, evaluation and resolution of potential safety concerns.

II Plant Staff Organizational Structure

The onsite station organization structure, below the Vice President level, will be expanded horizontally by increasing the number of positions at both the Manager and Superintendent levels. An additional sheet has been added to Figure 6.2–2 to accommodate these changes. The current Manager-Nuclear Plant will be renamed Plant Manager. A Project Manager will be added to provided separate management accountability and authority for plant outages, planning and scheduling, reporting and modifications. A Support Manager will be added to provide strengthened focus and accountability for such activities as security, emergency prepardeness, administration and personnel. A Superintendent-Training will be added, reporting to the VP-Peach Bottom Atomic Power Station (PBAPS), to ensure more attention to site training needs.

The Plant Manager will manage the current positions of Superintendent-Operations and Superintendent-Plant Services as well as the new positions of Superintendent-Maintenance and Instrumentation and Contols and Superintendent-Technical. The Superintendent-Operations will be assisted by an Assistant Superintendent-Operations position which replaces the current Operations Engineer position. A new Shift Manager position, replacing the current Shift Superintendent and some of the duties of the current Operations Engineer, will provide a higher level of management authority on each shift, will prevent isolation of management from the operators and will provide career path opportunities for Operations personnel The Shift Technical Adviser, Shift Supervisor and operator positions remain essentially unchanged except to reflect new position titles. The number of non-licenses operators outside the control room will be increased from three to five.

A new position of Operations Support Engineer will report to the Assistant Superintendent-Operations. This position will provide the technical support formerly provided by the Operations Engineer and will, therefore, relieve the Shift Manager's staff of these functions. The Operations Support Engineer's staff will include a technical staff, a utility shift manager position which will be filled when shift schedules permit and an Operations Support Superintendent. The supporting staff consisting of utility shift operator's a blocking coordinator and an electrical supervisor will assist shift operators in developing equipment blocking permits for taking systems out of service, shift scheduling, procedure review and coordinating of maintenance and surveilance testing of electrical equipment to support operations.

The current position of Superintendent-Plant Services will consolidate the existing chemistry and health physics groups and will also have a new position or radwaste engineer. A new position of Superintendent-Technical will manage a Technical Engineer and a Regulatory Engineer to provide technical support for modification testing, reactor engineering, plant performance, process computer, regulatory and INPO interfaces, the LER program and commitment tracking. A new position of Superintendent-Maintenance and Instrumentation and Control's will manage several assistant superintendents, engineers and supervisors in the consolidation of these two areas from the current organization.

The licensee proposes to delete eight position designations on Figure 6.2–2 at the lower levels of the organization. The

licensee states that all of the functions performed by these positions will be the responsibility of the organization which is shown on the proposed Figure 6.2–2. This would not be inconsistent with the BWR Standard Technical Specifications which simply require that the figure show the lines of responsibility and organizational structure.

The licensee did not propose any change in the interim relief granted by amendments 126 and 129 regarding the holding of an SRO license by either the PLant Manager or the Superintendent-Operations. Therefore, the relief provided by those amandments continues in effect and is shown on Figure 6.2–2.

The licensee indicates that these onsite organization changes will establish a separation of responsibility that will better enable onsite management to concentrate their attention on each organizational function and will also delete various administrative duties from the Plant Manager, thereby allowing more focus on daily activities. All groups performing onsite activities which currently report to non-station organizations, except those involved in independent corporate assessement and oversight activities, will be integrated into the onsite station organization. The licensee states that this will improve communications and coordinating among the groups and will provide accountability to the site vice president.

III. Plant Operations Review Committee (PORC)

The licensee proposes revisions to the PORC composition on TS page 246. The Superintendent-Operations will replace the Manager-Nuclear Plant as Chairman. The other three Superintendents reporting to the Pland Manager would also be included. The Assistant Superintendent-Operations would replace the equivalent position of Operations Engineer. The Maintenance Engineer and the Technical Engineer positions will continue on the PORC. The new position of Regulatory Engineer will be added. The Shift Manager would replace the comparable current Shift Superintendent position. The licensee states that these changes increase the roles of maintenance and operations and will maintain a representation of technical disciplines required for the appropriate review of safety issues.

IV. Administrative Changes

The licensee proposes miscellaneous changes which include: Updating the title of the corporate safety committee to reflect current nomenclature on pages 261, 266 and 267; renumbering a list on page 248 to eliminate the duplication of an index inadvertently made in a prior amendment; removing a reference on page 248 to a paragraph specifying reporting times which was deleted by a previous amendment. These changes also include: Extending Note 2 on Sheet 2 of Figure 6.2–2 to provide a reference to paragraph 6.1.1; amending the reporting requirements of paragraph 6.7.1 to provide specificity to the required reporting times consistent with the requirements in the Standard Technical Specifications and the Limerick TS; and to add an "s" to the word Operation where PORC is spelled out on pages 246, 247, 248, 248a and 251. The changes requested in this miscellaneous category to delete several lower level positions from Figure 6.2–2 and to add a second sheet to Figure 6.2–2 are addressed in section II above. The licensee also proposed to delete the designation of the Nuclear Generation Division (NGD) Superintendent as being responsible for the overall fire protection program. This change was made in amendment number 39 and the licensee does not provide sufficient specificity in its application regarding how this responsibility will otherwise be met. Therefore this request is denied. Designation of this responsibility will remain with the VP–PBAPS which is the approximate level of responsibility to the NGD Superintendent in this regard. This denial is without prejudice should the licensee wish to revisit the issue.

The licensee indicates that these onsite organization changes will establish a separation of responsibility that will better enable onsite management to concentrate their attention on each organizational function and will also delete various administrative duties from the Plant Manager, thereby allowing more focus on daily plant activities. All groups performing onsite activities which currently report to non-station organizations, except those involved in independent corporate assessment and oversight activities, will be integrated into the onsite station organization. The licensee states that this will improve communications and coordination among the groups and will provide accountability to the site vice president.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

(1) The changes discussed above in section I regarding the corporate organization are proposed to shorten and strengthen the nuclear operations chain of command, provide an onsite corporate presence and ensure that all onsite employees, except independent oversight functions, are accountable to the site vice president, establish support and engineering organizations that are focussed on nuclear related activities only, enhance and elevate Quality Assurance's role, strengthen the operating experience assessment program and to strengthen the independent assessment process. Accordingly, these changes are directed at bringing about improvements which will provide further control of and reduce the probability or consequences of the spectrum of accidents previously evaluated in the Updated Final Safety Analysis Report. For example, the reorganized Quality Assurance function under the General Manager-Nuclear Quality Assurance will include an interface of the QA activities at each site with the corporate QA group and the results are provided with a higher level of visibility. Independent assessment of operational performance and trend analysis of performance will be performed and will have a higher level of visibility. Therefore, on the bases discussed above and in section I the proposed changes will not result in an increase in the probability or consequences of any accident previously evaluated.

(2) The changes discussed above in section I regarding the corporate organization do not involve any physical modifications in plant hardware, plant design or plant systems operation. For this reason and for the reasons stated above in part (1) the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The objective of the proposed corporate reorganization is to change the organizational structure to increase control, accountability and corporate direction for nuclear operations, to strengthen self-assessment and problem resolution capabilities and to strengthen the independent assessment process. Since the proposed changes would be

directed at providing the improved features and enhancements discussed in part (1) above, they do not involve a significant reduction in a margin of safety.

(4) The changes discussed above in section II regarding the onsite organization are proposed to provide a strong corporate presence onsite; to provide separate management accountability and authority for plant operations through the Plant Manager, and outage management through the Project Manager; to ensure more attention and responsiveness to site training needs through the Superintendent-Training; and to provide strengthened management focus and accountability for critical station support functions through the Support Manager. The Licensee states that this will eliminate various administrative responsibilities from the Plant Manager, thereby allowing more focus on daily plant activities. The proposed organization will further provide the Plant Manager with a staff that, as discussed in section II above, will be expanded horizontally to include the Superintendents of Plant Services, Maintenance and Instrumentation and Controls, Technical and Operations. This is directed at establishing a separation of responsibility that will enable concentration on each organizational function. The proposed organization will provide better functional grouping of related disciplines through the Superintendents of Plant Services and Maintenance, Instrumentation and Controls and will provide for onsite management of construction, field engineering, testing and Maintenance crafts.

The licensee states that the proposed organization under the Superintendent-Operations will establish additional supervisory positions, including implementation of the Shift Manager concept, and a division of responsibility that will enhance management-operator interaction. Flexibility would also be provided to accommodate periodic rotation and alternative career paths for shift personnel. This is directed at enhancing operator morale and motivation and improving the professionalism of the operations organization.

As stated in the licensee's application, the qualifications, education and training requirements for the positions in the proposed organization meet or exceed the requirements of ANSI N18.1–1971. The proposed changes would be implemented by changes to Technical Specification Figures 6.2–1 and 6.2–2, by changing the title of the Manager-Nuclear Plant to Plant Manager on TS pages 243, 246, 247, and 248; by adding the Plant Manager as the recipient of reports on TS pages 247, 248, and 248a; by changing the reporting level from Superintendent-Nuclear Generating Division to Vice President-PBAPS, which is a corporate officer level position, on TS pages 247, 248, 248a, 249, 252, 252a, and 253; by adding an elevated level of reporting on TS pages 248 and 252; and by changing titles to reflect the proposed Superintendent-Training's position on page 246 and the Shift Manager's position on page 262.

The proposed changes do not involve physical changes in the design or operation of plant structures, systems or components. For this reason and for the reason discussed above and in section II above, the proposed changes will not result in an increase in the probability or consequences of any accident previously evaluated.

(5) The changes discussed above in section II regarding onsite organization do not involve any physical changes in the design or operation of plant structures, systems or components. For this reasons and for the reasons stated in part (4) above the propsoed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(6) As discussed in part 4 above the objective of the proposed onsite organization is to provide resources to strengthen the focus and accountability for plant activities, to provide better functional grouping of related disciplines and to enhance management-operator interaction and improve the professionalism of the operations organization. For these reasons and as discussed in section II and part 4 above, the proposed changes do not involve a significant reduction in a margin of safety.

(7) The changes discussed above in section III regarding the Plant Operating Review Committee are proposed to increase the role of maintenance and operations; to decrease the role of disciplines not directly involved with operational safety; and to maintain a representation of the required technical disciplines. The proposed PORC composition also reflects the revised titles for certain positions. Therefore, on the bases discussed above and in section III, the proposed changes will not result in an increase in the probability or consequences of any accident previously evaluated.

(8) The changes discussed above in part 7 and section III regarding the PORC do not involve any physical changes in the plant structures, systems and components. For this reason and for the reasons stated in part 7 above the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(9) The objective of the proposed revisions are to reflect the enhancements that have been proposed for the onsite organizations and to increase the emphasis on the roles of maintenance and operations in the PORC reviews. The size of the PORC and the quorum requirements are unchanged. On these bases, the proposed changes do not involve a significant reduction in a margin of safety.

(10) The changes discussed above in section IV include miscellaneous administrative revisions in nomenclature, corrections of errors, addition of a reference to another TS paragraph, and specification of a reporting time. The changes proposed by the licensee in this category dealing with deletion of operations staff positions from the organization charts have been addressed in the onsite organization discussions above and those dealing with the responsibility for the fire protection program have been denied for the reasons stated in section IV. The Commission has provided guidance concerning the application of standards in 10 CFR 50.92 by providing certain examples (March 6, 1986, 51 FR 7744) of amendments that are not likely to involve a significant hazards consideration. These proposed changes are enveloped by example (i) which relates to purely administrative changes for correction of an error, changes in nomenclature and changes to achieve consistency. On this basis these changes do not involve significant hazards considerations.

Based on the above discussions in section I, II, III and IV and Parts 1–10 the staff proposes to determine that the requested amendment does not involve a significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments should be addressed to the Rules and Procedures, Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the

publication date and page number of this **Federal Register** notice. Copies of comments received may be examined at the NRC Public Document Room, 1717 H Street NW., Washigton, DC.

By January 22, 1988, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Request for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such a amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Att: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325–6000 (in Missouri (800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Walter R. Butler, Director, Project Directorate I–2, Division of Reactor Projects I/II: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue NW., Washington, DC 20006, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 19, 1987, as supplemented by the licensee's Plan for Restart, Section I, Corporate Action, dated November 25, 1987, which are available for public inspection at the Commission's Public Document Room, 1717 H Street NW. Washington, DC 20555, and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Dated at Bethesda, Maryland, this 18th day of December 1987.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulations.

[FR Doc. 87–29389 Filed 12–22–87; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–15183, License No. 45–18488–01, EA 87–127]

Order Imposing Civil Monetary Penalty; Tidewater Memorial Hospital, Tappahannock, VA

I

Tidewater Memorial Hospital (licensee) is the holder of Material License No. 45–18488–01 issued by the Nuclear Regulatory Commission (NRC/Commission) on July 26, 1979. The

license authorizes the licensee to employ the use of radioactive materials for diagnostic and therapeutic purposes in patients in accordance with the conditions specified therein.

II

A routine unannounced inspection of the licensee's activities was conducted on June 17, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated September 11, 1987. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letter dated October 7, 1987.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined as set forth in the Appendix to this Order that violation A.4 should be withdrawn, that the remaining examples of violation A and violation B occurred as stated, that the Severity Level III categorization is warranted, and that the majority of the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The licensee pay a civil penalty in the amount of Two Thousand Four Hundred Sixteen Dollars and Sixty-Seven Cents ($2,416.67) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy of the Regional Administrator, Region II, 101 Marietta St., NW., Suite 2900, Atlanta, GA 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above as amended in the Appendix to this Order and

(b) Whether, on the basis of such violation, this Order shall be sustained.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Dated at Bethesda, Maryland, this 16th day of December 1987.

Appendix—Evaluations and Conclusions

On September 11, 1987, a Notice of Violation and Proposed Impositions of Civil Penalty (Notice) was issued for violations identified during a routine NRC inspection. Tidewater Memorial Hospital responded to the Notice on October 7, 1987. The licensee denied the occurrences of violations, A.1, A.2, A.3, A.4, A.7, and A.8 and affirmed the occurrence of the remaining violations. The licensee also requested remission or mitigation of the proposed civil penalty amount. The NRC's evaluation and conclusion for the violations which were contested and denied by Tidewater Memorial Hospital are as follows:

Restatement of Violation A.1

License Condition 17 requires the licensee to possess and use licensed material in accordance with statements, representations, and procedures contained in its license application dated January 23, 1979, letter dated July 24, 1984, and Model As Low As Reasonably Achievable (ALARA) Program dated July 27, 1984, including any enclosures.

Item 7(1) of the license application, Medical Isotopes Committee (Committee Administrative Duties and Frequency), requires the Medical Isotopes Committee to review the entire Radiation Safety Program at least annually to determine that all activities are being conducted safely and in accordance with the Nuclear Regulatory Commission/State Regulations and the conditions of the respective radioactive material licenses.

Contrary to the above, between July 27, 1984 and June 17, 1987, the Medical Isotopes Committee did not review the Radiation Safety Program.

Summary of Licensee's Response

The licensee contends that their consultant, Dr. Dean Broga, visits the hospital on a semiannual basis and that Dr. Broga's visits include a review of exposure levels in restricted and unrestricted areas, personnel exposures, postings, quality asurance programs, handling procedures, usage an storage, and all protocols followed by the Nuclear Medicine Department. The licensee also states that Dr. Broga's findings are discussed at the Radiation Safety Committee meetings and also sent to the Radiation Safety Officer in written form. The licensee asserts that Dr. Broga's semiannual review more than meets the requirements of License Condition 17, Item 7(1).

NRC Evaluation of Licensee's Response

License Condition 17, Item 7(1), requires the *Medical Isotopes Committee* (also known as the Radiation Safety Committee (RSC)) to review the entire Radiation Safety Progrm at least annually. Dr. Broga's semiannual survey report is the product of an individual outside consultant and does not constitute an annual review of the Radiation Safety Program by the Medical Isotopes Committee. Medical Isotopes Committee minutes reviewed between July 27, 1984 and June 17, 1987 did not record any annaul review of the Radiation Safety Program. Also, no formal review of the program, independent of the Medical Isotope Committee quarterly meetings, as performed by members of the Medical Isotopes Committee, acting as a majority of a quorum. In addition, if the RSC has actually performed an adequate formal annual review of the Radiation Safety Progam, in lieu of relying solely on a consultant's semiannual review, many of the sixteen examples of violations proposed in the September 11, 1987 Notice could have been avoided or would have been licensee-identified. The licensee's affirmation of ten of these examples also indicates minimal involvement by the RSC in managing the Radiation Safety Program. Because no formal annual review of the entire Radiation Safety Program was performed by the Medical Isotopes

Committee members, violation A.1 remains as stated.

Restatement of Violation A.2

License Condition 17 requires the licensee to possess and use licensed material in accordance with statements, representations, and procedures contained in its license application dated January 23, 1979, letter dated July 27, 1984, and Model As Low As Reasonably Achievable (ALARA) Program dated July 27, 1984, including any enclosures.

Item 3(a)(3) of the Model ALARA Program requires the Radiation Safety Officer (RSO) to perform a quarterly review of records of radiation levels in unrestricted and restricted areas to determine that they were at ALARA levels during the previous quarter.

Contrary to the above, between July 27, 1984 and February 8, 1985, between July 24, 1985 and January 31, 1986; between January 31, 1986 and July 24, 1986, between July 24, 1986 and March 16, 1987, the RSO did not perform a quarterly review of records of radiation levels in restricted areas. Additionally, between July 27, 1984 and June 17, 1987, the RSO did not perform a quarterly review of records of radiation levels in unrstricted areas.

Summary of Licensee's Response

The licensee contends that the exact implication of the three ALARA violations as referenced in violations A.2, A.3, and A.4 is unclear. The licensee states that they review quarterly exposure records at all RSC meetings to ensure compliance with ALARA levels. With the exception of the Radiologist (who serves as the the RSO), the licensee rarely has any monitored individual who approaches the ALARA Level I limits. The licensee states that Dr. Broga's (outside consultant) survey includes levels in restricted and unrestricted areas. The nuclear medicine technologist who performs the weekly exposure surveys is also a member of the RSC and is responsible for reporting any unusual situations to the Committe. The licensee contends that Dr. Broga's review includes ways to limit exposure, and that Tidewater Memorial Hospital does not have individuals receiving significant exposures as a function of their routine job responsibilities. The licensee explains that, if anything, its only mistake was its failure to document is efforts in a manner consistent with the inspector's expectations. The licensee further explains that it plans to amend its license application to more accurately reflect its program. Also, the license lists the dates of all RSC meetings held between July 27, 1984 and April 28, 1987.

NRC Evaluation of Licensee's Response

Dr. Broga's review of radiation levels in restricted areas was performed approximately semiannually. Dr. Broga's review was comprised of a contamination and exposure survey of restricted areas. The results were compiled into a "Nuclear Medicine Survey Report" and mailed to Dr. Lagundino, the licensee's Radiologist and RSO. The results of the report were also discussed, but not documented at the Radiation Safety Committee Meeting that coincided with Dr. Broga's visit. As stated in violation A.2, the RSO was required to perform a *quarterly* review of records of radiation levels in unrestricted areas. The dates when Dr. Broga performed his contamintion and exposure surveys (July 27, 1984; February 18, 1985; July 24, 1985; January 31, 1986; July 24, 1986; and March 16, 1987) did not constitute a quarterly frequency.

Dr. Broga's review of radiation levels did not include contamination or exposure survey results of unrestricted areas (hallways, adjacent rooms, etc.). All of Dr. Broga's swipes and exposure survey measurements were collected from points within the restricted areas (hot lab and injection/imaging areas).

The weekly surveys of unrestricted areas conducted by the nuclear medicine technologist did not constitute a quarterly review of radiation levels in unrestricted and restricted areas by the RSO, Dr. Lagundino. Under these circumstances, violaton A.2 was correct as stated.

Restatement of Violation A.3

License Condition 17 requires the licensee to possess and use licensed material in accordance with statements, representations, and procedures contained in its license application dated January 23, 1979, letter dated July 27, 1984, and Model As Low As Reasonably Achievable (ALARA) Program dated July 27, 1984, including any enclosures.

Item 3(a)(1) of the model ALARA Program states that the Radiation Safety Officer (RSO) will perform an annual review of the Radiation Safety Program for adherence to ALARA concepts.

Contrary to the above, between July 27, 1984 and June 17, 1987, the RSO did not perform an annual review of the Radiation Safety Program.

Summary of Licensee's Response

The licensee addresses violation A.3 in the "Summary of Licensee's Response" for violation A.2. The licensee states that quarterly exposure records are reviewed at all RSC meetings in order to ensure compliance to ALARA levels and that rarely does anyone approach ALARA Level I limits except for their Radiologist (RSO). The licensee also contends that Dr. Broga's review includes ways to limit exposure, and that the license does not have individuals receiving significant exposures as a function of their routine job responsibilities.

NRC Evalaution of Licensee's Response

The NRC staff maintains that the licensee's RSO did not perform any annual evaluation or review of the Radiation Safety Program for adherence to ALARA concepts. Such a review would have involved an annual evaluation of all individual occupational external exposure records for the four preceding quarters. The review also would have involved a review of specific procedures for reducing exposures (individual and collective) to as low as is reasonably achievable. Particular attention would have directed towards any individuals who exceeded the licensee's Investigation Levels I and II.

Item 6(b) of the July 27, 1984 Model ALARA Program states that each quarterly exposure that equals or exceeds Investigation Level I shall be reviewed by the RSO. This program also states that the RSO shall report the results of the review at the first RSC meeting following the quarter when the exposure was recorded and that the RSC shall consider each such exposure in comparison with those of others performing similar tasks and shall record the review in the RSC minutes. The RSC meeting conducted on February 18, 1985 may have reviewed Level I, but contrary to the Model ALARA Program, no explanation, comparison, or review was recorded in the RSC minutes regarding Dr. Lagundino's exposure level. Dr. Lagundino's exposure should have been discussed and documented during the RSO's annual review of the Radiation Safety Program.

The licensee's documents show that Dr. Broga designates his review of the ALARA program by only a check mark placed under the category "yes" of the "Nuclear Medicine Survey Report" and associated "Radiation Protection Survey-Nuclear Medicine." The NRC staff contends that a check mark does not constitute an adequate record of a program review of the Radiation Safety Program for adherence to ALARA concepts.

Item 1.a of Model ALARA Program requires the management of Tidewater Memorial Hospital to establish an organization for development of an ALARA program, to include the RSC and RSO. The NRC staff views the lack of timely and complete ALARA reviews as a joint responsibility of the RSO and the RSC. In addition, if the RSO had actually performed an adequate formal annual review of the Radiation Safety Program, in lieu of relying solely on a consultant's semiannual review, many of the sixteen examples of violations proposed in the September 11, 1987 Notice could have been avoided or would have been licensee-identified. The licensee's affirmation of ten of these examples also indicates admission of minimal involvement by the RSO in managing the Radiation Safety Program. Therefore, violation A.3 remains as stated.

Restatement of Violation A.4

License Condition 17 requires the licensee to possess and use licensed material in accordance with statements, representations, and procedures contained in its license application dated January 23, 1979, letter dated July 27, 1984, and Model As Low As Reasonably Achievable (ALARA) Program dated July 27, 1984, including any enclosures.

Items 2(c)(2) and 3(a)(2) of the Model ALARA Program requires that the radiation Safety Officer (RSO) and Radiation Safety Committee (RSC) review at least quarterly the occupational radiation exposure of authorized users and workers to determine that their exposures are ALARA in accordance with the provisions of Section 6 (Establishment of Investigational Levels In Order to Monitor Individual Occupational External Radiation Exposures) of the Model ALARM program.

Contrary to the above, between July 24, 1985 and November 11, 1986, the RSO and RSC failed to perform quarterly reviews of occupational radiation exposures.

Summary of Licensee's Response

The licensee addressed violation A.4 in the "Summary of Licensee's Response" for violation A.2. The licensee states that it reviewed the quarterly exposure records at all RSC meetings in order to ensure compliance with ALARA levels. The licensee lists the dates of all RSC meetings held between July 24, 1985 and November 11, 1986.

NRC Evaluation of Licensee's Response

Based on subsequent information submitted to our office in letters dated June 18, July 15, and October 7, 1987, we have determined that the RSO and RSC had performed quarterly reviews of occupational radiation exposures during the quarterly RSC meetings. Therefore, based on this new information we agree that the provisions of Items 2(c)(2) and 3(a)(2) of the license application were not violated. Accordingly, violation A.4 has been withdrawn and our records will be adjusted accordingly.

Restatement of Violation A.7

License Condition 17 requires the licensee to possess and use licensed material in accordance with statements, representations, and procedures contained in its license application dated January 23, 1979, letter dated July 27, 1984, and Model As Low As Reasonably Achievable (ALARA) Program dated July 27, 1984, including any enclosures.

Item 11 of the license application, Facilities and Equipment, requires the radioisotope laboratory to be locked when the physician or technician is not in attendance.

Contrary to the above, between approximately May 1, 1987 and June 17, 1987, the radioisotope laboratory was not locked or secured when the physician or technician was not in attendance.

Summary of Licensee's Response

The licensee states that violations A.7, A.11, A.12, and A.14 stem from the relocation of their nuclear department. The licensee contends that it was unable to get immediate key control from the contractor when its nuclear medicine laboratory was moved, and this resulted in the violation. The licensee also claims that since it presently uses a radiopharmacy, it does not routinely possess doses in the radioisotope laboratory for after-hour use. The licensee further explains that the area was under the supervision of the nuclear medicine technologist during daytime hours and that after-hours the area is not open to the public and is under the scrutiny of security and the emergency room staff. The licensee concludes by stating that although it may not have been in strict compliance with this requirement, the steps taken were sufficient to guard against problems which the regulation is designed to prevent. The posting violations (A.11, A.12, and A.14) were affirmed.

NRC Evaluation of Licensee's Response

On June 17, 1987, at approximately 11:00 a.m., the NRC inspector arrived at Tidewater Memorial Hospital to perform a routine, unannounced inspection. Upon entry into the nuclear medicine department (hot lab and injection/imaging areas), the inspector was unable to locate the nuclear medicine technologist or any department individual for approximately 30 minutes. During this time, no physician or technician was in attendance in the nuclear medicine department. Also, the two access doors leading into the nuclear medicine department (injection/imaging area) and the hot lab door located within the department were not locked. Consequently, access into the nuclear medicine department was not controlled or restricted. Although the licensee claims that it does not routinely possess radiopharmaceutical single dose units for after-hours use, it does routinely possess radioactive materials (to include radiopharmaceuticals, contaminated single dose syringes collected for storage, and a cesium #350982A–07 sealed source used for dose calibrator tests) which must be secured at all times from unauthorized removal. Therefore, violation A.7 should remain as stated.

Restatement of violation A.8

License Condition 17 requires the licensee to possess and use licensed material in accordance with statements, representations, and procedures contained in its license application dated January 28, 1979, letter dated July 24, 1984, and Model As Low As Reasonably Achievable (ALARA) Program dated July 27, 1984, including any enclosures.

Item 12(3) of the license application, Radiation Safety Training for Radiation Workers, requires all individuals who work with radiation sources (including security, nursing, and housekeeping personnel) to receive periodic training at least annually in radiation safety.

Contrary to the above, between August 9, 1984 and January 31, 1986, the licensee did not instruct security, nursing, and housekeeping personnel in radiation safety.

Summary of Licensee's Response

The licensee states that Dr. Broga has routinely presented an overview of the license operation and short training programs during the meetings which he has attended and that many of these overviews and training programs were not documented. The licensee contends that, since they are a very small hospital, the members of the RSC are in

daily contact with most of the hospital employees, especially any of those who have reason to be in and around the areas where radioactive material is used. Most training is done on a one-on-one basis when an employee begins employment. The licensee states that the violation is not one for which the licensee had been previously cited, and concludes by indicating that they have recently reviewed their training efforts in accordance with ALARA and are in the process of instituting a new system.

NRC Evaluation of Licensee's Response

At the time of the inspection, the Chief Radiologic Technologist stated that he had been responsible for coordinating most RSC meetings and training program schedules. The Chief Radiologic Technologist also stated that he had scheduled an in-service presentation on radiation safety to be conducted by Dr. Broga at the RSC meeting on February 18, 1985. This presentation was scheduled for maintenance, housekeeping, and nursing personnel, but only one nurse, who was an RSC member representative attended the presentation. During the RSC meeting held on January 31, 1986, maintenance, housekeeping, and nursing personnel attended an in-service presentation by Dr. Broga. However, no annual radiation safety training was provided for housekeeping and nursing personnel between at least August 9, 1984 and January 31, 1986. Also, no annual scheduling was proposed nor was training performed for any security personnel between August 9, 1984 and June 17, 1987. Items 3(b)(1) and (2) of the ALARA program, dated July 27, 1984, state that the RSO will schedule briefings and educational sessions to inform users, workers, and *ancillary personnel* of ALARA program efforts. Based on this information, violation A.8 remains as stated.

NRC Conclusion

After consideration of the October 7, 1987 response to the Notice of Violation and Proposed Imposition of Civil Penalty issued September 11, 1987, the NRC staff has concluded that sufficient basis was provided for the withdrawal of violation A.4, but that the remaining violations occurred as stated. The NRC staff agrees that the licensee has not had significant overexposures, contamination incidents, or other radiation mishaps. However, the evidence continues to support a management breakdown due to the total number of violations. Based on these violations, and in view of the magnitude of the noncompliances, the Severity Level III categorization and the majority of the proposed $2,500 civil penalty are warranted. Because the proposed civil penalty was assessed equally among the two violations and violation A.4 was one example of 15 in violation A and has been withdrawn, the proposed civil penalty amount has been reduced by 1/15th of 1/2 of the total ($83.33). Therefore, a civil penalty in the amount of $2,416.67 should be imposed.

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BILLING CODE 7590-01-M

[Docket Nos. 030-12570 and 030-12811; License Nos. 47-05322 and 47-05322-03, EA 87-74]

Order Imposing Civil Monetary Penalty; Wheeling Hospital, Inc., Wheeling, WV

I.

Wheeling Hospital, Inc. (licensee) is the holder of Materials License Nos. 47-05322-02 and 47-05322-03 issued by the Nuclear Regulatory Commission (NRC/Commission) on April 27, 1977 and July 22, 1977, respectively. The licenses authorize the licensee to employ the use of radioactive materials for diagnostic and therapeutic purposes for patients in accordance with the conditions specified therein.

II.

A routine unannounced inspection of the licensee's activities was conducted on April 29, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty was served upon the licensee by letter dated August 3, 1987. The Notice stated the nature of the violations, the provisions of the NRC requirements that the licensee had violated, and the amount of the civil penalty proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalty by letters dated August 5, 26, 27, and 28, and September 28, 1987.

III.

After consideration of the licensee's responses and the statements of fact, explanation, and argument for mitigation, the NRC staff has determined, as set forth in the Appendix to this Order, that violations A, B, C, and D.4 should be withdrawn and violations D.6, D.8, and G occurred as stated. Also, a portion of the proposed civil penalty for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty as amended by the Appendix to this Order should be imposed.

IV.

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of One Thousand Four Hundred Twenty-Nine Dollars ($1,429) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Regional Administrator, U.S. Nuclear Regulatory Commission, Region II, 101 Marietta Street, NW., Suite 2900, Atlanta, GA 30323.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty referenced in Section II above as amended in the Appendix to this Order, and

(b) Whether, on the basis of such violations, this Order should be sustained.

For Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Dated at Bethesda, Maryland this 10th day of December 1987.

Appendix–Evaluation and Conclusion

By letters dated August 5 and 26, 1987, the licensee responded, in part and in full, respectively, to the Notice of Violation and Proposed Imposition of Civil Penalty dated August 3, 1987. In a

letter dated August 27, 1987, the licensee restated its response in part. In a letter dated August 28, 1987, the licensee submitted copies of records requested by the NRC on August 14, 1987; and in a letter dated September 28, 1987, the licensee submitted copies of records requested by the NRC on April 29 and September 24, 1987. In these responses, the licensee denied four violations and parts of a fifth, did not contest two violations and parts of a third, and requested reclassification of the overall Severity Level and civil penalty amount based on new information and apparent prior condonation by the NRC. Provided below are restatements of the violations, licensee responses, staff evaluations, and conclusions.

Restatement of Violation A

Licensee Condition 22(a) of License No. 47–05322–03 requires a visiting physician to receive prior written permission from the hospital's Administrator and its Medical Isotopes Committee before the physician is authorized to use licensed material for human use under the terms of this license.

Contrary to the above, the licensee did not issue written permission from the hospital's Administrator and its Medical Isotopes Committee prior to authorizing Dr. Sameer Rafla, a visiting physician from Brooklyn Methodist Hospital, to use licensed material for radiation therapy of patients from April 29, 1984 to April 29, 1987. This violation applies to License No. 47–05322–03 only.

Licensee's Response

The licensee contends that the physician was merely a part-time physician assisting an authorized user under 10 CFR 35.25 and was therefore not a visiting physician requiring written permission per License Condition 22(a). The license offers three exhibits as evidence of Courtesy Staff appointments for 1980–1981.

NRC Evaluation

At the time of the inspection on April 29, 1987 and through the Enforcement Conference on May 27, 1987, the licensee did not clearly dispute the violation; however, the licensee's response dated August 5, 1987 indicates that Dr. Rafla should have been considered as working under the supervision of Dr. Bonnesen in accordance with 10 CFR 35.25. Therefore, based on this new information we agree that the provisions of License Condition 22(a) would not have applied. Accordingly, violation A has been withdrawn. Our records will be revised accordingly.

Restatement of Violation B

10 CFR 35.27(a) (2) and (3) authorizes a licensee to permit any visiting medical authorized user to use licensed material for medical use under the terms of the licensee's license for sixty days each year if, among other things, the licensee possesses a copy of a medical use license issued by the Commission or an Agreement State or a permit issued by the Commission or Agreement State broad licensee either of which identifies the visiting medical user by name and specifies the procedures which the visiting user is authorized to perform.

Contrary to the above, on April 29, 1987, the licensee did not possess a copy of a license issued by the Commission or an Agreement State, or a permit issued by the Commission or Agreement State broad licensee that authorizes medical use by Dr. Sameer Rafla even though over the past three years Dr. Rafla worked at the licensee's facility two or three times per year while another physician was on vacation. This violation applies to License No. 47–05322–03 only.

Licensee's Response

The licensee responded that Dr. Rafla was supervised and therefore was not a visiting physician in the context of 10 CFR 35.27. Also, an authorized user on the licensee's staff reviewed Dr. Rafla's credentials prior to Dr. Rafla commencing work.

