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Monday
April 4, 1988

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DEPARTMENT OF ENERGY

Office of Conservation and Renewable Energy

10 CFR Part 430

[Docket No. CAS-RM-79-102]

Energy Conservation Program for Consumer Products; Final Rulemaking Regarding Test Procedures for Central Air Conditioners, Including Heat Pumps; Correction

AGENCY: Office of Conservation and Renewable Energy, DOE.

ACTION: Fianal rule; correction.

SUMMARY: On March 14, 1988 (53 FR 8304), DOE published a final rule amending test procedures for central air conditioners, including heat pumps. This document corrects an editorial error in that notice. The correction is set out below.

EFFECTIVE DATE: September 12, 1988.

Issued in Washington, DC, March 29, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

PART 430—[CORRECTED]

1. In § 430.2 the definition of "Central air conditioners," is correctly revised as follows.

§ 430.2 Definitions

* * * * *

"Central air conditioner" means a product, other than a packaged terminal air conditioner, which is powered by single phase electric current, air cooled, rated below 65,000 Btu per hour, not contained within the same cabinet as a furnace, the rated capacity of which is above 225,000 Btu per hour, and is a heat pump or a cooling unit only.

* * * * *

[FR Doc. 88-7242 Filed 4-1-88; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances; Placement of Propylhexedrine and Pyrovalerone Into Schedule V

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: This final rule is issued by the Administrator of the Drug Enforcement Administration (DEA) in order to place propylhexedrine and pyrovalerone into Schedule V of the Controlled Substances Act (CSA). This action is being taken to enable the United States to meet its obligations under the 1971 Psychotropic Convention. As a result of this rule, some of the regulatory controls and the criminal sanctions of a Schedule V substance under the CSA will be applicable to the manufacture, distribution and possession of propylhexedrine and pyrovalerone.

EFFECTIVE DATE: The effective date for the requirements imposed by this Order is May 4, 1988, unless otherwise set forth below in the supplementary information section.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug Control Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 633-1366.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking regarding placement of propylhexedrine and pyrovalerone into Schedule V of the CSA was published in the **Federal Register** on October 30, 1987 (52 FR 41737). The Administrator found that the temporary placement of propylhexedrine and pyrovalerone into Schedule V is necessary in order to satisfy United States obligations under the 1971 Convention on Psychotropic Substances.

In response to the Notice of Proposed Rulemaking, a comment was received from SmithKline Consumer Products, the manufacturer of a preparation that contains propylhexedrine. In that comment, SmithKline asserted that U.S. treaty obligations would be satisfied by provisions of the Federal Food, Drug and Cosmetic Act, and therefore, that placement of propylhexedrine into Schedule V was unnecessary. The provisions of the Psychotropic Substances Act of 1978, Pub. L. 95-633, clearly indicate that Congress intended that

> control of psychotropic substances in the United States should be accomplished within the framework of the procedures and criteria for classification of substances provided in the Comprehensive Drug Abuse Prevention and Control Act of 1970. 21 U.S.C. 801(a)(3).

The provision of the Psychotropic Substances Act, as codified into the CSA, which applies with regard to propylhexedrine and pyrovalerone is found at 21 U.S.C. 811(d)(4)(B). It clearly states that in a case such as the one at issue, a substance shall be placed in Schedule IV or V of the CSA in order to carry out the minimum United States obligations under the treaty. This paragraph further specifies that the Attorney General shall except the drug from application of any provision of the CSA which he finds is not necessary to carry out treaty obligations. Consistent with this requirement, the Administrator will except propylhexedrine and pyrovalerone from certain recordkeeping and security requirements of the CSA. The requirements necessary for compliance with the treaty include: licensing or registration of manufacturers, import and export restrictions, and penal measures for illegal activity. These requirements cannot be imposed under the Federal Food, Drug and Cosmetic Act.

It should be noted that the United States has formally requested that the Secretary-General of the United Nations exempt the propylhexedrine-containing preparations presently approved by the Food and Drug Administration, including the SmithKline product, from specified measures of international control. In conjunction with this request, DEA will accept applications from manufacturers of products containing propylhexedrine for exclusion of their products pursuant to 21 U.S.C. 811(g)(1) and 21 CFR 1308.22. Such exclusions

would permit the present propylhexedrine-containing nasal inhalers to retain their over-the-counter status. If SmithKline, or any other firm that manufactures a product containing propylhexedrine, submits such a request for exclusion, DEA will make every effort to expedite the processing of the request. In essence, the exemption of the substances propylhexedrine and pyrovalerone from certain regulations and the exclusion of products containing propylhexedrine will impose minimal regulatory burden on legitimate manufacturers, while enabling the United States to comply with the requirements of the Psychotropic Convention.

The following provisions of the regulations (and their effective dates) that will be applicable to propylhexedrine and pyrovalerone are as follows:

1. *Registration.* Any person who manufactures, distributes, engages in research, imports, exports or otherwise handles propylhexedrine and/or pyrovalerone or who proposes to engage in such activity shall obtain a registration to conduct that activity by June 3, 1988, pursuant to Parts 1301 and 1311 of Title 21 of the Code of Federal Regulations.

2. *Importation and Exportation.* All importation and exportation of propylhexedrine and/or pyrovalerone occurring after May 4, 1988, shall be in compliance with Part 1312 of Title 21, Code of Federal Regulations.

3. *Criminal Liability.* Any activity with propylhexedrine and/or pyrovalerone not authorized by the CSA or implementing regulations occurring after May 4, 1988, is unlawful.

Those properly registered to handle propylhexedrine and/or pyrovalerone will be exempted from the security requirements of 21 CFR 1301.71–1301.76; the labelling and packaging requirements of 21 CFR 1302.03–1302.05, 1302.07 and 1302.08; the inventory requirements of 21 CFR 1304.11–1304.19; and the recordkeeping requirements of 21 CFR 1304.21–1304.27.

Pursuant to Title 5, United States Code, section 605(b), the Administrator certifies that the placement of propylhexedrine and pyrovalerone into Schedule V of the CSA, as ordered herein, will not have a significant impact upon small businesses or other entities whose interests must be considered under the Regulatory Flexibility Act (Pub. L. 96–354). This action must be carried out in order to fulfill United States international treaty obligations.

In accordance with the provisions of 21 U.S.C. 811(d), this scheduling action is a formal rulemaking that is required by United States obligations under an international convention, namely, the Convention on Psychotropic Substances, 1971. Such formal proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, have been exempted from the consultation requirements of Executive Order 12291 (46 FR 13193).

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Accordingly, based upon the notification of the Secretary-General of the United Nations, the requests by the Government of the United States relative to a qualified acceptance of the scheduling decisions regarding propylhexedrine and pyrovalerone and in accordance with the recommendations of the Assistant Secretary for Health, Department of Health and Human Services, under the authority vested in the Attorney General by 21 U.S.C. 811(d)(4) (B) and (C) and delegated to the Administrator of DEA by 28 CFR 0.100, the Administrator hereby amends 21 CFR 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR Part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b).

2. A new paragraph (d) is added to § 1308.15 to read as follows:

§ 1308.15 Schedule V.

* * * * *

(d) *Stimulants.* Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

(1) Propylhexedrine.....8161.
(2) Pyrovalerone.....1485.

John C. Lawn,

Administrator, Drug Enforcement Administration.

Dated: March 29, 1988.

[FR Doc. 88–7303 Filed 4–1–88; 8:45 am]

BILLING CODE 4410–09–M

Office of the Attorney General

28 CFR Part 0

[Order No. 1265–88]

Delegation of Power of the Attorney General Respecting Transfer of Offenders to or From Foreign Countries

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Section 0.64–2 of Title 28, Code of Federal Regulations, delegates to the Assistant Attorney General in charge of the Criminal Division all of the powers conferred on the Attorney General under 18 U.S.C. 4102 which have not been delegated to the Director of the Bureau of Prisons, including the authority to find appropriate or inappropriate the transfer of offenders to or from a foreign country under a treaty as referred to in Pub. L. 95–44. This final rule amends 28 CFR 0.64–2 by authorizing the Assistant Attorney General in charge of the Criminal Division to redelegate this authority to his Deputy Assistant Attorneys General, the Senior Associate Director of the Office of Enforcement Operations and, in the absence of the Senior Associate Director, to the Director of the Office of Enforcement Operations. This rule reflects certain organizational changes that have been made in the Criminal Division with respect to which office is charged with the responsibility for handling prisoner transfers under 18 U.S.C. 4102.

EFFECTIVE DATE: March 23, 1988.

FOR FURTHER INFORMATION CONTACT: Gerald Shur, Senior Associate Director, Office of Enforcement Operations, Criminal Division, Department of Justice, Washington, DC 20530; 202–633–3684.

SUPPLEMENTARY INFORMATION: The Assistant Attorney General currently is authorized under 28 CFR 0.64–2 to redelegate to his Deputy Assistant Attorneys General and appropriate Office Directors and Section Chiefs his authority to find appropriate or inappropriate the transfer of offenders to or from a foreign country under certain treaties. This final rule authorizes the Assistant Attorney General to redelegate this authority to his Deputy Assistant Attorneys General, the Senior Associate Director, Office of Enforcement Operations and, in the absence of the Senior Associate Director, the Director of the Office of Enforcement Operations.

This regulation is not a major rule within the meaning of Executive Order 12291 because it imposes no new requirements. Therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities and, therefore, is not subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Prisoners.

For the reasons stated in the preamble, Title 18, Part 0, Subpart K of the Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1324A, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 4001, 4041, 4042, 4044, 4082, 4201 *et seq.*, 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552a, 569; 31 U.S.C. 1108, 3801 *et seq.*; 50 U.S.C. App. 2001–2017p; Pub. L. NO. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. In § 0.64–2, the final sentence is deleted and the following sentence is added to read as follows:

§ 0.64–2 [Amended]

* * * * *

The Assistant Attorney General in charge of the Criminal Division is authorized to redelegate this authority to his Deputy Assistant Attorneys General, the Senior Associate Director of the Office of Enforcement Operations and, in the Senior Associate Director's absence, the Director, Office of Enforcement Operations.

Dated: March 23, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88–7233 Filed 4–1–88; 8:45 am]

BILLING CODE 4410–01–M

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28 CFR Part 0

[Atty. Gen. Order No. 1266–88]

Delegation of Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This document contains two delegations of authority from the Attorney General to the Director, Bureau of Prisons. Both delegations are a result of the implementation of the Comprehensive Crime Control Act (CCCA) of 1984. The first authorizes the Director, Bureau of Prisons to approve inmate disciplinary regulations. This delegation is prompted by the new provision, effective November 1, 1987, on credit toward service of sentence for satisfactory behavior, as set forth in 18 U.S.C. 3624. That section provides for an inmate who is serving a sentence greater than one year and less than life to receive a 54-day reduction from his sentence at the end of each year. This reduction, once made, is vested, and will occur unless "the Bureau of Prisons determines that, during the year, he has not satisfactorily complied with such institutional disciplinary regulations as have been approved by the Attorney General and issued to the prisoner." While the Bureau already has the general authority to implement disciplinary regulations, both under 18 U.S.C. 4042 and 28 CFR 0.96, the language of 18 U.S.C. 3624 warrants this specific delegation.

The second delegation pertains to the mental competency provisions of the CCCA. 28 CFR 0.96(k) currently authorizes the Director, Bureau of Prisons to remove insane prisoners to suitable institutions and retransfer to penal or correctional institutions upon recovery. This authority was based on the then-existing law set forth in 18 U.S.C. 4241, 4242. These statutory sections were revised by Chapter 313, Offenders With Mental Disease or Defect, of the CCCA. The present amendment to 28 CFR 0.96 is intended to redelegate the authority and responsibility of the Attorney General in Chapter 313 to the Director, Bureau of Prisons. These redelegations are expected to allow for a more efficient and direct handling of the matters discussed in this Chapter.