NRC Evaluation

The licensee is not required to possess a copy of Dr. Rafla's medical use license or permit if he was working under the supervision of an authorized user such as Dr. Bonnesen in accordance with 10 CFR 35.25. Therefore, based on our withdrawal of violation A, we withdraw violation B. Our records will be revised accordingly.

Restatement of Violation C

10 CFR 35.22(a)(4)(iv) requires a licensee's Radiation Safety Committee to maintain minutes of their meetings including a summary of deliberations and discussions.

10 CFR 35.22(b)(2) requires a licensee's Radiation Safety Committee to review, on the basis of safety and with regard to training and experience, and approve or disapprove any individual who is to be listed as a Teletherapy Physicist before submitting a license application or request for such amendment or renewal.

Contrary to the above, the licensee's Radiation Safety Committee did not review and document the training and experience of the Teletherapy Physicist, Mr. Virgil Yoder (Consultant), before submitting their license application for Amendment No. 8 on February 10, 1983. This violation applies to License No. 47–05322–03 only.

Licensee's Response

The licensee contends that the present 10 CFR 35.22(b)(2) requirement was not operative during the time period cited in violation C, nor was 10 CFR 35.27 (superseded text) operative prior to the hiring of their consulting Teletherapy Physicist. Additionally, the licensee states that Mr. Yoder's qualifications were reviewed in 1977.

NRC Evaluation

Violation C, issued on August 3, 1987, related to activities in February 1983. Due to an error, it cited 10 CFR 35.22 which did not go into effect until April 1, 1987. The NRC agrees that the violation was in error and we withdraw violation C. Our records will be revised accordingly.

Restatement of Violation D.4

License Condition 23 of License No. 47–05322–03, requires the licensee to possess and use licensed material described in items 6, 7, and 8 of this license in accordance with statements, representations, and procedures contained in the license application dated June 10, 1982.

Item 9(b)(2) of the license application dated June 10, 1982, requires the licensee to calibrate the primary beam calibration instruments every twenty-four (24) months.

Contrary to the above, the licensee did not calibrate the Victoreen R Meter Model 570 (Serial #2126) and Capintec Model 172–2 (Serial #607023) primary beam calibration instruments between February 20, 1969 and May 31, 1972, and between May 31, 1972 and June 5, 1985, intervals in excess of twenty-four (24) months. These violations apply to License No. 47–05322–03 only.

Licensee's Response

The licensee contends the following:

- The primary beam calibrations are performed by an outside consultant who uses his own instrument.
- The teletherapy license was issued on July 23, 1977. Therefore, there is no reason to calibrate the primary beam calibration instrument prior to that date.
- The Victoreen R Meter Model 570 primary beam calibration instrument was used prior to 1977 for the calibration of x-ray therapy equipment only. This instrument was not utilized for the annual calibration or monthly

spot-check of the Co-60 teletherapy unit at anytime.

• The Capintec Model 172–2 was used for annual calibrations and monthly spot-checks between July 22, 1977 and July 1984. Since July 1984, a Capintec Model 192 has been utilized. Both instruments were controlled and maintained by Mr. Yoder when he performed these calibrations. These instruments have been calibrated every 24 months as required and the calibration reports are maintained by Mr. Yoder.

• Wayne Butler, Ph.D., performs no monthly spot-checks. He does confer with Mr. Yoder bi-weekly regarding patient treatments and chart checks.

• The Capintec Model 192 (Serial No. 46301442) was used for annual calibrations and monthly spot-checks in 1986 and 1987. The Capintec Model 192 (Serial No. 94C747) was used in 1984 and 1985. The Capintec Model 172–2 was used between 1977 and 1983.

NRC Evaluation

Although many of the licensee's arguments do not directly address this violation as stated, the staff agrees that the primary beam calibration instruments were not required to be calibrated prior to the 1977 teletherapy license issuance. Based upon the new information provided in the licensee responses, we are withdrawing violation D.4 since an outside party calibrated the instruments at intervals not in excess of twenty-four months. Our records will be revised accordingly.

Restatement of Violation D.6

License Condition 23 of License No. 47–05322–03, requires the licensee to possess and use licensed material described in items 6, 7, and 8 of this license in accordance with statements, representations, and procedures contained in the licensee application dated June 10, 1982.

License Condition 19 of License No. 47–05322–02 requires the licensee to conduct its program in accordance with the statements, representations, and procedures contained in the licensee's letter with updated application and attachments received March 25, 1982 (including ALARA program dated August 15, 1980, as an attachment).

Item 15, Enclosure No. III(a)(1) of the license application dated June 10, 1982 (License No. 47–05322–03), and Attachment E of the ALARA Program dated August 15, 1980, included with the updated application and attachments received March 23, 1982 (License No. 47–05322–02), requires the licensee's Radiation Safety Officer (RSO) to perform an annual review of the Radiation Safety Program for adherence to ALARA concepts.

Contrary to the above, the licensee's RSO did not perform an annual review of the Radiation Safety Program between June 13, 1984 and February 11, 1987, an interval in excess of one year. This violation applies to both License Nos. 47–05322–03 and 47–05322–02.

Licensee's Response

The licensee contends that the violation was licensee-identified and corrected on February 11, 1987, prior to the NRC inspection.

NRC Evaluation

NMA Medical Physics Services documented and reviewed with the licensee, in four separate consulting reports, the licensee's failure to perform an annual review of the Radiation Safety Program. In a NMA Medical Physics Services consulting report dated February 6, 1985, the consultant notified the licensee of the annual review due on March 14, 1985. Again in a consulting report dated May 1986, the consultant alerted the licensee of the required annual review. Then on September 17, 1986, NMA Medical Physics Services notified the licensee of their deficiency in conducting an annual review. The final notification by NMA Medical Physics Services of Wheeling Hospital's annual review deficiencies was documented in a consulting report dated February 4, 1987. The licensee responded by performing an annual review on February 11, 1987. Violation D.6 was correct as stated.

Restatement of Violation D.8

License Condition 19 of License No. 47–05322–02 requires the licensee to conduct its program in accordance with the statements, representations, and procedures contained in the licensee's letter with updated application and attachments received March 25, 1982 (including ALARA program dated August 15, 1980, as an attachment).

Item 7, Appendix B, of undated application and attachments received March 25, 1982, requires the Medical Isotopes Committee to meet not less than once in each calendar quarter.

Contrary to the above, the Medical Isotopes Committee did not meet between June 13, 1984 and May 22, 1985, and between May 22, 1985 and December 11, 1985, and between December 11, 1985 and November 13, 1986, all three intervals in excess of a calendar quarter. This violation applies to License No. 47–05322–02 only.

Licensee's Response

The licensee contends that these failures were licensee-identified and corrected in November 1986, prior to the NRC inspection.

NRC Evaluation

Dr. Moren, Ph.D., an outside Consulting Physicist for Wheeling Hospital, noted in an earlier consulting report which evaluated Wheeling Hospital's Nuclear Medicine Department that the Radiation Safety Committee (RCS) has not met since June 13, 1984. NMA Medical Physics Services documented the infrequency of RSC meetings in two separate consulting reports dated November 1984 and February 1985. The November 1984 consulting report alerted the licensee of a missed RSC meeting during the third calendar quarter of 1984. The February 1985 consulting report also alerted the licensee of a missed RSC meeting during the second calendar quarter of 1985. Also NMA Medical Physics Services indicated in a consulting report dated February 6, 1985 that the RSC had not performed an annual ALARA review of the hospital's Radiation Safety Program. Consequently, based on Dr. Moren's consulting report and NMA Medical Physics Services' consulting reports, Wheeling Hospital was aware of their frequency of missed RSC meetings since at least June 13, 1984. Violation D.8 was correct as stated.

Restatement of Violation G

10 CFR 35.406(a) requires the licensee to count the number of brachytherapy sources returned to the storage area to ensure all sources taken from the storage area have been returned.

Contrary to the above, the licensee did not count the number of brachytherapy sources returned to the storage area on April 13, 1987, after removal of the sources from a temporary implant patient located in room 201. This violation applies to License No. 47–05322–02 only.

Licensee's Response

The licensee contends that their "returned" entry or "the time and date of return" entry for April 13, 1987, on Enclosure 4 of their letter of August 5, 1987, conforms to the data elements required by 10 CFR 35.406(a).

NRC Evaluation

The NRC evaluation is based on 10 CFR 35.406(a) requiring the licensee to return the brachytherapy sources to the storage area and *count* the number returned to ensure that all sources taken from the storage area have been

returned. The entry "returned" or the "time and date of return" entry does not constitute a count of the brachytherapy sources. Therefore, violation G remains as stated.

Conclusions

Based on the review of the partial response (August 5, 1987), the full response (August 26, 1987), and the partial response (August 27, 1987) by the licensee to the Notice of Violation and Proposed Civil Penalty issued on August 3, 1987, violations A, B, C, and D.4 have been withdrawn and violations D.6, D.8, and G have reaffirmed. The unresolved items described in Enclosure II to the letter, which appear to be in violation of NRC requirements, will be reviewed during future NRC inspections. The evidence continues to support a management breakdown due to the remaining violations and subsequent information revealing additional program deficiencies. Mitigation for violation D.6 and D.8 is inappropriate, notwithstanding the licensee's self-identification, in view of the opportunities available for self-identification and the knowledge the licensee had of the recurring conduct. We do note, as observed by the licensee, that some of the violations were not identified by the NRC in a previous inspection. NRC inspections are an audit. The inspector does not cover every aspect of a licensee's operation. The licensee has responsibility for full compliance not the NRC inspector. Based on these violations, and in view of the magnitude of the noncompliances, no mitigation of the Severity Level (III) is warranted. Based upon the withdrawal of violations A, B, and C, reduction in the civil penalty amount by $1071 is warranted. Therefore, a civil penalty in the amount of $1,429 should be imposed.

Enclosure II—Unresolved Items

A number of unresolved items are noted in reference to new information submitted in the licensee's responses. An unresolved item is defined as a matter for which NRC needs more information in order to determine compliance. Please be aware that these unresolved items will be reviewed during future NRC inspections. These unresolved items, along with the requirements which must be satisfied, are specified below:

- 10 CFR 35.406(b)(1) requires recording the names of individuals permitted to handle sources.
- 10 CFR 35.406(b)(2) requires the licensee to make a record of brachytherapy source use to include the number and activity of the sources in storage, after the *removal*, and the initials of the individual who removed the sources from storage.
- 10 CFR 35.406(b)(3) requires the licensee to make a record of the following:
  - Patient's name and room number
  - Number and activity of sources in storage after the *return* of the sources to storage

The documents submitted of the five cesium implants performed between April 10 and June 16, 1987 did not appear to contain the required information listed above.

On August 14, 1987 copies of Wheeling Hospital's records pertaining to Cesium-137 brachytherapy treatments subsequent to April 1, 1987 were requested. This information was requested in reference to the licensee's implementation of requirements as defined in 10 CFR 35.406(c) and 35.415(a)(4). In your letter dated August 28, 1987, no records of a brachytherapy implant survey were submitted to this Office regarding a Cesium-137 implant performed on April 10, 1987 (patient name: Penn, room 201). Since your letter of August 28, 1987 indicates that the "Cesium Room and Patient Survey Meter Readings" form had been created immediately following the April 29, 1987 NRC inspection in order to satisfy the requirements of 10 CFR 35.406(c) and 35.415(a)(4), it cannot be established whether the required surveys were conducted and whether records of the surveys had been kept. Your letter of August 28, 1987 indicates that all Cesium-137 brachytherapy treatments since April 29, 1987 had used the new form and all future treatments will continue to use this form.

10 CFR 35.415(a)(4) requires that records of surveys performed in contiguous restricted and unrestricted areas include the time of the survey. According to records submitted, the four implants performed between May 15 and June 16, 1987 do not indicate the time of the surveys. In order to assure compliance to 10 CFR 35.415, future brachytherapy surveys must include the time of the survey.

These unresolved items will be reviewed during a future NRC inspection at your facility.

[FR Doc. 87-29387 Filed 13-22-87; 8:45 am]

BILLING CODE 7590-01-M

PRESIDENTIAL COMMISSION ON THE HUMAN IMMUNODEFICIENCY VIRUS EPIDEMIC

Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the Presidential Commission on the Human Immunodeficiency Virus Epidemic will hold a public meeting on Wednesday, Thursday, and Friday, January 13, 14, and 15 in Hearing Room B at the Interstate Commerce Commission Building, 12th Street and Constitution Avenue (Constitution Avenue entrance), NW., Washington, DC 20423, from 9:00 a.m. to 5:30 p.m. each day.

The three day meeting will consist of panel presentations and discussions outlining aspects of the HIV epidemic related to clinical patient care. Experts from Federal, State, and local levels, and from the private sector, will make pesentations addressing issues surrounding care of patients infected with HIV. Agenda items subject to change as priorities dictated.

Records shall be kept of all Commission proceedings and shall be available for public inspection at 655—15th Street NW., Washington, DC 20005. For further information, please call 376-2206.

Polly L. Gault,

Executive Director, Presidential Commission on the HIV Epidemic.

[FR Doc. 87-29425 Filed 12-22-87; 8:45 am]

BILLING CODE 4160-15-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

December 17, 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 stocks:

Adams-Russell Electronics Co., Inc.
Common Stock, $.01 Par Value (File No. 7-0890)
NRM Energy Co., L.P.
Units (File No. 7-0891)
Atlas Corp.
Warrants (File No. 7-0892)
Brascan Ltd.
Class A Convertible, No Par Value (File No. 7-0893)

Consolidated Oil & Gas
Common Stock, $.20 Par Value (File No. 7–0894)
Cardis Corporation
Common Stock, $.01 Par Value (File No. 7–0895)
Crown Central Petroleum Corp.
Class A Common Stock, $5.00 Par Value (File No. 7–0896)
Calprop Corp.
Common Stock, $1.00 Par Value (File No. 7–0897)
Conquest Exploration
Common Stock, $.20 Par Value (File No. 7–0898)
Customedix Corp.
Common Stock, $.01 Par Value (File No. 7–0899)
Eastern Company (The)
Common Stock, $12.50 Par Value (File No. 7–0900)
Frequency Electronics, Inc.
Common Stock, $1.00 Par Value (File No. 7–0901)
Global Natural Resources, Inc.
Common Stock, $1.00 Par Value (File No. 7–0902)
Helm Resources
Common Stock, $1.00 Par Value (File No. 7–0903)
Health Care Reit, Inc.
Common Stock, $1.00 Par Value (File No. 7–0904)
Hipotronics, Incorporated
Common Stock, $.10 Par Value (File No. 7–0905)
Integrated Generics
Common Stock, $.001 Par Value (File No. 7–0906)
Instron Corporation
Common Stock, $1.00 Par Value (File No. 7–0907)
Kinark Corp.
Common Stock, $.10 Par Value (File No. 7–0908)
Koger Company (The)
Common Stock, $.10 Par Value (File No. 7–0909)
Computrac Inc.
Common Stock, $.01 Par Value (File No. 7–0910)
MCO Resources
Common Stock, $.01 Par Value (File No. 7–0911)
Media General
Class A Common Stock, $5.00 Par Value (File No. 7–0912)
New World Entertainment
Common Stock, $.01 Par Value (File No. 7–0913)
Olsten Corporation (The)
Common Stock, $.10 Par Value (File No. 7–0914)
Pope, Evans and Robbins, Inc.
Common Stock, $.10 Par Value (File No. 7–0915)
Penn Engineering & Mfg.
Common Stock, $1.00 Par Value (File No. 7–0916)
Pre-paid Legal Services
Common Stock, $.01 Par Value (File No. 7–0917)
Pico Products, Inc.
Common Stock, $.01 Par Value (File No. 7–0918)
Price Communications
Common Stock, $.01 Par Value (File No. 7–0919)
Paine Webber Residential Realty, Inc.
Common Stock, $.01 Par Value (File No. 7–0920)
Raven Industries, Inc.
Common Stock, $1.00 Par Value (File No. 7–0921)
Sterling Software
Common Stock, $.10 Par Value (File No. 7–0922)
Timberland Co.
Common Stock, $1.00 Par Value (File No. 7–0923)
Telephone & Data Systems
Common Stock, $1.00 Par Value (File No. 7–0924)
Thermedics, Inc.
Common Stock, $1.00 Par Value (File No. 7–0925)
Town & Country Jewelry
Common Stock, $.01 Par Value (File No. 7–0926)
Ultrasystems Inc.
Common Stock, $.01 Par Value (File No. 7–0927)
University Patents, Inc.
Common Stock, $.01 Par Value (File No. 7–0928)
Vanguard Technologies International, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–0929)
Washington Real Estate Investment Trust
Shares of Beneficial Interest, No Par Value (File No. 7–0930)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 11, 1988, 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. 87–29344 Filed 12–22–87; 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.

December 16, 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 stocks:

Federal Paper Board Company, Inc.
$2.875 Cumulative Convertible Preferred (File No. 7–0877)

Jepson Corporation
Common Stock, $.01 Par Value (File No. 7–0878)

Potlatch Corporation
$3.75 Series B Convertible Eachange Preferred (File No. 7–0879)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 8, 1988, 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. 87–29345 Filed 12–22–87; 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.

December 17, 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:

Liberty All-Star Equity Fund
Shares of Beneficial Interest (File No. 7-0887)
Rochester Gas & Electric Corp.
Common Stock, $5.00 Par Value (File No. 7-0888)
Savannah Electric & Power Co.
Common Stock, $5.00 Par Value (File No. 7-0889)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 11, 1988, 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. 87-29346 Filed 12-22-87; 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.

December 16, 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:

Borden Chemicals & PLastics, L.P.
Depositary Units (File No. 7-0869)
United Cable Television Corporation
Common Stock, $0.10 Par Value (File No. 7-0870)
Amfac, Inc. Common Stock, No Par Value (File No. 7-0871)
Carson Pirie Scott & Co. Common Stock, $5.00 Par Value (File No. 7-0872)
Cummins Engine Co., Inc. Common Stock, $2.50 Par Value (File No. 7-0873)
Allegheny International, Inc. Common Stock, $0.66 2/3 Par Value (File No. 7-0874)
Claire's Stores, Inc. Common Stock, $0.50 Par Value (File No. 7-0875)
Cleveland-Cliffs, Inc. Common Stock, $1.00 Par Value (File No. 7-0876)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 8, 1988, 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. 87-29347 Filed 12-22-87; 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.

December 16, 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:

Dean Foods Company
Common Stock, $1.00 Par Value (File No. 7-0880)
Enserch Exploration Partners, Ltd.
Depositary Units (File No. 7-0881)
General DataComm Industries, Inc.
Common Stock, $0.10 Par Value (File No. 7-0882)
Eagle-Picher Industries, Inc.
Common Stock, $1.25 Par Value (File No. 7-0883)
Federal Realty Investment Trust
Shares of Beneficial Interest (File No. 7-0884)
Thomas & Betts Corp.
Common Stock, $0.50 Par Value (File No. 7-0885)
USPCI, Inc.
Common Stock, $0.10 Par Value (File No. 7-0886)

These securites are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 8, 1988, 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. 87-29348 Filed 12-22-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25198; File No. SR-PHLX 87-35]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Principal Restrictions

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 November 9, 1987, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange") pursuant to Rule 19b–4, hereby proposes the following rule change: (italics indicates additions, brackets indicates deletions)

Obligations And Restrictions Applicable to Specialists And Registered Options Trader

Rule 1014. (a)–(d) No Change

(e) Except in accordance with paragraphs (c) and (d), no ROT shall:

(i) initiate an Exchange options transaction while on the Floor for any account in which he has an interest and execute as Floor Broker an off-floor order in options on the same underlying [security] *interest* during the same trading session, or

(ii) retain priority over an off-floor order while establishing or increasing a position for an account in which he has an interest while on the Floor of the Exchange.

(f) The provisions of the foregoing paragraphs (d) and (e) of this rule shall not apply to:

(i) any transaction by a registered specialist in an option in which he is so registered; or

(ii) any transaction, other than a transaction for an account in which an ROT has an interest, made with prior approval of a Floor Official to permit a member to contribute to the maintenance of a fair and orderly market in an option, or any purchase or sale to reverse any such transaction, or

(iii) any transaction to offset a transaction made in error.

. . . Commentary

.01–.16 No Change

.17 With respect to the prohibitions contained in paragraph (e), the daytime trading sessions on the Foreign Currency Options Floor during the hours of 8:00 a.m. and 2:30 p.m. are considered separate and distinct from the evening trading sessions on the Foreign Currency Options Floor during the hours of 7:00 p.m. and 11:00 p.m.

II. Self-Regulatory Organization's Statement Regarding 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 purpose of the proposed rule change is to clarify the meaning of the term "trading session" in light of the recently instituted evening trading hours on the Foreign Currency Options ("FCO") Floor. On September 16, 1987 the PHLX began trading foreign currency options during the hours of 7:00 p.m. and 11:00 p.m. on Sundays through Thursdays. These trading hours are in addition to the existing trading sessions on Monday through Friday during the hours of 8:00 a.m. and 2:30 p.m.

Under Rule 1014(e), an ROT is prohibited from acting both as a market maker and as a floor broker who executes off-floor orders in options on the same underlying security during the same trading session. The purpose of this provision is to avoid any risk that a market maker may trade ahead of a customer order or otherwise take advantage of a customer account in conducting proprietary trading activities. FCO Participants have asked the PHLX for clarification as to whether trading during the daytime hours of 8:00 a.m. and 2:30 p.m. and the evening hours of 7:00 p.m. and 11:00 p.m. on the same calendar day is considered trading during one session or two separate sessions.

PHLX has determined that although the evening and daytime segments are part of the same trading day, they are separate and distinct. For most purposes, the evening and daytime trading periods are treated by the Exchange as two segments of the same trading day. For purposes of Rule 1014(e), however, it would appear appropriate to treat each segment as a separate trading session. The current rule permits an ROT to act as a market maker on one trading day and a broker on the next. It is felt that, because the market may move substantially from one day to the next, the ability of an ROT to prefer himself over a customer, or to trade ahead of a customer order, is limited by prohibiting the ROT from acting in a dual capacity in the same session. This reasoning applies with equal force in considering the daytime and evening segments to be separate trading sessions. Accordingly, the rule change extends the separate session notion for purposes of Rule 1014(e) so that an ROT may act as a floor broker by day and market maker by night and vice versa.

Finally, Rule 1014(e)(i) has been amended to change the term underlying "security" to underlying "interest" to reflect the fact that the Exchange trades options on foreign currencies and stock indicies as well as on individual securities.

The proposed rule change is consistent with section 6(b)(5) of the Exchange Act in that it is designed to prevent fraudulent and manipulative acts and practices, and to protect investors and promote the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden or competition. Indeed, the proposal may serve to promote market maker and broker competition on the floor of the Exchange.

C. Self-Regulatory Organization's Statement on Comment on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

PHLX has designated the proposed rule change as an interpretation of the meaning of an existing rule. Accordingly, the proposed rule change takes effect upon this filing pursuant to section 19(b)(3)(A)(ii).

IV. Solicitation

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be

available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 13, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: December 15, 1987.

[FR Doc. 87-29343 Filed 12-22-87; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-17891]

Application and Opportunity for Hearing; American Airlines, Inc.

December 16, 1987.

Notice is hereby given that American Airlines, Inc. (the "Company") has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Meridian Trust Company (the "Bank") under an indenture dated as of April 15, 1987 (the "April Indenture") between Company and Bank and the trusteeship of the Bank as successor trustee under an indenture dated as of December 1, 1986 (the "December 1986 Indenture") between Company and The Connecticut Bank and Trust Company, National Association ("Connecticut Bank"), as trustee, and under seven indentures dated as of December 1, 1987 (the "December 1987 Indentues") between Company and Bank each of which were heretofore qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify Bank from acting as trustee under any of these indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is trustee under another indenture of the same obligor.

The Company alleges:

(1) Pursuant to the April Indenture, the Company has issued $10,406,000 aggregate principal amount of its Equipment Trust Certificates, Series C (the "April Certificates"). The Certificates were registered under the Securities Act of 1933 (the "1933 Act") and the April Indenture was qualified under the Act.

(2) Pursuant to the December 1986 Indenture, the Company has issued $35,112,000 aggregate principal amount of its Equipment Trust Certificates, Series A (the "December 1986 Certificates"). The Certificates were registered under the 1933 Act and the December Indenture was qualified under the Act.

(3) Connecticut Bank has advised the Company that, subject to the appointment of a successor trustee, it is resigning as trustee under the December 1986 Indenture. The Bank has advised it will accept the appointment, subject to a favorable determination by the Commission as requested in an application on file with the Commission, File No. 22-17125.

(4) Pursuant to the December 1987 Indentures, the Company will issue $106,800,000 aggregate principal amount of its Equipment Trust Certificates, (the "December 1987 Certificates"), Series D-J ("Series"), respectively. A Series will be issued under each December 1987 Indenture in the principal amount of $16,000,000 and $13,400,000, for Series D, E, F, G, J, and Series H and I, respectively. The Certificates were registered under the Securities Act of 1933 (the "1933 Act") and the Indentures were qualified under the Act.

(5) The Bank has advised it will accept the appointment, subject to a favorable determination by the Commission as requested in this Application.

(6) There is no default under the April Indenture, the December 1986 Indenture or the December 1987 Indentures.

(7) The Company's obligations with respect to the April Certificates, the December 1986 Certificates, and the December 1987 Certificates are and will be secured under separate indentures by separate security interests in separate and distinct property.

(8) Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as obligor under the April Indenture, the December 1986 Indenture, and the December 1987 Indentures are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under these Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to the application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-17891, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than January 9, 1988, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission. For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 29349 Filed 12-22-87; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16174; 812-6621]

Application; Merrill Lynch KECALP L.P. 1984 et al.

December 15, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("the 1940 Act").

Applicants: Merrill Lynch KECALP L.P. 1984 (the "1984 Partnership"), Merrill Lynch KECALP L.P. 1986 (the "1986 Partnership") (together, the "Partnerships") and Merrill Lynch Interfunding Inc. ("MLIF").

Relevant 1940 Act Sections: Exemption requested under section 17(b) from the provisions of section 17(a).

Summary of Application: Applicants seek an order relating to the acquisition by the Partnerships to certain securities from an "affiliated person," as defined in the 1940 Act.

Filing Date: The application was filed on February 10, 1987, and amended on December 15, 1987.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on their application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington 20549. The 1984 Partnership, the 1986 Partnership and MLIF, One Liberty Plaza, 165 Broadway, New York, New York 10080.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Fran Pollack-Matz (202) 272–3024 or Special Counsel Karen L. Skidmore (202) 272–3023, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is avilable for a free from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

Applicants' Representatives

1. The Partnerships, limited partnerships organized under the laws of Delaware, are non-diversified, closed-end investment companies of the management type under the 1940 Act. The investment objective of each Partnership is to seek long-term capital appreciation. Each of the Partnerships is an "employees' securities company," within the meaning of section 2(a)(13) of the 1940 Act, and operates in accordance with the terms of an exemptive order issued pursuant to section 6(b) of the 1940 Act in Investment Company Act Release No. 12363 (April 8, 1982) (the "KECALP Exemptive Order"). The general partner for each of the Partnership is KECALP Inc. ("KECALP"), a Delaware corporation and a wholly-owned subsidiary of Merrill Lynch & Co., Inc. ("ML&Co."). KECALP is responsible for managing and making investment decisions for the Partnerships. Previously, all investment made by the Partnerships had to be reviewed by an investment committee comprised of eleven of the fourteen members of KECALP's Board of Directors. That committee no longer exists, and investments are now approved by KECALP's Board of Directors. MLIF, a Delaware corporation, is an indirect subsidiary of ML&Co. that is engaged in commercial financing transactions.

Investment in Amstar

2. Amstar Corporation ("Amstar") is a diversified manufacturing corporation engaged in the refining of cane and beet sugar, as well as the production of premium quality electric tools, assorted industrial products and sophisticated electronics equipment. During 1986, Merrill Lynch Capital Markets ("MLCM"), an unicorporated group within Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"), a principal subsidiary of ML&Co. that conducts its investment banking and underwriting activities, structured a leveraged buyout of Amstar Holdings, Inc. ("AHI"), together with AHI's management. As a result of the transactions involved with the leveraged buyout, AHI's securities were acquired by Sucrose Acquisition, Inc. ("Acquisition"), a wholly-owned subsidiary of Sucrose Holdings, Inc. ("Holdings"), a predecessor of Amstar, with AHI as the surviving entity.

3. Acquisition and Holdings were newly formed Delaware corporations which were organized solely for the purpose of effecting the leverage buyout. Amstar's equity securities are owned by members of Amstar's management, MLIF and various partnerships created by Merrill Lynch Capital Partners, Inc. ("MLCP"), a wholly-owned subsidiary of ML&Co. On a fully-diluted basis, MLIF's ownership of Amstar's common stock aggregated 5.01%. MLIF's purchase price per share of Amstar's Common stock was $10.00 ("Original Purchase Price"); the purchase occurred on November 21, 1986 ("Original Purchase Date"). No dividends have been declared on such common stock.

4. MLIF has agreed to sell to the 1986 Partnership 32,588 shares of the Amstar common stock it owns. This amount of shares represents 0.50% of Amstar's outstanding shares of common stock on a fully-diluted basis. The KECALP Board approved the investment on November 3, 1986. The purchase price to be paid by the 1986 Partnership to MLIF for the shares of common stock of Amstar proposed to be acquired by the 1986 Partnership will be the lower of (i) the value of the investment on the date it is acquired by the 1986 Partnership (as determined by the Board of Directors of KECALP) or (ii) the cost to MLIF of purchasing and holding the investment. The 1986 Partnership will not pay any carrying costs in respect of the period prior to the later of (1) the date of acquisition of the Amstar common stock by MLIF or (2) the date KECALP approved the 1986 Partnership's purchase of the proposed investment. With respect to clause (ii), such cost shall be the Original Purchase Price per share paid for the shares of Amstar common stock on the Original Acquisition Date plus carrying costs relating to such investment. For purposes of this transaction, carrying costs consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A. during the period from the date KECALP approved the 1986 Partnership's purchase of the investment until the 1986 Partnership acquires the investment or (ii) the effective cost of borrowing by ML&Co. during such period. The effective cost of borrowings by ML&Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during this period.

Investment in CMI

5. Clinton Mills, Inc. ("Clinton Mills") is a leading manufacturer of unfinished woven fabrics, and markets a broad range of such fabrics for the apparel, home furnishings and industrial markets. During 1986, MLCM structured a leveraged buyout of Clinton Mills together with Clinton Mills' management. As a result of the transactions involved with the leveraged buyout, CMI Acquisition, Inc. ("Acquisition"), a newly-formed corporation and a wholly-owned subsidiary of CMI Holdings, Inc. ("CMI"), which also is a newly formed corporation to facilitate the leveraged buyout, acquired Clinton Mills' outstanding common stock through a merger transaction. CMI's common stock is owned by MLIF, certain members of Clinton Mills' management, Marine Midland National Corp., and various partnerships created by MLCP for the purpose of acquiring CMI. Following full implementation of the buyout, Clinton Mills has been merged into Acquisition. No dividends have been declared on the CMI common stock.

6. MLIF has agreed to sell to the 1986 Partnership up to 10,000 shares of the CMI common stock it owns. This amount of shares represents 0.50% of CMI's outstanding shares of common stock on a fully-diluted basis. The price paid for such shares was $10.00 per share ("Original Purchase Price") on December 30, 1986 ("Original Acquisition Date"). The KECALP Board approved the investment on December

15, 1986. The purchase price to be paid by the 1986 Partnership to MLIF for the shares of common stock of CMI proposed to be acquired by the 1986 Partnership will be the lower of: (i) The value of the investment on the date it is acquired by the 1986 Partnership (as determined by the Board of Directors of KECALP), or (ii) the cost to MLIF of purchasing and holding the investment. With respect to clause (ii), such cost shall be the Original Purchase Price per share paid for the shares of CMI common stock on the Original Acquisition Date, plus carrying costs relating to such investment. The 1986 Partnership will not pay any carrying costs in respect of the period prior to the later of: (1) The date of acquisition of the CMI common stock by MLIF, or (2) the date KECALP approved the 1986 Partnership's purchase of the proposed investment. For purposes of this transaction, carrying costs consist of interest charges computed at the lower of: (i) The prime commercial lending rate charged by Citibank, N.A. during the period from the date KECALP approved the 1986 Partnership's purchase of the investment until the 1986 Partnership acquires the investment, or (ii) the effective cost of borrowings by ML&Co. during such period. The effective cost of borrowings by ML&Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during this period.

Applicants' Legal Conclusions

1. As a result of affiliations, sales of securities on a principal basis by MLIF to the Partnerships are prohibited by section 17(a) and cannot be effected unless exemptive relief is obtained under section 17(b). The statutory standards with respect to the relief requested under section 17(b) are satisfied; relief is justified by both the terms of the transactions and the fact that the proposed investments are not otherwise available to the Partnerships. With respect to the terms of the transactions, the KECALP Board of Directors has reviewed the proposed investments in detail. The members of the KECALP Board of Directors are sophisticated and experienced in valuing securities and evaluating financial transactions generally. In this regard, KECALP considered all information deemed relevant, including the nature of the investments, the nature of the investments by affiliates of ML&Co. and the fairness of the purchase prices proposed to be paid by the Partnerships. The KECASL Board of Directors determined that the proposed investments by the Partnerships will not directly or indirectly benefit entities affiliated with ML&Co. or its subsidiaries which also acquired investments in Amstar and Clinton. Moreover, the KECALP Board approved the Partnerships' investments in Amstar and CMI after consideration of each of the factors set forth in section 17(b) of the 1940 Act.

2. In evaluating the terms of the transactions, the KECALP Board considered the fact that the proposed purchase prices to be paid by the Partnerships will include carrying costs incurred by an affiliated person (*i.e.*, MLIF) if the value of each investment at the times of acquisition by the Partnerships is more than the sum of the purchase price plus the affiliate's carrying costs. In approving purchase prices which may include carrying costs, KECALP's Board of Directors recognized that KECALP receives no compensation for serving as general partner of the Partnerships and that ML&Co. has incurred considerable expenses in organizing the Partnerships. The Partnerships believe that it is entirely appropriate for them to reimburse affiliates for carrying costs in a situation where affiliates purchased such investments as, in effect, its nominee and the Partnerships would have purchased such investments directly if it had not been deemed necessary to obtain the relief requested herein. In light of these factors, the KECALP Board believes it is wholly appropriate for the purchase price paid for portfolio investments to reflect carrying costs provided that the value of the investments at the time of acquisition exceeds the amount of the purchase price plus carrying costs. To deny reimbursement for carrying costs would result in a further and unwarranted loss to MLIF and provide a disincentive to act on behalf of the Partnerships in the future in transactions of this type.

3. The investments are not otherwise available for purchase by the Partnerships. The KECALP Board has approved such investments after review of a considerable number of possible investments for the Partnerships. The Partnerships' investment program will be prejudiced if they are not permitted to take the investments referred to in this application.

4. The Board of Directors of KECALP believes that the proposed investments are consistent with the rationale underlying the establishment of each of the Partnerships as an "employees' securities company." In the application for exemptive relief ultimately granted in the KECALP Exemptive Order, as well as in their prospectuses, it was indicated that ML&Co. and its affiliates would be involved in structuring, identifying and investing in many of the Partnerships' portfolio investments. The Partnerships thus submit that the relief requested herein is consistent with their purposes and its stated policies.

5. The Partnerships believe that the KECALP Exemptive Order provides relief to the Partnerships with respect to section 17(d) of the 1940 Act and Rule 17d–1 thereunder in connection with the transactions described therein.

Applicants Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. The investments in Amstar and CMI will be acquired by the Partnerships in the manner and on the terms described above.

2. In connection with the deliberations and determinations by the Board of Directors of KECALP regarding the Partnerships' proposed Amstar and CMI transactions, appropriate record-keeping will be maintained and made available for inspection by the Commission in accordance with the KECALP Exemptive Order and the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–29338 Filed 12–22–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16175; 812–6708]

Application; ML Venture Partners I, L.P., et al.

December 15, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: ML Venture Partners I, L.P. ("MLVP I"), ML Venture Partners II, L.P. ("MLVP II," and together with MLVP I, the "Partnerships"), Merrill Lynch KECALP L.P. 1984 ("KECALP 1984") and Merrill Lynch KECALP L.P. 1986 ("KECALP 1986") (collectively, "Applicants").

Relevant 1940 Act Sections: Exemption requested under section 17(d) and Rule 17d–1 thereunder, and section 57(a)(4), approving certain transactions.

Summary of Application: Applicants seek an order relating to the joint acquisition of certain securities by the

Applicants, which are "affiliated persons," as defined in the 1940 Act.

Filing Date: The application was filed on May 5, 1987 and amendments thereto were filed on December 2 and 15, 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 January 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request information of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. MLVP I and MLVP II, 717 Fifth Avenue, New York, New York 10022; KECALP 1984 and KECALP 1986, World Financial Center, North Tower, New York, New York 10281; with copies to Brown & Wood, One World Trade Center, New York, New York 10048, attention: John A. MacKinnon.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Carson Frailey (202) 272–3015 or Special Counsel Karen L. Skidmore (202) 272–3023 (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) 252–4300).

Applicants' Representations

1. MLVP I, a limited partnership organized under the laws of Delaware in 1982, is a business development company under the 1940 Act. The investment objective of MLVP I is to seek long-term capital appreciation by making venture capital investments. MLVP I has five general partners, four of whom are individuals (the "MLVP I Individual General Partners"). In accordance with section 56(a) of the Act, a majority of the Individual General Partners are persons who are not "interested persons" of MLVP I within the meaning of section 2(a)(19) of the 1940 Act ("MLVP I Independent General Partners"). The managing general partner for MLVP I is Merrill Lynch Venture Capital Co., L.P. (the "MLVP I Managing General Partner"). The MLVP I Managing General Partner is responsible for identification and management of MLVP I's venture capital investments. The Management Company is the general partner of both the MLVP I Managing General Partner and the MLVP II Managing General Partner (as hereinafter defined) and is also the management company for both Partnerships. The Management Company is a registered investment adviser and is an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML & Co."), a holding company which, through its subsidiaries, provides investment, financing, real estate, insurance and related services.

2. MLVP II is a business development company organized as a Delaware limited partnership in 1986. The investment objective of MLVP II is to seek long-term capital appreciation by making venture capital investments. The managing general partner of MLVP II, MLVPII Co., L.P. (the "MLVP II Managing General Partner"), will be responsible for MLVP II's venture capital investments, and is a registered investment adviser. The MLVP II Managing General Partner is a limited partnership controlled by its general partner, the Management Company, which will perform the management and administrative services necessary for the operation of MLVP II pursuant to a management agreement. The General Partners of MLVP II consist of the MLVP II Individual General Partners and the MLVP II Managing General Partner. The MLVP II Individual General Partners will include the MLVP II Independent General Partners and one General Partner who is an individual and who is an affiliated person of the MLVP II Managing General Partner and/or any individual who becomes a successor or additional Individual General Partner as provided in the MLVP II Partnership Agreement. Only individuals may serve as MLVP II Individual General Partners.

3. KECALP 1984 and KECALP 1986 (together, the "KECALP Partnerships"), limited partnerships organized under the laws of Delaware, are employees' securities companies as defined in section 2(a)(13) of the 1940 Act and registered as non-diversified, closed-end management investment companies. The investment objective of the KECALP Partnerships is to seek long-term capital appreciation. Under the terms of the KECALP Partnerships' offerings, as set forth in their Registration Statements, Units were offered exclusively to employees of ML & Co. and its subsidiaries, only if they received annualized compensation in respect of 1983 and 1985, respectively, equal to at least $75,000, and to non-employee directors of ML & Co. Each of the KECALP Partnerships operates in accordance with the terms of an exemptive order issued pursuant to section 6(b) of the 1940 Act in Investment Company Act Rel. No. 12363 (April 8, 1982) (the "KECALP Exemptive Order"). The general partner for KECALP is KECALP Inc. (the "KECALP General Partner"), a Delaware corporation and a wholly-owned subsidiary of ML & Co. The KECALP General Partner is responsible for managing and making investment decisions for KECALP.

4. DRS, a Delaware corporation organized in 1983, is engaged in the business of developing, manufacturing and marketing electronic laser printers. To the Applicants' knowledge, no stockholder of DRS is an affiliate or employee of ML & Co. or its affiliates, other than MLVP I and KECALP 1984. During March 1983, MLVP I acquired 250,000 shares of Series A Preferred Stock of DRS ("Series A"). In August 1984 and February 1985, MLVP I and KECALP 1984 acquired 178,500 shares and 12,120 shares, respectively, of Series B Preferred Stock of DRS ("Series B"). *See In The Matter of ML Venture Partners I, L.P.*, Investment Company Act Rel. Nos. 14350 (February 1, 1985) (order) and 14318 (January 11, 1985) (notice). In June 1986, MLVP I acquired a note from DRS in the amount of $458,630. The note was convertible into shares of Series C Preferred Stock of DRS ("Series C"). MLVP I also has entered into certain other lending arrangements with DRS involving $312,401, which amount was to be converted into shares of Series C.

5. At the time of the issuance of Series A and Series B Preferred Stock, it was contemplated that, over time, DRS would require additional financing and that the terms of such financing would be negotiated with the new participating institutional investors. Pursuant to the definitive stock purchase agreement dated as of May 28, 1987 (the "DRS Agreement"), DRS agreed, among other things, to reclassify issued and outstanding shares of Series A and Series B as Series C upon the first issuance of Series C. Pursuant to the terms of the DRS Agreement and in accordance with Delaware law, the closing occurred on May 28, 1987 after $4 million was committed to purchase shares of Series C (exclusive of MLVP II's investments, described below). The actual amount of the offering was $6.1 million. At the time of the closing, all of MLVP I's and KECALP 1984's holdings of Series A and Series B were converted automatically into shares of Series C.

6. Neither ML & Co. nor any of its affiliates was involved in any manner in planning, initiating or structuring the DRS transaction and none of the investors in DRS other than the Applicants are affiliates of ML & Co. The Series C, when compared with the Series A and Series B, has identical rights and priority status with respect to DRS' common stock, with the exception of a reduction of the conversion ratio to convert the preferred stock into DRS common stock. The reductions in conversion ratio and in purchase price from $11.25 to 9.90 per share were agreed to by DRS and the holders of its outstanding securities; MLVP I and KELCALP 1984 were not in a position of control where either could have caused a different purchase price or conversion ratio. Both MLVP I and KELCALP 1984 represent: (a) That their consent to the terms of the issuance of Series C was not influenced by the fact that the Applicants who propose to acquire Series C are affiliated entities; and (b) that the terms of Series C were determined through arm's-length negotiations. Moreover, MCVP I and KELCALP 1984 believe that the financing was beneficial to DRS by providing additional funds required for the development of its business plan.

7. The investment opportunity in Series C was brought to the attention of the MLVP I Managing General Partner, the MLVP II Managing General Partner (together, the "Managing General Partners") and the KECALP General partner during January 1987. The MLVP II Managing General Partner and the KECALP Managing General Partner have evaluated the proposed investments in Series C ("DRS Stock") and independently determined to approve investments of up to $1.5 million (but not to exceed 25% of the total amount of DRS Stock made available), $50,000 and $200,000 for MLVP II, KECALP 1984 and KECALP 1986, respectively. The investment decisions by the MLVP II Managing General Partner and the KECALP General Partner were made solely on the basis of the respective investment objectives and policies of MLVP II, KECALP 1984 and KECALP 1986.

8. Pursuant to the DRS Agreement, KECALP 1984 and KECALP 1986 have conditionally agreed to purchase the shares of DRS Stock, while MLVP II has orally agreed to purchase the amounts of DRS Stock. MLVP I's note and other interests pursuant to its other lending arrangements with DRS were converted into the DRS Stock automatically upon its issuance. The purchase prices of the shares of DRS Stock proposed to be acquired by MLVP II, KECALP 1984 and KELCALP 1986 represent less than 1.4%, 1.3% and 2.8%, respectively, of such entities' original net proceeds. Similarly, the acquisition price of the shares of DRS Stock obtained by MLVP I represents less than 3.1% of MLVP I's original net proceeds. No dividends have been declared on the DRS Stock. The shares of DRS Stock proposed to be acquired by MLVP II, KECALP 1984 and KECALP 1986 will represent 11.0%, 0.4% and 1.5%, respectively, of such stock outstanding on a fully diluted basis. The shares of DRS Stock acquired by MLVP I represent 12.5% of such stock outstanding on a fully-diluted basis.

Legal Conclusions

1. Because of questions as to the applicability of sections 17(d) and 57(a)(4) of thc Act, the Applicants determined to seek the relief requested. The DRS Agreement provides therefore that the KECALP Partnerships are not required to make payment to DRS for the shares of DRS Stock the KECALP Partnerships intend to acquire unless the Applicants receive the relief requested. The DRS Agreement further provides that if such orders have not been issued by the SEC before November 24, 1987, KECALP's obligations under the Agreement shall terminate. Although the KECALP Partnerships' obligations have now terminated, DRS has indicated that it is willing to honor the terms of the DRS Agreement with respect to the shares proposed to be acquired by the KECALP Partnerships. The terms of the KECALP Partnerships' purchases are the same as those of MLVP I and MLVP II in all other respects except the number of shares of the DRS Stock to be acquired.

2. Pursuant to the terms of the KECALP Exemptive Order, the KECALP Partnerships are permitted to engage in transactions in which certain affiliated persons of the KECALP Partnerships may also be participants. Specifically, the KECALP Partnerships may invest in (i) investment vehicles which are sponsored or managed by ML & Co. or its affiliates or (ii) investments in which a partnership described in clause (i) is a participant or plans to become a participant and which would not be prohibited investment except that ML & Co. or any of its subsidiaries, or one or more officers, directors or enployees of the KECALP General Partner, have a partnership interest in, or compensation arrangement with the partnership described in clause (i). To resolve any uncertainties concerning the transactions involving DRS Stock, however, and because the investments by the Partnerships in DRS Stock are otherwise prohibited by Section 57(a)(4) of the Act, the Applicants have determined to seek the relief requested.

3. The Managing General Partners of the Partnerships and the KECALP General Partner reviewed the proposed investments in DRS Stock. The Managing General Partners and the KECALP General Partner determined that such investments were consistent with the Applicants' investment objectives of seeking long-term capital appreciation. The Managing General Partners and the KECALP General Partner also determined that the investments in DRS Stock would not disadvantage any one of the Applicants in making such investments, maintaining its investment positions or disposing of such positions. The MLVP I Independent General partners and the MLVP II Independent General Partners (together, the "Independent General Partners") also made such a determination. In reaching such determinations, the Managing General Partners, the Independent General Partners and the KECALP General partner considered several factors, including the difference in the amount proposed to be acquired by each of the Applicants. It was recognized that the terms of the purchases by the Applicants would be the same in terms of the price paid per share of stock. With respect to the different number of shares of DRS Stock to be acquired, however, it was recognized that MLVP II and each KECALP Partnership is at a different point in its investment program and has different amounts of assets available for investment. It was also recognized that MLVP I's acquisition of DRS Stock was related to the amounts of the DRS notes that it had acquired previously. The Applicants believe that such circumstances do not make any one Applicant's proposed acquisition of DRS Stock any more or less advantageous than another Applicant's; to the extent that the investments prove to be successful, each of the Applicants will profit equally in proportion to its respective investment. Accordingly, the terms of the proposed investments are not unfair or less advantageous to any of the Applicants, but rather are the result of business considerations. Thus, it is submitted that the transactions would be consistent with the provisions, policies and purposes of the Act.

4. In both the KECALP Exemptive Order and the KECALP Partnerships' prospectuses, it was indicated that affiliates of ML & Co. would be involved in identifying and investing in many of the KECALP Partnerships' portfolio investments. The prospectuses of the Partnerships indicated that the

Partnerships may be coinvestors in portfolio companies with affiliates of management. The Applicants thus submit that the relief requested herein is consistent with the purposes of the KECALP Partnerships and the Partnerships, their stated policies and the disclosure made to prospective investors. The Applicants also believe that proposed investments are in the best interest of each of the Applicants to the extent that the investments are not otherwise available to them.

5. On the basis of their evaluations of the investments in DRS, the Managing General Partners and the KECALP General Partner have determined that the acquisition of shares of DRS Stock would be consistent with the provisions, policies and purposes of the Act. Accordingly, on the basis of such determinations and the information set forth above, the Applicants request that relief be granted pursuant to Rule 17d–1 permitting the acquisition of such securities on the terms described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–29339 Filed 12–22–87; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–16176; 812–6646]

Application; ML Venture Partners I, L.P., et al.

December 15, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicants: ML Venture Partners I, L.P. ("MLVP 1"), ML Venture Partners II, L.P. ("MLVP II," and together with MLVP I, the "Partnerships"), Merrill Lynch Venture Capital Inc. (the "Management Company") and Merrill Lynch KECALP L.P. 1986 ("KECALP").

Relevant 1940 Act Sections: Exemption requested under sections 17(b) and 57(c) from the provisions of sections 17(a) and 57(a)(1), respectively, and under section 17(d) and Rule 17d–1 authorizing transactions which are otherwise prohibited under sections 17(d) and 57(a)(4).

Summary of Application: Applicants seek an order relating to the acquisition of certain securities (i) deemed "joint transactions" or (ii) from an "affiliated person," as defined in the 1940 Act.

Filing Date: The application was filed on March 11, 1987 and amended on December 15, 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 January 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request information of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, Washington, DC 20549. MLVP I, MLVP II and the Management Company, 717 Fifth Avenue, New York, New York 10022, and KECALP, World Financial Center, North Tower, New York, New York 10281.

FOR FURTHER INFORMATION CONTACT: Staff Attorney Carson G. Frailey (202) 272–3037 or Special Counsel Karen L. Skidmore (202) 272–3023, 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) 252–4300).

Applicants' Representations

1. MLVP I, a limited partnership organized under the laws of Delaware in 1982, is a business development company under the 1940 Act. The investment objective of MLVP I is to seek long-term capital appreciation by making venture capital investments. MLVP I has five general partners, four of whom are individuals (the "MLVP I Individual General Partners"). A majority of the MLVP I Individual General Partners are persons who are not "interested persons" of MLVP I within the meaning of section 2(a)(19) of the 1940 Act ("MLVP I Independent General Partners"). The managing general partner for MLVP I is Merrill Lynch Venture Capital Co., L.P. (the "MLVP I Managing General Partner"). The MLVP I Managing General Partner is responsible for identification and management of MLVP I's venture capital investments. The Management Company is the general partner of both the MLVP I Managing General Partner and the MLVP II Managing General Partner (as hereinafter defined) and is also the management company for both Partnerships. The Management Company is a registered investment adviser under the Investment Advisers Act of 1940, as amended, and is an indirect subsidiary of Merrill Lynch & Co., Inc. ("ML&Co."), a holding company which, through its subsidiaries, provides investment, financing, real estate, insurance and related services.

2. MLVP II is a business development company organized as a Delaware limited partnership in 1986. The investment objective of MLVP II is to seek long-term capital appreciation by making venture capital investments. The general partners of MLVP II consist of the MLVP II Individual General Partners and the MLVP II Managing General Partner. The MLVP II Individual general partners will include the MLVP II Independent General Partners and one general partner who is an individual and who is an affiliated person of the MLVP II Managing General Partner and/or any individual who becomes a successor or additional individual general partner as provided in the MLVP II Partnership Agreement. Only individuals may serve as MLVP II Individual General Partners.

3. MLVPII Co., L.P. (the "MLVP II Managing General Partner") is the managing general partner of MLVP II and will be responsible for its venture capital investments. The MLVP II Managing General Partner is a limited partnership controlled by its general partner, the Management Company, which will perform the management and administrative services necessary for the operation of MLVP II pursuant to a management agreement.

4. An order exempting MLVP II and the Management Company (the "MLVP II Order") from certain provisions of the 1940 Act was issued in Investment Co. Act Rel. No. 15,652 (March 30, 1987). That order exempted MLVP II and the Management Company from the provisions of section 57(a) of the Act, thus permitting the Management Company to acquire certain venture capital investments, such as the investments in Everex and CADG proposed herein, on behalf of MLVP II during the MLVP II public offering period as if the MLVP II Managing General Partner were negotiating for MLVP II to make the acquisition directly. The terms of the MLVP II Order required that such initial investments would be acquired substantially on the terms set forth in the application described herein.

5. KECALP, a limited partnership organized under the laws of Delaware, is a non-diversified, closed-end

investment company of the management type under the 1940 Act. The investment objective of KECALP is to seek long-term capital appreciation. KECALP is an "employees' securities company," within the meaning of section 2(a)(13) of the 1940 Act, and operates in accordance with the terms of an exemptive order issued pursuant to section 6(b) of the 1940 Act in Investment Company Act Release No. 12363 (April 8, 1982) (the "KECALP Exemptive Order"). The general partner for KECALP is KECALP Inc. (the "KECALP General Partner"), a Delaware corporation and a wholly-owned subsidiary of ML&Co. The KECALP General Partner is responsible for managing and making investment decisions for KECALP.

Investment in Everex

6. Everex Systems, Inc. ("Everex"), located in Fremont, California, was founded in 1983. Everex develops and markets board-level enchancement products for IBM and IBM compatible personal computers. The investment opportunity in Series B Convertible Preferred Stock of Everex was brought to the attention of the MLVP I Managing General Partner and the MLVP II Managing General Partner (together, the "Managing General Partners") during September 1986. The Managing General Partners evaluated the proposed investments and determined to approve investments of $750,000 for each of the Partnerships. The shares of Series B Convertible Preferred Stock proposed to be purchased by each Partnership represent 1% of the common stock of Everex on a fully-diluted basis. The Partnerships' investments in Everex stock could not be made concurrently, however, without the relief requested in the application. Accordingly, the Management Company agreed to purchase the aggregate of 375,000 shares on behalf of the Partnerships and to sell such shares to them at the price determined as described below following receipt of the relief requested in the application.

7. The purchase price to be paid by each of the Partnerships to the Management Company for the shares of Series B Convertible Preferred Stock of Everex proposed to be acquired by the Partnerships will be the lower of (i) the value of the investment on the dates each of the Partnerships acquires the stock (as determined by the Partnerships' Independent General Partners) or (ii) the cost to the Management Company of purchasing and holding the investment. With respect to clause (ii), such cost shall be the original purchase price of $4.00 per share paid by the Management Company for the shares of Series B Convertible Preferred Stock on December 10, 1986, plus carrying costs related to such investments, as separately determined for each of the Partnerships. MLVP II will pay no carrying costs in respect of the period prior to January 12, 1987, the date MLVP II's Independent General Partners approved the investment, subject only to (i) the completion of MLVP II's public offering and (ii) determination of the price to be paid by MLVP II as described above. MLVP I will pay no carrying costs in respect of the period prior to December 10, 1986, the acquisition date of the purchase by the Management Company, which was subsequent to the authorization of the investment by the Independent General Partners of MLVP I. For purposes of these transactions, carrying costs consist of interest charges computed at the lower of (i) the prime commercial lending rate charged by Citibank, N.A. during the period for which carrying costs are being paid or (ii) the effective cost of borrowings by ML&Co. during such period. The effective cost of borrowings by ML&Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during the period.

Investment in CADG

8. Computer-Aided Design Group ("CADG"), a California corporation organized in 1978, provides facility management systems to major corporations, governments, and institutions. The investment opportunity in Series C Preferred Stock of CADG was brought to the attention of the MLVP II Managing General Partner and the KECALP General Partner during June 1986. The MLVP II Managing General Partner and the KECALP General Partner have evaluated the proposed investments in the CADG stock and independently determined to approve investments of $700,000 and $150,000 for MLVP II and KECALP, respectively. The shares of Series C Preferred Stock proposed to be purchased by MLVP II and KECALP represent 10% and 2%, respectively, of such stock outstanding on a fully-diluted basis. Because the foregoing investments may not be made concurrently by MLVP II and KECALP without the relief requested in the application, the Management Company has agreed that it will make the proposed investments in CADG stock on behalf of MLVP II and KECALP and sell such CADG stock to them following the granting of the relief requested in the application.

9. The purchase price to be paid by MLVP II and KECALP to the Management Company for the shares of Series C Preferred Stock of CADG proposed to be acquired by MLVP II and KECALP will be the lower of: (i) The value of the investment on the dates each of MLVP II and KECALP acquires the stock (as determined by the MLVP II Independent General Partners and the KECALP General Partner, respectively), or (ii) the cost to the Management Company of purchasing and holding the investment. With respect to clause (ii), such cost shall be the original purchase price of $1.13 per share paid by the Management Company for the shares of CADG Series C Preferred Stock on February 6, 1987, plus carrying costs related to such investments as separately determined for each of MLVP II and KECALP. KECALP will pay no carrying costs in respect of the period prior to the later of (i) the date the Management Company acquired the proposed investments or (ii) the date the KECALP General Partner approved KECALP's purchase of the proposed investment. MLVP II will pay no carrying costs in respect of the period prior to March 30, 1987, the date the MLVP II order was issued, which was subsequent to the date (February 13, 1987) MLVP II's Independent General Partners were notified of the investment and given the opportunity to object to such acquisition by the Management Company on behalf of MLVP II. Also, on March 30, 1987, the MLVP II Independent General Partners approved of the acquisition of such investment, subject only to: (i) The completion of MLVP II's public offering, and (ii) determination of the price to be paid by MLVP II for CADG stock as described above. For purposes of these transactions, carrying costs consist of interest charges computed at the lower of: (i) The prime commercial lending rate charged by Citibank, N.A. during the period for which carrying costs are being paid, or (ii) the effective cost of borrowings by ML&Co. during such period. The effective cost of borrowings by ML&Co. is its actual "Average Cost of Funds," which it calculates on a monthly basis by dividing its consolidated financing expenses by the total amount of borrowings during the period.

Applicants' Legal Conclusions

1. Relief under sections 17(b) and 57(c) of the 1940 Act is justified by both the terms of the transactions and the fact that the proposed investments are not otherwise available to the Partnerships and KECALP. With respect to the terms

of the transactions, the KECALP General Partner (on behalf of KECALP) and the Managing General Partners (on behalf of the Partnerships) have reviewed the proposed investments in detail. The members of the Board of Directors of the KECALP General Partner and the Managing General Partners are sophisticated and experienced in valuing securities and evaluating financial transactions generally. In this regard, the members of the Board of Directors of the KECALP General Partner and the Managing General Partners considered all information deemed relevant, including the nature of the investments, the nature of the investments by affiliates of ML&Co. in Everex and CADG, if any, and the fairness of the purchase prices proposed to be paid by the Partnerships and KECALP. The KECALP General Partner and the Managing General Partners determined that the proposed investments by the Partnerships and KECALP will not directly or indirectly benefit entities affiliated with ML&Co. Moreover, the investments in CADG and Everex were approved after consideration of each of the factors set forth in sections 17(b) and 57(c) of the 1940 Act.

2. In evaluating the terms of the transactions, both the KECALP General Partner and the Partnerships' Independent General Partners considered the fact that the proposed purchase prices to be paid by the Partnerships and KECALP will include carrying costs incurred by an affiliated person (i.e., the Management Company) if the value of the investments at the time of acquisition by the Partnerships and KECALP is more than the sum of the purchase price of each plus the affiliate's carrying costs. In approving a purchase price which may include carrying costs, the Board of the KECALP General Partner recognized that the KECALP General Partner receives no compensation for serving as general partner of KECALP and that ML&Co. has incurred considerable expenses in organizing KECALP. KECALP and the Partnerships believe that it is entirely appropriate for them to reimburse affiliates for carrying costs in a situation where an affiliate purchased an investment as, in effect, their nominee and KECALP and the Partnerships would have purchased such investments directly if it had not been deemed necessary to obtain the relief requested in the application. In light of these factors, the Managing General Partners and the KECALP General Partner believe it is wholly appropriate for the purchase price paid for portfolio investments to reflect carrying costs provided that the values of the investments at the times of acquisition exceed the amounts of the purchase prices plus carrying costs. To deny reimbursement for carrying costs would result in a further and unwarranted loss to the Management Company and provide a disincentive to act on behalf of the Partnerships and KECALP in the future.

3. The investments are not otherwise available for purchase by the Partnerships and KECALP. The Managing General Partners and the KECALP General Partner have approved such investments after review of a considerable number of possible investments for the Partnerships and KECALP. The Partnerships and KECALP thus submit that their respective investment programs will be prejudiced if they are not permitted to make the investments referred to in the application.

4. The KECALP General Partner believes that the proposed investment in CADG Series C Preferred Stock is consistent with the rationale underlying the establishment of KECALP as an "employees' securities company." In the application for exemptive relief ultimately granted in the KECALP Exemptive Order, as well as in KECALP's prospectus, it was indicated that ML&Co. and its affiliates would be involved in structuring, identifying and investing in many of KECALP's portfolio investments. Similarly, the proposed transactions in CADG stock and Everex Series B Convertible Preferred Stock are consistent with the Partnerships' investment objectives and the kinds of transactions in which it was contemplated the Partnerships would participate. The Partnerships and KECALP thus submit that the relief requested pursuant to sections 17(b) and 57(c) of the 1940 Act is consistent with the purposes of the Partnerships and KECALP and their respective stated policies.

5. With respect to the relief requested pursuant to Rule 17d–1 under the 1940 Act, the Managing General Partners of the Partnerships and the KECALP General Partner reviewed the proposed investments in Everex and CADG stock and determined that such investments were consistent with the Partnerships' and KECALP's investment objectives of seeking long-term capital appreciation. The Managing General Partners and the KECALP General Partner also determined that the investments in Everex and CADG Stock would not disadvantage either of the Partnerships or KECALP in making such investments, maintaining its investment positions or disposing of such positions. The Independent General Partners of MLVP I also made such determination with respect to the purchase of Everex Stock, and the Independent General Partners of MLVP II have made such determinations with respect to the Everex or CADG stock. In reaching such determinations, the Managing General Partners, the Independent General Partners and the KECALP General Partner considered several factors, including the difference in the amount proposed to be invested by each of the Partnerships and KECALP. It was recognized that the terms of the purchases by both Partnerships, with respect to the Everex stock, and by MLVP II and KECALP, with respect to the CADG Stock would be the same in terms of the price paid per share of stock. With respect to the different number of shares of CADG Stock, it was recognized that MLVP II and KECALP are each at different points in their investment programs and have different amounts of assets available for investment. MLVP II and KECALP believe that this factor does not make MLVP II's proposed investment in CADG stock any more or less advantageous than KECALP's investment; to the extent that the investments prove to be successful, MLVP II and KECALP will profit equally in proportion to their respective investments. Accordingly, the terms of the proposed investments are not unfair or less advantageous to MLVP II or to KECALP, but rather are the result of business considerations.

Similarly, the terms of the Partnerships' proposed investments in Everex stock, pursuant to which each Partnership will purchase the same amount of shares, are not unfair or less advantageous to either Partnership. Thus, it is submitted that the transactions would be consistent with the provisions, policies and purposes of the Act.

6. In both the KECALP Exemptive Order and KECALP's prospectus, it was indicated that affiliates of ML & Co. would be involved in identifying and investing in many of KECALP's portfolio investments. The prospectuses of the Partnerships indicated that the Partnerships may be co-investors in portfolio companies with affiliates of management. The Partnerships and KECALP thus submit that the relief requested herein is consistent with the purposes of KECALP and the Partnerships, their stated policies and the disclosure made to prospective investors. The Applicants also believe that proposed investments are in the

best interest of KECALP and the Partnerships to the extent that the investments are not otherwise available to them.

Conditions

1. The investments in Everex and CADG will be acquired by the Partnerships in the manner and on the terms described above.

2. In connection with the deliberations and determinations by the Board of Directors of KECALP regarding the Partnerships' proposed Everex and CADG transactions, appropriate record-keeping will be maintained and made available for inspection by the Commission in accordance with the KECALP Exemptive Order and the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87-29340 Filed 12-22-87; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-16178; (812-6821)]

Application; Prudential-Bache Global Fund, Inc. et al.

Date: December 17, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for amendment of an existing order under the Investment Company Act of 1940 ("1940 Act").

Applicants: Prudential-Bache Global Fund, Inc. ("Global Fund"), Prudential-Bache Government Plus Fund, Inc. ("Government Plus Fund"), Prudential-Bache Securities Inc. ("Prudential-Bache"), Prudential Mutual Fund Management, Inc. ("PMF") and Prudential Mutual Fund Distributors, Inc. ("PMFD").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c-1 thereunder.

Summary of Application: Applicants seek an order, pursuant to section 6(c) of the 1940 Act, amending an existing exemptive order (Investment Company Act Rel. No. 14615, July 1, 1985, as amended on September 12, 1985, Investment Company Act Rel. No. 14718, "Existing Order"). The proposed amendment would exempt the Global Fund, the Government Plus Fund and any other Exempted Fund, as defined below (collectively, the "Exempted Funds"), from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rule 22c-1 thereunder, to the extent necessary, to permit the Exempted Funds to waive a contingent deferred sales Load ("CDSL") under certain circumstances in addition to those allowed by the Existing Order.

Filing Dates: The application was filed on August 10, 1987, and amended on November 3 and December 15, 1987.

Hearing or Notification of a 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 request must be received by the SEC by 5:30 p.m. on January 8, 1988. 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, in the case of an attorney-at-law, 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; Applicants, One Seaport Plaza, New York, New York 10292.

FOR FURTHER INFORMATION CONTACT: Thomas Mira, Staff Attorney (202) 272-3033, or Brion 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).

Applicants' Representations

1. The Existing Order exempts the Global Fund and the Government Plus Fund (collectively, the "Funds") and any other existing or future registered mutual fund for which Prudential-Bache serves as manager or administrator and distributor, and which is sold substantially on the same basis as the Funds, from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rule 22c-1 thereunder, to the extent necessary, to permit the assessment (and waiver and reduction in certain cases) of a CDSL on certain redemptions of their shares. Currently, the Funds' investment adviser is The Prudential Insurance Company of America. The Funds' administrator was formerly Prudential-Bache, but is currently PMF, an affiliate of Prudential-Bache. The distributor of the Funds' shares is Prudential-Bache. It is contemplated that PMFD, also an affiliate of Prudential-Bache, may become the distributor of the Funds. The Applicants respectfully request that the Existing Order be amended, as described below, to apply to the Funds and any other existing or future registered mutual fund for which Prudential-Bache or PMF serves as manager or administrator, and Prudential-Bache or PMFD serves as distributor, and which is sold on substantially the same basis as the Funds (collectively, the "Exempted Funds").

2. Applicants propose that the CDSL be waived by the Exempted Funds, in addition to those waivers already permitted by the Existing Order, in the following situations: (1) In cases of death or disability (as defined in section 72(m)(7) of the Internal Revenue Code ("Code") when the decedent or disabled person is either an individual stockholder or owns the shares as a joint tenant with right of survivorship and the redemption is made within one year of the death or initial determination of disability, (2) any redemption made in connection with a profit sharing or stock bonus plan to which section 402(a)(8) of the Code applies, upon "hardship" (as defined below) of the employee, or (3) any redemption which might occur as a result of the execution of a qualified domestic relations order as defined by section 414(p) of the Code. The term "hardship" shall be defined as an immediate and heavy financial need occurring in the personal affairs of an employee. The Exempted Funds' administrator or manager will retain the right to review a plan's determination that a hardship exists and may request such documentation as it deems necessary to make such determination.

Applicants' Legal Conclusion

Applicants submit that the proposed waivers of the CDSL are consistent with all provisions of the 1940 Act and are fair and equitable and in the best interests of the stockholders and of the public, in that, in each situation in which the CDSL would be waived, the redeeming stockholder is a member of a class of stockholders which is favored under the tax laws.

Applicants' Conditions

Applicants consent to the following conditions with respect to requested order:

1. The Exempted Funds will comply with the provisions of Rule 12b-1 under the 1940 Act both currently and as that Rule may be modified in the future.

2. The Exempted Funds will comply with the provisions of Rule 22d–1 under the 1940 Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–29341 Filed 12–22–87; 8:45 am]

BILLING CODE 8010–01–M

[(Rel. No. IC–16177 (812–6822)]

Application for Amendment of an Existing Order; Prudential-Bache Government Plus Fund II et al.

December 16, 1987.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for amended order under the Investment Company Act of 1940 ("1940 Act").

Applicants: Prudential-Bache Goverment Plus Fund II ("Fund"), Prudential-Bache Securities Inc. ("Prudential-Bache"), Prudential Mutual Fund Management, Inc. ("PMF") and Prudential Mutual Fund Distributors, Inc. ("PMFD").

Relevant 1940 Act Sections: Exemption requested pursuant to section 6(c) from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) and Rule 22c–1.

Summary of Application: Applicants seek an order, pursuant to section 6(c) of the 1940 Act, amending an existing exemptive order (Investment Company Act Rel. No. 15419, November 14, 1986, "Existing Order"). The amended order would exempt the Fund and any other "Exempted Fund", as defined below (collectively, "Exempted Funds"), from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rule 22c–1 thereunder, to the extent necessary, to permit the Exempted Funds to waive a contingent deferred sales load ("CDSL") under certain circumstances in addition to those allowed by the Existing Order.

Filing Dates: The application was filed on August 10, 1987, and amended on December 15, 1987.

Hearing or Notification of a 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 request must be received by the SEC by 5:30 p.m. on January 8, 1988. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notification of the date of the hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicants, c/o One Seaport Plaza, New York, New York 10292.