Chapter 313 amended provisions of Title 18, United States Code relating to the procedures to be followed for offenders who are or have been suffering from a mental disease or defect. In carrying out the provisions of this Chapter, the Attorney General has numerous responsibilities. Some of these include designating a suitable facility for hospitalization (18 U.S.C. 4241, 4244, 4245); attempting to arrange for the release of a person committed to his care by the court to the appropriate official of the State in which the person is domiciled or was tried (18 U.S.C. 4243, 4246); and, for designating a suitable facility for a psychiatric or psychological examination (18 U.S.C. 4247(b)).

The authority of the Attorney General is further delineated in 18 U.S.C. 4247(i), and includes such areas as contracting for the appropriate housing of persons committed under Chapter 313; and applying for civil commitment, pursuant to State law, of persons committed to the Attorney General's custody pursuant to 18 U.S.C. 4243, 4246. The Attorney General, in arranging for the hospitalization in a suitable facility of a person suffering from mental disease or defect, is to consider the suitability of the facility's rehabilitation programs in meeting the needs of the person. The Attorney General is also to consult with the Secretary of the Department of Health and Human Services in the general implementation of the provisions of Chapter 313, and in the establishment of standards for facilities used in the implementation of this Chapter.

EFFECTIVE DATE: March 23, 1988.

FOR FURTHER INFORMATION CONTACT: Hank Jacob, Office of General Counsel, Bureau of Prisons, phone 202/272–6874.

This Order pertains to agency management. It is not subject to publication for notice and comment under 5 U.S.C. 553 and is not a rule within the meaning of either the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, or Executive Order No. 12291 ("Federal Regulation").

List of Subjects in 28 CFR Part 0

Authority delegation (Government agencies), Organization and functions (Government agencies).

Accordingly, by virtue of the authority vested in me by 28 U.S.C. 510 and 5 U.S.C. 301, 0.96 of Title 28, Code of Federal Regulations is amended as follows:

PART 0—[AMENDED]

1. The authority citation for Part 0 is revised to read as follows:

Authority: 5 U.S.C. 301, 2303; 8 U.S.C. 1103, 1427(g); 15 U.S.C. 644(k); 18 U.S.C. 2254, 3621, 3622, 3624, 4001, 4041, 4042, 4044, 4082, 4201 et seq., 4241 et seq., 6003(b); 21 U.S.C. 871, 881(d), 904; 22 U.S.C. 263a, 1621–1645o, 1622 note; 28 U.S.C. 509, 510, 515, 524, 542, 543, 552, 552a, 569; 31 U.S.C. 1108; 50 U.S.C. App. 2001–2017p; Pub. L. No. 91–513, sec. 501; EO 11919; EO 11267; EO 11300.

2. 28 CFR 0.96 is amended by revising paragraph (k) and adding a new paragraph (v) to read as follows:

§ 0.96 [Amended]

* * * * *

(k) Performing the functions of the Attorney General under the provisions of 18 U.S.C. Chapter 313 (§§ 4241–4247).

* * * * *

(v) Approving inmate disciplinary and good time regulations (18 U.S.C. 3624).

Dated: March 23, 1988.

Edwin Meese III,

Attorney General.

[FR Doc. 88-7234 Filed 4-1-88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Freedom of Information Reform Act of 1986; Revision of Fee Schedule; Fee Waiver Policy

AGENCY: National Labor Relations Board.

ACTION: Final rule.

SUMMARY: The National Labor Relations Board (NLRB) amends its Freedom of Information Act (FOIA) Regulations, 29 CFR 102.117, in accordance with provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570) regarding fees and fee waivers. As required by the Reform Act, the Office of Management and Budget has issued a fee schedule and guidelines, 52 FR 10012 (March 27, 1987) to which the NLRB's rules conform.

EFFECTIVE DATE: May 16, 1988.

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 October 27, 1986, the President signed the Freedom of Information Reform Act of 1986 (Pub. L. 99-570). This legislation amended the Freedom of Information Act (FOIA) to provide broader exemption protection for law enforcement information and modified the Act's fee and fee waiver provisions. The Reform Act specifically required the Office of Management and Budget (OMB) to develop and issue a schedule of fees and guidelines pursuant to notice and public comment. The Act also required individual agencies to "promulgate, regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees" applicable to the processing of FOIA requests (5 U.S.C. 552(a)(4)(A)(i)). On July 17, 1987, the Board published in the **Federal Register** proposed changes to its rules and regulations that were necessary to implement the new fee schedule and fee waiver provisions of the FOIA (52 FR 27012-16).

The NLRB received a total of three comments to its proposed rules. Two of the comments were critical of the Board's definitions of the specified user groups. These definitions were based on the definitions promulgated by the OMB, and the Board was limited in its ability to respond to the comments because it was statutorily obligated to conform its fee schedule to that promulgated by OMB, 5 U.S.C. 552(a)(4)(A)(i). The last comment suggested that the Board should adopt more detailed substantive regulations implementing the amended fee waiver standard in the Freedom of Information Act. The Board considered revising the proposed rule but concluded that it was sufficient to incorporate in its rules the statutory language governing fee waiver. Therefore, the final rule is unchanged from its publication in proposed form.

A new paragraph (d) contains the fee-related provisions. The remaining portions of the rule contain changes in the designations of paragraphs and sections and in cross-references, and are published in their entirety.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the NLRB certifies that this rule will not have a significant impact on a substantial number of small business.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor Management relations, Freedom of Information Act.

Accordingly, 29 CFR Part 102 is amended as follows:

PART 102—RULES AND REGULATIONS, SERIES 8

1. The authority citation for 29 CFR Part 102 is revised as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117 also issued under section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. Section 102.117 is amended by redesignating paragraphs (d) through (k) as (e) through (l). Section 102.117 is further amended by adding a new paragraph (d). Paragraphs (c)(1) and (c)(2) (i) and (ii) and (e) through (l) are revised, and paragraphs (c)(2) (iv) and (v) are removed.

§ 102.117 Board materials and formal documents available for public inspection and copying; requests for described records; time limit for response; appeal from denial of request; fees for document search, duplication, and review; files and records not subject to inspection.

* * * * *

(c)(1) Requests for the inspection and copying of records other than those specified in paragraphs (a) and (b) of this section must be in writing and must reasonably describe the record in a manner to permit its identification and location. The envelope and the letter should be clearly marked to indicate that it contains a request for records under the Freedom of Information Act (FOIA). The request must contain a specific statement assuming financial liability in accordance with paragraph (d)(2) of this section for the direct costs of responding to the request. If the request is for records in a Regional or subregional office of the Agency, it should be made to that Regional or subregional office; if for records in the Office of the General Counsel and located in Washington, DC, it should be made to the Freedom of Information Officer, Office of the General Counsel, Washington, DC; and if for records in the offices of the Board in Washington, DC, to the Executive Secretary of the Board, Washington, DC. Requests made to other than the appropriate office will be forwarded to that office by the receiving office, but in that event the applicable time limit for response set forth in paragraph (c)(2)(i) of this section shall be calculated from the date of receipt by the appropriate office.

(2)(i) Within 10 working days after receipt of a request by the appropriate office of the Agency a determination shall be made whether to comply with such request, and the person making the request shall be notified in writing of that determination. If the determination is to comply with the request, the records shall be promptly available to the person making the request upon payment of any charges due in accordance with the provisions of paragraph (d)(2) of this section. If the determination is to deny the request, the notification shall set forth the reasons therefor and the name and title or position of each person responsible for the denial, and shall notify the person making the request of the right to appeal the adverse determination under the provisions of paragraph (c)(2)(ii) of this section.

(ii) An appeal from an adverse determination made pursuant to paragraph (c)(2)(i) of this section must be filed within 20 working days of the receipt by the person of the notification of the adverse determination where the request is denied in its entirety; or, in the case of a partial denial, within 20 working days of the receipt of any records being made available pursuant to the request. If the adverse determination was made in a Regional Office, a subregional office, or by the Freedom of Information Officer, Office of the General Counsel, the appeal shall

be filed with the General Counsel in Washington, DC. If the adverse determination was made by the Executive Secretary of the Board, the appeal shall be filed with the Chairman of the Board in Washington, DC. Within 20 working days after the receipt of an appeal the Chairman of the Board or the General Counsel, as the case may be, shall make a determination with respect to such appeal and shall notify the person in writing. If the determination is to comply with the request, the record shall be made promptly available to the person making the request upon receipt of payment of any charges due in accordance with the provisions of paragraph (d)(2) of this section. If on appeal the denial of the request for records is upheld in whole or in part, the person making the request shall be notified of the reasons for the determination, the name and title or position of each person responsible for the denial, and the provisions for judicial review of that determination under the provisions of 5 U.S.C. 552(4)(B). Even though no appeal is filed from a denial in whole or in part of a request for records by the person making the request, the Chairman of the Board or the General Counsel may, without regard to the time limit for filing of an appeal, sua sponte initiate consideration of an adverse determination under this appeal procedure by written notification to the person making the request. In such event the time limit for making the determination shall commence with the issuance of such notification.

* * * * *

(d)(1) For purposes of this section, the following definitions apply:

(i) "Direct costs" means those expenditures which are actually incurred in searching for and duplicating and, in the case of commercial use requesters, reviewing documents to respond to a FOIA request.

(ii) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page and line-by-line identification of material within documents. Searches may be done manually or by computer using existing programing.

(iii) "Duplication" refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microfilm, videotape, audiotape, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(iv) "Review" refers to the process of examining documents located in response to a request that is for commercial use to determine whether a document or any portion of any document located is permitted to be withheld. It includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release.

(v) "Commercial use request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial trade or profit interests of the requester or the person on whose behalf the request is made.

(vi) "Educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education, which operates a program or programs of scholarly research.

(vii) "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a reasonable expectation of publication through that organization, even though not actually employed by it.

(viii) "Working days," as used in this paragraph, means calendar days excepting Saturdays, Sundays, and legal holidays.

(2) Persons requesting records from this Agency shall be subject to a charge of fees for the full allowable direct costs of document search, review, and duplicating, as appropriate, in accordance with the following schedules, procedures, and conditions:

(i) Schedule of charges:

(A) For each one-quarter hour or portion thereof of clerical time, $2.50.

(B) For each one-quarter hour or portion thereof of professional time, $6.60.

(C) For each sheet of duplication (not to exceed 8½ by 14 inches) of requested records, $0.10.

(D) All other direct costs of preparing a response to a request shall be charged to the requester in the same amount as incurred by the Agency. Such costs shall include, but not be limited to: certifying that records are true copies, and sending records to requesters or receiving records from the Federal records storage centers by special methods such as express mail.

(ii) Fees incurred in responding to information requests are to be charged in accordance with the following categories of requesters:

(A) Commercial use requesters will be assessed charges to recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to 2 hours of free search time nor 100 free pages of reproduction of documents.

(B) Educational institution requesters will be assessed charges for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but are sought in furtherance of scholarly research. Requesters must reasonably describe the records sought.

(C) Requesters who are representatives of the news media will be assessed charges for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in paragraph (d)(1)(vii) of this section, and the request must not be made for commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for commercial use. Requesters must reasonably describe the records sought.

(D) All other requesters, not elsewhere described, will be assessed charges to recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first 2 hours of search time shall be furnished without charge. Requesters must reasonably describe the records sought.

(E) Absent a reasonably based factual showing that a requester should be placed in a particular user category, fees will be imposed as provided for in the commercial use requester category.

(iii)(A) In no event shall fees be imposed on any requester when the total charges are less than $11, which is the Agency cost of collecting and processing the fee itself.

(B) If the Agency has reason to believe that a requester or several requesters whose interests are aligned are breaking up a request into several smaller requests for the purpose of

evading the imposition of fees that otherwise would be charged, the Agency may, after notification, aggregate the requests and impose fees in accordance with the fee schedule in this section.

(iv) Documents are to be furnished without charge or at reduced levels if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(v) If a requester fails to pay chargeable fees that were incurred as a result of the Agency's processing of the information request, beginning on the 31st day following the date on which the notification of charges was sent, the Agency may assess interest charges against the requester in the manner prescribed in section 3717 of Title 31 U.S.C.