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).

Applicants' Representations

1. The Existing Order exempts the Fund, and any other existing or future registered mutual fund for which Prudential-Bache serves as the primary distributor and the shares of which are issued and sold on a basis similar to shares of the Fund, from the provisions of sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the 1940 Act and Rule 22c–1 thereunder, to the extent necessary, to permit the assessment (and waiver and reduction in certain cases) of a CDSL on certain redemptions of its shares. Currently, the Fund's investment adviser is The Prudential Insurance Company of America. The Fund's administrator was formerly Prudential-Bache, but is currently PMF, an affiliate of Prudential-Bache. The distributor of the Fund's shares is Prudential-Bache. It is contemplated that PMFD, also an affiliate of Prudential-Bache, may become the distributor of the Fund. Therefore, the Applicants respectfully request that the Existing Order be amended as described below, to apply to the Fund and any other existing or future registered mutual fund for which Prudential-Bache or PMF serves as manager or administrator, and Prudential-Bache or PMFD serves as distributor, and the shares of which are issued and sold on a basis similar to shares of the Fund ("Exempted Funds").

2. Applicants propose that the CDSL be waived by the Exempted Funds, in addition to those waivers already permitted under the Existing Order, for any redemption: (1) Made in connection with a profit sharing or stock bonus plan to which section 402(a)(8) of the Internal Revenue Code ("Code") applies, upon "hardship" (as defined below) of the employee, or (2) which might occur as a result of the execution of a qualified domestic relations order as defined by section 414(p) of the Code. The term "hardship" shall be defined as an immediate and heavy financial need occurring in the personal affairs of an employee. The Exempted Funds' administrator will retain the right to review a plan's determination that a hardship exists and may request such documentation as it deems necessary to make such determination.

Applicants' Legal Conclusion

Applicants submit that the proposed waivers of the CDSL are consistent with all provisions of the 1940 Act and are fair and equitable and in the best interests of the shareholders and of the public, in that, in each situation in which the CDSL would be waived, the redeeming shareholder is a member of a class which is favored under the tax laws.

Applicants' Conditions

Applicants consent to the following conditions with respect to the requested exemptive relief:

1. The Exempted Funds will comply with Rule 12b–1 under the 1940 Act both currently and as that Rule may be modified in the future.

2. The Exempted Funds will comply with the provisions of Rule 22d–1 under the 1940 Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 87–29342 Filed 12–22–87; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice CM–8/1148]

Overseas Security Advisory Council; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on Wednesday, January 27, 1988 at 8:30 a.m. in the Buena Vista Palace Hotel, 1900 Buena Vista Drive, Lake Buena Vista, Florida. Pursuant to section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)(4), it has been determined the meeting will be closed to the public. Matters relative to privileged commercial information will be discussed. The agenda calls for the discussion of private sector physical security policies, bomb threat statistics, and security programs at sensitive U.S.

Government and private sector locations overseas.

Date: December 14, 1987.

Louis Schwartz, Jr.,

Director of the Diplomatic Security Service, and Chairman of the Overseas Security Advisory Council.

[FR Doc. 87-29322 Filed 12-22-87; 8:45 am]

BILLING CODE 4710-24-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 120-XX]

Proposed Advisory Circular; Communication and Coordination Between Crewmembers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Request for comments on proposed Advisory Circular (AC) 120-XX, Communication and Coordination Between Crewmembers.

SUMMARY: The proposed AC gives information regarding research on crewmember communication and coordination and suggests areas for improvement.

Comments Invited: Comments are invited on all aspects of the proposed AC. Commentators must identify file number AC 120-XX.

DATE: Comments must be received on or before March 22, 1988.

ADDRESS: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, AFS-220, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, AFS-220, at the above address, telephone (202) 267-3735 (7:30 a.m. to 4:00 p.m. EDT).

SUPPLEMENTARY INFORMATION: During various cabin safety meetings the public and members of the aviation community have expressed interest and concern in crewmember communication and coordination. Therefore, the FAA sponsored research in this area. The results of one aspect of this research are briefly discussed and suggestions for improvement are given in this AC.

Issued in Washington, DC, on December 15, 1987.

William T. Brennan,

Acting Director of Flight Standards.

[FR Doc. 87-29359 Filed 12-22-87; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1987 Rev., Supp. No. 5]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Continental Surety and Fidelity Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Continental Surety and Fidelity Insurance Company under the United States Code, Title 31, Sections 9304 to 9308, to qualify as an acceptable surety on Federal bonds is terminated effective November 1, 1987.

The Company was last listed as an acceptable surety on Federal bonds at 52 FR 24609, July 1, 1987.

With respect to any bonds currently in force with Continental Surety and Fidelity Insurance Company, bond-approving officers for the Government may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20226, telephone (202) 287-3921.

Dated: December 14, 1987.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 87-29350 Filed 12-22-87; 8:45 am]

BILLING CODE 4810-35-M

UNITED STATES INSTITUTE OF PEACE

Procedures for Review of Grant Applications

This announcement succeeds the **Federal Register** announcements of July 16, 1986 (51 FR 25784) (*Interim Procedures for Grant Applications*), and December 10, 1986 (51 FR 44564) (*Notice in Grant Application Review and Voting*). It is effective upon publication in the **Federal Register.** The United States Institute of Peace invites public comment and emphasizes that this announcement provides procedures that are subject to modification from time to time as experience and further consideration warrant. Significant changes will be published in the **Federal Register.**

The announcement identifies eligible recipients for grants; the subject-matter scope for which grants may be issued, including areas of special interest to the United States Institute of Peace; and the procedures the Institute will follow to receive, evaluate, and act upon grant applications. It also explains how grant application forms may be obtained.

Introduction

The United States Institute of Peace is an independent, nonprofit corporation established by Act of Congress (Pub. L. 98-525) in October 1984. It was created to * * *

> serve the people and the Government through the widest possible range of education and training, basic and applied research opportunities, and peace information services on the means to promote international peace and the resolution of conflicts among the nations and peoples of the world without recourse to violence
>
> *[United States Institute of Peace Act, Section 1702(b)]*

The United States Institute of Peace is funded entirely by federal appropriations. The Institute is prohibited from receiving gifts, contributions, and grants from foreign governments or agencies and from private individuals or organizations. The Institute is governed by a fifteen-member Board of Directors, including four *ex officio* members from federal service, and eleven individuals appointed from outside federal service by the President of the United States and confirmed by the United States Senate. The Board held its first meeting on February 25 and 26, 1986, and since has met approximately once a month.

The Grants Program; Eligibility and Subject-Matter

Eligible Grant Recipients

The Institute may award grants to nonprofit institutions, official public institutions, and individuals (whether or not they are associated with an institution). The Institute is required to pay in grants or contracts at least one-fourth of its annual appropriations to nonprofit or official public institutions, which include:

- Institutions of postsecondary, community, secondary, and elementary education (including combinations of such institutions) * * *
- Public and private educational, training, or research institutions (including the American Federation of Labor—the Congress of Industrial Organizations) and libraries, and * * *
- Public departments and agencies (including State and territorial departments of education and commerce).

[United States Institute of Peace Act, Section 1705(c)]

The Institute may obligate through grants and contracts more than twenty-five percent of its annual appropriations to nonprofits or official public institutions. The twenty-five percent requirement also applies to appropriate funds from any prior fiscal year that have been transferred to the Endowment of the United States Institute of Peace.

Indirect Costs

The Institute does not favor applying the public monies entrusted to it to costs not directly related to any project being funded. Applicants are advised to explain both the necessity for such indirect costs in their proposal and to describe effects made to reduce or eliminate them.

Subject-Matter Scope of Grants

The Institute does not take positions on policy issues pending before Congress or other domestic or international bodies and does not mediate particular international disputes. Therefore, the Institute will not fund grant proposals of a partisan political nature or proposals that would inject the grantee or the Institute into the policy processes of the United States government or any foreign government or international organization. In addition, in accord with the United States Institute of Peace Act, section 1709(b), the Institute will not use political tests or political qualifications in selecting or monitoring any grantee.

In implementing its research, education and training, and public information mandates, the broad purposes for which the Institute invites and will consider grants are:

(1) To carry out basic and applied research, particularly of an interdisciplinary or multidisciplinary nature, on the cause of war and other international conflicts, on the ways in which conflicts have been or can be prevented, contained, or terminated, and on the condition and character of peace where it obtains among nations and peoples;

(2) To educate students, including graduate and post-graduate students, and the general public on questions of international peace and conflict resolution, including peace and conflict resolution theories, methods, techniques, programs, and systems and the experience of the United States and other nations in resolving conflicts with justice and dignity and without violence;

(3) To conduct training, symposia, and continuing education programs for practitioners, policymakers, policy implementers, and citizens and noncitizens that will develop their skills in international peace and conflict resolution;

(4) To make international peace and conflict resolution research, education, and training more available and useful to persons in government, private enterprise, and voluntary associations, including the creation of handbooks and other practical materials;

(5) To examine the resolution of conflict between free trade unions and Communist-dominated organizations in the context of the global struggle for the protection of human rights; and.

(6) To assist the Institute in its publication, clearinghouse, and other information services programs.

Priority Subject Areas for Grants

Mindful of its obligation to expend taxpayer funds with great care, Institute is conducting a review of past and ongoing research in international peace and conflict management, and related fields, in order to identify gaps and subjects that warrant additional consideration.

The Institute seeks to obtain the maximum benefits from its grantmaking program for research, education and training, and public information activities. The Board of Directors has determined that encouraging a concerted focus on specific identified subjects—which will be changed from time to time to reflect new priorities—will increase the Institute's effectiveness. It has identified several areas for priority consideration in the immediate future. The Board emphasizes, however, that applicants should feel free to submit proposals dealing with other aspects of the Institute's mandate. They, too, will receive careful attention.

The subjects of special interest to the Institute at present time are:

- Research on the relationship between adherence to international human rights standards and international peace.
- Research on perceptions of peace across political systems and ideologies, including the comparative status of peace movements and their impact under different political systems, and comparative assessment and survey of the teaching of peace.
- Research on negotiations, including lessons from negotiations between the United States and the Soviet Union, lessons from negotiations between democratic and nondemocratic systems, and general lessons in the area of negotiation.
- Research on the relationship between domestic political systems and the aggressive use of force.
- Research on strengthening the non-use-of-force provisions of the United Nations Charter, including the effectiveness of the United Nations and other international institutions in dealing with low intensity and covert forms of aggression.
- Research on the mediation of political change.
- Developing curricula and materials for the study of international peace and conflict resolution from high school through post-graduate programs.
- Developing curricula and materials for negotiation, mediation, and conciliation theory, teaching, and training.
- Assisting media programming, including research and the development of materials particularly for television and radio, that will bring information about issues of international peace and conflict resolution to the broader public.

Grants Program Procedures

Grant Proposals

Every proposal for a grant from the Institute must be made on an Application Form (USIP Form 10A) and may include attachments as needed. It is particularly important that the eight pages of the Application Form be filled out completely and with care. Some members of the Institute's Board of Directors may see no more of the application than the Application Form. Applicants must, therefore, report the basic elements of their proposals clearly and succinctly therein.

Every proposal must be submitted in four typed copies. The Application Form may be obtained from the Institute at the address given below. In addition to the information required in the Application Form, a proposal may be as detailed as the applicant desires.

Project directors from colleges, universities, official public institutions, and nonprofit organizations should be sure to consult with grants officials of their institutions in preparing project budgets. Buget categories included in Application Form 10A are intended for general use. Accordingly, the terminology may not correspond well with usages employed at any given institution, and the use thereof may cause misunderstandings among the applicant, the Institute, and his institution. Applicants should feel free to alter budget terminology to suit, provided that the terms used are defined in the detailed budget description which must be attached.

Review Process

The Institute's staff will examine every proposal for eligibility and completeness. Questions on either will be referred to the applicant. Staff responses on eligibility and completeness will not be considered part of the formal review process, but the Institute's President will inform the Board of Directors of any applicant determined by the Institute's staff not to qualify on grounds of ineligibility and of any proposal that is incomplete and has not within a reasonable period of time been made complete. After staff examination, the President will send all eligible and complete applications to the Board of Directors for review.

Each member of the Board of Directors will receive a copy of the applicant's eight-page Application Form. In addition, each application will be assigned to a committee of the Board for initial review, and each member of that committee will receive copies of the Application Form and all attachments submitted by the applicant. Any Board member not on the committee to which the application has been assigned may request to receive a full application (i.e., Form 10A plus all attachments) at any time.

Upon receipt of applications for review at any given meeting of the Board of Directors, each member will notify the Institute's Ethics Officer of his recusal from review and action on any application involving a conflict of interest or the appearance of a conflict of interest. (For additional information on recusal, see the last paragraph of this announcement).

In reviewing applications, each member of the Board committee to which those applications have been assigned will divide them into two categories: *P* (applications for possible award) and *N* (noncompetitive applications). The ratings will be communicated to the Institute's Director of Grant Programs, who will create a composite list giving ratings for each application. This list will be communicated to all Board members prior to Board committee meetings.

All applications receiving a *P* rating from any committee member will be reviewed and acted upon in committee. In addition, any Board member not on that committee may request that an application be discussed in committee. Applications falling fully into the *N* category (i.e., not receiving a *P* rating from any committee member and not requested for discussion by a Board member not on the committee) will not be discussed in committee and will be regarded as recommended for rejection by the full Board. In the course of committee discussion or at any time prior to making recommendations to the full Board, the committee may decide to review and act upon an application originally receiving a full *N* rating.

All applications not falling fully into the *N* category will be discussed by the full Board in plenary session. *N*-rated applications will be reported to the full Board as rejected, but may be reviewed if a Board member so requests. All applications, irrespective of their initial ratings or committee recommendation, will be voted upon by the full Board of Directors.

Outside review of applications may be sought during any part of the review and action process, at the committee and full Board levels. Any Board member, whether on the initial review committee or otherwise, may request outside review of an application. In each instance of outside review, the Institute staff will seek at least two reviewers, one a specialist in the field relevant to the particular project proposed in the application (or as close to it as possible) and one from an outside field.

In evaluating grant applications, central concerns will include: (1) The significance of the project to the Institute's mandate and the subject areas of special interest identified by the Board of Directors and listed above; (2) evidence that the project will not simply duplicate existing knowledge or programs; (3) the likelihood that the project will make a significant contribution to the field in scholarship and knowledge; and (4) the usefulness of the proposed product in fulfilling the Institute's mandate. The Institute is particularly interested in proposals that envision a specific product of enduring value.

Conflict of Interest and Recusal

Institute Directors, officers, and employees will recuse themselves from the consideration process with respect to any application for a grant with which they have a conflict of interest or which might reasonably present the appearance of a conflict of interest. All recusals will be reported to the Institute's Ethics Officer. Directors, officers, or employees of the Institute who have reason to believe they may have a potential conflict of interest regarding any proposal upon which they are called to act shall bring the situation to the attention of the Ethics Officer for guidance. Nothing in this paragraph shall be read as diminishing in any way the conflict of interest provisions contained in the United States Institute of Peace Act, including section 1706(g).

Application Forms are available from United State Institute of Peace, 1550 M Street, NW., Suite 700, Washington, DC 20005–1708, (202) 457–1700.

Contact: Dr. Kenneth M. Jensen. Telephone: (202) 457–1700.

Dated: December 14, 1987.

Samuel W. Lewis,

President, United States Institute of Peace.

[FR Doc. 87–29317 Filed 12–22–87; 8:45 am]

BILLING CODE 3155–01–M

Sunshine Act Meetings

Federal Register
Vol. 52, No. 246
Wednesday, December 23, 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).

UNITED STATES INTERNATIONAL TRADE COMMISSION

TIME AND DATE: Wednesday, January 6, 1988 at 3:00 p.m.

PLACE: Room 117, 701 E Street, NW, Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints:
   Certain Plastic Light Duty Screw Anchors (Docket Number 1426).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kennth R. Mason, Secretary, (202) 523-0161.

Kenneth R. Mason,

Secretary.

December 16, 1987.

[FR Doc. 87-29412 Filed 12-18-87; 5:01 pm]

BILLING CODE 7020-02-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, January 6, 1988.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board's actions taken by notation voting during the month of December, 1987.
2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

Date of Notice: December 16, 1987.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 87-29435 Filed 12-21-87; 11:24 am]

BILLING CODE 7550-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 21, 28, 1987, January 4, and 11, 1988.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of December 21

Tuesday, December 22

10:00 a.m.
Briefing by Executive Branch (Closed—EX. 1)

Wednesday, December 23

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 28—Tentative

No Commission Meetings

Week of January 4—Tentative

Wednesday, January 6

10:00 a.m.
Briefing on Status of NRC Internal Drug Program (Public Meeting)

Thursday, January 7

10:00 a.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
2:00 p.m.
Briefing on Status of Maintenance Program and Policy Statement (Public Meeting)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 11—Tentative

No Commission Meetings

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING) (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Andrew Bates, (202) 634-1410.

December 17, 1987.

Andrew L. Bates,

Office of the Secretary.

[FR Doc. 87-29422 Filed 12-18-87; 5:01 pm]

BILLING CODE 7020-02-M

POSTAL SERVICE BOARD OF GOVERNORS

Vote to Close Meeting

By telephone vote a majority of the Board members voted to close to public observation a meeting of the Board scheduled for January 4, 1988. The meeting will be held at U.S. Postal Service headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting will concern consideration of a major capital investment project.

The meeting is expected to be attended by the following persons: Governors Griesemer, Hall, McConnell, Nevin, Pace, Peters, Ryan and Setrakian; Postmaster General Tisch; Deputy Postmaster General Coughlin; Secretary for the Board Harris; and General Counsel Cox.

The Board of Governors has determined that, pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations, the discussion of these matters is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information, the premature disclosure of which would likely frustrate implementation of proposed procurement actions.

In accordance with section 552b(f)(1) of Title 5, United States Code, and § 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the meeting may properly be closed to public observation, pursuant to section 552b(c)(9)(B) of Title 5, United States Code, and § 7.3(i) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary for the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

[FR Doc. 87-29518 Filed 12-21-87; 3:29 pm]

BILLING CODE 7710-12-M

POSTAL SERVICE BOARD OF GOVERNORS

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, January 4, 1988, in Washington, DC, and at 8:30 a.m. on Tuesday, January 5, 1988, in the Benjamin Franklin Room, U.S. Postal Service

Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. As indicated in the following paragraph, the January 4 meeting is closed to the public. The January 5 meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

The Board voted in accordance with the provisions of the Government in the Sunshine Act to close to public observation its meeting scheduled for January 4, 1988, to consider a major capital investment project.

Agenda

Monday Session

January 4, 1988—1:00 p.m. (Closed)

1. Capital Investment:
—South Tampa Bay, FL, Mail Processing Center.

Tuesday Session

January 5, 1988—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, December 7–8, 1987.
2. Remarks of the Postmaster General.
3. Election of Chairman and Vice Chairman.
4. Appointment of Audit Committee Members by Chairman.
5. Annual Report on Open Meeting Compliance.
6. Annual Report of the Postmaster General.
7. Status Report on CSRS/FERS.
8. Tentative Agenda for February 1–2, 1988, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 87–29519 Filed 12–21–87; 3:29 pm]

BILLING CODE 7710-12-M

Corrections

Federal Register
Vol. 52, No. 246
Wednesday, December 23, 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.

ENVIRONMENTAL PROTECTION AGENCY

[WH-FLR-3297-S]

State and Local Assistance; Grants for Construction of Treatment Works

Correction

In notice document 87-27655 beginning on page 45860 in the issue of Wednesday, December 2, 1987, make the following corrections:

1. On page 45862, in the table, in the entries for Virginia, Washington, and West Virginia, in the first and second columns, remove the zero immediately to the right of the decimal point. There should be only one zero to the immediate right of the decimal point for each entry.

2. On the same page, in the table, the first "Wisconsin" entry should be removed.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 78N-2285]

Clinical Chemistry and Clinical Toxicology Devices; General Provisions and Classifications of 220 Devices

Correction

In rule document 87-9858 beginning on page 16102 in the issue of Friday, May 1, 1987, make the following correction:

§ 862.3750 [Corrected]

On page 16137, in the third column, in § 862.3750(b), "Class II" should read "Class I".

BILLING CODE 1505-01-D

federal register

Wednesday
December 23, 1987

Part II

Department of Education

Pell Grant Program; Deadline Dates for Receipt of Applications, Reports, and Other Documents for the 1987-88 Award Year; Notice

DEPARTMENT OF EDUCATION

Pell Grant Program; Deadline Dates for Receipt of Applications, Reports, and Other Documents for the 1987–88 Award Year

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the deadline dates for the receipt of documents from persons applying for financial assistance under, and from institutions participating in, the Pell Grant Program during the 1987–88 award year.

SUPPLEMENTARY INFORMATION: The purpose of the Pell Grant Program is to assist students in the continuation of their training and education at the postsecondary level by providing financial aid to help pay for their educational costs. Authority for the Pell Grant Program is contained in section 411 of the Higher Education Act of 1965, as amended (20 U.S.C. 1070a). The regulations for the Pell Grant Program are codified in 34 CFR Part 690.

I. Applications for Determination of Expected Family Contribution—Table I

As a requirement for receiving a Pell Grant, each applicant is responsible for submitting to an institution of higher education, a valid Student Aid Report (SAR) that states the amount of the student's expected family contribution (referred to on the SAR as the "SAI" [student aid index]) and the information used in calculating that amount. Therefore, each applicant must first submit to an agency listed in Table I of this notice his or her application for determining the expected family contribution. That application—referred to in this notice as the original application—must be submitted on one of the forms shown in Table I and be received by the designated agency at the agency's address shown in Table I no later than the deadline date, May 2, 1988, shown in Table I.

It should be noted that an application sent to the Federal Student Aid Programs must be received at the U.S. Postal facility indicated in the table. Individuals at the processing center are not authorized to personally accept hand delivered documents.

(Approved by the Office of Management and Budget under these OMB Control Numbers—Application: 1840–0110; Special Condition Application: 1840–0111)

TABLE 1.—DEADLINE DATE FOR RECEIPT OF APPLICATION FORMS FOR DETERMINING EXPECTED FAMILY CONTRIBUTION: MAY 2, 1988

Type of Form	Address for submission
Application for Federal Student Aid (AFSA).	Federal Student Aid Program, P.O. Box 4160, Iowa City, Iowa 52244.
Special Condition Application for Federal Student Aid.	Federal Student A Programs, P.O. Box 4161, Iowa City, Iowa 52244.
Spanish Application for Federal Student Aid.	Federal Student Aid Programs, P.O. Box 4162, Iowa City, Iowa 52244.
Spanish Special Condition Application for Federal Student Aid.	Federal Student Aid Programs, P.O. Box 4163, Iowa City, Iowa 52244.
Family Financial Statement (FFS).	ACT Student Need Analysis Services, P.O. Box 4005, Iowa City, Iowa 52243.
Financial Aid Form (FAF)	College Scholarship Service, CN 6300, Princeton, New Jersey 08541, or College Scholarship Service, Box 380, Berkeley, California 94701.
Pennsylvania Higher Education Assistance Agency (PHEAA).	Pennsylvania Higher Education Assistance Agency, P.O. Box 3157, Harrisburg, Pennsylvania 17105.
Student Aid Application for California SAAC.	College Scholarship Service, Box 70, Berkeley, California 94701–0070.
Illinois State Scholarship Commission Application for Federal and State Student Aid (AFSSA).	Illinois State Scholarship Commission, P.O. Box 53317, Jacksonville, Florida 32201.

(34 CFR 690.12)

II. Other Documents—Table II

Once an applicant has filed his or her original application, additional information may be necessary. In some cases the agency receiving the original application (the processing agency) may request the information. In other cases, the applicant is responsible for initiating a request that additional or alternative information be considered.

The type of information and the forms to be used to report that information are listed in Table II of this notice. Each category designates an address to which the specified information or request must be sent, and the deadline date by which that information or request must be received at that address. The applicant must submit to the Federal Student Aid Programs, any changes that he or she wants to be reflected on his or her SAR. The following explains each category:

Correction Application—If an original application lacks sufficient information for it to be processed, the Secretary will send a correct application to the applicant. In addition, if an applicant has misreported his or her dependency status on the original application or his or her dependency status subsequently changes from the status reported on the original application, other than changes that are the result of a change in marital status, the applicant has the responsibility for requesting a correction application. The correction application may be obtained from the Federal processing agency, financial aid administrator, or Educational Opportunity Center counselors or by writing to Federal Student Aid Programs, P.O. Box 84, Washington, D.C. 20044. The correction application must be returned to the address listed in Table II and received at that address no later than the deadline date, July 29, 1988, shown in Table II.

Student Aid Report (SAR)

- *Correction/Verification of Information Requested by the Secretary*—If the Secretary returns an SAR to an applicant for correction or verification of correct information, the applicant must correct or verify the information and return the SAR to the appropriate address listed in Table II. The SAR must be received at that address no later than the deadline date, July 29, 1988, shown in Table II. A student attending an institution participating in the Pell Grant Electronic Data Exchange must submit that SAR, with the information corrected or verified, to the institution by July 29, 1988.
- *Correction of Inaccurate Information*—If the SAR reflects information that was inaccurate when the application was signed, the applicant must correct that information on the SAR and send the SAR to the address listed in Table II. The SAR must be received no later than the July 29, 1988 deadline date shown in Table II. A student attending an institution participating in the Pell Grant Electronic Data Exchange must submit that SAR, with the information corrected, to the institution by July 29, 1988.
- *Recomputation of Student Aid Index*—An applicant may request on the SAR, that the Secretary recompute his or her student aid index, if—(1) The student believes a clerical or arithmetic error has occurred or (2) The student or his or her family has suffered a loss of or damage to assets resulting from a natural disaster in an area that has been declared a national disaster area by the President of the United States. The applicant must send the SAR to the address listed in Table II. The SAR must be received no later than the July 29, 1988 deadline date. A student attending an institution participating in the Pell Grant Electronic Data Exchange must submit a request for recomputation to the institution by July 29, 1988.
- *Request for Duplicate SAR*—If an applicant wishes to receive a duplicate SAR, the applicant may write to one of the addresses listed in Table II, or call one of the phone numbers listed in

Table II. A written request must be received at either address no later than the July 29, 1988 deadline date. All telephone requests must also be made no later than July 29, 1988. It should be noted that a written request sent to the Iowa City application processing center must be received at the U.S. Postal facility indicated in Table II. Individuals at that site are not authorized to personally accept hand delivered documents.

(Approved by the Office of Management and Budget under OMB Control Number 1840–0132)

TABLE II.—DEADLINE DATES FOR RECEIPT OF OTHER DOCUMENTS: JULY 29, 1988

Type of form/information	Address for submission
Correction Application:	
Application for Federal Student Aid correction application.	Federal Student Aid Programs, P.O. Box 4160, Iowa City, IA 52244.
Student Aid Report (SAR) Correction/Verification of Information Requested by the Secretary Request for verification of corrected information.	Federal Student Aid Programs P.O. Box 4126, Iowa City, IA 52244.
Correction of Inaccurate Information (except address correction): Request for correction of inaccurate information.	Federal Student Aid Programs, P.O. Box 4103, Iowa City, IA 52244.
Request for Correction of Address.	Federal Student Aid Programs, P.O. Box 4127, Iowa City, IA 52244.
Recomputation of Student Aid Index: Request for recomputation of a student aid index because of (1) clerical or arithmetic errors or (2) loss of or damage to assets in Presidentially-declared national disaster area.	Federal Student Aid Programs, P.O Box 4103, Iowa City, IA 52244.
Request for Duplicate SAR: Request in writing or request by phone.	Federal Student Aid Programs, P.O. Box 4164, Iowa City, IA 52244. (319) 337-3738 or Federal Student Aid Programs, P.O. Box 84, Washington, DC 20044, (301) 984-4070.

[34 CFR 690.14, 690.39, 690.48]

Note.—Although the Pell application processing site will accept and process corrections through July 29, 1988, this does not extend the deadline by which the student must submit his or her valid SAR to the institution's financial aid office. If the student does not submit a valid SAR to the financial aid office, showing that he or she is eligible, by his or her last date of enrollment or June 30, 1988, whichever is earlier, he or she will not be eligible for a Pell Grant payment.

III. Verification Procedures and Deadline Dates

The information provided on an application and included on an SAR may be subject to verification. In that case, in order to receive a Pell Grant award for the 1987–88 award year, the applicant—and his or her parents, if applicable—must submit the necessary verification documents in accordance with the following procedures. The documents must be received no later than the deadline dates specified below. These dates do not conflict with nor supersede the deadline dates specified in Tables I and II of this notice.

Verification of Information on Application. If an applicant is selected to have the information on his or her application verified under the verification procedures set forth in Subpart E of the Student Assistance General Provisions, he or she must submit the requested documents as specified below. The deadline date for completing the verification process is the earlier of 60 days from the applicant's last date of enrollment in the case of an applciant who leaves school because of graduation, completion of an academic term, or withdrawal, or September 1, 1988. A student who will still be enrolled in a course of study in the 1987–88 award year after September 1, 1988, must submit the requested documents by September 1, 1988.

This process is complete when the applicant has:

(1) Submitted all requested verification documents to his or her institution;

(2) Made all necessary corrections on Part 2 of the SAR;

(3) Signed and submitted the corrected Part 2 to the SAR to the Department of Education's processing center at the address indicated in the lower left hand corner on the back of Part 2 of the SAR—the same address indicated under the first four categories shown in Table II—by the deadline date listed for these categories in Table II; and

(4) Submitted to the institution the corrected/reprocessed SAR received from the Department of Education's processing center. (34 CFR 668.60)

IV. Institutional Payment Summary (IPS)—Table III

An institution participating in the Pell Grant Program is required to provide the Secretary with an Institutional Payment Summary (IPS) and Part 3 of the SARs (Payment Documents) by the deadline dates established in Table III. This material should be sent to the following address, in the manner described below: Pell Grant Program, P.O. Box 1400, Merrifield, Virginia 22116–1400.

- Each institution must submit an IPS either with Student Payment Documents or with SAR Data Tapes reflecting the information contained on Part 3 of the SAR.
- An institution may submit an IPS without a batch of Payment Documents or SAR Data Tape, only under one of these circumstances:

(1) The institution has no Pell recipients, or

(2) The institution has no new Pell recipients or payment data changes to submit within a given reporting period for previously reported students.

An institution must submit two signed institutional Payment Summaries. Photocopies of the IPS may be submitted provided that each copy contains the original handwritten signature of the institutional administrator officially responsible for the accuracy and completeness of the IPS. Although an institution may make a submission as often as necessary during each of the required reporting periods shown in Table III, it must make *at least one* submission within each of those periods, even if it submits only an IPS under the conditions noted above. Submissions must be made no later than the deadline data for each reporting period noted in Table III.

An institution participating in the Pell Grant Electronic Data Exchange must either:

(1) Submit the documents or data tapes to the above address in the manner describd above; or

(2) Provide to the Pell Grant Central Disbursement System a properly certified and acceptable electronic payment data submission via the Pell Grant Electronic Data Exchange. This submission must be made at least once during each of the stated periods.

TABLE III.—DEADLINE DATES FOR RECEIPT OF INSTITUTIONAL PAYMENT SUMMARY (IPS) DOCUMENTS

Reporting periods	Closing date
Institutions with a 1986–87 Pell Grant Authorization of $750,000 or more:	
July 1, 1987 thru Oct. 15, 1987	Oct. 15, 1987
Oct. 16, 1987 thru Dec. 15, 1987	Dec. 15, 1987
Dec. 16, 1987 thru Feb. 15, 1988	Feb. 15, 1988
Feb. 16, 1988 thru April 15, 1988	April 15, 1988
April 16, 1988 thru June 15, 1988	June 15, 1988
June 16, 1988 thru Aug. 15, 1988	Aug. 15, 1988
Institutions with a 1986–87 Pell Grant Authorization under $750,000:	
July 1, 1987 thru Dec. 15, 1987	Dec. 15, 1987
Dec. 16, 1987 thru April 15, 1988	April 15, 1988
April 16, 1988 thru Aug. 15, 1988	Aug. 15, 1988

(34 CFR 690.83)

(Approved by the Office of Management and Budget under OMB Control Number IPS Form 1840–0540)

Failure of an institution to comply with these requirements may result in the initiation of a proceeding to fine, suspend, limit, or terminate the institution in accordance with Subpart G of the Student Assistance General Provisions regulations in 34 CFR Part 668.

V. Submission to the Secretary of Student Aid Reports by Institutions

As noted above, Table III requires an institution to submit at least one IPS (and SAR Payment Documents, if applicable) within each of the required reporting periods. However, because 34 CFR 690.83 requires an institution to submit 1987–88 SAR Payment Documents to the Secretary of Education by December 31, 1988, an institution with additional IPS's and Payment Documents may submit them until the end of the year.

Institutions will not be permitted to adjust their Pell Grant accounts after December 31, 1988 for award year 1987–88 or any award years prior to 1987–88 except under the circumstances listed below. This deadline has been established to permit an orderly closing of accounts from previous years.

- Adjustments are required by a program review of the institution's records by an official or employee of the Department of Education.
- Adjustments are required by an audit conducted under the requirements of 34 CFR 690.84.
- The institution is required to adjust a student's award because of a court order.
- The institution discovers that a student has been overpaid.
- Verification cases referred to the Department where the student has only received partial payment or no payment, and verification cannot be completed in time to meet the December 31, deadline.

Note.—This means that an institution will not be allowed to adjust its accounts for any underpayment it discovers after December 31 *unless* the case meets one or more of the conditions described above. If an institution discovers an underpayment, and submits to the Secretary 1987–88 Payment Documents or SAR's for years prior to 1987–88, no adjustment will be made; that is, the institution will not receive additional Pell Grant funds. If it appears that an adjustment must be made because of the above circumstances, the institution should contact an area desk representative at (202) 732–3795.

Application Forms and Information

Student aid application forms, correction application forms, and information brochures may be obtained through college and university financial aid administrators, Educational Opportunity Center counselors, or by writing to: Federal Student Aid Programs, P.O. Box 84, Washington, DC 20044.

Applicable Regulations

The regulations applicable to this program are the Pell Grant Program regulations in 34 CFR Part 690 and the Student Assistance General Provisions regulations in 34 CFR Part 668.

FOR FURTHER INFORMATION CONTACT: Joyce R. Coates, Program Specialist, Policy Station, Pell Grant Branch, Division of Policy and Program Development, Office of Student Financial Assistance, Office of Postsecondary Education, 400 Maryland Avenue SW. (ROB–3, Room 4318), Washington, DC 20202. Telephone (202) 732–4888.

(20 U.S.C. 1070a)

(Catalog of Federal Domestic Assistance No. 84.063, Pell Grant Program)

Dated: December 16, 1987.

C. Ronald Kimberling,

Assistant Secretary for Postsecondary Education.

[FR Doc. 87–29365 Filed 12–22–87; 8:45 am]

BILLING CODE 4000–01–M

federal register

Wednesday
December 23, 1987

Part III

Department of Transportation

41 CFR Part 12-60
48 CFR Ch. 63
Contract Appeals Board; Rules Procedure; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

41 CFR Part 12-60

48 CFR Ch. 63

Contract Appeals Board; Rules of Procedure

[Docket 45353]

AGENCY: Department of Transportation, Board of Contract Appeals.

ACTION: Interim final rule.

SUMMARY: The Department of Transportation (DOT) Board of Contract Appeals issues revisions to its rules of procedure, which will govern proceedings before the Board in contract appeals and related matters.

EFFECTIVE DATE: This interim final rule is effective upon date of publication in the **Federal Register**. Comments must be received on or before February 2, 1988.

ADDRESS: Submit written comments, preferably in duplicate, to OST Docket Clerk, Docket Number 45353, Room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address between 9:00 am and 5:00 pm, EST Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Roger Martino, Chief, Procurement Management Division, Office of Acquisition and Grant Management, M-62, 400 Seventh Street SW., Washington, DC 20590; (202) 366-4271. This is not a toll-free number. Office hours are from 9:00 to 5:00 pm, EST Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: This chapter of 48 CFR is added to set forth the functions and procedures of the DOT Board of Contract Appeals, established pursuant to Pub. L. 95-563, the Contract Disputes Act of 1978. Except for the deletion of Rule 30 (6302-30), there are no changes to the Rules as they have been in effect since 1979.

This rule is issued under delegated authority under 49 CFR Part 1.59(q).

List of Subjects in 48 CFR Chapter 63

Government procurement.

Dated: December 9, 1987.

Jon H. Seymour,

Assistant Secretary for Administration.

1. A new Chapter 63 is added to 48 CFR to read:

CHAPTER 63—DEPARTMENT OF TRANSPORTATION BOARD OF CONTRACT APPEALS

2. 41 CFR Part 12-60 is transferred to 48 CFR Chapter 63 as Parts 6301 and 6302 and revised to read as follows:

CHAPTER 63—DEPARTMENT OF TRANSPORTATION BOARD OF CONTRACT APPEALS

PART 6301—BOARD OF CONTRACT APPEALS

Sec.

6301.0 Foreword.
6301.1 Scope of part.
6301.2 Qualifications of members.
6301.3 Jurisdiction and authority of the Board and its members.
6301.4 Ex Parte communications.
6301.5 Contract appeals procedures (general).
6301.6 Effective date.

Authority: Contract Disputes Act of 1978 (41 U.S.C. 600, *et seq.*).

6301.0 Foreword.

A Department of Transportation Board of Contract Appeals has been established pursuant to Pub. L. 95-563. The Secretary appoints the members of the Board and designates the Chair and Vice-Chair of the Board.

6301.1 Scope of part.

(a) *Scope.* This part prescribes the functions and procedures of the Department of Transportation Board of Contract Appeals and provides for the appointment of a Chair, a Vice-Chair, and Members of the Board, and sets forth their duties.

(b) *Definitions.* For the purposes of this part—

"Administrative Judge" means a member of the Board selected and appointed to serve pursuant to the Contract Disputes Act of 1978;

"Appellant" means the contractor who appeals;

"Board" means the Department of Transportation Board of Contract Appeals;

"Contracting officer" means the Government's contracting officer whose decision is appealed, or the successor contracting officer;

"Parties" means the appellant and the contracting officer, and

"Secretary" means the Secretary of Transportation.

6301.2 Qualifications of members.

Each member of the Board must be a qualified attorney who is admitted to practice before the highest court of a State or the District of Columbia. Members of the Board are selected and appointed to serve in the same manner as administrative law judges appointed pursuant to section 3105 of Title 5 of the United States Code, with the additional requirement that each member shall have had not fewer than five years experience in public contract law.

6301.3 Jurisdiction and authority of the Board and its members.

(a) The Board hears and decides:

(1) Appeals from decisions made by contracting officers relating to contracts of the Department of Transportation and its constituent administrations;

(2) Appeals from decisions of contracting officers relating to contracts of any other executive agency when such agency or the Administrator for Federal Procurement Policy has designated the Board to decide the appeal;

(3) Matters within jurisdiction of the Board in accordance with the provisions of the Contract Disputes Act, 41 U.S.C. 600 et seq.; and

(4) Other matters as directed by the Secretary which are not inconsistent with statutory duties.

In each case, the Board shall make a final decision which is impartial, fair, and just to the parties and is supported by the record of the case and the law. The Administrative Judge assigned to hear an appeal has authority to act for the Board in all matters with respect to such appeal. Included in such authority is the authority to sign subpoenas and the power to authorize the Recorder of the Board to issue subpoenas pursuant to section 11 of the Contract Disputes Act of 1978. (41 U.S.C. 610)

(b) An Administrative Judge may not act for the Board or participate in a decision if that Judge has participated directly in any aspect of the award or administration of the contract involved.

(c) Except for appeals considered under the expedited small claims or accelerated procedures, appeals are assigned to a panel of three Administrative Judges of the Board. The decision of a majority of the panel shall constitute the decision of the Board.

6301.4 Ex Parte communications.

Ex parte communications, that is, written or oral communications with the Board by or for one party only without notice to the other, are not permitted. No member of the Board or of the Board's staff shall consider, nor shall any person directly or indirectly involved in an appeal submit to the Board or to the Board's staff, off-the-record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation between Board members nor to ex parte communications

concerning the Board's administrative functions or procedures.

6301.5 Contract appeals procedures (general).

(a) It is the intent of these rules to provide for the just and inexpensive determination of appeals without unnecessary delay. It is the objective of the Board's preliminary procedures to encourage full disclosure of relevant and material facts, and to discourage surprise. Each specified time limitation is a maximum, and should not be fully used if the action described can be accomplished in a shorter period. The Board may extend any time limitation for good cause and in accordance with legal precedent.

(b) Ordinarily, the appellant has the burden of proof.

(c) The rules of procedure at 6302 shall govern the procedures in all contract disputes appealed to the Board.

6301.6 Effective date.

This chapter shall apply to all appeals relating to contracts entered into on or after March 1, 1979, and upon the contractor's election of Contract Disputes Act procedures, to appeals relating to earlier contracts with respect to claims pending before the contracting officer on March 1, 1979, or initiated thereafter.

PART 6302—RULES OF PROCEDURE

Sec.

6302.1 How to appeal a contracting officer's decision (Rule 1).
6302.2 Contents of notice of appeal (Rule 2).
6302.3 Docketing of appeals (Rule 3).
6302.4 Preparation, contents, organization, forwarding, and status of appeal file (Rule 4).
6302.5 Service of documents (Rule 5).
6302.6 Computation and extension of time limits (Rule 6).
6302.7 Motions (Rule 7).
6302.8 Appellant's election of procedures (Rule 8).
6302.9 The SMALL CLAIMS (EXPEDITED) procedure (Rule 9).
6302.10 The ACCELERATED procedure (Rule 10).
6302.11 Submission of appeal without a hearing (Rule 11).
6302.12 Regular procedure (Rule 12).
6302.13 Pleadings (Rule 13).
6302.14 Amendments of pleadings or record (Rule 14).
6302.15 Prehearing briefs (Rule 15).
6302.16 Prehearing conference (Rule 16).
6302.17 The record of the appeal (Rule 17).
6302.18 Discovery—depositions (Rule 18).
6302.19 Interrogatories to parties, admission of facts, and inspection of documents (Rule 19).
6302.20 Time and place of hearing (Rule 20).
6302.21 Notice of hearing (Rule 21).
6302.22 Unexcused absence of a party (Rule 22).
6302.23 Nature of hearings (Rule 23).
6302.24 Subpoenas (Rule 24).
6302.25 Copies of papers (Rule 25).
6302.26 Posthearing briefs (Rule 26).
6302.27 Transcript of proceedings (Rule 27).
6302.28 Withdrawal of exhibits (Rule 28).
6302.29 Representation of the parties (Rule 29).
6302.30 Reserved (Rule 30).
6302.31 Settlement (Rule 31).
6302.32 Decisions (Rule 32).
6302.33 Motion for reconsideration (Rule 33).
6302.34 Dismissal for lack of jurisdiction (Rule 34).
6302.35 Dismissal without prejudice (Rule 35).
6302.36 Dismissal for failure to prosecute or defend (Rule 36).
6302.37 Sanctions (Rule 37).
6302.38 Remand from court (Rule 38).

Authority: Contract Disputes Act of 1978 (41 U.S.C. 600, et seq.).

6302.1 How to appeal a contracting officer's decision (Rule 1).

(a) Notice of an appeal shall be in writing and mailed or otherwise furnished to the Board within 90 days from the date of receipt of a contracting officer's decision. A copy of the notice shall be furnished to the contracting officer from whose decision the appeal is taken.

(b) Where the contractor has submitted a claim of $50,000 or less to the contracting officer and has requested a written decision within 60 days from receipt of the request, and the contracting officer has not done so, the contractor may file a notice of appeal as provided in paragraph (a) of this section citing the failure of the contracting officer to issue a decision.

(c) Where the contractor has submitted a claim in excess of $50,000 to the contracting officer and the contracting officer has failed to issue a decision within a reasonable time, the contractor may file a notice of appeal as provided in paragraph (a) of this section, citing the failure to issue a decision.

(d) Upon docketing of appeals filed pursuant to paragraph (b) or (c) of this section, the Board, at its option, may stay further proceedings pending issuance of a final decision by the contracting officer within the time fixed by the Board or order the appeal to proceed without the contracting officer's decision.

6302.2 Contents of notice of appeal (Rule 2).

A notice of appeal must indicate that an appeal is intended and identify the contract number, the administration, bureau, or office concerned with the dispute, the decision from which the appeal is taken, and the amount in dispute, if known. The notice of appeal shall be signed by the appellant, or by an officer of an appellant corporation or member of an appellant firm, or by an appellant's authorized representative or attorney.

6302.3 Docketing of appeals (Rule 3).

Following receipt by the Board of the original notice of appeal, the appellant and the contracting officer are promptly notified of its receipt and docketing by the Board, and the Board furnishes a copy of these rules to the appellant.

6302.4 Preparation, contents, organization, forwarding, and status of appeal file (Rule 4).

(a) *Duties of contracting officer.* Within 30 days after receipt of notice that an appeal has been docketed, the contracting officer shall assemble and transmit to the Board, with a copy to the appellant and the Government attorney, an appeal file consisting of all documents pertinent of the appeal, including:

(1) The contracting officer's decision and finding of fact from which the appeal is taken;

(2) The contract, including pertinent specifications, modifications, plans, and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letters of claim in response to which the decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of an witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant may supplement the file by transmitting to the Board any additional documents which it considers pertinent to the appeal and shall furnish two copies of such documents to the Government attorney.

(c) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file. The contracting officer's final decision and the contract shall be conveniently placed in the file for ready reference.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the

appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, the other party shall be notified that the document or a copy is available for inspection at the offices of the Board or of the party filing the document.

(e) *Status documents in appeal file.* Documents contained in the appeal file are, without further action by the parties, a part of the record upon which the Board renders its decision, unless a party objects to the consideration of a particular document at or before the hearing or, if there is no hearing on the appeal, before closing the record. If objection to a document is made, the Board rules upon its admissibility into the record as evidence in accordance with Rules 17 and 23.

6302.5 Service of documents (Rule 5).

A copy of every written communication submitted to the Board shall be sent to every party to the dispute. Such communications shall be sent by delivering in person or by mailing, properly addressed with postage prepaid, to the opposing party or, where the party is represented by counsel, to its counsel. Each communication with the Board shall be accompanied by a statement, signed by the originating party, saying when, how, and to whom a copy was sent.

6302.6 Computation and extension of time limits (Rule 6).

(a) *Computation.* Except as otherwise provided by law, in computing any period of time prescribed by these rules, or by any order of the Board, the day of the event from which the designated period of time begins to run is not included, but the last day of the period is included unless it is a Saturday, Sunday, or a legal holiday, in which case the period runs to the end of the next business day.

(b) *Extensions.* All requests for extensions of time shall be submitted to the Board in writing and shall state good cause for the request.

6302.7 Motions (Rule 7).

(a) Motions are made by filing an original and two copies, together with any supporting papers, with the Board. Motions may also be made upon the record, in the presence of the other party, at a prehearing conference or a hearing. The Board considers any timely motion:

(1) For extensions of time (Rule 6) or to cure defaults;

(2) To require that a pleading be made more definite and certain, or for leave to amend a pleading (Rule 14);

(3) To dismiss for lack of jurisdiction (Rule 34); to dismiss for failure to prosecute (Rule 36); or to grant summary relief because a pleading does not raise a justifiable issue;

(4) For discovery, for interrogatories to a party, or for the taking of depositions (Rules 18 and 19);

(5) To reopen a hearing; or to reconsider a decision (Rule 33), or

(6) For any other appropriate order.

(b) The Board may, on its own motion, initiate any such action by notice to the parties. Unless a longer time is allowed by the Board, a party who receives a motion shall file any answering material within 20 days after the date of receipt. The Board makes an order on each motion that is appropriate and just to the parties, and upon conditions that will promote efficiency in disposing of the appeal.

(c) The Board may permit oral hearing or argument on motions, and may require the presentation of briefs.

6302.8 Appellant's election of procedures (Rule 8).

(a) In every appeal the appellant is required to elect one of the following procedures:

(1) A hearing under the Board's regular procedure (Rule 12);

(2) A hearing under the SMALL CLAIMS (EXPEDITED) procedure, if applicable (Rule 9);

(3) A hearing under the Board's ACCELERATED procedure, if applicable (Rule 10), or

(4) Submission on the written record or without a hearing (Rule 11). Also see Rule 11 with respect to the Government's right to waive a hearing.

(b) The SMALL CLAIMS (EXPEDITED) procedure is available where the amount in dispute is $10,000 or less (Rule 9). The ACCELERATED procedure is available where the amount in dispute is $50,000 or less (Rule 10). In deciding whether the SMALL CLAIMS (EXPEDITED) or ACCELERATED procedure is applicable to an appeal, any question regarding the amount in dispute shall be determined by the Board.

(c) The appellant's election of one of the above procedures shall be made in writing within 30 days after receipt of the appeal file unless such period is extended by the Board for good cause shown. The election may not be withdrawn except with permission of the Board and for good cause shown.

6302.9 The SMALL CLAIMS (EXPEDITED) procedure (Rule 9).

(a) The SMALL CLAIMS (EXPEDITED) procedure provides for simplified rules of procedure to facilitate the decision of an appeal, whenever possible, within 120 days from the date such procedure is elected.

(b) Promptly upon receipt of an appellant's election of the SMALL CLAIMS (EXPEDITED) procedure, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties:

(1) Identify and simplify the issues in dispute;

(2) Establish a simplified procedure appropriate to the particular appeal;

(3) Determine whether the appellant desires a hearing and, if so, fix a time and place for the hearing, and

(4) Establish a schedule for the expedited resolution of the appeal.

(c) The subpoena power set forth in Rule 24 is available for use under the SMALL CLAIMS (EXPEDITED) procedure.

(d) The filing of pleadings, motions, discovery proceedings or prehearing procedures will be permitted only to the extent consistent with the requirement of conducting the hearing at the scheduled time and place or, if no hearing is scheduled, of closing the record at an early time so as to permit a decision of the appeal within the 120-day time limit. The Board, in its discretion, may impose shortened time periods for any actions required or permitted under these rules, necessary to enable the Board to decide the appeal within the 120-day time limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(e) Decisions in appeals considered under the SMALL CLAIMS (EXPEDITED) procedure are rendered by a single Administrative Judge. Written decisions of appeals considered under this procedure are short and contain only summary findings of fact and conclusions. If there has been a hearing on the appeal, the presiding Administrative Judge may, in his or her discretion, hear closing oral arguments of the parties and then render an oral decision on the appeal. Such decision will include summary findings of fact and conclusions. Whenever such an oral decision is rendered, the Board subsequently furnishes the parties with a written transcript of the oral decision for record and payment purposes and to commence the time period for the filing

of a motion for reconsideration under Rule 33.

(f) Decisions of the Board under the SMALL CLAIMS (EXPEDITED) procedure shall have no value as precedent. Except in cases of fraud, decisions rendered under the SMALL CLAIMS (EXPEDITED) procedure may not be appealed by either party.

6302.10 The ACCELERATED procedure (Rule 10).

(a) The ACCELERATED procedure makes available a procedure where the appeal is resolved, whenever possible, within 180 days from the date such procedure is elected.

(b) Promptly upon receipt of appellant's election of the ACCELERATED procedure, the assigned Administrative Judge shall take the following actions, if feasible, in an informal meeting or a telephone conference with both parties:

(1) Identify and simplify the issues in dispute;

(2) Establish a simplified procedure appropriate to the particular appeal;

(3) Determine whether a hearing is desired and, if so, fix a time and place for a hearing; and

(4) Establish a schedule for the accelerated resolution of the appeal.

(c) The subpoena power set forth in Rule 24 is available for use under the ACCELERATED procedure.

(d) The filing of pleadings, motions, discovery proceedings or prehearing procedures will be permitted only to the extent consistent with the requirement of conducting the hearing at the scheduled time and place or, if no hearing is scheduled, the closing of the record at an early time so as to permit decision of the appeal with the 180-day limit. The Board, in its discretion, may impose shortened time periods for any actions required or permitted under these rules, necessary to enable the Board to decide the appeal within the 180-day limit, allowing whatever time, up to 30 days, that the Board considers necessary for the preparation of the decision after closing the record and the filing of briefs, if any.

(e) Decisions in appeals considered under the ACCELERATED procedure are rendered by a single Administrative Judge, subject to the concurrence of the Vice-Chair or another assigned Administrative Judge. In the event of an even division on an appeal, the Chair participates in the decision of the appeal. Written decisions of appeals considered under this procedure are short and contain only summary findings of fact and conclusions. In cases where the amount in dispute is $10,000 or less and there has been a hearing under the ACCELERATED procedure the presiding Administrative Judge may, in his or her discretion, hear closing oral arguments of the parties and then render an oral decision on the appeal. Such decision will include summary findings of fact and conclusions. Whenever such an oral decision is rendered the Board subsequently furnishes the parties with a written transcript of the oral decision for record and payment purposes and to commence the time period for the filing of a motion for reconsideration under Rule 33.

(f) Decisions of the Board under the ACCELERATED procedure are published and have precedential value. Such decisions may be appealed by either party.

6302.11 Submission of appeal without a hearing (Rule 11).

Either party may elect to waive a hearing and to submit its case upon the record before the Board pursuant to Rule 17. Submission of a case without hearing does not relieve a party from the necessity of proving the facts supporting that party's allegation or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested) and by briefs in accordance with Rule 26.

6302.12 Regular procedure (Rule 12).

Under the regular procedure the parties are required to file pleadings with the Board (Rule 13). The regular procedure affords the parties an opportunity to make full use of prehearing and discovery procedures. Hearings under the regular procedure are conducted in the same manner as before courts of the United States in non-jury trials.

6302.13 Pleadings (Rule 13).

(a) *Complaint.* Under the regular procedure the appellant, within 30 days after receipt of the appeal file, shall file with the Board an original and two copies of a complaint setting forth simple, concise, and direct statements of each of its claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint, although no particular form is required. If the complaint is not filed within 30 days and, in the opinion of the Board, the issues before the Board are sufficiently defined, the appellant's claim and notice of appeal may be deemed to be its complaint, and the parties are so notified.

(b) *Answer.* Within 30 days from receipt of said complaint or a Rule 13(a) notice from the Board, the Government shall file with the Board an original and two copies of an answer, setting forth simple, concise, and direct statements of the Government's defense to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer and shall set forth any affirmative defenses as appropriate. Should the answer not be filed within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the parties are so notified.

6302.14 Amendments of pleadings or record (Rule 14).

(a) *Pleadings.* The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer. The application for such an order suspends the time for responsive pleading. The Board may, in its discretion and within the proper scope of the appeal, permit either party to amend its pleadings upon conditions just to both parties.

(b) *Record.* When an issue within the proper scope of the appeal, but not raised by the pleadings, is tried by consent of the parties or by permission of the Board, the issue is treated in all respects as if it had been raised. A motion to amend the pleadings to conform to the proof may be made but is not required. If evidence is objected to at a hearing on the ground that it is not within an issue raised by the pleadings, it may be admitted in evidence, but the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

6302.15 Prehearing briefs (Rule 15).

The Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected under the regular procedure. (Rule 8(a)(1)). If the Board does not ask for briefs, either party may, upon notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall be furnished simultaneously to the other party.

6302.16 Prehearing conference (Rule 16).

(a) Whether the case is to be submitted on the written record or be heard under any hearing procedure, the Board, upon its own initiative or upon the application of any party, may call upon the parties to appear before the Board for a conference to consider:

(1) The simplification, clarification, or severing of the issues;

(2) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(3) The limitation of the number of expert witnesses and the avoidance of similar cumulative evidence;

(4) The possibility of agreement disposing of all or any of the issues in dispute, and

(5) Such other matters as may aid in the disposition of the appeal. The result of the conference is set forth in an appropriate memorandum or order which becomes part of the record.

(b) In addition to the procedures provided in paragraph (a) of this section, the Board may direct any party whose claim is based in whole or in part on books of account or other records to furnish to the other party a statement showing the items and figures intended to be proved, with adequate reference to the books and records from which such figures were taken, and to make all such books and records available for examination by the other party. The Board may also direct any party to whom such a statement of items and figures has been submitted (1) to make an examination of such books or records or waive challenge of the accuracy of the statement submitted as reflecting the contents of such books and records; and (2) to furnish the submitting party a schedule or schedules showing the results of such examination, with specific references to the books and records from which such figures were taken, where the examining party's results and figures are different from those contained in the statement submitted.

6302.17 The record of the appeal (Rule 17).

(a) *Contents.* The record upon which the Board's decision is rendered consists of the appeal file, (Rule 4) and, if filed, the pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions and interrogatories and answers to interrogatories received in evidence, admissions, stipulations, transcripts of hearings, hearing exhibits, post-hearing briefs, and documents which the Board has specifically made a part of the record. The record is available for inspection at the offices of the Board at all reasonable times.

(b) *Time of closing the record.* Except as the Board, in its discretion, may otherwise order, no proof is received in evidence after completion of the hearing of the appeal or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) *Weight of the evidence.* The weight to be attached to any evidence of record rests within the sound discretion of the Board. The Board may require any party to submit additional evidence on any matter relevant to the appeal.

6302.18 Discovery-depositions (Rule 18).

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, or provisions for protecting the secrecy of confidential information or documents.

(b) *Obtaining a deposition.* After an appeal has been docketed, the Board upon application of any party and for good cause shown, may order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for such order shall specify whether the purpose of the deposition is for discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions are as mutually agreed upon by the parties, or failing such agreement, as ordered by the Board.

(d) *Use of evidence.* No testimony taken by deposition is considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at the hearing. Testimony by deposition is not ordinarily received in evidence if the deponent is present and can testify at the hearing. However, any deposition may be used to contradict or impeach the testimony of a witness at the hearing. In cases submitted on the record, the Board, in its discretion, may receive depositions as evidence to supplement the record.

(e) *Expenses.* Each party bears its own expenses associated with discovery, unless, in the discretion of the Board, the expenses are apportioned otherwise.

(f) *Subpoenas.* Where appropriate, any party may request that a subpoena be issued under the provisions of Rule 24.

6302.19 Interrogatories to parties, admission of facts, and inspection of documents (Rule 19).

(a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath, and returned within 30 days of receipt by the answering party. Within 30 days after service the answering party may object to any interrogatory and the Board determines the extent to which the interrogatory is permitted.

(b) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a written request for the admission of specified facts. If the request is to admit the genuineness of any document or the truth of any facts stated in a document, a copy of such document shall be served with the request. Within 30 days after receipt of the request, the party served shall answer each requested admission of facts or file objections thereto in writing. The factual propositions set out in the request are deemed admitted, if the answering party, willfully and without good cause, fails to respond to the request for admissions.

(c) *Production and inspection of documents.* After an appeal has been filed with the Board, a party may serve upon the other party a written request to produce and permit the inspection and copying or photographing of any designated documents, not privileged, regarding any matter which is relevant to the appeal.

(d) Any discovery under this rule shall be subject to the provisions of Rule 18(a) with respect to general policy and protective orders.

6302.20 Time and place of hearing (Rule 20).

Hearings will be held at such places determined by the Board to best serve the interests of the parties and the Board. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals, the requirements for accelerated or expedited procedures and other pertinent factors. On request of any party and for good cause, the

Board, may, in its discretion, change the date of hearing.

6302.21 Notice of hearing (Rule 21).

The parties are given at least 15 days notice of the time and place set for hearing. In scheduling hearings, the Board gives due regard to the desires of the parties and the requirement for the just and inexpensive determination of appeals without unnecessary delay. Notices of hearings shall be promptly acknowledged by the parties.

6302.22 Unexcused absence of a party (Rule 22).

The unexcused absence of a party at the time and place set for hearing is not an occasion for delay. In the event of such absence, the presiding Administrative Judge may order the hearing to proceed or, in his or her discretion, may invoke the provisions of Rule 36.

6302.23 Nature of hearings (Rule 23).

(a) Hearings are as informal as may be reasonable and appropriate under the circumstances. At the hearing the parties may offer such relevant evidence as they deem appropriate and as would be admissible under the Federal Rules of Evidence, subject, however, to the sound discretion of the presiding Administrative Judge in supervising the extent and manner of presenting the evidence. In general, admissibility is governed by relevancy and materiality. Copies of documents, affidavits, or other evidence not ordinarily admissible under judicial rules or evidence, may be admitted in the discretion of the presiding Administrative Judge. The weight to be attached to evidence presented in any particular form is within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. In any case, the Board may require evidence in addition to that offered by the parties.

(b) Witnesses before the Board are examined orally under oath or affirmation, unless the facts are stipulated, or the Board otherwise orders.

6302.24 Subpoenas (Rule 24).

(a) *General.* Every subpoena shall state the name of the Board and the title of the appeal and shall command each person to whom it is directed to attend and give testimony, and, if appropriate, to produce books, papers, documents, or tangible things, at a time and place therein specified. Subpoenas (including those calling for the production of documentary evidence) are signed by an Administrative Judge or by the Recorder of the Board but otherwise left blank when furnished to the party requesting the subpoena. The party to whom the subpoena is issued shall fill it in before service.

(b) *Subpoenas for attendance at hearing.* At the request of any party, subpoenas for the attendance of witnesses at a hearing are issued. A subpoena requiring the attendance of a witness at a hearing may be served at any place within 100 miles of the place of hearing specified in the subpoena; but the Board, upon proper application and for good cause shown by the requesting party, may authorize the service of a subpoena at any other place.

(c) *Subpoenas for production of documentary evidence.* A subpoena, in addition to requiring attendance to testify, may also command any person to whom it is directed to produce books, papers, documents, or tangible things designated therein. A subpoena calling for such production shall show the general relevance and reasonable scope of the evidence sought.

(d) *Subpoenas for taking depositions.* Subpoenas in aid of depositions (including those for the production of books, papers, documents, or tangible things) may be issued by the Recorder of the Board upon a showing that the parties have agreed to, or the Board has ordered, the taking of depositions under Rule 18. The service of subpoenas in aid of depositions shall be limited to the city or county wherein the witness resides or is employed or transacts business in person. If a subpoena is desired at other locations, a specific ruling of the Board is required.

(e) *Request to quash or modify.* Upon written request by a person under subpoena or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable costs of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(f) *Foreign country.* A subpoena directed to a witness in a foreign country shall issue under the circumstances and in the manner, and be served as provided in 28 U.S.C. 1781–1784.

(g) *Service.* A subpoena may be served by a United States Marshal or a deputy, or by any person not a party who is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by tendering the subpoena to that person with the fees for one day's attendance and the mileage allowed by law (28 U.S.C. 1821). When the subpoena is issued on behalf of the United States or an officer or agency of the United States, fees and mileage need not be tendered.

(h) *Fees.* The party at whose instance a subpoena is issued shall be responsible for the payment of witness fees and mileage, as well as the fees and mileage of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the books, papers, documents, or tangible things produced.

(i) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of a United States District Court, the Board will apply to the court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the court may be punished by the court as a contempt thereof.

6302.25 Copies of papers (Rule 25).

When books, records, papers, or documents have been received in evidence, a true copy or any material or relevant part may be substituted during or at the conclusion of the hearing.

6302.26 Posthearing briefs (Rule 26).

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding Administrative Judge at the conclusion of the hearing.

6302.27 Transcript of proceedings (Rule 27).

Testimony and argument at hearings are reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings are supplied to the parties and others at such rates as may be fixed by the Board.

6302.28 Withdrawal of exhibits (Rule 28).

After a decision has become final, the Board, in its discretion, upon request

and after notice to the other party, may direct or permit the withdrawal of all or part of original exhibits. The substitution of true copies of exhibits or photographs of physical objects may be required by the Board as a condition of withdrawal.

6302.29 Representation of the parties (Rule 29).

(a) *The Appellant.* An individual appellant may appear before the Board in person, a corporation by an officer, a partnership or joint venture by a member, or any of these by an attorney-at-law admitted to practice before the highest court of the District of Columbia or any state, commonwealth, or territory of the United States. An attorney representing an appellant shall file a written notice of appearance with the Board.

(b) *The Government.* Government counsel may, in accordance with their authority, represent the interest of the Government before the Board. They shall file notices of appearance with the Board.

6302.30 [Reserved] (Rule 30).

6302.31 Settlement (Rule 31).

A dispute may be settled at any time before the Board renders its decision by the appellant filing a written notice withdrawing the appeal or by written stipulation of the parties settling the dispute. Proceedings may be suspended while the parties are considering settlement.

6302.32 Decisions (Rule 32).

Decisions of the Board are rendered in writing. Copies are forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions are open for public inspection at the offices of the Board in Washington, DC. Decisions of the Board are made solely upon the record, as described in Rule 17.

6302.33 Motion for reconsideration (Rule 33).

A motion for reconsideration shall set forth specifically the grounds relied upon to sustain the motion and shall be *mailed or otherwise furnished* within 30 days from the date of receipt of a copy of the Board's decision.

6302.34 Dismissal for lack of jurisdiction (Rule 34).

Any motion addressed to the jurisdiction of the Board shall be promptly filed. A hearing on the motion may be afforded on application of either party. The Board has the right at any time on its own motion to raise the issue of its jurisdiction to proceed with a particular case and do so by an appropriate order, affording the parties an opportunity to be heard.

6302.35 Dismissal without prejudice (Rule 35).

When the Board is unable to proceed with disposition of an appeal for reasons not within its control, such appeal is placed in a suspense status. In any case where such suspension has continued, or it appears that it may continue for a period in excess of one year, the Board may dismiss the appeal without prejudice to its restoration to the Board's docket when the cause of suspension has been eliminated. Unless either party or the Board acts to reinstate any appeal so dismissed within three years from the date of dismissal, the dismissal is automatically converted to a dismissal with prejudice without further action by the parties or the Board.

6302.36 Dismissal for failure to prosecute or defend (Rule 36).

Whenever a record discloses the failure of any party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates a party's intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be dismissed or granted, as appropriate.

6302.37 Sanctions (Rule 37).

If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal, including dismissal with prejudice.

6302.38 Remand from court (Rule 38).

Whenever any court remands a case to the Board for further proceedings, each of the parties shall, within 20 days of such remand, submit a report to the Board recommending procedures to be followed so as to comply with the court's order. The Board considers the reports and enters special orders governing the handling of the remanded case. To the extent the court's directive and time limitations permit, such orders conform to these rules.

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December 23, 1987

Part IV

Environmental Protection Agency

40 CFR Parts 280 and 281

Underground Storage Tanks; Supplement to Proposed Rule; Request for Comments

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 280 and 281

[FRL 3260-9]

Underground Storage Tanks; Technical Requirements, Financial Responsibility Requirements, and State Program Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplement to proposed rule; request for comments.

SUMMARY: On April 17, 1987, the Environmental Protection Agency (EPA) proposed regulations (52 FR 12662, 12786, and 12853) for underground storage tank systems (USTs) containing petroleum or substances defined as hazardous under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. Today the Agency is requesting comments on six issues not previously raised in the April 17 proposals: (1) The use of "static inventory control" to monitor used oil UST systems; (2) a list of substances that would be subject to the petroleum UST system standards, rather than the standards for hazardous substance UST systems, regardless of their relative concentrations; (3) alternative approaches to release monitoring of piping and tanks protected from external corrosion; (4) an approach to judging whether state requirements are "no less stringent" than the federal requirements; (5) additional decisionmaking authority for implementing agencies; and (6) the definition of flow-through process tank. Any comments in response to this notice will be considered by EPA in developing the final rule.

DATE: Comments must be received by January 22, 1988.

ADDRESSES: Send three copies of written comments to Docket Clerk, Office of Underground Storage Tanks (WH-562A), Docket No. UST 2-3 (used oil; the list of substances subject to petroleum UST system standards; and release detection) and UST 4-3 (state program issues), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments received by EPA and new information identified in today's notice may be inspected by appointment in Room LG-100, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC from 9:00 a.m. to 5:00 p.m., Monday through Friday, except legal holidays. Appointments can be made by calling (202) 475-9720.

FOR FURTHER INFORMATION CONTACT: RCRA/Superfund Hotline, (800) 424-9346; or in Washington, DC, (202) 382-3000.

SUPPLEMENTARY INFORMATION: The contents of today's preamble appear in the following outline:

I. Authority
II. Background
III. Used Oil Underground Storage Tanks
IV. List of Substances Subject to Petroleum UST Standards
V. Alternatives to Release Monitoring for Piping and Tanks Protected From External Corrosion
A. Release Detection Variances for Protected Tanks
B. Frequency of Release Detection for Protected Tanks
C. Release Detection for Piping
VI. Identification of Federal Objectives for Use in Determining No Less Stringent State Programs
A. Background
B. Summary of Approaches to State Program Approval
C. Federal Objectives
D. Federal Objectives and No Less Stringent State Program Requirements
VII. Additional Decisionmaking Authority for Implementing Agencies
VIII. Alternative Definition of a Flow-Through Process Tank
IX. Notice of Availability

I. Authority

This supplemental notice is issued under the authority of sections 2002, 9001, 9002, 9003, 9004, 9005, 9006, 9007, and 9009 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6991(a), 6991(b), 6991(c), 6991(d), 6991(e), 6991(f), 6991(g), 6991(h)).