(vi) Each request for records shall contain a specific statement assuming financial liability, in full or to a specified maximum amount, for charges, in accordance with paragraphs (d)(2) (i) and (ii) of this section, which may be incurred by the Agency in responding to the request. If the anticipated charges exceed the maximum limit stated by the person making the request or if the request contains no assumption of financial liability for charges, the person shall be notified and afforded an opportunity to assume financial liability. The request for records shall not be deemed received for purposes of the applicable time limit for response until a written assumption of financial liability is received. The Agency may require a requester to make an advance payment of anticipated fees under the following circumstances:

(A) If the anticipated charges are likely to exceed $250, the Agency shall notify the requester of the likely cost and obtain satisfactory assurance of full payment when the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(B) If a requester has previously failed to pay fees that have been charged in processing a request within 30 days of the date when the notification of fees was sent, the requester will be required to pay the entire amount of fees that are owed, plus interest as provided for in paragraph (d)(2)(v) of this section, before the Agency will process a further information request. In addition, the Agency may require advance payment of fees that the Agency estimates will be incurred in processing the further request before the Agency commences processing that request. When the Agency acts under paragraph (d)(2)(vi) (A) or (B) of this section, the administrative time limits for responding to a request or an appeal from initial denials will begin to run only after the Agency has received the fee payments required above.

(vii) Charges may be imposed even though the search discloses no records responsive to the request, or none not exempt from disclosure.

(e) Subject to the provisions of §§ 102.31(c) and 102.66(c), all fines, documents, reports, memoranda, and records of the Agency falling within the exemptions specified in 5 U.S.G. 552(b) shall not be made available for inspection or copying, unless specifically permitted by the Board, its Chairman, or its General Counsel.

(f) An individual will be informed whether a system of records maintained by this Agency contains a record pertaining to such individual. An inquiry should be made in writing or in person during normal business hours to the official of this Agency designated for that purpose and at the address set forth in a notice of a system of records published by this Agency, in a Notice of Systems of Governmentwide Personnel Records published by the Office of Personnel Management, or in a Notice of Governmentwide Systems of Records published by the Department of Labor. Copies of such notices, and assistance in preparing an inquiry, may be obtained from any Regional Office of the Board or at the Board offices at 1717 Pennsylvania Avenue, NW., Washington, DC 20570. The inquiry should contain sufficient information, as defined in the notice, to identify the record. Reasonable verification of the identity of the inquirer, as described in paragraph (j) of this section, will be required to assure that information is disclosed to the proper person. The Agency shall acknowledge the inquiry in writing within 10 days (excluding Saturdays, Sundays, and legal public holidays) and, wherever practicable, the acknowledgment shall supply the information requested. If, for good cause shown, the Agency cannot supply the information within 10 days, the inquirer shall within that time period be notified in writing of the reasons therefor and when it is anticipated the information will be supplied. An acknowledgment will not be provided when the information is supplied within the 10-day period. If the Agency refuses to inform an individual whether a system of records contains a record pertaining to an individual, the inquirer shall be notified in writing of that determination and the reasons therefor, and of the right to obtain review of that determination under the provisions of paragraph (k) of this section.

(g) An individual will be permitted access to records pertaining to such individual contained in any system of records described in the notice of system of records published by this Agency, or access to the accounting of disclosures from such records. The request for access must be made in writing or in person during normal business hours to the person designated for that purpose and at the address set forth in the published notice of system of records. The request for access must be made in writing or in person during normal business hours to the person designated for that purpose and at the address set forth in the published notice of system of records. Copies of such notices, and assistance in preparing a request for access, may be obtained from any Regional Office of the Board or at the Board offices at 1717 Pennsylvania Avenue NW., Washington, DC 20570. Reasonable verification of the identity of the requester, as described in paragraph (j) of this section, shall be required to assure that records are disclosed to the proper person. A request for access to records or the accounting of disclosures from such records shall be acknowledged in writing by the Agency within 10 days of receipt (excluding Saturdays, Sundays, and legal public holidays) and, wherever practicable, the acknowledgment shall inform the requester whether access will be granted and, if so, the time and location at which the records or accounting will be made available. If access to the record or accounting is to be granted, the record or accounting will normally be provided within 30 days (excluding Saturdays, Sundays, and legal public holidays) of the request, unless for good cause shown the Agency is unable to do so, in which case the individual will be informed in writing within that 30-day period of the reasons therefor and when it is anticipated that access will be granted. An acknowledgment of a request will not be provided if the record is made available within the 10-day period. If an individual's request for access to a record or an accounting of disclosure from such a record under the provisions of this paragraph is denied, the notice informing the individual of the denial shall set forth the reasons therefor and advise the individual of the right to obtain a review of that determination under the provisions of paragraph (k) of this section.

(h) An individual granted access to records pertaining to such individual contained in a system of records may review all such records. For that purpose the individual may be accompanied by a person of the individual's choosing, or the record may be released to the individual's representative who has written consent of the individual, as described in paragraph (j) of this section. A first copy of any such record or information will ordinarily be provided without charge to the individual or representative in a form comprehensible to the individual. Fees for any other copies of requested records shall be assessed at the rate of 10 cents for each sheet of duplication.

(i) An individual may request amendment of a record pertaining to such individual in a system of records maintained by this Agency. A request for amendment of a record must be in writing and submitted during normal business hours to the person designated for that purpose and at the address set forth in the published notice for the system of records containing the record of which amendment is sought. Copies of such notices, and assistance in preparing a request for amendment, may be obtained from any Regional Office of the Board or at the Board offices at 1717 Pennsylvania Avenue NW., Washington, DC 20570. The requester must provide verification of identity as described in paragraph (j) of this section, and the request should set forth the specific amendment requested and the reason for the requested amendment. The Agency shall acknowledge in writing receipt of the request within 10 days of receipt (excluding Saturdays, Sundays, and legal public holidays) and, wherever practicable, the acknowledgment shall advise the individual of the determination of the request. If the review of the request for amendment cannot be completed and a determination made within 10 days, the review shall be completed as soon as possible, normally within 30 days (Saturdays, Sundays, and legal public holidays excluded) of receipt of the request unless unusual circumstances preclude completing the review within that time, in which event the requester will be notified in writing within that 30-day period of the reasons for the delay and when the determination of the request may be expected. If the determination is to amend the record, the requester shall be so notified in writing and the record shall be amended in accordance with that determination. If any disclosures accountable under the provisions of 5 U.S.C. 552a(c) have been made, all previous recipients of the record which was amended shall be advised of the amendment and its substance. If it is determined that the request should not be granted, the requester shall be notified in writing of that determination and of the reasons therefor, and advised of the right to obtain review of the adverse determination under the provisions of paragraph (k) of this section.

(j) Verification of the identification of individuals required under paragraphs (f), (g), (h), and (i) of this section to assure that records are disclosed to the proper person shall be required by the Agency to an extent consistent with the nature, location, and sensitivity of the records being disclosed. Disclosure of a record to an individual in person will normally be made upon the presentation of acceptable identification. Disclosure of records by mail may be made on the basis of the identifying information set forth in the request. Depending on the nature, location, and sensitivity of the requested record, a signed notarized statement verifying identity may be required by the Agency. Proof of authorization as representative to have access to a record of an individual shall be in writing, and a signed notarized statement of such authorization may be required by the Agency if the record requested is of a sensitive nature.

(k)(1) Review may be obtained with respect to:

(i) A refusal, under paragraph (f) or (l) of this section, to inform an individual if a system of records contains a record concerning that individual,

(ii) A refusal, under paragraph (g) or (l) of this section, to grant access to a record or an accounting of disclosure from such a record, or

(iii) A refusal, under paragraph (i) of this section, to amend a record.

The request for review should be made to the Chairman of the Board if the system of records is maintained in the office of a Member of the Board, the office of the Executive Secretary, the office of the Solicitor, the Division of Information, or the Division of Administrative Law Judges. Consonant with the provisions of section 3(d) of the National Labor Relations Act, and the delegation of authority from the Board to the General Counsel, the request should be made to the General Counsel if the system of records is maintained by an office of the Agency other than those enumerated above. Either the Chairman of the Board or the General Counsel may designate in writing another officer of the Agency to review the refusal of the request. Such review shall be completed within 30 days (excluding Saturdays, Sundays, and legal public holidays) from the receipt of the request for review unless the Chairman of the Board or the General Counsel, as the case may be, for good cause shown, shall extend such 30-day period.

(2) If, upon review of a refusal under paragraph (f) or (l), the reviewing officer determines that the individual should be informed of whether a system of records contains a record pertaining to that individual, such information shall be promptly provided. If the reviewing officer determines that the information was properly denied, the individual shall be so informed in writing with a brief statement of the reasons therefor.

(3) If, upon review of a refusal under paragraph (g) or (l), the reviewing officer determines that access to a record or to an accounting of disclosures should be granted, the requester shall be so notified and the record or accounting shall be promptly made available to the requester. If the reviewing officer determines that the request for access was properly denied, the individual shall be so informed in writing with a brief statement of the reasons therefor, and of the right to judicial review of that determination under the provisions of 5 U.S.C. 552a(g)(1)(B).

(4) If, upon review of a refusal under paragraph (i), the reviewing official grants a request to amend, the requester shall be so notified, the record shall be amended in accordance with the determination, and, if any disclosures accountable under the provisions of 5 U.S.C. 552a(c) have been made, all previous recipients of the record which was amended shall be advised of the amendment and its substance. If the reviewing officer determines that the denial of a request for amendment should be sustained, the Agency shall advise the requester of the determination and the reasons therefor, and that the individual may file with the Agency a concise statement of the reason for disagreeing with the determination, and may seek judicial review of the Agency's denial of the request to amend the record. In the event a statement of disagreement is filed, that statement—

(i) Will be made available to anyone to whom the record is subsequently disclosed together with, at the discretion of the Agency, a brief statement summarizing the Agency's reasons for declining to amend the record, and

(ii) Will be supplied, together with any Agency statements, to any prior recipients of the disputed record to the extent that an accounting of disclosure was made.

(l) To the extent that portions of system of records described in notices

of Governmentwide systems of records published by the Office of Personnel Management are identified by those notices as being subject to the management of an officer of this Agency, or an officer of this Agency is designated as the official to contact for information, access, or contents of those records, individual requests for access to those records, requests for their amendment, and review of denials of requests for amendment shall be in accordance with the provisions of 5 CFR Part 297, Subpart A, § 297.101, *et seq.*, as promulgated by the Office of Personnel Management. To the extent that portions of system of records described in notices of Governmentwide system of records published by the Department of Labor are identified by those notices as being subject to the management of an officer of this Agency, or an officer of this Agency is designated as the official to contact for information, access, or contents of those records, individual requests for access to those records, requests for their amendment, and review of denials of requests for amendment shall be in accordance with the provisions of this rule. Review of a refusal to inform an individual whether such a system of records contains a record pertaining to that individual and review of a refusal to grant an individual's request for access to a record in such a system may be obtained in accordance with the provisions of paragraph (k) of this section.

Dated, Washington, DC, March 29, 1988.

By direction of the Board.

National Labor Relations Board.

C. Truesdale,

Exective Secretary.

[FR Doc. 88-7209 Filed 4-1-88; 8:45 am]

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DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 388

[DoD Directive 5141.5]

Strategic Defense Initiative Organization (SDIO)

AGENCY: Department of Defense.

ACTION: Final rule.

SUMMARY: This part establishes the Strategic Defense Initiative Organization as an agency of the Department of Defense and delineates its responsibilities, functions, relationships, and authorities.

EFFECTIVE DATE: June 4, 1987.

FOR FURTHER INFORMATION CONTACT: Mr. R. Furtner, Office of the Assistant Secretary of Defense (Comptroller), the Pentagon, Washington, DC 20301, telephone (202) 695-4281.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 388

Organization and function.

Accordingly, Title 32, Chapter I, is amended to add Part 388 as follows:

PART 388—STRATEGIC DEFENSE INITIATIVE ORGANIZATION

Sec.

Authority: 10 U.S.C. 192.

§ 388.1 Purpose.

This part establishes, pursuant to the authority vested in the Secretary of Defense under 10 U.S.C. and National Security Decision Directive 119, January 6, 1984, the Strategic Defense Initiative Organization (hereafter referred to as "SDIO") as an agency of the Department of Defense with responsibilities, functions, relationships, and authorities as prescribed herein.

§ 388.2 Applicability.

This applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, the Inspector General of the Department of Defense (IG, DoD), and the Defense Agencies (hereafter referred to as "DoD Components").

§ 388.3 Mission.

SDIO shall manage and direct the conduct of a vigorous research program, including advanced technologies, that will provide the basis for an informed decision regarding the feasibility of eliminating the threat posed by nuclear ballistic missiles of all ranges, and of increasing the contribution of defensive systems to U.S. and allied security. The program shall protect options for near-term deployment of limited ballistic missile defenses. The program shall be carried out in full consultation and, where appropriate, with participation of our allies. The program shall be conducted in compliance with all existing treaty obligations and will emphasize non-nuclear technologies.

§ 388.4 Organization and management.

(a) SDIO is established as a separate agency of the Department of Defense under the direction, authority, and control of the Secretary of Defense, and shall function under the overall supervision of the Deputy Secretary of Defense. It shall consist of a Director, appointed by the Secretary of Defense, and such subordinate organizational elements as are established by the Director within resources authorized by the Secretary of Defense.

(b) The SDI Executive Committee (EXCOM) shall provide DoD oversight and guidance for the internal management of the Strategic Defense Initiative Program (SDIP). The EXCOM shall provide formal review of the program for the Secretary of Defense. It shall be chaired by the Deputy Secretary of Defense and shall include as members: the Vice Chairman of the Joint Chiefs of Staff; the Secretaries of the Military Departments and Chiefs of the Military Services; the Under Secretaries of Defense; the Assistant Secretary of Defense (Comptroller) (ASD(C)); the Assistant Secretary of Defense (Production and Logistics) (ASD(P&L)); the Assistant Secretary of Defense (Command, Control, Communications, and Intelligence) (ASD(C3I)); the Assistant Secretary of Defense (Legislative Affairs); the Director of Operational Test and Evaluation (Director, OT&E); the Assistant to the Secretary of Defense (Atomic Energy); the Director, Program Analysis and Evaluation (DPA&E); and the Directors of the Defense Advanced Research Projects Agency and the Defense Nuclear Agency. The Director, SDIO, shall serve as Executive Secretary of the EXCOM.

§ 388.5 Functions and responsibilities.

(a) The *Director, SDIO*, is the principal advisor to the Secretary of Defense and the Deputy Secretary of Defense for SDIP programmatic policy, requirements, priorities, systems, resources and programs. The DSDIO shall, under the overall supervision of the Deputy Secretary of Defense and subject to the direction of the Secretary of Defense and Deputy Secretary of Defense, organize, direct, and manage the SDIO and exercise management oversight of all DoD SDIP programs and resources. In the performance of these responsibilities, the Director shall:

(1) Develop programmatic policies, issue program guidance, and assign project responsibility to DoD Components.

(2) Develop systems, standards, and procedures for the administration and

management of approved SDI plans and programs; establish program goals and objectives; set priorities; and evaluate DoD Componet SDI program activities.

(3) In coordination with the ASD(C) and DPA&E, review DoD Component SDI Program Objectives Memoranda (POMs) and budget submissions; make determinations regarding priorities and resources; prepare the consolidated SDI POM; provide recommendations on Program Budget Decisions to the ASD(C) and DPA&E or incorporation into the planning, programming, and budgeting system (PPBS) process; and initiate and implement Congressional reprogramming actions.

(4) Make such determinations regarding priorities and resources as may be required to achieve approved program objectives.

(5) Serve as SDI Acquisition Executive for the SDIO.

(6) In coordination with appropriate DoD officials, identify service, agency, and SDIO responsibilities for program execution, and in such cases where source-selection is not delegated to the Military Departments and Defense Agencies, retain authority within SDIO.

(7) In coordination with the Under Secretary of Defense (Acquisition) (USD(A)), develop mechanisms for coordinating SDI programs with other DoD research, development, test and evaluation efforts.

(8) Oversee the participation of U.S. allies in the SDIP. Through coordination with the appropriate executing agent, delegate international projects to the Military Departments of Defense Agencies.

(9) Present the SDI POM, the annual budget, and periodic program reviews to the SDIO EXCOM.

(10) In consideration of the Chairman, Joint Chiefs of Staff; Military Department; and Defense Agency requirements and recommendations, plan for future transition of the SDI research program into development and subsequent production and deployment.

(11) Perform research to establish supportability criteria for the integration of logistic factors with system architectures, concepts, and design activity during the early phases of the SDIP.

(12) Serve as principal DoD official responsible for presenting the SDIP budget to the Congress.

(13) Serve as principal public spokesperson for the SDIP.

(14) Promote coordination, cooperation, and mutual understanding within the Department of Defense and between the Department of Defense and other Federal Agencies, and the civilian community.

(15) Serve on boards, committees, and other groups pertaining to SDIO functions and responsibilities.

(16) Establish internal procedures for compliance with the ABM Treaty and other SAL Agreements, pursuant to DoD Directive 5100.70.[1]

(17) Perform such other duties as the Secretary of Defense or Deputy Secretary of Defense may prescribe.

(b) *DoD Components* shall provide advice and support to the DSDIO in accordance with applicable DoD Directives.

(c) The *Secretaries of the Military Departments and Directors of Defense Agencies* shall:

(1) Execute SDI programs as approved by the Secretary of Defense.

(2) Establish a streamlined management structure and procedure: to include a single office of primary responsibility to facilitate expedited communications and actions on the SDI program.

(3) Provide program recommendations to the Director, SDIO, for consideration in the development of the SDI POM. These recommendations shall be developed as an integral part of the Military Departments/Defense Agencies POM process. The participating Military Departments and Defense Agencies must review their assigned work packages and resources to ensure that supporting Military Departments/Defense Agency requirements are adequately addressed (e.g., manpower, facilities, etc.).

(4) Submit program documentation and reports required by the Director, SDIO.

(5) Establish simplified contract/procurement procedures for and creative methods of achieving program objectives consistent with applicable laws and good management practice.

(d) The *Chairman of the Joint Chiefs of Staff* (CJCS) shall provide strategic guidance and define operational concepts and requirements.

§ 388.6 Relationships.

(a) In the performance of assigned functions, the Director, SDIO, shall:

(1) Serve as a member of the Defense Resources Board when SDI matters are under consideration and Executive Secretary of the SDI Executive Committee.

(2) Consult with the CJCS and Under Secretary of Defense for Policy when addressing issues under their respective purview, to include the strategy and policy implications of defensive capabilities.

(3) Establish, in consultation with the USD(A), ASD(P&L), ASD(C) and the Director, OT&E, mechanisms for coordination of SDI programs with other DoD technical efforts.

(4) Establish procedures for streamlined communications with each Military Department and Defense Agency involved in the SDI Program.

(5) Maintain active liaison for the exchange of information and advice in the field of assigned responsibility with all DoD Components, other U.S. Government activities, and non-DoD research institutions (including private business entities and educational institutions).

(6) Keep the Secretary of Defense, the Deputy Secretary of Defense the OSD Staff, the Secretaries and Chiefs of the Military Departments, the CJCS, and other DoD and non-DoD U.S. Government Agencies informed on schedules, status, and significant new developments, breakthroughs, and technological advances within assigned projects.

(7) Make appropriate use of established facilities in the OSD, other DoD Components, and other Government Agencies rather than unnecessarily duplicating such facilities.

(8) Operate within the DoD Acquisition System, taking direction from the USD(A) on matters of acquisition policy, procedure, and execution, consistent with DoD Directive 5134.1.[2]

(9) Coordinate and exchange information with other DoD officials having collateral and related functions.

(b) Within available resources, officials of all DoD Components will provide support, in their respective fields of responsibility, to the Director, SDIO, as may be necessary to carry out the assigned responsibilities and functions of the SDIO.

(c) Other DoD officials shall coordinate with the Director, SDIO, concerning the functions and responsibilities cited in § 388.5.

§ 388.7 Authorities.

The Director, SDIO, is hereby delegated authority to:

(a) Enter into and administer contracts, directly or through a Military Department, a DoD contract administration services component, or other governmental department or agency, as appropriate, for supplies, equipment, and services required to accomplish the mission of the SDIO.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Centers, Attn: Code 1052, 5801 Tabor Avenue, Philadelphia, PA 19120.

[2] See footnote 1 to § 388.5(a)(16).

(b) Serve as the head of an Agency and Contracting Activity within the meaning of and subject to the limitations of FAR 2.1, and DoD FAR Supplement 2.1, for the SDIO.

(c) Authorize the allocation/sub-allocation of funds made available to SDIO for assigned research and development projects.

(d) Acquire or construct, through a Military Department or other Government Agency, such research, development, and test facilities and equipment required to carry out assignments that may be approved by the Secretary of Defense or Deputy Secretary of Defense in accordance with applicable statutes.

(e) Negotiate agreements, as necessary, with other U.S. agencies and organizations to ensure proper coordination and execution of the SDIP.

(f) Negotiate agreements, as necessary, with foreign governments to execute allied participation in the SDI research program. These agreements will be subject to approval by duly constituted DoD authorities.

(g) Recommend to the Secretary of Defense, Deputy Secretary of Defense, or USD(A) revisions or exceptions to Military Department/Defense Agency regulations, Directives, procedures or Instructions for, or related to, acquisition for individual or a class of SDIO requirements as determined necessary to accomplish the SDIO objectives.

(h) Communicate directly with heads of the DoD organizations, including the Secretaries and Chiefs of the Military Departments, the CJCS, the Directors of Defense Agencies, and, under special circumstances, with the Commanders of the Unified and Specified Commands.

(i) Establish special security procedures for sensitive SDI research programs.

(j) Exercise the administrative authorities contained in the Appendix of this part.

§ 388.8 Administration.

(a) SDIO shall be authorized such personnel, facilities, funds, and other administrative support as the Secretary of Defense deems necessary.

(b) The Military Departments shall assign personnel to SDIO in accordance with approved authorizations and procedures for assignment to joint duty.

(c) Administrative support required for SDIO will be provided by the Director, Washington Headquarters Services, and other DoD Components, as appropriate.

§ 388.9 Effective date.

This part is effective June 4, 1987.

Appendix—Delegations of Authority

Pursuant to the authority vested in the Secretary of Defense, and in accordance with DoD policies, Directives, and Instructions, the Director of the Strategic Defense Initiative Organization (DSDIO) or, in the absence of the Director, the person acting for him or her, is hereby delegated authority, as required in the administration and operation of the Strategic Defense Initiative Organization to:

1. Perform the following functions in accordance with the provisions of Title 5, United States Code, section 7532; Executive Order 10450, "Security Requirements for Government Employment," April 27, 1953; and DoD 5200.2–R, "DoD Personnel Security Program," December 20, 1979:

a. Designate any position in the SDIO as a "sensitive" position.

b. Authorize, in case of an emergency, the appointment of a person to a sensitive position in the SDIO, for a limited period of time, for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

c. Authorize the suspension, but not the termination, of the services of an SDIO employee in the interest of national security.

2. Authorize and approve:

a. Travel for SDIO civilian employees in accordance with Volume II, Joint Travel Regulations.

b. Temporary duty travel only for military personnel assigned or detailed to SDIO in accordance with Volume I, Joint Travel Regulations.

c. Invitational travel to persons serving without compensation whose consultative, advisory, or other specialized technical services are required in a capacity directly related to, or in connection with, SDIO activities.

3. Approve the expenditure of funds available for travel by military personnel assigned or detailed to SDIO for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations in such instances where the approval of the Secretary of Defense or his designee is required by law (37 U.S.C. 412). This authority cannot be redelegated.