II. Background

As a major section of the Hazardous and Solid Waste Amendments of 1984, Subtitle I provides for the development and implementation of a comprehensive regulatory program for underground storage tank (UST) systems. Under section 9003 of Subtitle I, EPA must promulgate regulations applicable to owners and operators of UST systems as necessary to protect human health and the environment. This section requires that EPA issue design, construction, installation, and compatibility performance standards for new tanks as well as requirements applicable to all tank owners and operators concerning leak detection, recordkeeping, reporting, closure, corrective action, and financial responsibility. Section 9004 requires EPA to authorize states to implement their own UST programs in lieu of the federal program if their requirements are "no less stringent" than EPA's and provide for adequate enforcement.

The April 17 proposed regulations were in three parts: UST technical requirements for petroleum and hazardous substances UST systems, financial responsibility for petroleum UST systems, and state program approval. Numerous issues were identified and discussed in the Preamble to the proposal. The public comment period ended on July 17 and the Agency is evaluating the numerous comments received in response to the proposal.

Since the proposal, the Agency has identified six additional areas about which it is now requesting public comment before finalizing the proposed rules. This notice identifies and addresses each of these additional areas and highlights several technical and policy questions about which EPA would like public comments and any relevant data that might guide EPA decisionmaking on the final rules. All data and responses to these questions, along with the comments already received on the proposal, will be carefully considered in developing the final rules. The final rules are expected to be promulgated next spring.

III. Used Oil Underground Storage Tanks

In the Preamble to the April 17, 1987 proposed regulations the Agency requested comments on its proposal to defer regulation of used oil tanks (52 FR 12689). Today the Agency seeks comment on allowable methods of release detection to be applied to such tanks if regulation is not deferred in the final rule.

Specifically, EPA is requesting comment on whether the final rules should include—for used oil USTs only—an alternative release detection method (referred to here as "static inventory control") in addition to those listed in § 280.41 of the proposed rule. Also, the Agency requests comment on allowing this alternative only for small used oil UST systems (e.g., less than 550 gallons or less than 1000 gallons). In a static inventory control test, the volume of oil in the tank is determined with a measuring stick. After an overnight or weekend period when no product is added to or taken from the tank, the volume of oil is measured again and the two readings are compared. The results of tests made over a period of time are averaged to determine if the tank has a leak.

Because of the way used oil is typically managed, the Agency believes that this release detection method may

be very practical and effective, particularly for use with small used oil USTs. These types of small USTs are often used for the periodic accumulation and storage of used oils at relatively low volumes of throughput. Such low-use storage practices appear to lend themselves to the static inventory method of detection.

In contrast, detection methods proposed for petroleum UST systems may not be practicable for small used oil USTs. For example, volumetric tank tightness testing techniques probably are not readily applicable for several reasons. Most of these test methods require measuring the temperature and coefficient of expansion of the substance stored. The coefficient of expansion is particularly difficult to establish for the heterogeneous used oils that are commonly stored in USTs before recycling. Thus, the only practical way to tightness test such tanks would be to clean them out and fill them with another substance (such as water).

The Agency is specifically requesting comments and relevant data on the following issues pertaining to used oil UST systems:

- The appropriateness of static inventory control for all used oil tanks, regardless of size;
- The appropriateness of allowing static inventory control only for small used oil tanks (e.g., less than 550 gallons or less than 1000 gallons);
- The frequency of static inventory control tests (e.g., daily, monthly, annually) and the minimum time frame for conducting tests (e.g., 24 hours, 36 hours).

The Agency is also requesting comments on whether there are other tanks containing substances other than used oil that may be sufficiently similar in physical properties (e.g., fuel oils 4, 5, and 6), and are managed in such a way that they should also be allowed to use a static inventory control method of release detection.

IV. List of Substances Subject to Petroleum UST Standards

The April 17 proposal would subject many owners and operators of UST systems containing hazardous substances to more stringent release detection requirements than owners and operators of UST systems containing petroleum. If the proposed rule were promulgated, owners and operators of hazardous substance UST systems would be required to use secondary containment with interstitial monitoring on those UST systems. A variety of other release detection options would be available to owners and operators of petroleum UST systems. EPA chose to propose the more stringent regulations for hazardous substance USTs because there is a lack of information demonstrating that alternative release detection methods could reliably detect releases of many hazardous substances.

Because hazardous substance UST systems would be regulated differently from petroleum USTs, EPA also proposed a method for determining when a mixture of petroleum and hazardous substances would be subject to the more stringent standards. EPA proposed that the regulation of mixtures of petroleum and hazardous substances be based on the relative concentrations of petroleum or hazardous substances in the mixture. For example, tanks containing mixtures in which petroleum comprised more than 50 percent of the weight or volume of the mixture would be regulated as petroleum USTs. Correspondingly, tanks containing hazardous substances whose weight or volume comprised more than 50 percent of the mixture would be regulated as hazardous substance tanks. EPA is concerned that the above approach may prove to be unworkable because of the difficulty of measuring concentrations and the uncertainty raised by constituents of petroleum that are also hazardous substances.

Therefore, the Agency is soliciting comment on whether, in the final rule, the Agency should identify a specific list of substances that would be subject to the petroleum UST system requirements regardless of the relative concentration of hazardous substances and petroleum within the substance listed. Under this approach, the definition of "petroleum tank systems" would be changed to include any tank system containing the substances listed. By contrast, "hazardous substance tank systems" would be defined as those USTs containing a substance or mixture of substances that is not found on this list and that also qualifies as a "regulated substance" under Subtitle I. Thus, petroleum substances not included on this list might be subject to hazardous substance tank requirements.

The Agency is seeking comment and data on the appropriateness of such an approach and the contents of the list. The list presently under consideration is set forth below. The Agency intends to develop a separate glossary that describes the chemical and physical properties, as well as the uses, of each of the substances identified in the list. This glossary is intended as a tool for owners and operators and implementing agencies to assist in the identification of petroleum substances and mixtures subject to the petroleum UST system regulations.

EPA's attempt to define the types of substances to be subject to the petroleum UST system standards is based on a review of information on the petroleum product refinery process. Refining is a complicated arrangement of processes and steps varying from simple distillation of crude petroleum to complex and expensive catalytic cracking. The primary purpose of refining is to separate crude oil into fractions or its individual constituents for direct use, for blending, or as feedstock for the synthesis of other chemicals. Some refinery operations are coupled with other petrochemical operations so that, in effect, numerous products such as plastics, alcohol, and fertilizers are derived from the original crude oil. The more detailed list limits the scope of the petroleum UST system regulations to those substances derived directly from the crude oil by the simple separation steps and excludes the numerous chemicals produced from these raw materials (some of which are addressed under the hazardous substances UST system requirements). EPA solicits comments on this approach.

Petroleum and petroleum products are complex mixtures of hydrocarbons. Some CERCLA hazardous substances are naturally present in crude oil. These substances can be separated from crude oil for direct use by consumers, or mixed with other fractions or substances. In the proposed list below, petroleum products containing hazardous substances that naturally occur in crude oil would be subject to the petroleum UST requirements. If these substances are in purified form, they would be subject to hazardous substance UST system requirements. For example, "gasoline" that contains benzene, a natural constituent of crude oil, would be considered a petroleum fraction and thus subject to regulations applicable to petroleum UST systems. When benzene, however, is stored in its pure form or mixed with other hazardous or non-petroleum substances, it would be considered a hazardous substance subject to the hazardous substance UST system regulations. Any UST containing a hazardous substance listed in CERCLA that has a petroleum product added to it, for example, as a solvent for the application or practical use of that hazardous substance, will be regulated as a hazardous substance UST. EPA requests comment on this approach to regulating mixtures of hazardous substances.

Petroleum products will undergo change in composition over time through

the introduction and substitution of various substances into the final product. For example, the octane enhancers in gasoline products have changed over the last several years and may continue to change in the future. By inclusion of the general product name on the list, the Agency intends to regulate as petroleum both current and future mixtures of the general product line, irrespective of changes in product composition. EPA solicits comments on this subject.

Some petroleum products can be derived from other materials such as coal, biomass, shale oil, plant extract, and organic waste. Because these products can be indistinguishable from crude-oil derived petroleum products, EPA would treat such a substance under the following list as if it were a petroleum fraction, and thus it would be subject to the petroleum UST rules.

The Agency solicits public comment on the applicability to all of the substances listed here of the proposed technical standards for petroleum UST systems, particularly the release detection methods described in Subpart D of the proposed rule.

Proposed List of Substances or Mixtures To Be Subject to the Petroleum UST Standards

Basic petroleum substances

Crude oils
Crude oil fractions
Petroleum feedstocks
Petroleum fractions

Motor gasolines

Leaded regular
Unleaded regular
Leaded premium
Unleaded premium
Gasohol

Aviation gasolines

Grade 80
Grade 100
Grade 100–LL

Aviation jet fuels

Jet A
Jet A–1
Jet B
JP–4
JP–5
JP–8

Distillate fuel oils

No. 1–D
No. 1
No. 2–D
No. 2

Residual fuel oils

No. 4–D
No. 4-light
No. 4
No. 5-light
No. 5-heavy
No. 6

Gas-turbine fuel oils

Grade 0–GT
Grade 1–GT
Grade 2–GT
Grade 3–GT
Grade 4–GT

Illuminating oils

Kerosene
Mineral seal oil, long-time burning oils, 300 oil, mineral colza oil

Solvents

Stoddard solvent
Petroleum spirits, mineral spirits, petroleum ether
Varnish makers' and painters' naphthas
Petroleum extender oils
Commercial hexane

Lubricants

Automotive
Industrial

Building materials

Liquid asphalt
Dust-laying oils

Insulating and waterproofing materials

Transformer oils
Cable oils

Used Oils

V. Alternatives To Release Monitoring for Piping and Tanks Protected From External Corrosion

Since issuing the proposed UST Rule, EPA has performed additional analysis on the causes of UST system releases. A draft of the report *Causes of Release From UST Systems* and its supporting documents are now available in the Public Docket for review and comment. This draft report generally confirms the Agency's previous estimates used in preparing the proposed rulemaking concerning the total number of releases. The new data, however, show that releases from piping are much more common than tank releases. Also, the new data suggest that tank failure most often occurs due to corrosion of unprotected steel tanks over 10 years old and seldom occurs in tanks protected from external corrosion (though few of them have yet reached the end of their manufacturer-warrantied period—typically 20 to 30 years). For example, in one study of tank testing results, conducted primarily in Texas, approximately 30 percent of the UST systems were classified as not tight. Of that 30 percent, more of the systems had leaks from piping, vent lines or fittings than from tanks: 50 percent had leaks in the vent lines or tank fittings; 33 percent had product dispensing pipe leaks; and 17 percent had tank leaks. All of the tank leaks in this study were from unprotected steel tanks. These findings are typical of the new data collected.

Interviews with over 50 manufacturers, owners, installers, tank testers and regulators, on the other hand, have led EPA to conclude that tanks that are protected from external corrosion are unlikely to fail in their first 10 years. Of the nearly 200,000 fiberglass-reinforced plastic (FRP) tanks installed over the past 22 years, fewer than 1,000 of them have failed. Although some failures occurred when these tanks were first introduced, modification of installation practices and tank design has reduced the annual failure rate to less than 0.05 percent. The few that fail usually do so soon after installation as a result of improper installation.

Approximately 100,000 coated and cathodically protected tanks have been installed. Some are over 20 years old, although most have been installed in the last 5 years. Few failures have been recorded to date. None of these failures have resulted in a warranty claim. The failures were due to other causes, such as not following the manufacturer's installation or monitoring instructions. Cathodic protection technology has been successfully applied to many pipelines and other buried metal structures for over 30 years.

Approximately 30,000 composite tanks have been installed in the U.S. Tanks of this type have been in use for over 20 years without a single reported corrosion-related failure. The thick fiberglass coating on the tank exterior protects the steel shell from corrosion. This type of tank is widely used in Europe. The current manufacturing standards for these tanks are much more stringent than they were in the past. Although there is less historical performance data on composite tanks than on the other two tank types, EPA has confidence in their future performance.

Also in the April 17 proposal, EPA requested comments on the need for additional design and release monitoring requirements for pressurized piping and spill and overfill controls. These new data (including anecdotal evidence and numerous field observations) on causes of release have led EPA to consider whether there may be different ways of monitoring piping and protected tanks than those proposed on April 17. The new data suggests that new tanks are protected

from the primary reason for failure (corrosion) and piping is the more common release source. Accordingly, the Agency requests comments on whether it should set more stringent detection requirements in the final rule for the piping (particularly pressurized delivery piping). In addition, EPA requests comments on whether it should allow alternative approaches or variances from the frequent-to-continuous monitoring that was proposed for the tank portion of a corrosion protected system.

A. Release Detection Variances for Protected Tanks

The first issue related to protected tanks for which EPA is requesting additional comment today is the use of variances to allow less frequent or alternative approaches to release detection of protected tanks in areas of lower risk (for example, at remote locations, in areas where the ground water is deep and not vulnerable to surface contamination, or in impermeable soil conditions that would prevent the movement of any release off the site). One alternative approach to release detection that might be allowed under such a variance could be periodic inspections and preventive maintenance of the interior of the protected tank. A variance allowing the use of such a method could be granted on a case-by-case basis by the implementing agency upon a demonstration that more frequent monitoring is unnecessary to protect human health and the environment. A variance could also be granted based on the site's location within an area that was previously classified as less vulnerable to contamination by the implementing agency.

In the April 17 proposal, EPA concluded that frequent-to-continuous release monitoring was necessary to minimize the adverse impacts of new tank system failures. This conclusion was based on the premise that rapid detection and prompt corrective action would control the extent of contamination and allow effective ground-water restoration. In lower risk areas, however, rapid release detection may not be necessary with protected tanks. A release from a protected tank will be a rare occurrence, and when it does occur it may not cause serious ground-water degradation in these lower risk areas even if it is not detected promptly.

EPA is requesting comment today on how such a variance should be structured. Specifically, what alternative release detection measures are appropriate and under what conditions should the alternatives be allowed?

The Agency requests comment on whether internal tank inspections and assessments are an appropriate alternative to release detection in lower risk areas and could be used to reliably detect early significant signs of degradation of a protected tanks' structure. Internal inspection and assessment appears to be preferred over release detection in much of Europe. Under this alternative approach for protected tanks, the Agency would require that the inspection be capable of detecting signs of internal corrosion, significant degradation of the interior or exterior surface, excessive deflection in the tank walls, and any other factors that could indicate an increased likelihood of failure. EPA requests comment on whether, if the failure mechanisms of protected tanks manifest themselves gradually, as is expected, periodic inspections (for example, at 5- or 10-year intervals) could identify these failures and allow an opportunity to take remedial steps that prevent further deterioration. The Agency also requests comment on whether infrequent release monitoring is appropriate in areas of lower risk. Several states and localities allow less frequent release monitoring than was suggested in the April 17 proposal. Testing could take place, for example, once a year, or once every five years in lower risk areas.

The second variance issue that EPA is requesting comment on today is under what conditions the above alternatives should be allowed. Should the EPA only allow this variance in Class III ground-water areas as defined in the Ground-Water Protection Strategy published by the Office of Ground-Water Protection? Could the variance be based on a site-specific determination of risk posed to human health and the environment? This determination could be based on consideration of ground-water use and vulnerability, proximity to surface waters and nearby inhabited structures, as well as other structures such as sewers. For example, the California UST program allows general variances that would enable the use of different methods of construction and monitoring state-wide, and site-specific variances whose issuance would be based on a consideration of environmental information at the particular site. Both types of variances must be found by the state to adequately protect the "soil and beneficial uses of waters within the state," according to the California state law. The Agency requests comment on this approach and how the appropriate release detection alternative could be chosen for a particular site or ground-water class area.

Specifically, EPA requests comment on the following: The need for release monitoring of protected tank's in lower risk areas; what failure mechanisms are expected or have been experienced with the different types of protected tanks, particularly if periodic internal inspections are conducted; industry field experiences with the detection of early signs of degradation of the tanks' structure by internal inspection, and the confidence associated with such assessment results; protocols that can be used for this internal inspection and assessment that will enable early identification of all types of failure mechanisms; the frequency at which the inspection should be performed; whether this approach can adequately protect human health and the environment; which failure modes detected during inspections can and cannot be reliably controlled or addressed by repairs; and information comparing the costs of this approach to the costs of the release detection methods under the April 17 proposal.

B. Frequency of Release Detection for Protected Tanks

The Agency is also requesting public comment on the appropriateness of allowing periodic rather than frequent-to-continuous release detection for protected tanks during the first 10 years of their use. A large number of non-leaking protected tanks currently in use are over ten years old, which has led EPA to believe that failures in tanks protected from external corrosion will be rare during the first ten years of use. Thus, EPA is considering allowing tightness testing of protected tanks every 3 or 5 years for the first ten years of their use. EPA requests comments on this approach.

Long-term failure rates for protected tanks, on the other hand, are still unknown. EPA is concerned that a higher rate of failure may occur later in the operational lives of protected tanks, for example, after 20 to 30 years of use. Such tanks today are typically only warrantied for 30 years by the manufacturer. Thus, EPA would require, at a minimum, frequent-to-continuous monitoring of protected tanks after the first ten years of their use. EPA requests comments on the need to also require the retirement of tanks whose warranties have expired or that have been in use for over thirty years.

C. Release Detection for Piping

With regard to the underground product delivery piping connected to the

tank, the Agency requests comments on the need to require more stringent release monitoring than was proposed on April 17. Recent data suggests piping is much more susceptible to failure than a protected tank because of its susceptibility to corrosion, improper installation, accidents, and environmental conditions (e.g., frost heaves or stresses due to heavy traffic loads). EPA requests comments on the following issues pertaining to delivery piping: Should EPA require the use of automatic detectors that restrict or shut off runaway releases for all pressurized piping? Should EPA also require periodic service or tightness tests to assure releases are minimized? What is the minimum time necessary for owners and operators to add these automatic detectors to existing pressurized piping? Should EPA require it to be installed within 1 or 2 years or when release detection for the tank is required? Should suction lines be periodically checked for tightness to assure leaks are discovered and addressed? At what frequency should suction and pressure line testing be performed?

With regard to release detection for pressurized piping, EPA has some new information that is available for public inspection in the Public Docket concerning methods that are currently being used within the petroleum industry. Many service stations are already equipped with mechanical pressure detectors that limit the flow of product when a leak is detected. Some major oil companies test pressurized lines annually, even when they are already equipped with this sort of continuous detector. EPA requests public comment on requiring the combination of mechanical pressure detectors and annual line testing.

In response to the April 17 proposed regulations, EPA received a report sponsored by the American Petroleum Institute entitled *Preliminary Report: A Leak Detection Performance Evaluation of Automatic Tank Systems and Product Line Detectors at Retail Facilities.* This new information is available for viewing in the public docket. It is the first attempt of which EPA is aware to independently evaluate vendor-claimed performance of some of the automatic line detectors. EPA requests public comment on this report. EPA also requests comments on several specific issues pertaining to these devices: Should EPA require automatic shutoff line leak detectors in the final rule? Should a performance standard be specified for this more sophisticated line detection technology? For example, should EPA require that these detectors perform with a probability of detection of 0.99, a probability of false alarm of 0.01, and a release rate of 0.1 gallons per hour?

As stated earlier, EPA now has data indicating that suction lines may pose significantly less of a threat to human health and the environment than pressurized lines. The Agency is aware of the availability of testing services that are presently used to test the integrity of suction lines. (Some information on this topic is now available for viewing in the public docket). Public comment and information is requested concerning these practices and the release detection performance and costs associated with such methods. Should the Agency allow the use of such methods alone for purposes of release detection on suction lines? Would conducting this type of test on a one- or three-year basis be adequate to protect human health and the environment at both new and existing tanks with suction lines? Between tests, will the owner or operator likely detect significant line leaks due to resulting operational problems with the pump?

VI. Identification of Federal Objectives for Use in Determining No Less Stringent State Programs

A. Background

Section 9004 of Subtitle I allows EPA to authorize states to operate their own program "in lieu of" the federal program if certain conditions are met. First, the state program must include requirements for each element in the federal program: Release detection, recordkeeping, reporting of releases, corrective action, closure of UST systems, new UST system performance, financial responsibility and notification. Second, the above requirements must be "no less stringent" than corresponding federal requirements. Finally, the state must provide for adequate enforcement of these requirements. Almost half of the states have recently developed and begun to implement their own comprehensive UST programs. EPA has encouraged these developments and believes that states must continue to have the flexibility to develop and carry out "homegrown" initiatives. EPA intends to establish an authorization process that will result in as little unnecessary disruption of these ongoing initiatives as possible. EPA believes that states should not have to go back and make revisions to their program to receive approval to operate "in lieu of" EPA requirements unless those revisions are necessary to protect human health and the environment.

This portion of today's notice seeks to expand and clarify the discussion of the "no less stringent" question and provide further details for public review and comment on how the Agency intends to implement its preferred approach to state program approval. In the April 17, 1987 proposed rule, EPA generally described three approaches that could be used to determine whether states are no less stringent. These three approaches are described in the following section. In addition, the Agency identified the general advantages and disadvantages of each approach but did not address the specific criteria it intended to use.

Today's notice presents the results of additional work on the no-less-stringent question. In the following sections, the Agency discusses a number of specific issues left unresolved in the proposed rule concerning "no less stringent," and solicits public review and comments on these issues. EPA will carefully consider all comments received in response to this notice, as well as the April 17 proposal, in developing the final rule for state program approval.

B. Summary of Approaches to State Program Approval

Section 9004(b)(1) of Subtitle I specifies that state programs must contain requirements that are no less stringent than the corresponding federal requirements in order to receive approval to operate in lieu of the federal program. In the Preamble to the April 17 proposal, EPA identified and solicited comments on the following three approaches to determining if state programs are no less stringent. The first approach was a holistic evaluation that would compare the overall stringency of the total state program to the total federal requirements. This approach would allow trade-offs between program elements; for example, balancing less stringent financial responsibility with more preventive tank system standards.

The second approach was an individual requirement-by-requirement comparison of specific state and federal requirements. This approach would require that all the federal requirements be matched by corresponding no less stringent state requirements for purposes of state program approval. This would tend to require state programs to have at least the same requirements as the federal program.

The third approach compared the overall technical program elements of the state program to the federal objectives for those elements. This approach would allow the consideration of trade-offs within technical elements.

The stringency of each state program element would be determined based on the likelihood of its performance in meeting the overall federal objectives for that element. As stated in the April 17 proposal, EPA prefers to use the third approach as the best combination of flexibility and implementability.

EPA does not believe that the specific federal requirements in the technical regulations provide the only definitive approach for protection of human health and the environment. In developing the federal requirements, EPA recognized that there could be other approaches that would meet EPA's overall performance objectives. The proposed technical standards are by necessity more detailed and specific than the objectives they are designed to meet because the federal regulations must be implemented by the regulated community as well as enforced by the implementing agency. Thus, the proposed requirements will protect human health and the environment, but they are not necessarily the only set of requirements that would do so. In many cases, the individual requirements set forth within the federal elements should not be interpreted to preclude states from developing other approaches that will still achieve the overall objectives of performance that the federal requirements are designed to achieve.

C. Federal Objectives

The April 17 proposal did not identify any of the federal objectives against which state program elements are to be compared under this preferred approach. Today's notice identifies these objectives and discusses them in detail in section VI.D.

These objectives represent the Agency's expectations of what will constitute an approvable state program. Federal objectives have been identified for the following program elements: (1) New UST systems (design, construction, installation and notification); (2) upgrading of existing UST systems; (3) general operating requirements; (4) release detection; (5) release reporting and investigation; (6) corrective action; (7) out-of-service or closed UST systems; and (8) financial responsibility. To satisfy the "no less stringent" requirement using this approach, the state must have requirements for all UST systems that meet the following objectives:

1. New UST System Design, Construction, Installation, and Notification

All new underground storage tanks, and the attached underground piping used to convey the regulated substance stored in the tank, must conform to the following:

- Be designed and constructed in a manner that will prevent releases for their operating life due to manufacturing defects, structural failure, or corrosion. (Note: Codes of practice developed by nationally-recognized organizations and national independent testing laboratories may be used to demonstrate that the state program requirements are no less stringent in this area.)
- Be installed in a manner that will prevent releases due to installation errors. (Note: Codes of practice developed by nationally-recognized organizations and manufacturers' instructions may be used to demonstrate that the state program requirements are no less stringent in this area.)
- All UST system owners and operators must notify the implementing state agency of the existence of any new UST system using a form designated by the state agency.

2. Upgrading Existing UST Systems

Existing UST systems must be upgraded to the new UST system standards within 10 years (by 1998). (The state may provide a demonstration in the state program approval application of how other state requirements will achieve this federal goal without an explicit 10-year deadline.)

3. General Operating Requirements

All new and existing UST systems must conform to the following:

- Be operated properly so that spills and overfills are prevented during product delivery;
- Be provided with equipment to prevent spills and overfills when new tanks are installed or existing tanks are upgraded. In lieu of such equipment, other state requirements on transporters must be provided to ensure that all spills and overfills are prevented during product delivery;
- Be operated and maintained to prevent releases due to corrosion for the operating life of the UST system if they have been equipped with corrosion protection;
- Be made or lined with materials that are compatible with the substance stored;
- At the time of upgrade or repair, be upgraded or repaired in a manner that will prevent releases due to structural failure or corrosion during their operating life;
- Have records of monitoring, testing, repairs, and closure maintained that are sufficient to demonstrate recent facility compliance status. These records must be made readily available when requested by the implementing agency.

4. Release Detection

All UST systems must be provided with release detection that conforms to the following:

- Is applied before all new UST systems begin to operate, and within five years after the effective date of the federal regulations at all other UST systems;
- Is sampled, tested, or checked for releases at all new UST systems at least once every 30 days, *except* that monthly inventory reconciliation (or its equivalent) can be used in combination with semi-annual testing of the tanks and their attached underground piping;
- Is sampled, tested, or checked for releases at all existing UST systems at least once every 30 days, *except* that monthly inventory reconciliation (or its equivalent) can be used in combination with tightness testing (every five years for tanks that are protected against corrosion, and every three years for tanks without protection) until [insert date 10 years from effective date]. After [insert date], release detection for existing UST systems must satisfy release detection requirements for new UST systems;
- Consists of a method, or combination of methods, capable of detecting a release of the regulated substance from any portion of the UST system before it migrates beyond the excavation area—as effectively as any of the methods allowed under the federal requirements—for as long as the UST system is in operation;
- Is designed, installed, operated and maintained so that releases will be detected;
- If the UST system is not provided with a continuous method of release detection, there must also be automatic detection and shutoff equipment on all of the UST's attached piping that conveys the regulated substance under greater than atmospheric pressure; and
- All new hazardous substance UST systems must use interstitial monitoring within secondary containment of the tanks and the attached underground piping that conveys the regulated substance stored in the tank, unless the owner and operator can demonstrate to the state (or the state otherwise determines) that another method will detect a release of the regulated substance in a manner no less stringent than other methods allowed under the state program.

5. Release Reporting and Investigation

All UST system owners and operators must promptly investigate all suspected releases and report all underground releases that are confirmed, and any spills and overfills that are not contained and cleaned up.

6. Corrective Action

All releases from UST systems must conform with the following:

- Be promptly stopped when discovered;
- Be contained or otherwise have hazards mitigated through initial abatement activities;
- Be investigated to determine the extent of impacts on soil and ground water; and
- Be cleaned up through corrective action as necessary to protect human health and the environment.

7. Out-of-Service or Closed UST Systems

UST systems must conform with the following:

- Out-of-Service UST Systems. All new and upgraded UST systems temporarily taken out of service must continue normal operating requirements if regulated substances are stored in the tank;
- Closure of UST Systems. All tanks and piping must be closed in a manner that eliminates the potential for any future releases. The site must also be assessed to determine if there were any present or past releases, and if so, corrective action requirements must be complied with.

8. Financial Responsibility

The state requirements for financial responsibility for petroleum UST systems must assure that at least $1 million per occurrence is available for corrective action and third-party claims in a timely manner to protect human health and the environment.

States may allow the use of a wide variety of financial assurance mechanisms to meet this requirement. Each financial mechanism must meet the following criteria in order to be no less stringent than the federal requirements. The mechanism must: Be valid and enforceable; be issued by a provider that is qualified or licensed in the state; not permit cancellation without allowing the state to draw funds; ensure that funds will only and directly be used for corrective action and third party liability costs; and require that the provider notify the owner or operator of any circumstances that would impair or suspend coverage. States must require owners and operators to maintain records that demonstrate compliance with the state financial responsibility requirements, and these records must be made readily available when requested by the implementing agency.

D. Federal Objectives and No Less Stringent State Program Requirements

By identifying the federal objectives against which state program requirements will be compared, this notice provides significant new information concerning the Subtitle I state program approval process. Thus, EPA is today again soliciting public review and comments on the use of the element-by-element approach towards determining whether state program requirements are no less stringent than the federal requirements. In general, the Agency is interested in receiving comments on whether this approach will provide the level of flexibility that is needed for the Subtitle I approval process. Will state programs that have requirements meeting the federal objectives identified in the previous section of this notice be no less stringent in performance than the proposed federal requirements? Does this approach provide a clear and workable framework for readily and consistently approving acceptable state programs? Should the federal objectives be included in the final state program approval regulations? To what degree should state guidelines, procedures and statements of administrative policies be accepted by EPA as sufficient to assure that the federal objectives will be achieved by the state program? Should states be required to demonstrate that they can meet these objectives only through statutory authorities and regulations?

It is important to note that any changes made in the April 17, 1987 proposed technical regulations as the result of previously received public comments or data may result in some modifications to the federal objectives described today. For example, the Agency earlier requested and received comments on the feasibility of a class approach to regulation and whether secondary containment should be required at all USTs in sensitive groundwater areas. Therefore, if the Agency should decide on a class approach to the final technical rules, then the federal objectives would need to be modified.

The following sections describe the federal objectives in greater detail.

1. New UST System Design, Construction, Installation and Notification

EPA believes that new UST systems that are designed, constructed, and installed properly should prevent most future releases. An important federal objective is to have all new UST systems built and installed in accordance with current industry designs and practices. To achieve this objective, state requirements can incorporate these widely known codes and practices or adopt them by reference.

The federal objective for notification is that all UST system owners notify the implementing agency of the UST's existence, along with other statutorily required information. Section 9002(b)(2) of Subtitle I specifies the information that must be included in the notification for all USTs: The age, size, type, location and users of each tank. The Agency has already promulgated a form that may be used for existing and new tank system notifications. Many states, however, have designed their own forms to include additional data.

For existing USTs, this notification requirement has already been implemented nationally. Under Section 9002, all owners of existing and new UST systems were required to notify the designated state agency of the existence, age, use, etc. of their USTs. A few states chose not to designate a state agency and the notification forms for those states were accepted by the Regional EPA office. Because notifications of existing USTs have already taken place under existing federal authorities, states may be approved if they simply require owners and operators of *new* UST systems to notify the state agency. Only a few states do not already have the notification data for existing UST systems and that data may be collected from EPA.

2. Upgrading Existing UST Systems

An important objective in the federal program is to get the unprotected bare steel USTs in the nation either upgraded or replaced within 10 years. This required transition to protected tanks is expected to forestall and prevent numerous leaks that would otherwise occur in the future due to corrosion of bare steel UST systems.

Although this is an objective of the federal requirements that state programs must satisfy, EPA is aware of only one state (Florida) that has explicit requirements to upgrade existing UST systems within this 10-year period. The Agency intends to exercise some flexibility in determining whether the state program requirements are no less stringent in performance in achieving the federal objective. States that do not have an explicit 10-year deadline will be

allowed to describe how other requirements are expected to achieve this objective without it. For example, EPA is aware of some existing state programs that, as a result of existing release detection requirements, will meet the objective, even without a deadline. In many of these states, initial reports are that numerous USTs have already been closed, upgraded or replaced. EPA intends to consider the potential impacts that such additional, more stringent, or faster-paced state requirements may have on reasonably achieving the same general objective of prompting most unprotected tanks to be closed, upgraded, or replaced by the time period established in the federal program.

3. General Operating Requirements

Prevention of releases through the proper operation and management of the UST system is an important objective of the federal requirements. Proper management approaches include the prevention of: Lapses in corrosion protection mechanisms; the introduction of any incompatible regulated substances into the tank system; tank overfilling and spills at the fill port; upgrades or repairs of USTs that do not follow acceptable practices; and inadequate recordkeeping that does not enable a demonstration of recent facility compliance. Improper operations will inevitably result in some releases into the environment; therefore, state-mandated operating requirements must be applicable to control the incidence of such releases.

The Agency is aware of some states that attempt to prevent spills and overfills by placing requirements on the transporters of the regulated substances. Because the transporter is the person who is most often responsible and present during the complete filling process, these programs try to control the behavior of a relatively few trained transporters, rather than a large number of tank owners and operators who are not always present when a tank is filled and who are not routinely trained in the proper way to fill a tank. Also, there is equipment (such as dry-disconnect couplings on delivery hoses) that can be used by transporters to prevent spills at tanks. Although EPA does not have authority to regulate transporters at the federal level, it is willing to consider approving state programs that demonstrate the use of such requirements in their applications for program approval as a no less stringent substitute for imposing requirements on the tank owners and operators. The Agency solicits comment on the appropriateness of allowing states to rely upon transporter requirements as a way of demonstrating achievement of this federal objective.

4. Release Detection

The detection of releases from new and existing USTs is an important objective in the federal requirements. The following discussion summarizes the five major aspects of this objective.

First, an approvable state program, at a minimum, would have to require that release detection be applied at all USTs as rapidly as scheduled in the proposed federal program (within 5 years). Although states would not have to follow the same approach towards phase-in as the federal program (all bare steel USTs within 3 years, the rest within 5 years), all USTs would have to be required to use some method of release detection within 5 years for the program to be determined no less stringent than this aspect of the federal program. For example, states could phase in release detection based on tank age, sensitive ground-water areas, or county by county as long as the schedule is completed within the 5-year period proposed for all USTs covered under the program. EPA is convinced that many releases will be detected the first time release detection is used on existing USTs. EPA requests comments on this approach to judging the stringency of state release detection requirements.

Second, EPA proposed new tank requirements that include immediate application of frequent-to-continuous monitoring or semi-annual tightness testing and inventory controls. This aspect of the federal release detection objective is aimed at avoiding the passing of lengthy periods of time before releases from new tank systems are discovered. If state programs are to be considered no less stringent, state requirements will have to detect new tank system releases within the same time frame set by the federal requirements.