4. Develop, establish, and maintain an active and continuing Records Management Program under DoD Directive 5015.2, "Records Management Program," September 17, 1980; DoD Directive 5400.7, "DoD Freedom of Information Act Program," March 24, 1980; and DoD Directive 5400.11, "Department of Defense Privacy Program," June 9, 1982.

5. Establish and use imprest funds for making small purchases of material and services, other than personal, for the SDIO when it is determined more advantageous and consistent with the best interests of the Government, in accordance with DoD Instruction 5100.71, "Delegation of Authority and Regulations Relating to Cash Held at Personal Risk Including Imprest Funds," March 5, 1973, and the Joint Regulation of the General Services Administration/Treasury.

6. Authorize and approve overtime work for civilian personnel in SDIO in accordance with the provisions of the Federal Personnel Manual Supplement 990–1, section 550.111.

7. Establish and maintain appropriate property accounts for SDIO and appoint boards of survey, approve reports of survey, relieve personal liability, and drop accountability for SDIO property contained in the authorized property accounts that have been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

8. Establish and maintain, for the functions assigned, an appropriate publications system for the promulgation of regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD 5025.1–M, "Department of Defense Directives System Procedures," April 1981.

9. Issue the necessary security regulations for protection of property and places under the jurisdiction of the SDIO, under DoD Directive 5200.8, "Security of Military Installations and Resources," July 29, 1980.

10. Exercise original TOP SECRET classification authority.

11. Establish security classification guidance and review policy.

12. In coordination with the Deputy Assistant Secretary of Defense (Administration), enter into interservice support agreements with the Military Departments, other DoD components, or other Government Agencies as required, for the effective performance of responsibilities and functions assigned to the SDIO.

13. Establish advisory committees pursuant to the provisions of the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and DoD Directive 5105.18, "DoD Committee Management Program," March 20, 1984.

14. Authorize the publication of advertisements, notices or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of SDIO (44 U.S.C. 3702).

15. Request specific Military Departments and Defense Agencies to serve as contracting activities for the SDIO, as necessary.

Linda Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

Dated: March 29, 1988.

[FR Doc. 88–7331 Filed 4–1–88; 8:45 am]

BILLING CODE 3810–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

Table of Frequency Allocations

AGENCY: Federal Communications Comission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission amends Part 2 of its rules to remove footnotes NG133 and 569 from the Table of Frequency Allocations. Footnotes NG133 and 569 provide for

operation of stations, other than radio astronomy stations, in the 73.0–74.6 MHz band until December 31, 1985. Since this date has passed, footnotes NG133 and 569 are obsolete and are therefore removed.

EFFECTIVE DATE: March 22, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Husnay, Office of Engineering and Technology, (202) 653–8106.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 2

Frequency allocations.

Order

[DA 88–171]

Adopted: March 14, 1988.
Released: March 22, 1988.

By the Managing Director:

1. This item deletes two obsolete footnotes to the Table of Frequency Allocations in § 2.106 of the Rules. Nongovernment (NG) footnote NG133 states that stations authorized in the band 73.0–74.6 MHz as of December 1, 1961, may continue to operate until December 31, 1985. International footnote 569 states that in Region 2, the fixed, mobile and broadcasting services previously authorized in the band 73.0–74.6 MHz may continue to operate until December 31, 1985. Since December 31, 1985, has passed, footnotes NG133 and 569 are now obsolete and are therefore removed.

2. This action is considered to be editorial in nature. Accordingly, it is ordered that footnotes NG133 and 569 in Part 2 of the Commission's Rules are removed pursuant to the authority of 47 U.S.C. Sections 154(i), 302, and 303, and pursuant to § 0.231(d) of the Commission's Rules. Because the removal of NG133 and 569 is nonsubstantive, the notice and comment provisions as well as the effective date requirements of the Administrative Procedure Act are inapplicable. This action becomes effective immediately.

Federal Communications Commission.

Edward J. Minkel,

Managing Director.

47 CFR Part 2 is amended as follows:

PART 2—[AMENDED]

1. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted.

§ 2.106 [Amended]

2. Section 2.106 is amended by removing footnotes NG133 and 569 from columns 2, 4, and 5 in band 73.0–74.6 MHz.

[FR Doc. 88–7252 Filed 4–1–88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Relict Trillium

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines *Trillium reliquum* Freeman (relict trillium) to be an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended. *Trillium reliquum* is known from only ten locations—Alabama (two sites), Georgia (five sites), and South Carolina (three sites). The species is endangered by timber harvesting, wildfires, and development of its habitat. This action will implement the Federal protection provided by the Act for *Trillium reliquum.*

EFFECTIVE DATE: May 4, 1988.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801.

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Currie at the above address (704/259–0321 or FTS 672–0321).

SUPPLEMENTARY INFORMATION:

Background

Trillium reliquum, a herbaceous member of the lily family, was recognized as a distinct species by Freeman (1975) after his extensive study of this complex and taxonomically difficult group. During his research, Freeman examined more than 10,000 *Trillium* specimens from over 80 herbaria and extensively collected and observed members of the group in the field. This rare species is distinguished from other sessile-flowered *Trillium* by its decumbent or S-curved stems, distinctively shaped anthers, and the color and shape of its leaves. The flowers appear in early spring and are greenish to brownish purple or occasionally pure yellow in color. The fruit is an oval-shaped, berry-like capsule, which matures in early summer. *Trillium reliquum* is perennial from a tuberous rhizome; and, like other members of the genus, it dies back to this rhizome after the fruit matures (Freeman 1975, Freeman 1985).

Trillium reliquum is found primarily in moist hardwood forests that have had little or no disturbance in the recent past. The soils on which it grows vary from rocky clays to alluvial sands, but all exhibit a high organic matter content in the upper soil layer. Most sites appear to be free from the influence of fire, both in the recent and distant past. Timber harvesting at the known sites has been limited to selective cutting (Freeman 1985). Relict trillium does occur on less than optimum sites, such as power and sewer line rights-of-way, and can apparently become reestablished after intensive disturbance to its habitat, such as agricultural activity (Martin *in litt.*, Boardman *in litt.*, Barrett *in litt.*). However, Rayner (1987) notes that the best populations are found in the rich wooded areas that also support other species considered rare or endangered in South Carolina. Reestablishment within power line and sewer line rights-of-way would be expected, provided that maintenance activities did not include broad spectrum herbicides or other intensive disturbances. Reestablishment of the species after intensive agricultural activities would be anticipated provided that there is a nearby source of seeds for the plants and if the original soil, moisture, and vegetational associates are reestablished on the disturbed site.

There are currently ten known extant populations and one extirpated population of *Trillium reliquum.* Alabama has two extant populations, Georgia has five extant populations and one extirpated population, and South Carolina has three populations. The following discussion of the status of each State's populations is primarily extracted from a status report on the species prepared by Freeman (1985). Freeman's 1985 information is supplemented as appropriate by the additional information noted below.

Site 1, Henry County, Alabama. This small population (approximately 150 plants on one-third acre) is on land managed as a recreation area by the U.S. Army Corps of Engineers. Roads constructed in the area, as well as an existing power transmission line, have altered the area and may have destroyed habitat occupied by *Trillium reliquum.* At the present time, illegal trash and refuse dumping and digging for fish bait are potential threats to the species at this location.

Site 2, Lee County, Alabama. This is the second largest known population of the species. Several thousand plants are distributed over an area of 120 acres. This privately owned site is near an expanding urban population; the major threat to the site is expansion of an adjacent residential subdivision. The site is currently for sale and could, in the near future, be lost to intensive residential development or conversion to intensive pine monoculture.

Site 3, Clay County, Georgia. This moderate-sized population occurs along a small creek that is a tributary of the Chattahoochee River. The plants occur within a small (3-acre) area bounded by development on three sides and unsuitable habitat on the fourth side. The site is privately owned and is threatened by timber harvesting and/or residential development.

Site 4, Columbia County, Georgia. This moderate-sized population occurs on approximately 15 acres within a privately owned tract in the vicinity of an expanding urban area. Historically, part of this population was destroyed by a quarrying operation. Current threats to the site include residential development and timber harvesting.

Site 5, Columbia County, Georgia. This very small population (less than 50 plants) occurs on unprotected, privately owned land. Recent residential development and timber harvesting have altered many areas adjacent to the site. Potential threats to this population include development, logging, and wildfires.

Site 6, Early County, Georgia. This small population was adversely impacted by a tornado that struck the area in 1983. The only plants observed in 1985 were near the edge of the impacted area. The mature hardwood forest that formerly occurred at this site has been completely destroyed and replaced with a thick tangle of broken tree trunks and limbs intertwined with greenbrier, blackberry, and grape vines.

Site 7, Talbot County, Georgia. This small population of 20 plants was discovered in the spring of 1987. It is located on a wildlife management area controlled by the Georgia Department of Natural Resources. Recent timber management activities have drastically altered the site, and its continued existence is not assured. The management agency (Georgia Department of Natural Resources) responsible for the site will ensure that future activities there are undertaken in a manner consistent with the protection of *Trillium reliquum* (Tom Patrick, Georgia Natural Heritage Inventory, pers. comm.).

Site 8, Lee County, Georgia. This site is represented by an old collection of relict trillium made by Mrs. M. G. Henry in 1939. Thorough searches of the original collection site and adjacent, apparently suitable, habitat failed to reveal the presence of an extant population in this area. *Trillium reliquum* appears to have been extirpated from Lee County by the numerous land use changes that have occurred in the area since 1939 (John Freeman, Auburn University, pers. comm.).

Site 9, Aiken and Edgefield Counties, South Carolina. This is the largest known population of *Trillium reliquum.* The population consists of a series of about ten subpopulations (or colonies) containing from a few hundred to several thousand plants. These colonies occur along a narrow band of suitable habitat that extends for approximately 3 miles. Historically, the plants were probably nearly continuously distributed over this entire area; however, extensive habitat alteration within the population has resulted in the current pattern of irregularly distributed colonies.

A portion of this population site has been purchased as a nature preserve by the South Carolina Wildlife and Marine Resources Department. An additional small colony is within a highway right-of-way owned by the South Carolina Department of Transportation. The remainder of the area is in private ownership and is threatened by residential development resulting from the expansion of an adjacent urban area. A portion of the best habitat that occurred at this location was apparently destroyed by activities associated with highway construction. A small portion of the site is currently being adversely impacted by grazing cattle. In the spring of 1986, several hundred plants were cut (while in bloom) by vandals or uninformed wildflower enthusiasts (Roger Jones, The Nature Conservancy, pers. comm.). A small population segment located on approximately 100 acres in private ownership is apparently protected from destruction by the owners' stated goal of maintaining the area in its natural condition (Boardman *in litt.*). An additional 80 acres, a portion of which supported *Trillium reliquum,* was recently logged and planted in pines (Baggott *in litt.*). Rayner (*in litt.*) states that the best segment of this population has recently been subdivided and is currently for sale. Aiken County and the City of North Augusta are currently planning the construction of new sewer lines in the northern part of Aiken County and adjacent Edgefield County. The sewer line routes have been altered to some extent to reduce direct impacts on *Trillium reliquum* (Martin *in litt.*, Rayner *in litt.*). However, the development that will follow this expansion of the wastewater collection system may increase the threats to the population. Subsequent increases in land values will make it more difficult to protect a viable population through landowner agreements, nondevelopment easements, or acquisition of property (Rayner *in litt.*).

Site 10, Aiken County, South Carolina. This small (10-acre) population is in a rich, vegetatively diverse ravine adjacent to the Savannah River. A portion of the site is municipally owned, while the remainder is in private ownership. Threats to the privately owned portion of the site include wildfires, trampling by visitors to the area, timber harvesting, and development. The municipally owned portion is protected by the city's informal agreement to maintain the area in its natural state (Charles Martin, North Augusta City Administrator, pers. comm.).

Site 11, Aiken County, South Carolina. This healthy population occurs along the lower slope of a bluff that parallels the Savannah River. It is the third largest of the known *Trillium reliquum* sites, is privately owned, and currently receives no protection. Threats to this location include wildfires, logging, development, and livestock grazing.

Additional appropriate sites were searched for the presence of *Trillium reliquum* during the 1984 and 1985 field seasons (Freeman 1985). Habitat characteristics such as slope, soils, vegetation, and topography were used to indicate suitable habitat. Including the known sites, Freeman (1985) searched a total of 44 locations for presence and distribution of *Trillium reliquum.* Upon completion of the status survey, the Service provided copies to the appropriate State agencies for review and comment. Rayner responded (*in litt.*) that one additional area (the Oconee River drainage) may support the species and suggested that an attempt be made to determine if, in fact, the species occurs in that area. The Service searched seven areas in Baldwin County, Georgia, during the spring of 1986. The related species *Trillium maculatum* and/or *Trillium cuneatum* were found at most of these sites, but no additional populations of *Trillium reliquum* were found. The areas searched were those which, based upon soils, slope, vegetation, and topography, appeared to be most likely to support *Trillium reliquum.*

Federal government actions on this species began with the November 28, 1983, publication of a supplement to the Notice of Review for Native Plants in the **Federal Register** (48 FR 53640). *Trillium reliquum* was included in this supplement as a category-2 species. Category-2 species are those for which listing as endangered or threatened species may be warranted, but for which substantial data on biological vulnerability and threats are not currently known or on file to support proposed rules. Subsequent to this notice, the Service funded a status survey of the species. Field work for this survey was conducted during the 1984 and 1985 field seasons, and the Service accepted the final report (Freeman 1985) in late September 1985. This status report and other available information indicate that the addition of *Trillium reliquum* to the Federal list of Endangered and Threatened Plants is warranted.

All plants included in the comprehensive plant notices are treated as under petition. Section 4(b)(3)(B) of the Endangered Species Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. On October 12, 1984; October 11, 1985; and October 10, 1986, the Service found that listing *Trillium reliquum* may be warranted but was precluded by other higher priority listing actions.

On January 14, 1987, the Service published, in the **Federal Register** (52 FR 1497), a proposal to list *Trillium reliquum* as an endangered species. That proposal constituted the final finding as required by the 1982 amendments to the Endangered Species Act. The proposal provided information on the species' biology, status, and threats, and the potential implications of listing. The proposal also solicited comments on the status, distribution, and threats to the species.

Summary of Comments and Recommendations

In the January 14, 1987, proposed rule, the June 4, 1987, notice of a public hearing and extension of the comment period (52 FR 21088); the June 22, 1987, public hearing; and notifications associated with these activities, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following newspapers: *Abbeville Herald*, Abbeville, Alabama; *Opelika-Auburn News*, Opelika, Alabama; *Cuthbert Times and News Record*, Cuthbert, Georgia; *Early County News*, Blakely, Georgia; *Columbia News-Times*, Martinez, Georgia; *Edgefield Advertisor*, Edgefield, South Carolina; and *Aiken Standard*, Aiken, South Carolina.

In response to a formal request, a public hearing on the proposal to list *Trillium reliquum* as an endangered species was held on June 22, 1987, at the North Augusta Community Center in North Augusta, South Carolina. A notice of the hearing and reopening of the comment period to July 2, 1987, was published in the **Federal Register** on June 4, 1987 (52 FR 21088). The public hearing notice announced the purpose, time, and location of the hearing and extended the formal comment period on the proposal in order to ensure that all interested parties had ample time to provide information on the proposed rule.

All written comments and oral statements presented at the public hearing and those received during comment periods are covered in the following discussion. Comments of similar content are grouped together. These issues and the Service response to each, are discussed below.

Nineteen responses to the proposed rule were received during the initial comment period and five verbal statements and seven written responses were provided at the public hearing. Two Federal agencies and three State agencies provided comments. The remaining comments came from private organizations or individuals.

The U.S. Army Corps of Engineers (Mobile District), Tennessee Valley Authority, Alabama Forestry Commission, Georgia Department of Natural Resources, and the South Carolina Wildlife and Marine Resources Department either supported the proposal or stated their activities would have no affect on the species.

The Sierra Club (South Carolina Chapter), South Carolina Nature Conservancy, and four individuals and private organizations provided comments supporting the proposal. One individual provided information on additional South Carolina locations. Another individual who supported the listing provided additional information on threats to one of the Alabama populations, and requested that critical habitat be designated. The Service has incorporated the additional information on status and threats to the species as appropriate into this document. Also, the Service does not believe that it would be prudent to determine critical habitat for relict trillium (see Critical Habitat Section for discussion).

One landowner requested a public hearing and in a subsequent letter requested information on several aspects of the Endangered Species Act regulations developed to implement it. The Service provided the information requested by this individual.

The public hearing on the proposed rule to list relict trillium as an endangered species was held on June 22, 1987, at the North Augusta Community Center in North Augusta, South Carolina. The hearing officer was Mr. John Harrington of the Secretary of the Interior's Office of the Solicitor. The Service was represented by Messrs. Richard Biggins and Robert Currie of the Asheville Field Office. The objectives and procedures of the hearing were first reviewed by Mr. Harrington. This introduction was followed by a review of the Endangered Species Act and the status of relict trillium by Mr. Currie. Public comments on the proposed rule were then accepted. The comment session was followed by a short question and answer period. The hearing began at 7:30 p.m. and ended at 8:24 p.m. A transcript of the hearing was prepared by Culpepper Reporting Service, Inc., Augusta, Georgia. Five verbal statements were made at the public hearing and seven written comments were provided, three of which were copies of verbal statements given.

The Sierra Club, the South Carolina Wildlife and Marine Resources Department, and two private organizations restated their support of the proposal. Two individuals also supported the listing.

A landowner stated that he owned a 1.49-acre tract of land that supported relict trillium and that he had not received official notification from the Service on its proposal to add the species to the Federal list of endangered species. He further stated that there was an abundance of potential habitat for relict trillium in the vicinity of North Augusta, South Carolina, and Augusta, Georgia, and that not enough searches for the species had been conducted to determine the actual status of the species. He stated that he did not believe that the available information supported consideration of relict trillium as an endangered species. He stated he and his father, who owns 98 acres of land surronding his property, have no plans to adversely affect the portion of the relict trillium population found there. Also, he provided information on the ability of relict trillium to recover from

fire, cattle grazing, and timber harvesting.

The additional information provided on the response of relict trillium to habitat alterations such as fire, logging, or agricultural activities has been incorporated into this final rule. The Service regrets that one landowner failed to receive official notification of the rule proposing that relict trillium be added to the Federal endangered species list. The Service makes every effort to ensure that all appropriate parties are notified but occasionally fails in this endeavor. Also, the Service has made every effort to survey potential habitat and determine the status of existing populations (see Background section for a more detailed description).

An attorney for a landowner stated that he believed that because of the difficulty in identifying relict trillium and the amount of potential habitat for the species, the Service should delay adding the species to the endangered species list until more field searches have been conducted. He pointed out that the number of known populations had grown from two in 1975 to ten in 1987, and he stated that most of the threats to the species would not be alleviated by adding the species to the Federal list of endangered species.

This attorney further stated that relict trillium does not merit addition to the Federal list because this recently described species has not been adequately studied nor is there evidence that it is actually declining. He requested that final action on the proposal to list the species be delayed for 1 year. The purpose of the delay would be to conduct additional field work. This additional work would include searches for additional populations and further monitoring of the known populations. This would provide a better understanding of trends in the populations and determine if they are actually declining or not. (See Service response below).

The Service acknowledges that some members of the sessile-flowered trillium group are difficult for the inexperienced to identify. However, all individuals conducting relict trillium searches for the Service and State conservation agencies are thoroughly familiar with the group and can be confidently relied upon to correctly identify the species.

The increase in the number of known relict trillium populations from two in 1975 to ten in 1987 is the direct result of the intensive searches that have been conducted for additional populations. Most of these additional populations were found by Dr. John Freeman of Auburn University (under contract to the Service to search for additional populations) and by Dr. Doug Rayner (South Carolina Wildlife and Marine Resources Department); the latter searched for the plant as a part of his duties as botanist for the South Carolina Heritage Trust Program. Work to date on the distribution of relict trillium has been extensive and is reviewed in the "Background" section of this final rule. A few additional populations, if discovered, are not anticipated to significantly change the known distribution of relict trillium. Any new populations will also be vulnerable to many of the same threats that are facing those currently known.

The Service recognizes that the addition of a plant to the Federal list of endangered and threatened species will not protect the species from all of the actions and activities that threaten its continued existence. The species will still be susceptible to taking at most of the known populations; non-Federal construction and habitat modification activities that may adversely affect the species will continue to affect the species regardless of whether the species is listed or not. However, there are many benefits that addition to the Federal list provides. These benefits are reviewed in the "Conservation Measures" section of this final rule.

Another landowner stated that she owned land supporting relict trillium; although she was sympathetic with the goal of protecting the species, she could not afford to make her property a preserve. She requested that the appropriate agencies preserve what land is needed to protect the species or that agreements for protecting the species be worked out with the individuals who have bought or will buy her property as residential lots.

The Service acknowledges that many private landowners will not be able to or will choose not to protect the relict trillium colonies growing on their property. The Service, in cooperation with the appropriate State agencies and private groups, will endeavor to ensure that a sufficient number of colonies and populations of relict trillium are protected to ensure that the species will continue to exist. The mechanisms that will be used to accomplish this goal include purchase of habitat and habitat protection through acquisition of binding or nonbinding easements.

The city administrator, City of North Augusta, provided additional information on the nature of the habitat where relict trillium is found. He stated that with the meager amount of information available, more searches for the species need to be conducted before the species is added to the Federal list. (See Service response above).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Trillium reliquum* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR Part 424) were followed. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Trillium reliquum* Freeman (relict trillium) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

All of the known *Trillium reliquum* populations are currently threatened by one or more human activities (Freeman 1985, Rayner *in litt.*). The most significant of these threats is the loss or alteration of their habitat resulting from residential development. Most populations are adjacent to rapidly expanding urban areas, and the direct impacts of construction activities associated with an expanding population are significant. In addition to these direct impacts, activities such as, power transmission line construction, gas, water, and sewer line installation, and road construction all may have indirect or direct impacts on the species if not planned in a way to protect this rare species. Logging of areas occupied by the species constitutes a significant threat, as does conversion or use of the sites for pine monoculture, pastures, or row crop agriculture. Historically, quarrying of stone has adversely affected one population; and stone, sand, and clay quarrying remains a potential threat to at least portions of the known populations. Fires, whether caused by arson, accident, or for timber management, threaten all populations. All populations have been impacted to some extent by one or more of these activities, and all populations, at least in part, remain vulnerable to them (Freeman 1985).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Trillium reliquum is not currently a significant component of the commercial trade in native plants; however, the

species has potential for horticultural use, and publicity of the species could generate an increased demand.

C. Disease or Predation

A portion of the *Trillium reliquum* population at Site 7 is currently being adversely impacted by cattle that are being permitted to graze within the wooded areas supporting the species. This activity is a potential threat to most of the known populations. No other threats related to disease or predation are currently known.