Third, EPA's proposed release detection standards require that all methods, or combinations of methods, of detection be designed, installed, operated and maintained so that they are capable of detecting the releases from both the tanks and attached piping. EPA's proposed requirements specify general performance, and sometimes design, requirements for several different detection methods to assure they are used in ways that enhance detection of releases. Although approvable state programs do not have to mandate exactly the same requirements as the federal program, a state program must have requirements that assure a similar level of performance as the federally-allowed methods. For example, state ground-water monitoring wells located outside of the excavation area or at depths greater than 20 feet may be no less stringent if they are allowed to be used only in combination with other methods of detection or after an investigation by a qualified professional establishes an optimum location and depth that is suited to site conditions and assures rapid detection. EPA requests comments on the types of state requirements that should be accepted as no less stringent in assuring that this aspect of the federal release detection objective is met.

Fourth, EPA proposed that all new hazardous substance USTs be provided with interstitial monitoring, unless another release detection method can be demonstrated as reliable to the implementing agency. EPA believes states should also include this release detection requirement to be able to meet this aspect of the federal objective.

Fifth, the EPA proposal requires all existing USTs to be, at a minimum, tightness tested every 3 years if bare steel and every 5 years if protected from corrosion. For purposes of approving no less stringent state programs, this aspect of the federal release detection objective is that existing tank system owners and operators be required by the state to perform periodic tests of their USTs as frequently as would be required by the federal requirements until the system is upgraded or replaced and complies with the new tank standards. EPA requests comment on the appropriateness of approving state programs with detection requirements for existing tanks that differ in frequency from the federal requirements.

An additional question remains concerning the release detection objective. Earlier in this Notice, EPA discusses the possibility of including in the final technical rule a variance procedure for allowing owners and operators of petroleum USTs to use alternative release monitoring methods in lower risk areas. Such monitoring methods include internal tank inspections and preventive maintenance procedures or less frequent monitoring. If a variance is included in the federal technical requirements for release detection, this type of variance may also be allowed to be included in state requirements for release detection. To be no less stringent, the state may adopt a variance similar to the federal variance or may prospectively classify low risk locations. EPA requests comments on this approach and on whether a state variance can be

considered to be a "no less stringent" approach that meets the federal objective.

5. Release Reporting and Investigation

The proposal requires owners and operators of UST systems to promptly investigate suspected releases and report confirmed releases. For states to be determined no less stringent in this program element, they must require owners or operators to report or investigate when an UST system shows any indication that a release may be occurring or may have occurred. In addition, confirmation of underground releases must be reported by the owner and operator to ensure requirements for corrective action are met.

As an alternative to the reporting of all aboveground spills, the state may instead establish procedures that require immediate remedial action steps when a spill occurs. The Agency is aware that states have varying cutoff levels for the reporting of spills and overfills and, because reporting of spills is an administrative requirement, EPA believes that a state with higher reporting levels than required under the federal program may be approvable as long as containment and cleanup is required of unreported spills. The Agency requests comment on whether spilled product needs to be reported, even if the state requires prompt and complete investigation and cleanup, particularly of hazardous substance spills. For example, the Agency is aware of one state that requires all confirmed tank leaks to be reported, but spills and overfills of petroleum that are less than 100 gallons do not need to be reported because the immediate cleanup steps for such spills are already specifically prescribed in regulation. The Agency requests comment on whether this approach should be considered to be no less stringent than the federal requirements.

6. Corrective Action

Another objective of the federal requirements is that each site with a release be provided with corrective action as needed to protect human health and the environment. To determine whether the state program element will achieve this overall objective, the Agency intends to evaluate state corrective action requirements by looking at a few key aspects. First, will the state program require the release to be immediately stopped once it is discovered? Second, does the state program ensure that an identified release is contained and significant hazards rapidly mitigated (for example, is free product removed)? Third, will the state program cause adverse impacts to soil and ground water to be investigated, identified and cleaned up as necessary to protect human health and the environment? Finally, will the implementing agency have access to information necessary to establish and monitor the attainment of cleanup levels at the site?

As discussed in the Preamble to the April 17 proposal (52 FR 12751), the Agency's review of the experiences of several state and local cleanup programs indicates that no matter what approach is taken in their regulations, the actual work associated with cleanups in the field commonly translates into two stages: (1) Immediate abatement actions that are typically required at many sites (for example, free product removal), and (2) longer term corrective action associated with soils and ground-water. For purposes of state program approval, EPA does not believe that state requirements must be the same as proposed at the federal level. In fact, at present, most of the operating state and local programs appear to have much more general requirements than those proposed by EPA on April 17. Through numerous discussions with state officials, EPA has learned that these general mandates are supplemented by much more specific state policies, procedures and guidelines. Some states have also established state funding mechanisms that, in effect, place a significant part of the responsibility for cleanup activities with the state following a report by the owner or operator.

To meet this objective, EPA would allow states to demonstrate that they are no less stringent than corresponding federal corrective action requirements if they have requirements that at least mandate the four aspects of the federal objective described above. EPA solicits comments on the above approach, including whether the objective provides sufficient flexibility for States with varying, but protective, requirements; whether it is clear enough and implementable for program approval purposes; and whether it will ensure that only programs that are no less stringent will be approved. Comment is also solicited on whether states with even more general corrective action requirements (that do not explicitly mandate the four aspects of the federal objective discussed above) should be determined to be no less stringent if the state can demonstrate that the four aspects of the corrective action objective are implemented through written policies, guidelines and procedures.

7. Out-of-Service or Closed UST Systems

The federal objective for temporarily out-of-service UST systems is to ensure that the potential for releases from them is minimized through continuance of normal operating procedures. To meet this objective, temporarily closed UST systems containing product should continue release detection. Another approach would be simply to remove the product for the temporary closure period. For purposes of state program approval, if a state allows temporary closure, it must be able to hold the owner and operator responsible for the tank's management when the system is temporarily out-of-service and containing product. The Agency intends to be flexible concerning the specifics of what constitutes "normal operating procedures" for purposes of state program approval. To meet the federal objective, the state must at least continue to require release detection if product is stored in an out-of-service UST system.

The federal objective for the final closure of UST systems is to prevent all future releases and adverse environmental and public health impacts from closed systems. This is a very important objective because the Agency believes hundreds of thousands of UST systems will be closed over the next several years. The objective has two important aspects. First, all tanks and piping must be closed in a manner that eliminates the potential for any future releases from within the system. Second, the site must be assessed to determine if any past releases have occurred at that site that require corrective action. To meet this objective, the state will need to require the proper closure of UST systems by ensuring that all regulated substances are removed from the tank so that future releases are impossible. The state may choose to hold owners and operators responsible for using codes of practice developed by nationally-recognized organizations, or the state may specify the particular steps necessary for a proper closure. The state will also need to require that the assessment be reported and releases cleaned up. As part of the closure element, the state may require that the owner notify the state agency at closure. The Agency is aware that some agencies require notification before the closure takes place so that a state or local inspector may be present. Other states merely require notification after closure has occurred. For purposes of state program approval, prior reporting of closure is only required if the site

assessment reveals a past release and corrective action is necessary.

8. Financial Responsibility

An important objective of the federal program is that each UST system have adequate financial responsibility to undertake corrective action and meet third-party liability claims. The federal law generally mandates one million dollars as the minimum level of assurance needed for petroleum UST systems to demonstrate sufficient financial responsibility to meet cleanup and liability costs for a one time release. Aggregate levels are established by the proposed federal regulations for multi-tank owners. To meet these requirements, the federal program not only allows the use of a wide variety of mechanisms, but also allows the states to develop and allow their own financial mechanisms (for example, state trust funds). The federal program also allows combinations of mechanisms to be used. To help states determine whether their mechanisms are no less stringent than the federal requirements, we have established general criteria that are applicable to all financial mechanisms. These criteria follow from the federal objective that at least $1 million per occurrence is available for petroleum UST systems for corrective action and third-party liability claims in a timely manner to protect human health and the environment.

By establishing these criteria, we believe it is unnecessary to require the states to copy much of the direct requirements for each of the mechanisms affected by these criteria. For example, we would not specifically require the state to demonstrate that its regulations require a surety company to state in a bond that the bond cannot be cancelled during a 120-day period following notice of cancellation of the bond to the owner or operator. In order to fulfill the general criteria, the state must be able to draw on the funds assured by the bond before cancellation occurs. The state regulations must ensure that the time period before the effective cancellation of the bond provides ample opportunity for the state to assess the facility, determine if a release has occurred, and, if needed, draw funds from the instrument. In this way, the federal objective for financial responsibility is met.

VII. Additional Decisionmaking Authority for Implementing Agencies

As previously discussed, state programs must contain seven specific technical elements that are no less stringent than the corresponding federal requirements as well as notification requirements to be approved under section 9004. Instead of requiring a detailed line-by-line review and comparison of state requirements to federal requirements, EPA is presently considering the above "federal objective" approach to judging the stringency of state program elements.

Given the nature of the state program approval process, EPA believes that state program reviews will inevitably entail some line-by-line comparisons. Thus, even under the proposed flexible approach to approval, some state program reviews could still become inadvertently complicated and delayed by state program requirements that differ from those of the corresponding federal program.

To ensure that the approval process is flexibly implemented and is not unnecessarily delayed because of dissimilar state and federal administrative and procedural requirements, EPA today is requesting comment on providing additional flexibility to implementing agencies by changing several sections of the technical standards that were proposed on April 17, 1987. The purpose of these changes in the final rule would be to allow state implementing agencies to substitute their own procedural and administrative requirements for those set forth in the federal requirements.

The following is a list of the sections in the proposed technical standards and the added language. EPA requests comments on the need for these changes and whether similar types of changes to other sections of the proposed technical standards are appropriate:

Section	Additional language
Subpart B—New UST Systems:	
Section 280.20(a)(2)(i)	Adding "or according to guidelines established by the implementing agency" to the end of each paragraph.
Section 280.20(a)(2)(ii)	
Subpart C—General Operating Requirements:	
Section 280.30(b)(4)	Adding "or other equipment or procedures required by the implementing agency to be used at the site to assure spills and overfills are prevented" to the end of the paragraph.
Section 280.33(c)	Adding "or by personnel authorized by the implementing agency" to the end of the paragraph.
Section 280.34(b)	Adding "or in another reasonable time period established by the implementing agency" to the end of the paragraph.
Subpart D—Release Detection:	
Section 280.43(a)	Adding "or within another reasonable time period determined by the implementing agency" to the end of the paragraph.
Section 280.43(b)	
Section 280.43(c)	
Subpart E—Release Reporting and Investigation:	
Section 280.50(a)	Adding "or another reasonable period of time determined by the implementing agency" to the end of the paragraph.
Section 280.50(b)	Adding "or another reasonable amount specified by the implementing agency" after each phrase "25 gallons." Also adding "or within the time period established by the implementing agency" after "24 hours" every time it occurs.
Subpart F—Corrective Action for UST Systems Containing Petroleum:	
Section 280.61(a)(1)	Adding "or another reasonable period of time determined by the implementing agency" to the end of the paragraph.
Section 280.61(a)(5)	
Section 280.62(c)	
Section 280.65(a)(2)	Replacing the phrase "in excess of 25 gallons, or less than 25 gallons if" with the phrase "in excess of 25 gallons (or another amount determined by the implementing agency), or less than 25 gallons (or another amount determined by the implementing agency) if".
Subpart G—Corrective Action for UST Systems Containing Hazardous Substances:	
Section 280.74(b)	Adding "or another reasonable time period determined by the implementing agency" after "30 days".
Subpart H—Out-of-Service UST Systems and Closure:	
Section 280.80(d)	Adding "or another reasonable time period determined by the implementing agency" after "30 days".

The Agency also is considering changes to the proposed financial responsibility requirements for petroleum UST systems. The Agency solicits comments on the need for and appropriateness of adding the phrase "or another reasonable time period determined by the implementing agency" to the following subsections of the proposed financial responsibility rules:

Section 280.94(d)
Section 280.94(f)
Section 280.95(c)(3)
Section 280.95(c)(4)
Section 280.95(c)(5)
Section 280.96(c)(4)
Section 280.96(c)(5)
Section 280.96(c)(7)
Section 280.97(b)(1)2d
Section 280.97(b)(1)2e
Section 280.99(b)
Section 280.105(a)
Section 280.105(b)
Section 280.106(a)(2)
Section 280.106(a)(3)
Section 280.108(a)(1)(i)
Section 280.110(a)
Section 280.111(c)

VIII. Alternative Definition of a Flow-Through Process Tank

Another issue on which EPA is requesting additional comments today is the definition of flow-through process tanks. As described in the preamble to the proposed rule (52 FR 12692), Subtitle I of the 1984 RCRA Amendments expressly excludes "flow-through process" tanks. The Agency proposed to define this type of tank as one that "forms an integral part of an industrial or commercial process through which there is a steady or uninterrupted flow of materials during the operation of a process." The exclusion was not intended to apply to those tanks "used to store regulated substances prior to their introduction into the industrial or commercial process, or to store regulated substances as intermediates, by-products or finished products of the process."

EPA requests comments on the advisability of using alternative language to the proposed definition. In this alternative, "integral to a production process" would be substituted for "integral part of an industrial or commercial process." The Agency believes that this substitution would clarify the intent of the exclusion, making the regulation easier to implement.

IX. Notice of Availability

Reports, comments, and other information received and collected by EPA since the end of the comment period on the April 17 proposal are available for public inspection, by appointment, in the OUST Docket. The new information in these additional documents addresses subjects such as internal cathodic protection of oil storage tanks, exposure of fiberglass-reinforced plastic material to alcohol-gasoline mixtures, delineation of well water protection areas, and a summary of a meeting with representatives from state and local underground storage tank programs. EPA invites the public to view this new information and requests that any public comments on it be submitted to EPA on or before January 22, 1988. Please contact the Docket Clerk in the Office of Underground Storage Tanks (WH-562A), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 475-9720, for an appointment.

List of Subjects in 40 CFR Parts 280 and 281

Administrative practice and procedure, Confidential business information, Hazardous materials, Reporting and recordkeeping requirements, Underground storage tanks, Water pollution control, Water supply.

Dated: December 15, 1987.

Lee M. Thomas,

Administrator.

[FR Doc. 87-29264 Filed 12-22-87; 8:45 am]

BILLING CODE 6560-50-M

federal register

Wednesday
December 23, 1987

Part V

Department of the Interior

Minerals Management Service

Outer Continental Shelf; Notice of Sale; Central Gulf of Mexico, Sulphur and Salt Lease Sale

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf (OCS)
Notice of Sale
Central Gulf of Mexico
Sulphur and Salt Lease Sale

PREAMBLE TO NOTICE OF SALE

By publication of the proposed Notice of Sale on September 10, 1987, the Department of the Interior provided the public and potential bidders the opportunity to review and comment on the terms and conditions of the proposed OCS sulphur and salt lease sale. All comments on the proposed Notice of Sale received by the Department were given careful consideration during the development of the final Notice of Sale. Some of these comments indicated an unfamiliarity with leasing or operating laws and regulations on the part of potential bidders while other comments requested that additional information be made available prior to the holding of the sale. The following discussion addresses these concerns.

(a) Operational Constraints

Concern was expressed that the adoption of the Information to Lessees (ITL) clause regarding operational constraints implied that oil and gas operations would be treated preferentially to sulphur operations. The operational constraints ITL clause was developed to address interference with established operations and concerns associated with subsidence caused by sulphur operations. It is not intended to confer preferential treatment on oil and gas operators, but simply to ensure that existing oil and gas operations are not adversely affected by sulphur operations. Sulphur lessees will be afforded similar protection from potential interference with their operations which could result from leasing in the future. Section 17(b) of the sulphur lease form reserves the right of the lessor to grant leases for any other minerals within an area leased for sulphur, "except that operations under such leases shall not unreasonably interfere with or endanger operations under this lease." Additionally, the Gulf of Mexico Regional Office of the Minerals Management Service (MMS) will make available to potential lessees information regarding existing oil and gas leases and operations on bidding units included in this sale to ensure that bidders are informed as fully as possible prior to the sale regarding potential constraints on sulphur operations. See paragraph 14(a) of the Notice.

The MMS is available to discuss with interested parties the issues of potential operational constraints and the applicability of operating regulations to sulphur operations. Contact Mr. Price McDonald, Chief, Offshore Rules and Operations Division, at (703) 648-7813 for information on this matter.

(b) Size of Bidding Units

Comments were received stating that the bidding units as configured in the proposed Notice of Sale (combinations of 1/4 blocks) do not coincide closely with the potential areal extent of sulphur deposits. Since this configuration could result in a potential lessee acquiring and holding "extraneous" acreage, commenters requested that bidding units be redefined to coincide more closely with the extent of sulphur deposits. Alternatively, commenters noted, provision should be made to allow acreage to be relinquished in 1/16-block increments.

The MMS currently lacks data on the exact outline of each prospect and has thus configured bidding units using the larger 1/4-block increments. However, existing regulations (30 CFR 256.76) allow unwanted acreage to be relinquished in 1/16-block increments after leases are awarded. Additional costs might be incurred by a potential lessee only for the first year's rental on portions of blocks which the lessee deems extraneous and wishes to relinquish.

(c) Archaeological Resources

Commenters requested that if MMS knows which bidding units may contain archaeological resources and where these resources are located within the unit, this information should be made available prior to the sale. They were concerned that compliance with the archaeological stipulation and procedures to protect archaeological sites may render a lease useless by precluding immediate development in the most desirable areas.

The MMS does not have sufficiently specific information regarding the presence, location, or characteristics of archaeological resources to indicate that deferral of any of the bidding units is warranted. Leasing of these units with the archaeological resources stipulation will provide for exploration and potential sulphur production while ensuring that adequate steps are taken to preserve archaeological resources. Of the 51 bidding units included in the sale, 12 have a low probability of archaeological resource occurrence and would not likely be subject to the survey requirement of the stipulation. These bidding units are 2, 9, 19, 37, 40, 42 through 46, 49, and 51. A portion of bidding unit number 48 (MPSE 295) also has a low probability of archaeological resource occurrence and would not require a survey. Portions of bidding units 7(EC 178 and 185N/2), 15(VR 226), and 39 (ST 160SW/4) have been cleared by previous archaeological surveys and would not require further surveys.

Three whole bidding units (1, 12, and 47) and portions of bidding units 3(EC 104), 11(VR 162), 14(VR 204NW/4), 16(SMI8), 20(EI 76), 21(EI 94; 110NW/4; 111N/2), 22(EI 116S/2; 129A), 25(EI 172), 26(EI 190; 191), and 29(EI 253N/2) have also had archaeological surveys. However, the results of surveys on these blocks indicate that potential lessees would be required to implement a mitigation plan prior to conducting exploration or development activities on certain portions of these blocks. A mitigation plan may involve the avoidance of a potential archaeological resource (indicated by

an anomaly or other information on an archaeological survey record) or the conduct of a more detailed survey to determine whether such a potential archaeological resource actually exists and whether a proposed operation could proceed without adversely affecting the resource.

The remaining whole and partial bidding units have not been surveyed. Archaeological surveys will be required of the lessee on these bidding units. These surveys will serve as the basis for determining whether mitigation plans will be required. Upon request by potential bidders, additional information regarding completed surveys and survey requirements will be made available by the Gulf of Mexico Regional Office prior to the lease sale. Such requests will be treated as proprietary to protect against disclosing information about the potential bidder's interest in specific areas. See paragraph 14(a) of the Notice.

(d) Sulphur and Salt Regulations

Commenters expressed concern about the current lack of separate regulations for sulphur operations. Sulphur leasehold activities in the OCS are currently managed by requiring compliance with the regulations in 30 CFR Part 250, OCS Order No. 10 for the Gulf of Mexico Region, and review of Exploration and Development and Production Plans on a case-by-case basis. This approach has been an effective means of providing for safety in operations and protection of the environment.

The MMS issued a notice of proposed rulemaking on March 18, 1986 (51 FR 9316), to consolidate, update, and restructure rules governing oil, gas, and sulphur operations in the OCS. All comments received regarding the proposed rulemaking, including concerns that sulphur operations should be covered by separate, specific regulations, have been considered in the development of final rulemaking. Final rules are anticipated to be published prior to the sulphur lease sale. Sulphur operations will continue to be managed by requiring compliance with OCS Order No. 10 and regulations in 30 CFR Part 250 until final rulemaking is, in fact, complete.

The MMS is available to discuss with interested parties the rulemaking process and to answer any questions regarding the applicability of existing regulations to sulphur operations. See paragraph (a) of this preamble.

(e) Royalty on Salt

In the proposed Notice, interested parties were invited to comment on an appropriate royalty rate for salt sold off lease. Comments ranged from precluding salt from being sold off lease—condition the leases so that salt could only be used in the sulphur production process on lease—to a nominal royalty rate. The Department has selected a royalty rate of 5 percent for salt taken off lease, consistent with the royalty rate charged for Federal salt leases issued in New Mexico in 1984 and in California in 1985. No royalty is charged for salt employed to produce sulphur on the lease. See paragraph 4 of this Notice.

THE NOTICE OF SALE FOLLOWS HEREWITH

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Outer Continental Shelf
Notice of Sale
Central Gulf of Mexico
Sulphur and Salt Lease Sale

1. Authority. This Notice is published pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356, (1982)), as amended by the OCS Lands Act Amendments of 1985 (100 Stat. 147), and the regulations issued thereunder (30 CFR Part 256).

2. Filing of Bids. Sealed bids will be received by the Regional Director (RD), Gulf of Mexico Region, Minerals Management Service (MMS), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394. Bids may be delivered in person to that address during normal business hours (8 a.m. to 4 p.m.) until the Bid Submission Deadline at 10 a.m., February 23, 1988. Hereinafter, all times cited in this Notice refer to Central Standard Time (c.s.t.) unless otherwise stated. Bids will not be accepted the day of Bid Opening, February 24, 1988. Bids received by the RD later than the time and date specified above will be returned unopened to the bidders. Bids may not be modified unless written modification is received by the RD prior to 10 a.m., February 23, 1988. Bids may not be withdrawn unless written withdrawal is received by the RD prior to 8:30 a.m., February 24, 1988. Bid Opening Time will be 9 a.m., February 24, 1988, at the Gulf of Mexico Regional Office, First Floor Conference Room (Room 101), 1201 Elmwood Park Boulevard, New Orleans, Louisiana. All bids must be submitted and will be considered in accordance with applicable regulations, including 30 CFR Part 256.

3. Method of Bidding. A separate bid in a sealed envelope labeled "Sealed Bid for Sulphur and Salt Lease Sale (bidding unit number, map number, map name, and block number(s)), not to be opened until 9 a.m., c.s.t., February 24, 1988," must be submitted for each prescribed bidding unit bid upon. It is recommended that all numbers of blocks and applicable portions (as described in paragraph 12) comprising the bidding unit appear on the sealed envelope. A bid form for this sale is available from the Gulf of Mexico Regional Office as provided in paragraph 14(a). In addition, the total amount bid must be in whole dollar amounts (no cents). Bidders must submit with each bid one-fifth of the cash bonus, in cash or by cashier's check, bank draft, or certified check, payable to the order of the U.S. Department of the Interior—Minerals Management Service. No bid for less than all of any bidding unit as described in paragraph 12 will be considered.

All documents must be executed in conformance with signatory authorizations on file. Partnerships also need to submit or have on file in the Gulf of Mexico Regional Office a list of signatories authorized to bind the partnership. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder in percent to a maximum of five decimal places after the decimal point, e.g., 50.12345 percent. Other documents may be required of bidders under 30 CFR 256.46. Bidders are warned against violation of 18 U.S.C. 1860, prohibiting unlawful combination or intimidation of bidders.

4. Bidding Systems. All bids submitted at this sale must provide for a cash bonus in the amount of $144,000 or more per bidding unit. All leases awarded will provide for a yearly rental payment of $3 per acre or fraction thereof. All leases will provide for a minimum royalty of $3 per acre or fraction thereof. A cash bonus/fixed royalty bidding system with a sulphur royalty rate of 12-1/2 percent at the mine will be employed on all bidding units offered in this sale. No royalty will be collected on salt used for operations or production purposes on the lease itself. A royalty rate of 5 percent at the mine applicable to salt produced for offsite usage will be employed on all bidding units offered in this sale.

5. Equal Opportunity. Each bidder must have submitted by the Bid Submission Deadline stated in paragraph 2, the certification required by 41 CFR 60-1.7(b) and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, on the Compliance Report Certification Form, Form MMS-2033 (June 1985), and the Affirmative Action Representation Form, Form MMS-2032 (June 1985). See paragraph 14(d).

6. Bid Opening. Bid opening will begin at the Bid Opening Time stated in paragraph 2. The opening of the bids is for the sole purpose of publicly announcing bids received, and no bids will be accepted or rejected at that time. If the Department is prohibited for any reason from opening any bid before midnight on the day of Bid Opening, that bid will be returned unopened to the bidder as soon thereafter as possible.

7. Deposit of Payment. Any cash, cashier's checks, certified checks, or bank drafts submitted with a bid may be deposited by the Government in an interest bearing account in the U.S. Treasury during the period the bids are being considered. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States.

8. Withdrawal of Bidding Units or Portions Thereof. The United States reserves the right to withdraw any bidding unit or portion thereof from this sale prior to issuance of a written acceptance of a bid for the bidding unit.

9. Acceptance, Rejection, or Return of Bids. The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any bidding unit will be awarded to any bidder, unless:

(a) the bidder has complied with all requirements of this Notice and applicable regulations;

(b) the bid is the highest valid bid; and

(c) the amount of the bid has been determined to be adequate by the authorized officer.

No bonus bid will be considered for acceptance unless it provides for a cash bonus in the amount of $144,000 or more per bidding unit. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and applicable regulations may be returned to the person submitting that bid by the RD and not considered for acceptance. Bid adequacy guidelines are available from the Gulf of Mexico Regional Office. See paragraph 14(a).

10. Successful Bidders. Each person who has submitted a bid accepted by the authorized officer will be required to execute copies of the lease, pay the balance of the cash bonus bid together with the first year's annual rental as specified below, and satisfy the bonding requirements of 30 CFR 256, Subpart I. Successful bidders are required to submit the balance of the bonus and the first year's annual rental payment, for each lease issued, by electronic funds transfer in accordance with the requirements of 30 CFR 218.155.

11. Leasing Maps and Official Protraction Diagrams. Most of the bidding units offered for lease may be located on the Outer Continental Shelf Leasing Maps--Louisiana Nos. 1 through 12. This is a set of 27 maps which sells for $17 and which may be purchased from the Gulf of Mexico Regional Office (see paragraph 14(a)). Two of the bidding units contain blocks which are located on the Official Protraction Diagram NH 16-10, Mississippi Canyon (revised December 2, 1976). This map sells for $2 and also may be purchased from the Regional Office.

12. Description of the Areas Offered for Bids. The sale will include 51 bidding units as tabulated on the following page. Bidding units are based upon the MMS geologic outline of potential sulphur deposits and are formed by combining several quarter-blocks. The tabulation contains the bidding units offered in this sale as well as their block composition and acreage. The map abbreviations used therein and their associated map names are:

WC-West Cameron	WCW-West Cameron West
WCS-West Cameron South	EC-East Cameron
ECS-East Cameron South	VR-Vermilion
SMI-South Marsh Island	SMIN-South Marsh Island North
SMIS-South Marsh Island South	EI-Eugene Island
SS-Ship Shoal	SSS-Ship Shoal South
PL-South Pelto	ST-South Timbalier
GI-Grand Isle	GIS-Grand Isle South
WD-West Delta	WDS-West Delta South
MC-Mississippi Canyon	SP-South Pass
SPSE-South Pass South and East	MP-Main Pass
MPSE-Main Pass South and East	

CENTRAL GULF OF MEXICO
SULPHUR AND SALT LEASE SALE BIDDING UNITS

Bidding Unit #	Bidding Unit Description	Acreage
1	WCW 306	5,000.00
2	WCS 521;522;544	11,428.74
3	EC 104;115	10,000.00
4	EC 118;119	10,000.00
5	EC 126	5,000.00
6	EC 154;155; WC 263;272NE/4	16,250.00
7	EC 178;179W/2;184NW/4;185N/2	11,250.00
8	EC 229	5,000.00
9	ECS 293;304N/2	7,500.00
10	VR 124	5,000.00
11	VR 161;162	9,792.53
12	VR 164;179	10,000.00
13	VR 189;190;193;194	20,000.00
14	VR 199SW/4;200;203;204NW/4	12,500.00
15	VR 217;218;225;226	20,000.00
16	SMI 8; SMIN 288	6,315.57
17	SMI 33;38	10,000.00
18	SMI 58;69;70; SMIS 71NE/4;72;73	23,719.57
19	SMIS 121,132N/2	7,500.00
20	EI 62S/2;63S/2;76;77	15,000.00
21	EI 89;94;95W/2;110NW/4;111N/2	16,250.00
22	EI 116S/2;128;128A;129;129A	12,500.00
23	EI 119;120;125;126	20,000.00
24	EI 157SE/4;158;175;176E/2	13,750.00
25	EI 172;184	10,000.00
26	EI 188S/2;189S/2;190;191	15,000.00
27	EI 205;218;227N/2	12,500.00
28	EI 208	5,000.00
29	EI 237;238;252N/2;253N/2	15,000.00
30	SS 30;31;32;33	20,000.00
31	SS 149;154	10,000.00
32	SS 208SE/4;209S/2;214;215W/2	11,250.00
33	SS 218;219E/2;229;230W/2; SSS 242N/2	17,500.00
34	SSS 268;269E/2;274;275W/2	15,000.00
35	PL 11;12;19NW/4;20N/2	13,750.00
36	ST 63;86	10,000.00
37	ST 131;132N/2; GIS 86	7,762.58
38	ST 134W/2;135;151N/2	10,000.00
39	ST 160SW/4;161;176;177	16,250.00
40	GI 72	5,000.00
41	WD 30;31	10,000.00
42	WDS 121SE/4;122S/2;133;134E/2	11,250.00
43	WDS 137;138; MC 267	12,258.68
44	WDS 152S/2; MC 357;358	8,629.27
45	SPSE 88;89;93;94	17,080.90
46	SP 60;61N/2; SPSE 67;70N/2	14,999.94
47	MP 72(seaward of Federal/State boundary)	3,750.80
48	MP 144;145; MPSE 295;296	19,110.72
49	MPSE 289	4,560.81
50	MPSE 299	4,560.81
51	MPSE 305;306	9,999.92

13. Lease Terms and Stipulations.

(a) Leases resulting from this sale will have a primary lease term of 10 years with the condition that the lease may be cancelled after 5 years, following notice pursuant to the OCS Lands Act, if drilling of an exploratory well has not been commenced or if the well has not been drilled in conformance with the approved exploration plan criteria or if there is not a suspension of operations in effect. Leases will be on Form MMS-2006 (December 1987). A copy of this lease form is reproduced at the end of this Notice. Additional copies may be obtained from the Gulf of Mexico Regional Office. See paragraph 14(a).

(b) The stipulations to be applied are as described in the following paragraphs:

Stipulation No. 1—Protection of Archaeological Resources.

(This stipulation applies to all bidding units leased in this sale.)

(1) "Archaeological resource" means any prehistoric or historic district, site, building, structure, or object (including shipwrecks); such term includes artifacts, records, and remains which are related to such a district, site, building, structure, or object (Section 301(5), National Historic Preservation Act, as amended, 16 U.S.C. 470w(5)). "Operations" means any drilling, mining, or construction or placement of any structure for exploration, development, or production of the lease.

(2) If the Regional Director (RD) believes an archaeological resource may exist in the lease area, the RD will notify the lessee in writing. The lessee shall then comply with subparagraphs (a) through (c).

(a) Prior to commencing any operations, the lessee shall prepare a report, as specified by the RD, to determine the potential existence of any archaeological resource that may be affected by operations. The report, prepared by an archaeologist and a geophysicist, shall be based on an assessment of data from remote-sensing surveys and of other pertinent archaeological and environmental information. The lessee shall submit this report to the RD for review.

(b) If the evidence suggests that an archaeological resource may be present, the lessee shall either:

(i) Locate the site of any operation so as not to adversely affect the area where the archaeological resource may be; or

(ii) Establish to the satisfaction of the RD that an archaeological resource does not exist or will not be adversely affected by operations. This shall be done by further archaeological investigation, conducted by an archaeologist and a geophysicist, using survey equipment and techniques deemed necessary by the RD. A report on the investigation shall be submitted to the RD for review.

(c) If the RD determines that an archaeological resource is likely to be present in the lease area and may be adversely affected by operations, the RD will notify the lessee immediately. The lessee shall take no action that may adversely affect the archaeological resource until the RD has told the lessee how to protect it.

(3) If the lessee discovers any archaeological resource while conducting operations on the lease area, the lessee shall report the discovery immediately to the RD. The lessee shall make every reasonable effort to preserve the archaeological resource until the RD has told the lessee how to protect it.

Stipulation No. 2—Military Areas.

(This stipulation applies only to Bidding Unit No. 49, i.e. Main Pass South and East Addition Block 289, which is located in the Eglin Water Test Area 1 (EWTA-1), an area used by the U.S. Air Force for rocket and missile testing. This bidding unit is located on the western boundary of EWTA-1.)

(a) Hold and Save Harmless

Whether compensation for such damage or injury might be due under a theory of strict or absolute liability or otherwise, the lessee assumes all risks of damage or injury to persons or property, which occur in, on, or above the Outer Continental Shelf (OCS), to any persons or to any property of any person or persons who are agents, employees, or invitees of the lessee, its agents, independent contractors, or subcontractors doing business with the lessee in connection with any activities being performed by the lessee in, on, or above the OCS, if such injury or damage to such person or property occurs by reason of the activities of any agency of the U.S. Government, its contractors or subcontractors, or any of their officers, agents or employees, being conducted as a part of, or in connection with,
the programs and activities of the command headquarters for Eglin Water Test Area 1 (EWTA-1), address provided below.

Notwithstanding any limitation of the lessee's liability in the lease, the lessee assumes this risk whether such injury or damage is caused in whole or in part by any act or omission, regardless of negligence or fault, of the United States, its contractors or subcontractors, or any of its officers, agents, or employees. The lessee further agrees to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the lessee, and to indemnify and save harmless the United States against all claims for loss, damage, or injury sustained by the agents, employees, or invitees of the lessee, its agents, or any independent contractors or subcontractors doing business with the lessee in connection with the programs and activities of the aforementioned military installation, whether the same be caused in whole or in part by the negligence or fault of the United States, its contractors, or subcontractors, or any of its officers, agents, or employees and whether such claims might be sustained under a theory of strict or absolute liability or otherwise.

(b) Electromagnetic Emissions

The lessee agrees to control its own electromagnetic emissions and those of its agents, employees, invitees, independent contractors or subcontractors emanating from EWTA-1 in accordance with requirements specified by the commander of the command headquarters for EWTA-1, address provided below, to the degree necessary to prevent damage to, or unacceptable interference with, Department of Defense flight, testing or operational activities conducted within EWTA-1. Necessary monitoring control and coordination with the lessee, its agents, employees, invitees, independent contractors, or subcontractors will be affected by the commander of the aforementioned onshore military installation conducting operations in EWTA-1, provided, however, that control of such electromagnetic emissions shall in no instance prohibit all manner of electromagnetic communication during any period of time between a lessee, its agents, employees, invitees, independent contractors, or subcontractors and onshore facilities.