D. The Inadequacy of Existing Regulatory Mechanisms

In Alabama, *Trillium reliquum* is informally listed as an endangered species (Freeman *et al.* 1979, Freeman 1979). However, the species has no legal status or protection in the State. *Trillium reliquum* is not included in *Georgia's Protected Plants* (McCollum and Ettman 1977) and therefore does not receive any legal protection in the State. This list has only been revised once since it was originally published, and it is anticipated that relict trillium will be added to the Georgia list as an endangered plant in a future revision of the Protected Plan List (Chuck Rabolli, Georgia Department of Natural Resources, pers. comm.). South Carolina includes *Trillium reliquum* as an endangered species on its informal list of rare native vascular plants (Rayner *et al.* 1984). Although South Carolina does not have an official plant protection program, the State is pursuing protection of this rare species through its natural areas aquisition program. The only South Carolina population protected from taking is the portion of Site 7 that has been purchased by South Carolina as a natural area. Plants can only be collected from a State-owned natural area by permit from the appropriate State agency. This prohibition is difficult to effectively enforce and the plants there, as at all of the other known sites, remain vulnerable to taking by hobbyists, collectors, and vandals.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Trillium reliquum is a species that currently exists in three very small clusters of populations. Whether these represent remnant populations of a species that was once much more widely distributed or a species that has always been rare is impossible to determine, based upon the information currently available. In addition to the factors A–D discussed above, the remaining populations appear to be threatened by an additional human-related factor, which is adversely affecting the native flora throughout the Southeast. The woody vine, *Lonicera japonica* (Japanese honeysuckle), is an aggressive, weedy species that was introduced into this country. This species is, in some areas, replacing the native flora. Freeman (1985) notes that this species may represent a serious threat to *Trillium reliquum*. In recognition of this threat, the South Carolina Wildlife and Marine Resources Department recently initiated a honeysuckle control program on the preserve supporting the species (Rayner 1987).

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Trillium reliquum* as an endangered species. Endangered status seems appropriate because of the severity of the threats facing the species throughout its rather limited range. Critical habitat is not being designated for the reasons discussed below.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. The Service finds that designation of critical habitat is not prudent for *Trillium reliquum* at this time. The species has potential for horticultural use. Increased publicity and the provision of specific location information associated with critical habitat designation could result in taking pressures on the species. Publication of critical habitat descriptions would make *Trillium reliquum* more vulnerable to taking, since most of the known populations are on privately owned land. Many of the populations consist of only a small number of individuals, and the loss of even a few could jeopardize the species. The landowners involved in managing the habitat of the relict trillium have been informed of the locations of this species and of the importance of protecting it. Protection of this species' habitat will be addressed through the recovery process and through the section 7 jeopardy standard. Therefore, it would not be prudent to determine critical habitat for *Trillium reliquum* at this time.

Available Conservation Measures

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

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(4) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Nine of the ten known populations of *Trillium reliquum* are on privately or State-owned lands. One small population is located on a federally owned recreation area managed by the U.S. Army Corps of Engineers. There are no currently planned programs or projects which would adversely affect this population.

The South Carolina Department of Health and Environmental Control administers the Clean Water Act's section 201 (33 U.S.C. 1281) grant program in South Carolina. This program provides partial Federal funding for wastewater treatment facilities. The City of North Augusta is currently conducting final planning studies for an expansion of this system into the area supporting the largest known population of *Trillium reliquum*. The city has been working with the South Carolina Wildlife and Marine Resources Department to ensure that the installation of the wastewater treatment facilities does not have a significant adverse effect on relict trillium. Based upon past experience with the section 7 consultation program, the Service believes that future coordination on this project will proceed in a cooperative manner and that relict trillium will be

protected from activities that would jeopardize its continued existence while the installation of a needed wastewater treatment system will be permitted. There are no other known current or planned Federal activities that may affect any other populations.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general trade prohibitions and exceptions that apply to all endangered plants. With respect to *Trillium reliquum*, all trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued since *Trillium reliquum* is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, P.O. Box 27329, Washington, DC 20038–7329 (202/343–4955).

National Environmental Policy Act

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

Literature Cited

Freeman, J.D. 1975. Revision of *Trillium* Subgenus *Phyllantherum* (Liliaceae). Brittonia 27:1–62.

Freeman, J.D. 1979. Endangered, threatened, and special concern plants of Alabama. Auburn Univ. Agr. Exp. Sta., Botany and Microbiology Department Ser. #3 24 pp. illus.

Freeman, J.D. 1985. Status Report on *Trillium reliquum*. Unpublished report to the U.S. Fish and Wildlife Service, Southeast Regional Office, Atlanta, Georgia. 36 pp.

Freeman, J.D., A.S. Causey, J.W. Short, and R.R. Haynes. 1979. Endangered, threatened, and special concern plants of Alabama. J. Ala. Acad. Sci. 50:1–26.

McCollum, J.L., and D.R. Ettman. 1977. Georgia's Protected Plants. Georgia Department of Natural Resources and USDA–SCS, Atlanta, Georgia, 64 pp.

Rayner, D.A., C. Aulbach-Smith, W.T. Batson, and C.L. Rogers. 1984. Native vascular plants (rare, threatened, or endangered) in South Carolina. Unpublished list.

Author

The primary author of this final rule is Mr. Robert R. Currie, Asheville Field Office, U.S. Fish and Wildlife Service, 100 Otis Street, Room 224, Asheville, North Carolina 28801 (704/259–0321 or FTS 672–0321).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 94–359, 90 Stat. 911; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531 *et seq.*); Pub. L. 99–625, 100 Stat. 3500 (1986), unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order under the family Liliaceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
Liliaceae—Lily family:						
* *	* *	*		*	*	
Trillium reliquum	Relict trillium	U.S.A. (AL, GA, SC)	E	306	NA	NA
* *	* *	*		*	*	

Dated: March 25, 1988.

Susan Recce,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 88–7290 Filed 4–1–88; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 53, No. 64
Monday, April 4, 1988

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.

FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Part 2431

Attorney Fees Under the Back Pay Act

AGENCY: Federal Labor Relations Authority.

ACTION: Proposed rule; request for comments.

SUMMARY: The Authority proposes to amend its rules by adding Part 2431 concerning the processing of applications for awards of attorney fees under the Back Pay Act. The intent is to provide clear and easily applied procedures for the awarding of attorney fees under the Back Pay Act.

DATES: Written comments must be received by the Authority on or before May 4, 1988.

ADDRESSES: Comments should be addressed to Jacqueline R. Bradley, Executive Director, Federal Labor Relations Authority, 500 C Street SW., Washington, DC 20424.

FOR FURTHER INFORMATION CONTACT: Kenneth W. Goshorn, Director of External Affairs, (202) 382-0731.

SUPPLEMENTARY INFORMATION: Under the provisions of the Back Pay Act, 5 U.S.C. 5596, the Authority is an "appropriate authority" to grant an award of attorney fees when there has been a finding that an unwarranted or unjustified personnel action has resulted in a withdrawal, reduction, or denial of all or part of the pay, allowances, or differentials due one or more employees. The proceedings covered by the Back Pay Act specifically include unfair labor practice proceedings. In *United States Department of Housing and Urban Development, Region VI and United States Department of Housing and Urban Development, Region VI, San Antonio Area Office*, 24 FLRA No. 84, 24 FLRA 885 (1986), the Authority ruled that "the mere presence of an administrative prosecutor (such as the General Counsel) does not *per se* preclude an award for contributions to the proceedings made by outside counsel."

The Authority finds that it is necessary and appropriate to promulgate regulations providing procedures for the filing and adjudication of applications for awards of attorney fees in such proceedings. The Authority already has promulgated regulations concerning awards of attorney fees under the Equal Access to Justice Act, 5 U.S.C. 504. *See* 5 CFR Part 2430. These proposed regulations parallel those procedures where appropiate, and also adopt the "interest of justice" standard (as provided for in 5 U.S.C. 7701(g)) required by the Back Pay Act. The intent of the proposed regulations is to provide an easily applied procedural vehicle for the adjudication of such applications. The proposed procedures adopt, to the maximum extent feasible, the general rules of practice before the Authority in other relevant proceedings.

List of Subjects in 5 CFR Part 2431

Administrative practices and procedures, Government employees, Labor-management relations, Attorney fees.

For reasons set out in the preamble, 5 CFR is proposed to be amended by adding Part 2431 to read as follows:

PART 2431—ATTORNEY FEES UNDER THE BACK PAY ACT

Sec.

Authority: 5 U.S.C. 7134; 5 U.S.C. 5596.

§ 2431.1 Purpose.

The Back Pay Act, 5 U.S.C. 5596, provides for the award of attorney fees to eligible employees related to an unjustified or unwarranted personnel action that resulted in the withdrawal, reduction, or denial of all or part of the pay, allowances, and differentials due the employee. When an appropriate authority corrects or directs the correction of such an unjustified or unwarranted personnel action, the payment of reasonable attorney fees shall be deemed warranted if such payment is in the interest of justice, as determined in accordance with standards established by the Merit Systems Protection Board under section 7701(g) of Title 5, United States Code; and there is a specific finding by the appropriate authority setting forth the reasons such payment is in the interest of justice. The rules in this part describe the parties eligible for awards and the Authority proceedings that are covered. They also set forth the procedures for applying for such awards and the procedures by which the Authority will rule on such applications.

§ 2431.2 Proceedings affected; eligibility for award.

(a) The provisions of this part apply to unfair labor practice proceedings pending on complaint against a Rspondent Agency.

(b) A party in an unfair labor practice proceeding who has prevailed in the proceeding, or in a significant and discrete portion of the proceeding, and who otherwise meets the eligibility requirements of this section, is eligible to apply for an award of attorney fees under the provisions of these rules.

§ 2431.3 Standards for awards.

An eligible applicant may receive an award for fees incurred in connection with a proceeding, or in a significant and discrete portion of the proceeding if such award is found to be in the interests of justice, as determined in accordance with standards established by the Merit Systems Protection Board under section 7701(g) of Title 5, United States Code.

§ 2431.4 Allowable fees and expenses.

(a) In determining the reasonableness of the fee sought, the following matters may be considered:

(1) The attorney's customary fee for similar services (or, if an employee of the applicant, the fully allocated cost of the services);

(2) The prevailing rate for similar services in the community in which the attorney ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceedings; and

(5) Such other factors as may bear on the value of the services provided.

(b) The extent to which the efforts of counsel on behalf of the applicant made a substantial contribution to, and were not duplicative of, the efforts of the General Counsel of the Authority in the prosecution of the case.

(c) The payment of reasonable attorney fees shall be allowed only for the services of members of the Bar and for services of law clerks, paralegals, or law students, when assisting members of the Bar. However, no payment may be allowed for the services of any employee of the Federal Government, except as provided in section 205 of Title 18, United States Code, relating to the activities of officers and employees in matters affecting the Government.

§ 2431.5 When an application may be filed; referral to Administrative Law Judge; stay of proceeding.

(a) An application may be filed after entry of the final order establishing that the applicant has prevailed in the proceeding, or in a significant and discrete portion of the proceeding, but in no case later than thirty (30) days after the entry of the Authority's final order in the proceeding. The application for an award shall be filed with the Authority in Washington, DC. Sections 2429.21 through 2429.27 of this Subchapter, as applicable, shall govern such filing. Upon filing, the application shall be referred to the Chief Administrative Law Judge for designation of an Administrative Law Judge to consider the application. To the extent practicable, the Chief Administrative Law Judge shall refer the application to the Administrative Law Judge who heard the proceeding upon which the application is based.

(b) In the event any person seeks Authority reconsideration or court review of the Authority decision that forms the basis for the application for fees and expenses, the proceedings for the award of fees and other expenses, but not the time limit of this section for filing an application for an award, shall be stayed pending final disposition of the case.

§ 2431.6 Contents of application; documentation of fees and expenses.

The application shall be accompanied by full documentation of the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent by each individual in connection with the proceeding, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The Authority or its Administrative Law Judge may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

§ 2431.7 Answer to the application; comments by the General Counsel.

(a) Within 30 days after service of an application, the Respondent agency may file an answer to the application. The answer shall explain in detail any objection to the award requested, and identify the facts relied on in support of the Respondent's position. If the answer is based on alleged facts not already in the record of the proceeding, supporting affidavits shall be provided or a request made for further proceedings under § 2431.9.

(b) The General Counsel may file comments on an application within 30 days after it is served.

(c) Motions for extensions of time to file documents permitted by this section or § 2431.9 shall be filed with the Chief Administrative Law Judge not less than five (5) days before the due date of the document.

§ 2431.8 Settlement.

The applicant and the Respondent Agency may agree on a proposed settlement of the award before final action on the application. If an applicant and the Respondent Agency agree on a proposed settlement of an award, the terms of the agreement shall be entered into the record of the case.

§ 2431.9 Further proceedings.