(c) Operational

The lessee, when operating or causing to be operated on its behalf, boat or aircraft traffic in EWTA-1, shall enter into an agreement with the commander of the command headquarters for EWTA-1, address provided below, upon utilizing the area prior to commencing such traffic. Such an agreement will provide for positive control of boats and aircraft operating in EWTA-1 at all times.

EWTA-1 Contact Officer: Commander
Armament Division
Attention: Howard Dimmig/CCN
Eglin AFB, Florida 32542
Telephone: (904) 882-5558

Stipulation No. 3—Hydrocarbon Discovery Stipulation.

(This stipulation applies to all bidding units leased in this sale.)

Sulphur and salt leases are granted separately from oil and gas leases. Therefore, any hydrocarbons discovered by the sulphur and salt lessee cannot be produced under this lease. If the lessee discovers hydrocarbons while conducting sulphur and salt operations on the lease area, the lessee shall report the discovery immediately to the Regional Director (RD). If the RD determines that the discovery is significant, and the Director determines that release of the information is necessary for the proper development of the field or area, then a public announcement of the significant hydrocarbon discovery will be made pursuant to 30 CFR 250.3.

14. Information to Lessees.

(a) Supplemental Documents. For copies of the various documents identified as available from the Gulf of Mexico Regional Office, prospective bidders should contact the Public Information Unit, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123-2394, either in writing or by telephone (504) 736-2519. For additional information, contact the Regional Supervisor for Leasing and Environment at that address or by telephone at (504) 736-2755.

(b) Navigation Safety. Operations on some of the bidding units offered for lease may be restricted by designation of fairways, precautionary zones, anchorages, safety zones, or traffic separation schemes established by the U.S. Coast Guard pursuant to the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.), as amended. U.S. Corps of Engineers permits are required for construction of any artificial islands, installations, and other devices permanently or temporarily attached to the seabed located on the OCS in accordance with section 4(e) of the OCS Lands Act, as amended.

(c) Offshore Pipelines. Lessees are advised that the Department of the Interior and the Department of Transportation have entered into a Memorandum of Understanding, dated May 6, 1976, concerning the design, installation, operation, and maintenance of offshore pipelines. Bidders should consult both Departments for regulations applicable to offshore pipelines.

(d) Affirmative Action. Revision of the Department of Labor regulations on affirmative action requirements for Government contractors (including lessees) has been deferred, pending review of those regulations (see Federal Register of August 25, 1981, at 46 FR 42865 and 42968). Existing stocks of the affirmative action forms described in paragraph 5 of this Notice contain language that would be superseded by the revised regulations at 41 CFR 60-1.5(a)(1) and 60-1.7(a)(1). Submission of Form MMS-2032 (June 1985) and Form MMS-2033 (June 1985) will not invalidate an otherwise acceptable bid, and the revised regulations' requirements will be deemed to be part of the existing affirmative action forms.

(e) Ordnance Disposal Areas. The U.S. Air Force has released an indeterminable amount of unexploded ordnance throughout Eglin Water Test Area 1, which is shown on a map available from the MMS Gulf of Mexico Regional Office. The exact location of the unexploded ordnance is unknown, and lessees are advised that all bidding units included in this sale in or near this water test area should be considered potentially hazardous to drilling and platform and pipeline placement.

(f) Operational Constraints.

(1) Sulphur and salt exploration or development activities will be permitted in such a manner that they will not unduly interfere with prior rights or approvals for oil and gas exploration and/or development activities.

(2) Exploration or development and production plans submitted in accordance with 30 CFR 250.34 for proposed sulphur and salt activities will be required to include the showing of notice to existing oil and gas operators or pipeline permittees whose existing or approved activities may be affected by the proposed sulphur activities. Information regarding existing pipelines and other oil and gas appurtenances and structures is available from the Regional Office. See paragraph 14(a).

(3) The MMS may, if determined necessary as a means of safeguarding life and the environment and the carrying out of oil and gas operations, impose appropriate operational constraints or requirements including but not limited to the following:

(a) The establishment of "no activity zones" in the vicinity of certain existing or approved oil and gas activities; and

(b) The delaying of sulphur development activities until such time that the potential for negative impact upon oil and gas activities is at an acceptable level.

15. OCS Orders. Operations on all leases resulting from this sale will be conducted in accordance with the provisions of all Gulf of Mexico OCS Orders, as of their effective dates, and any other applicable OCS Order as it becomes effective.

Director, Minerals Management Service

Approved:

Wm. D. Bettenberg

Assistant Secretary - Land and Minerals Management

J. Steven Griles

December 18, 1987

Date

A COPY OF THE LEASE FORM IS ATTACHED HEREWITH

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Office | Serial number

Cash bonus | Rental rate per acre, or fraction thereof

SULPHUR AND SALT LEASE OF SUBMERGED LANDS UNDER THE OUTER CONTINENTAL SHELF LANDS ACT

This form does not constitute an information collection as defined by 44 U.S.C. 3502 and therefore does not require approval by the Office of Management and Budget.

Minimum royalty rate per acre, or fraction thereof | Royalty rate

This lease is effective as of (hereinafter called the "Effective Date") and shall continue for an initial period of years (hereinafter called the "Initial Period") by and between the United States of America (hereinafter called the "Lessor"), by the **Regional Director, Gulf of Mexico OCS Region**, Minerals Management Service, its authorized officer, and

(hereinafter called the "Lessee"). In consideration of any cash payment heretofore made by the Lessee to the Lessor and in consideration of the promises, terms, conditions, and covenants contained herein, including the Stipulation(s) numbered attached hereto, the Lessee and Lessor agree as follows:

Sec. 1. Statutes and Regulations. This lease is issued pursuant to the Outer Continental Shelf (OCS) Lands Act (43 U.S.C. 1331-1356, (1953)), as amended, and the regulations issued thereunder (30 CFR Part 256). The lease is issued subject to the Act; all regulations issued pursuant to the Act and in existence upon the Effective Date of this lease; all regulations issued pursuant to the statute in the future which provide for the prevention of waste and conservation of the natural resources of the Outer Continental Shelf and the protection of correlative rights therein; and all other applicable statutes and regulations.

Sec 2. Rights of Lessee. The Lessor hereby grants and leases to the Lessee the exclusive right and privilege to drill for, develop, and produce sulphur and salt resources in the submerged lands of the Outer Continental Shelf containing approximately acres (hereinafter referred to as the "leased area"), described as follows:

Form MMS-2006 (Dec. 87)

These rights include:

(a) the nonexclusive right to conduct within the leased area geological and geophysical explorations in accordance with applicable regulations;

(b) the nonexclusive right to drill water wells within the leased area, unless the water is part of geopressured-geothermal and associated resources, and to use the water produced therefrom for operations pursuant to the Act free of cost, on the condition that the drilling is conducted in accordance with procedures approved by the Director of the Minerals Management Service or the Director's delegate (hereinafter called the "Director"); and

(c) the right to construct or erect and to maintain within the leased area artificial islands, installations, and other devices permanently or temporarily attached to the seabed and other works and structures necessary to the full enjoyment of the lease, subject to compliance with applicable laws and regulations.

Sec. 3. Term. This lease shall continue from the Effective Date of the lease for the Initial Period and so long thereafter as sulphur and/or salt are produced from the leased area in paying quantities, or drilling or well reworking operations, as approved by the Lessor, are conducted thereon, or as otherwise provided by regulations.

Sec. 4. Rentals. The Lessee shall pay the Lessor, on or before the first day of each lease year which commences prior to a discovery in paying quantities of sulphur and/or salt on the leased area, a rental as shown on the face hereof.

Sec. 5. Minimum Royalty. The Lessee shall pay the Lessor, at the expiration of each lease year which commences after a discovery of sulphur and/or salt in paying quantities, a minimum royalty as shown on the face hereof or, if there is production, the difference between the actual royalty required to be paid with respect to such lease year and the prescribed minimum royalty if the actual royalty paid is less than the minimum royalty.

Sec 6. Royalty on Production.

(a) The Lessee shall pay a fixed royalty as shown on the face hereof in value of production saved, removed, or sold from the leased area. Any Lessee is liable for royalty payments on sulphur and/or salt lost or wasted from a lease site when such loss or waste is due to negligence on the part of the operator of the lease, or due to the failure to comply with any rule or regulation, order, or citation issued under the Act.

(b) The value of production for purposes of computing royalty on production from this lease shall never be less than 5 percent of the gross production or value of the sulphur at the mine. The value of production shall be the estimated reasonable value of the production as determined by the Lessor, due consideration being given to the highest price paid for a part or for a majority of sulphur and/or salt of like quality in the same general area, to the price received by the Lessee, to posted prices, and to other relevant matters. Except when the Lessor, in its discretion, determines not to consider special pricing relief from otherwise applicable Federal regulatory requirements, the value of production for the purposes of computing royalty shall not be deemed to be less than the gross proceeds accruing to the Lessee from the sale thereof. In the absence of good reason to the contrary, value computed on the basis of the highest price paid or offered at the time of production in a fair and open market for the major portion of like quality sulphur produced and sold from the field or area where the leased area is situated will be considered to be a reasonable value.

(c) Royalties shall be due and payable by the last day of the next month following the month in which the sulphur and/or salt is produced, unless the Lessor prescribes a later date.

Sec. 7. Payments. The Lessee shall make all payments (rentals, royalties, and any other payments required by this lease) to the Lessor by electronic transfer of funds, check, draft on a solvent bank, or money order unless otherwise provided by regulations or by direction of the Lessor. Rentals, royalties, and any other payments required by this lease shall be made payable to the Minerals Management Service and tendered to the Director. Determinations made by the Lessor as to the amount of payment due shall be presumed to be correct and paid as due.

Sec. 8. Bonds. The Lessee shall maintain at all times the bond(s) required by regulation prior to the issuance of the lease and shall furnish such additional security as may be required by the Lessor if, after operations have begun, the Lessor deems such additional security to be necessary.

Sec. 9. Plans. The Lessee shall conduct all operations on the leased area in accordance with approved exploration plans and approved development and production plans as are required by regulations. The Lessee may depart from an approved plan only as provided by applicable regulations.

Sec. 10. Performance. The Lessee shall comply with all regulations and Orders. After due notice in writing, the Lessee shall drill such wells and produce at such rates as the Lessor may require in order that the leased area or any part thereof may be properly and timely developed and produced in accordance with sound operating principles.

Sec. 11. Safety Requirements. The Lessee shall:

(a) maintain all places of employment within the leased area in compliance with occupational safety and health standards and, in addition, free from recognized hazards to employees of the Lessee or of any contractor or subcontractor operating within the lease area;

(b) maintain all operations within the leased area in compliance with regulations or orders intended to protect

persons, property, and the environment on the Outer Continental Shelf; and

(c) allow prompt access, at the site of any operation subject to safety regulations, to any authorized Federal inspector and shall provide any documents and records which are pertinent to occupational or public health, safety, or environmental protection as may be requested.

Sec. 12. Suspension and Cancellation.

(a) The Lessor may suspend or cancel this lease pursuant to Section 5 of the Act, and compensation shall be paid when provided by the Act.

(b) The lessor may, upon recommendation of the Secretary of Defense, during a state of war or national emergency declared by Congress or the President of the United States, suspend operations under the lease, as provided in section 12(c) of the Act, and just compensation shall be paid to the Lessee for such suspension.

Sec. 13. Indemnification. The Lessee shall indemnify the Lessor for, and hold it harmless from, any claim, including claims for loss or damage to property or injury to persons caused by or resulting from any operation on the leased area conducted by or on behalf of the Lessee. However, the Lessee shall not be held responsible to the Lessor under this section for any loss, damage, or injury caused by or resulting from:

(a) negligence of the Lessor other than the commission or omission of a discretionary function or duty on the part of a Federal Agency whether or not the discretion involved is abused; or

(b) the Lessee's compliance with an order or directive of the Lessor against which an administrative appeal by the Lessee is filed before the cause of action for the claim arises and is pursued diligently thereafter.

Sec. 14. Purchase of Production. In time of war or when the President of the United States shall so prescribe, the Lessor shall have the right of first refusal to purchase at the market price all or any portion of the sulphur and/or salt produced from the leased area, as provided in Section 12(b) of the Act.

Sec. 15. Equal Opportunity Clause. During the performance of this lease, the Lessee shall fully comply with paragraphs (1) through (7) of section 202 of Executive Order 11246, as amended (reprinted in 41 CFR 60-1.4(a)), and the implementing regulations which are for the purpose of preventing employment discrimination against persons on the basis of race, color, religion, sex, or national origin. Paragraphs (1) through (7) of section 202 of Executive Order 11246, as amended, are incorporated in this lease by reference.

Sec. 16. Certification of Nonsegregated Facilities. By entering into this lease, the Lessee certifies, as specified in 41 CFR 60-1.8, that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. As used in this certification, the term "segregated facilities" means, but is not limited to, any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion, or national origin, because of habit, local custom, or otherwise. The Lessee further agrees that it will obtain identical certifications from proposed contractors and subcontractors prior to award of contracts or subcontracts unless they are exempt under 41 CFR 60-1.5.

Sec. 17. Reservations to Lessor. All rights in the leased area not expressly granted to the Lessee by the Act, the regulations, or this lease are hereby reserved to the Lessor. Without limiting the generality of the foregoing, reserved rights included:

(a) the right to authorize geological and geophysical exploration in the lease area which does not unreasonably interfere with or endanger actual operations under the lease, and the right to grant such easements or rights-of-way upon, through, or in the leased area as may be necessary or appropriate to working of other lands or to the treatment and shipment of products thereof by or under authority of the Lessor;

(b) the right to grant leases for any minerals other than sulphur and/or salt within the leased area, except that operations under such leases shall not unreasonably interfere with or endanger operations under this lease;

(c) the right, as provided in section 12(d) of the Act, to restrict operations in the leased area or any part thereof which may be designated by the Secretary of Defense, with approval of the President, as being within an area needed for national defense and, so long as such designation remains in effect, no operations may be conducted on the surface of the leased area or the part thereof included within the designation except with the concurrence of the Secretary of Defense. If operations or production under this lease within any designated area are suspended pursuant to this paragraph, any payments of rentals and royalty prescribed by this lease likewise shall be suspended during such period of suspension of operations and production, the term of this lease shall be extended by adding thereto any such suspension period, and the Lessor shall be liable to the Lessee for such compensation as is required to be paid under the Constitution of the United States.

Sec. 18. Transfer of Lease. The Lessee shall file for approval with the appropriate field office of the Minerals Management Service any instrument of assignment or other transfer of this lease, or any interest therein, in accordance with applicable laws and regulations.

Sec. 19. Surrender of Lease. The Lessee may surrender this entire lease or any officially designated subdivision of the leased area by filing with the appropriate field office of the Minerals Management Service a written relinquishment, in triplicate, which shall be effective as of the date of filing. No surrender of this lease or of any portion of the leased area shall relieve the Lessee or its surety of the obligation to pay all accrued rentals, royalties, and other financial obligations or to abandon all works on the area to be surrendered in a manner satisfactory to the Director.

Sec. 20. Removal of Property on Termination of Lease. Within a period of 1 year after termination of this lease in whole or in part, the Lessee shall remove all devices, works, and structures from the premises no longer subject to the lease in accordance with applicable regulations and orders of the Director. However, the Lessee may, with the approval of the Director, continue to maintain devices, works, and structures on the leased area for drilling or producing on other Leases.

Sec. 21. Remedies in Case of Default.

(a) Whenever the Lessee fails to comply with any of the provisions of the Act, the regulations issued pursuant to the Act, or the terms of this lease, the lease shall be subject to cancellation in accordance with the provisions of section 5(c) and (d) of the Act and the Lessor may exercise any other remedies which the Lessor may have, including the penalty provisions of section 24 of the Act. Furthermore, pursuant to section 8(o) of the Act, the Lessor may cancel the lease if it is obtained by fraud or misrepresentation.

(b) Nonenforcement by the Lessor of a remedy for any particular violation of the provisions of the Act, the regulations issued pursuant to the Act, or the terms of this lease shall not prevent the cancellation of this lease or the exercise of any other remedies under paragraph (a) of this section for any other violation or for the same violation occurring at any other time.

Sec. 22. Unlawful Interest. No member of, or Delegate to, Congress, or Resident Commissioner, after election or appointment, or either before or after they have qualified, and during their continuance in office, and no officer, agent, or employee of the Department of the Interior, except as provided in 43 CFR Part 20, shall be admitted to any share or part in this lease or derive any benefit that may arise therefrom. The provisions of Section 3741 of the Revised Statutes, as amended, 41 U.S.C. 22, and the Act of June 25, 1948, 62 Stat. 702, as amended, 18 U.S.C. 431-433, relating to contracts made or entered into or accepted by or on behalf of the United States, form a part of this lease insofar as they may be applicable.

Sec. 23. Special Provisions.

(a) Any lease issued for an initial period of 10 years will be cancelled after 5 years, following notice pursuant to the Outer Continental Shelf Lands Act, where drilling of an exploratory well has not been commenced before the end of the 5th year, or if the well has not been drilled in conformance with the approved exploration plan criteria, or if there is not a suspension of operations in effect.

(b) The Lessee is granted the exclusive right to drill salt wells within the leased area and to use the salt produced therefrom for sulphur-mining operations pursuant to the Act free of royalty on the lease, on the condition that the drilling is conducted in accordance with procedures approved by the Director.

(c) The Lessee shall pay no royalty on salt produced and consumed or otherwise used on the lease for the production of sulphur. The Lessee shall pay a fixed royalty of 5% at the mine for any salt produced and used or otherwise disposed of off the leased area for purposes other than sulphur production.

_____ (Lessee)	THE UNITED STATES OF AMERICA, Lessor
_____ (Signature of Authorized Officer)	_____ (Signature of Authorized Officer)
_____ (Name of Signatory)	_____ (Name of Signatory)
_____ (Title)	_____ (Title)
_____ (Date)	_____ (Date)
_____ (Address of Lessee)	

If this lease is executed by a corporation, it must bear the corporate seal.

[FR Doc. 87-29418 Filed 12-22-87; 8:45 am]

BILLING CODE 4310-MR-C

federal register

Wednesday
December 23, 1987

Part VI

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Advisory Committee Meeting and Guidelines for Research; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Advisory Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee at the National Institutes of Health, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892, on February 1, 1988, from approximately 9 a.m. to adjournment at approximately 5 p.m. This meeting will be open to the public to discuss:

Amendment of Guidelines,

Proposed major action,

Other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at the meeting may be given such an opportunity at the discretion of the Chair.

Dr. William J. Gartland, Executive Secretary, Recombinant DNA Advisory Committee, National Institutes of Health, 12441 Parklawn Drive, Suite 58, Rockville, Maryland 20852, telephone (301) 770–0131, will provide materials to be discussed at the meeting, rosters of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: December 14, 1987.

Betty J. Beveridge,

Committee Management Officer, National Institutes of Health.

[FR Doc. 87–29465 Filed 12–22–87; 8:45 am]

BILLING CODE 4140–01–M

Recombinant DNA Research; Proposed Action Under Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of proposed action under NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth a proposed action to be taken under the National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules. Interested parties are invited to submit comments concerning this proposal. This proposal will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on February 1, 1988. After consideration of this proposal and comments by the RAC, the Director of the National Institutes of Health will issue a decision on this proposal in accord with the NIH Guidelines.

DATES: Comments received by January 19, 1988, will be reproduced and distributed to the RAC for consideration at its February 1, 1988, meeting.

ADDRESS: Written comments and recommendations should be submitted to the Director, Office of Recombinant DNA Activities, 12441 Parklawn Drive, Room 58, Rockville, MD 20852. All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities, 12441 Parklawn Drive, Room 58, Rockville, Maryland 20852, (301) 770–0131.

SUPPLEMENTARY INFORMATION: The NIH will consider the following action under the NIH Guidelines for Research Involving Recombinant DNA Molecules:

Large-Scale Production Involving Cephalosporium Acremonium Strain LU4–79–6

In a letter dated December 4, 1987, Dr. Mark A. Fogelsong of Eli Lilly and Company, Indianapolis, Indiana, requests approval to conduct large-scale experiments and production involving *Cephalosporium acremonium* strain LU4–79–6 under less than Biosafety Level 1—Large Scale (BL1–LS) conditions. Information on *C. acremonium* and construction of strain LU4–79–6 are provided in the submission.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: December 17, 1987.

James C. Hill,

Acting Director, National Institute of Allergy and Infectious Diseases.

[FR Doc. 87–29466 Filed 12–22–87; 8:45 am]

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Reader Aids

Federal Register

Vol. 52, No. 246

Wednesday, December 23, 1987

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	523-5227
Public inspection desk	523-5215
Corrections to published documents	523-5237
Document drafting information	523-5237
Machine readable documents	523-5237

Code of Federal Regulations

Index, finding aids & general information	523-5227
Printing schedules	523-3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523-6641
Additional information	523-5230

Presidential Documents

Executive orders and proclamations	523-5230
Public Papers of the Presidents	523-5230
Weekly Compilation of Presidential Documents	523-5230

The United States Government Manual

General information	523-5230

Other Services

Guide to Record Retention Requirements	523-3187
Legal staff	523-4534
Library	523-5240
Privacy Act Compilation	523-3187
Public Laws Update Service (PLUS)	523-6641
TDD for the deaf	523-5229

FEDERAL REGISTER PAGES AND DATES, DECEMBER

45597-45800.....1
45801-45934.....2
45935-46050.....3
46051-46342.....4
46343-46444.....7
46445-46584.....8
46585-46730.....9
46731-46982.....10
46983-47364.....11
47365-47544.....14
47545-47686.....15
47687-47890.....16
47891-48078.....17
48079-48178.....18
48179-48390.....21
48391-48510.....22
48511-48660.....23

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
5748.....46729
5749.....46731
5750.....46733
5751.....46735
5752.....47365, 47545
Executive Orders:
12462.....48179
12543 (See Notice of Dec. 15, 1987).....47891
12616.....46730
12617.....48179
Administrative Orders:
Notices:
Dec. 15, 1987.....47891
Statements:
Dec. 7, 1987.....46728

4 CFR

21.....46445

5 CFR

351.....46051
540.....46051
551.....47687
831.....47893
870.....46343
874.....46343
1201.....47547
1204.....45597
1600.....45801
1605.....46314

7 CFR

6.....48079
7.....48511
8.....47660
21.....48015
301.....45597, 47367, 47688, 48181
319.....46052, 47372
352.....47373
401.....45598-45604
413.....47375
422.....48182
423.....45805, 47376
431.....47376
432.....47377
770.....45606
907.....46060, 46737, 46983, 48080
908.....46737
910.....46061, 46984, 48080
911.....46344
915.....46344
966.....46345
981.....45607, 45609
1434.....48081
1900.....45806, 46348
1924.....48391
1942.....47097
1944.....45807, 48391
1955.....48519
1956.....46348, 47688
Proposed Rules:
52.....46486
318.....48272
401.....45830
735.....47009
905.....46366
959.....46366
966.....47576
971.....46366
985.....46600
987.....46366
1951.....45638

8 CFR

212.....48082
214.....48082
238.....48082
245.....48082
248.....48082
299.....48082
316a.....46738
Proposed Rules:
3.....46776
109.....46092
208.....46776
236.....46776
242.....46776
253.....46776

9 CFR

78.....47378
85.....45935
92.....45611, 47548
303.....48084
381.....48084
Proposed Rules:
145.....47014
147.....47014
316.....45639
350.....45639

10 CFR

30.....48092
40.....48092
70.....48092
1039.....48015
Proposed Rules:
Ch. I.....47398
2.....48447
35.....47726
61.....47398
62.....47578
430.....46367, 47549

12 CFR

4.....46061
204.....46450, 47689
208.....46984
217.....47689

226.....45611
304.....48183
337.....47379
574.....48519
611.....48093
614.....46151
706.....46585

Proposed Rules:
202.....47589
205.....47591
210.....47112
226.....47592
229.....47112
332.....48447
701.....46601, 47014

13 CFR
102.....47699
125.....48391

Proposed Rules:
121.....47937

14 CFR
21.....46348
25.....46348
39.....45612–45614, 45808–45810, 46064–46067, 46452, 46739, 46985–46995, 47387, 47551, 47702–47704, 47990, 48184–48187, 48392
71.....45615, 45616, 46556, 46740–46742, 46995–46997, 47304, 47308, 47676, 48191, 48393, 48522
75.....47677
91.....47672
97.....45617, 46743, 48394
108.....48508
121.....45910, 47991
129.....48508
135.....45910, 47991
234.....48395
255.....48395
1208.....48015
1213.....45935
1221.....45811

Proposed Rules:
Ch. I.....45831
39.....45640, 45642, 45831, 46094, 46776, 47015, 47016, 47399–47401, 47943–47946, 48274, 48542
43.....47680
71.....45644, 46778, 46779, 47017–47020, 47402, 47727, 48274, 48448, 48449, 48484
73.....47021, 48274
91.....47680

15 CFR
11.....48015
371.....45618, 48522
374.....45618
385.....46886
399.....46886, 47388, 48522, 48523
801.....46587

Proposed Rules:
18.....47597

16 CFR
6.....45619
13.....45937
305.....46888
1015.....45631

Proposed Rules:
13.....45645, 45970, 45972, 48276, 48543
453.....46706
1016.....47599
1700.....48450

17 CFR
1.....46070, 47705
200.....48191
211.....46454, 48193
274.....46350

Proposed Rules:
34.....47022
240.....48125

18 CFR
2.....47897, 47914, 48398
4.....48398
11.....48398
154.....48407
157.....47897
270.....48407
271.....46072
273.....48407
284.....47914
375.....48398, 48407
380.....47897
381.....48407
389.....45823
1306.....48015
1312.....47720

Proposed Rules:
1310.....47728

19 CFR

Proposed Rules:
4.....46602, 48194
101.....47908
128.....47729
143.....47729
177.....47601

20 CFR
355.....47705
404.....47914

Proposed Rules:
365.....47601
614.....46604

21 CFR
74.....45938
176.....46968
184.....47918
333.....47312
369.....47312
520.....48094
558.....48095
862.....48623

Proposed Rules:
182.....46968
352.....46095

22 CFR
302.....47714
502.....47991

Proposed Rules:
502.....47029
1506.....46779

23 CFR

Proposed Rules:
625.....47403
635.....45645

24 CFR
200.....48197
203.....48197
204.....48197
213.....48197
220.....48197
221.....48197
222.....48197
226.....48197
227.....48197
235.....48197
237.....48197
240.....48197
888.....48205
3280.....47552

Proposed Rules:
42.....47953
43.....47953
236.....48276
813.....46614
885.....46614
888.....48278

25 CFR

Proposed Rules:
177.....46781

26 CFR
1.....47554, 48407, 48524
18.....48524
31.....45632
35a.....46075
54.....46747
602.....46075, 46747, 47554, 48407

Proposed Rules:
1.....45835, 47609, 48452, 48546
18.....48546
48.....45901
54.....46782
602.....46782, 47609

27 CFR
9.....46589
19.....47557
25.....47557
47.....48096
240.....47557
250.....46592, 47557
270.....47557
275.....47557
285.....47557

Proposed Rules:
9.....48279
250.....46628

28 CFR
Ch. VII.....48097
2.....46596, 47921
549.....48068

Proposed Rules:
16.....48279
701.....47406

29 CFR
12.....48015
19.....48419
22.....48492
103.....48534
1613.....48263
1910.....46075, 46168
1915.....46075
1917.....46075
1918.....46075
1926.....46075, 46168
1928.....46075
1952.....48103
2613.....47561
2617.....47561
2619.....47561, 47562
2621.....47563
2676.....47564

Proposed Rules:
103.....47029
1910.....47097

30 CFR
779.....47352
780.....47352
783.....47352
784.....45920, 47352
816.....47352
817.....45920, 47352
913.....48421
935.....46597
942.....47716

Proposed Rules:
904.....47411
935.....46377, 46379, 46783, 48125
952.....46095
953.....46097

31 CFR
316.....48422
342.....48422
351.....46455, 48422

Proposed Rules:
0.....45648

32 CFR
40a.....48431
41.....46997
209.....47389
229.....47720
259.....48015
536.....45938
706.....46080, 47922
1900.....46456
2003.....48367

Proposed Rules:
199.....46098, 47029
285.....48452
1636.....47949
1656.....47949

33 CFR
62.....46351
95.....47526
100.....46351
110.....46760
117.....46081, 47391, 47923, 48263
146.....47526
150.....47526
160.....48264
165.....46351, 47924
173.....47526
177.....47526

Proposed Rules:
165.....45973, 47413
179.....47950

34 CFR
15.....48015
668.....45712, 46353
674.....45738
675.....45738
676.....45738
690.....45712

Proposed Rules:
251.....47951

333.....46720
776.....47538
778.....46784
790.....46785

36 CFR

296.....47720
904.....48015
1155.....47717

Proposed Rules:

1150.....48546
1202.....48280
1258.....48280

37 CFR

Proposed Rules:

304.....45664

38 CFR

4.....46439
21.....45633
25.....48015

Proposed Rules:

21.....46494

39 CFR

111.....48436
224.....46998
225.....46998
226.....46998
227.....46998
228.....46998
229.....46998
777.....48029

Proposed Rules:

111.....48281

40 CFR

4.....48015
52.....45634, 45958, 45959, 46463, 46762, 46764, 47392, 47565, 47566, 47925, 48265, 48535
60.....47826
81.....46081, 46465
82.....47486
85.....46354
86.....47858
123.....45823
144.....45788, 46946
180.....45824, 46019, 46598, 47990, 48536–48539
260.....46946
264.....45788, 46946
265.....45788
270.....45788, 46946
271.....45634, 45788, 46466
355.....48072
600.....47858
716.....47990

Proposed Rules:

35.....46712
52.....46495, 46786, 47610, 48285
60.....47032
62.....46380
80.....47032
82.....47489
86.....47032
180.....47733, 47734
280.....48638
281.....48638
600.....47032
721.....46496
763.....48286

41 CFR

12–60.....48630
101–6.....45926
101–7.....45825
101–38.....48540
101–44.....47393
101–47.....46467
105–51.....48015
105–55.....46468
114–50.....48015
128–18.....48015
201–1.....46468
201–2.....46468
201–23.....46468
201–24.....46468

Proposed Rules:

101–41.....48547

42 CFR

124.....46022, 48362
401.....48112
405.....48112
408.....48112
417.....47003
431.....47926
435.....47926, 48438
436.....48438
440.....47926
441.....47926
466.....47003
476.....47003

Proposed Rules:

405.....47990
409.....48127
410.....48127
416.....48127
421.....48127
433.....48290
435.....47414
436.....47414
441.....48127
442.....47990
488.....47990
489.....47990, 48127

43 CFR

4.....46355, 47097
7.....47720
3420.....46469
3460.....46469
3560.....48124

Proposed Rules:

3450.....46499

44 CFR

25.....48015
65.....46501
67.....46505

Proposed Rules:

67.....46787, 47611

45 CFR

15.....48015
1100.....48265

Proposed Rules:

233.....47420
1803.....48297

46 CFR

4.....47526
5.....47526
26.....47526
35.....47526
78.....47526
97.....47526
109.....47526
167.....47526
185.....47526
196.....47526
197.....47526
560.....45960
586.....46356

Proposed Rules:

38.....45665
42.....47422
44.....47422
45.....47422
54.....45665
69.....46103
98.....45665
151.....45665
170.....47422
174.....47422
249.....48077
503.....45835
572.....46501
588.....46505

47 CFR

15.....45961
25.....45636
73.....45636, 45963–45965, 46598, 46599, 47004, 47567, 47722–47724, 47935, 48268, 48438, 48439,
74.....47567
76.....45961, 46363
80.....48439
90.....47569

Proposed Rules:

1.....46628
15.....47615
43.....46628
64.....47951
73.....45974, 45975, 46629–46631, 47032, 47033, 47735, 47736, 48130–48133
80.....45665

48 CFR

Ch. 63.....48630
232.....47005
519.....47396
532.....47005
552.....47005
553.....47006
819.....46082
1801.....46765
1805.....46765
1807.....46765
1808.....46765
1809.....46765
1812.....46765
1813.....46765
1815.....46765
1827.....46765
1830.....46765
1831.....46765
1832.....46765
1836.....46765
1837.....46765
1852.....46765, 47935
1853.....46765
2401.....47395
2402.....47395

Proposed Rules:

31.....46043
228.....48549
245.....47427
252.....48549
1409.....48301
1415.....48301
1452.....48301
2409.....46560
2412.....46560
2413.....46560
2415.....46560
2416.....46560
2417.....46560
2424.....46560
2427.....46560
2432.....46560
2434.....46560
2437.....46560
2442.....46560
2446.....46560
2451.....46560
2452.....46560
2453.....46560
2470.....46560
5215.....48550
5252.....48550
5706.....47033

49 CFR

1.....46364, 46478, 47007, 47097
24.....47994
25.....48015
571.....46479, 46480
1002.....46481
1007.....46481
1011.....45636, 46773, 48440
1052.....45966
1103.....46481
1150.....46481
1152.....45636, 46773, 48440
1160.....45827, 46481
1162.....46481
1169.....46481
1171.....46481
1177.....46481
1180.....46481
1182.....46481

Proposed Rules:

17.....46510, 46511
24.....45667
383.....47326
701.....46381

50 CFR

14.....46019
17.....46083, 46085
20.....46087
80.....47571
611.....45966, 46484, 48362
642.....47724
649.....46088
650.....46485
652.....47008
675.....45966, 46484, 48362
681.....47572

Proposed Rules:

17.....45976, 46106, 46334, 46336, 48552
20.....47428
21.....47428
253.....47990
611.....48303
655.....47034
658.....47615
663.....45668
672.....48303
675.....48303

LIST OF PUBLIC LAWS

Last List December 22, 1987

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.J. Res. 199/Pub. L. 100-195

Designating April 1988 as "Actors' Fund of America Appreciation Month." (Dec. 18, 1987; 101 Stat. 1312; 1 page) Price: $1.00

S. 649/Pub. L. 100-196

To amend the Reclamation Authorization Act of 1976 (90 Stat. 1324, 1327). (Dec. 18, 1987; 101 Stat. 1313; 1 page) Price: $1.00

H.J. Res. 431/Pub. L. 100-197

Making further continuing appropriations for the fiscal year ending September 30, 1988, and for other purposes. (Dec. 20, 1987; 101 Stat. 1314; 1 page) Price $1.00