(a) The determination of an award may be made on the basis of the documents in the record. The Administrative Law Judge, upon request of either the applicant or the Respondent Agency, or on his or her own initiative, may order further proceedings. Such further proceedings may include, but shall not be limited to, an informal conference, oral argument, additional written submissions, or an evidentiary hearing.

(b) A request that the Administrative Law Judge order further proceedings under this section shall specifically identify the disputed issues and the evidence sought to be adduced, and shall explain why the additional proceedings are necessary to resolve the issues.

(c) An order of the Administrative Law Judge scheduling oral argument, additional written submissions, or an evidentiary hearing, shall specify the issues to be considered in such argument, submissions, or hearing.

(d) Any evidentiary hearing held pursuant to this section shall be conducted not earlier than forty-five (45) days after the date on which the application is served. In all other respects, such hearing shall be conducted in accordance with §§ 2423.14, 2423.16, 2423.17, 2423.19 through 2423.21, 2423.23, and 2423.24, insofar as these sections are consistent with the provisions of this part.

§ 2431.10 Administrative Law Judge's decision; contents; service; transfer of case to the Authority; contents of record in case.

(a) Upon conclusion of proceedings under this section, the Administrative Law Judge shall prepare a recommended decision. The decision shall include written findings and conclusions on the applicant's status as a prevailing party and eligibility under the interests of justice standard, and an explanation of the reasons for any difference between the amount requested and the amount awarded if such award is recommended. The Administrative Law Judge shall cause the decision to be served promptly on all parties to the proceeding. Thereafter, the Administrative Law Judge shall transmit the case to the Authority, including the judge's decision and the record. Service of the Administrative Law Judge's decision and the order transferring the case to the Authority shall be complete upon mailing.

(b) The record in a proceeding on an application for an award of fees under this part shall consist of the application for an award of fees and any amendments or attachments thereto, the answer and any amendments or attachments thereto, any comments by the General Counsel, motions, rulings, orders, stipulations, written submissions, the stenographic transcript of oral argument, the stenographic transcript of the hearing, exhibits and depositions, together with the Administrative Law Judge's decision, and the exceptions and briefs as

provided in § 2431.11 and the record of the unfair labor practice proceeding upon which the application is based.

§ 2431.11 Exceptions to Administrative Law Judge's decision; briefs; action of the Authority.

Procedures before the Authority, including the filing of exceptions to the Administrative Law Judge's recommended decision rendered pursuant to § 2431.10, and action by the Authority, shall be in accordance with §§ 2431.26(c), 2423.27, and 2423.28 of these rules. The Authority's review of the matter shall be in accordance with § 2423.29(a).

Dated: March 30, 1988.

Jerry L. Calhoun,

Chairman.

Jean McKee,

Member.

[FR Doc. 88-7291 Filed 4-1-88; 8:45 am]

BILLING CODE 6727-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 949

[Docket No. A.O. F&V 88-2]

Proposed Texas-New Mexico High Plains Potato Marketing Agreement and Order; Hearing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed marketing agreement and order.

SUMMARY: Notice is hereby given of a public hearing to be held to consider a proposed marketing agreement and order to cover potatoes grown in the High Plains area of Texas and New Mexico. The proposed program would establish minimum standards of quality and maturity by grades and sizes. The proposal was submitted by the Texas/New Mexico Potato Committee which represents a substantial portion of the potato growers and handlers of the High Plains area. The program would be financed by assessments levied on potato handlers of the designated 21 counties of Texas and 10 counties of New Mexico. The assessment rate would be established by the Secretary of Agriculture, based on the recommendation of a committee that would administer the program. The committee would be composed of six producers, four handlers, and a member of the general public.

DATES: The hearing will be held in Hereford, Texas, beginning on April 19, 1988, at 9:00 a.m. Additional sessions, if necessary, will be held on April 20, and 21, beginning at 9:00 a.m. at the same location.

ADDRESS: The hearing will be held in the Hereford Community Center, 100 Avenue C and Park Avenue, Hereford, Texas 79045.

FOR FURTHER INFORMATION CONTACT: Copies of this Notice of Hearing may be obtained from:

(1) James Wendland, Officer-in-Charge, McAllen Marketing Field Office, USDA, 320 North Main Street, Box A-103, McAllen, Texas 78501-4698; telephone (512) 682-2833; or

(2) Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Room 2525-S, AMS, USDA, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 447-5331.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12291. The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 "Act", as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR Part 900).

The Regulatory Flexibility Act (Pub. L. 96-354), effective January 1, 1981, applies, and seeks to ensure that, within the statutory authority of a program, the regulatory and reporting requirements of the program are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the reporting requirements and probable economic impact of the proposal on small businesses.

Proponents of the order believe that the imposition of standards of quality and maturity within the production area will promote the marketing of potatoes of consistently high quality. The proposal would also authorize research for production as well as marketing, and projects to assist, improve or promote the marketing, distribution, consumption or efficient production of these potatoes. The industry believes that once quality standards are enforced, an effective promotional program, not including paid advertising which is not authorized for this commodity by the Act, can be implemented to raise buyer and consumer awareness and expand the market.

This proposal has been widely discussed within the High Plains potato industry but has not yet received approval by the Secretary of Agriculture.

The hearing will be held for the purposes of:

(a) Receiving evidence about the economic and marketing conditions which relate to the proposed marketing agreement and order and to any appropriate modifications thereof.

(b) Determining whether the handling of potatoes in the proposed production area is in the current of interstate or foreign commerce or directly burdens, obstructs or affects interstate or foreign commerce.

(c) Determining the need for such a marketing agreement and order that would be implemented for potatoes in the production area.

(d) Determining the economic impact of the proposed marketing agreement and order on the industry in the production area and on the public affected by such a program.

(e) Determining whether the proposal or an appropriate modification of it will tend to effectuate the declared policy of the Act.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an exparte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Provisions of the proposed marketing agreement and order follow. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement and are proposed by the Agricultural Marketing Service.

List of Subjects in 7 CFR Part 949

Marketing agreements and orders, Potatoes, Texas, New Mexico.

The marketing agreement and order proposed by the Texas-New Mexico Potato Committee would add a new Part 949 to read as follows:

PART 949—IRISH POTATOES GROWN IN THE HIGH PLAINS AREA OF TEXAS AND NEW MEXICO

Definitions

Authority: Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*

Definitions

§ 949.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture who has been delegated, or who may hereafter be delegated the authority to act for the Secretary.

§ 949.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Sec. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

§ 949.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 949.4 Production area.

"Production area" means the counties of: Bailey, Briscoe, Castro, Cochran, Dallam, Donley, Deaf Smith, Floyd, Gaines, Hale, Hall, Hartley, Hockley, Lamb, Lubbock, Motley, Oldham, Parmer, Swisher, Terry, and Yoakum located in the State of Texas, and the counties of Chaves, Curry, De Baca, Eddy, Guadalupe, Lea, Roosevelt, Torrance, Union, and Quay located in the State of New Mexico.

§ 949.5 Potatoes.

"Potatoes" means and includes all varieties of *Selanum tuberosum*, commonly known as Irish potatoes, grown in the production area.

§ 949.6 Seed potatoes.

"Seed potatoes" or "seed" means any potatoes which have been certified by the official seed certification agency of the States of Texas or New Mexico, or other seed certification agencies recognized by the Secretary, and which bear the official tags, seals, or other appropriate identification indicating such certification.

§ 949.7 Handler.

"Handler" is synonymous with "shipper" and means any person, except a common or contract carrier of potatoes owned by another person, who handles potatoes or causes potatoes to be handled.

§ 949.8 Handle or ship.

"Handle" or "ship" means to harvest, grade or package potatoes grown in the production area other than in the capacity as a producer, and to sell, transport, or in any other way to place potatoes grown in the production are, or cause such potatoes to be placed, in the current of commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery within the production area of field-run potatoes to storage or to a person for the purpose of having such potatoes prepared for market.

§ 949.9 Producer.

"Producer" is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of potatoes for market.

§ 949.10 Fiscal period.

"Fiscal period" means the calendar year or such other 12-month period beginning and ending on the dates that may be recommended by the committee and approved by the Secretary.

§ 949.11 Committee.

"Committee" means the administrative committee known as Texas-New Mexico Potato Committee established pursuant to § 949.20.

§ 949.12 Grade, size and maturity.

"Grade" means any of the officially established grades of potatoes, "Size" means any of the officially established sizes of potatoes, and "Maturity" means any of the stages of development or condition of the outer skin (epidermis) of potatoes, as defined in the United States Standards for Potatoes issued by the United States Department of Agriculture (51.1540 to 51.1556, inclusive of this title), including amendments, modifications, or variations thereof, or, such other grades, sizes, and maturities as may be recommended by the committee and approved by the Secretary.

§ 949.13 Varieties.

"Varieties" means all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 949.14 Pack.

"Pack" means a quantity of potatoes in any type of container, which falls within specific weight limits, numerical limits, grade limits, or any combination of these recommended by the committee and approved by the Secretary.

§ 949.15 Container.

"Container" means a sack, bag, crate, box, basket, barrel, or bulk load or any other receptacle used in the packaging, transportation, sale or other hanlding of potatoes.

§ 949.16. Culls.

"Culls" means potatoes which do not meet the requirements set forth in § 949.52.

§ 949.17 District.

"District" means each of the geographic divisions of the production area initially established pursuant to § 949.23 or as reestablished pursuant to § 949.24.

§ 949.18 Export.

"Export" means the shipment of potatoes to any destination which is not within the 50 States, or the District of Columbia, of the United States.

Committee

§ 949.20 Establishment and membership.

(a) There is hereby established a committee, consisting of eleven (11) members, to administer the terms and provision of this part. Six (6) members shall be producers, four (4) members shall be handlers, and one (1) shall be a public member. Each committee member shall have an alternate who shall have the same qualifications as the member.

(b) Each member, other than the public member, shall be an individual who is, prior to selection and during such term of office (1) a resident of the production area, and (2) a producer or handler, or an officer or employee of a producer or handler. An officer or employee of a producers' cooperative marketing organization may serve as a handler member.

(c) Four (4) members shall be producers from District 1 and two (2) members shall be producers from District 2. Three (3) members shall be handlers from District 1 and one (1) member shall be a handler from District 2. Any person who operates in more than one district or is engaged in both producing and handling potatoes shall elect one classification, and one district from which to be represented on the committee.

(d) The public member shall be a resident of the production area and be neither a producer nor a handler and shall have no direct financial interest in the commercial production, financing, buying, packing or marketing of potatoes, except as a consumer, nor shall such person be a director, officer or employee of any firm so engaged.

§ 949.21 Alternates.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate, during such member's absence or when designated to do so by such member. In the event both a member of the committee and that member's alternate are unable to attend a committee meeting, the member, the alternate, or the committee, in that order, may designate another alternate from the same district and the same classification (handler or producer) to serve in such member's stead. In the event of the death, removal, resignation, or disqualification of a member, that member's respective alternate shall serve until a successor of such member is selected and has qualified. The Committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 949.22 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for three years and shall begin as of January 1 and end the last day of December or for such other three-year period as the committee may recommend and the Secretary approve. Members and alternates shall serve in such capacity for the portion of the term of office for which they are selected and have qualified, and until their respective successors are selected and have qualified. No member or alternate may serve more than two consecutive terms on the committee unless specifically exempted from this requirement by the Secretary.

(b) The term of office of the initial members and alternates shall begin as soon as possible after the effective date of this subpart. As determined by the Secretary, approximately one-third of the initial committee members and alternates shall serve for a one-year term and approximately one-third of the initial committee members and alternates shall serve for a two-year term. The remainder of the initial committee members and alternates shall serve for a three-year term. Those members serving initial terms of one year or less may serve two additional, consecutive three-year terms.

§ 949.23 Districts.

To determine a basis for selecting committee members, the following districts of the production area are hereby initially established:

District 1: All production area counties located within the State of Texas and;

District 2: All production area counties located within the State of New Mexico.

§ 949.24 Redistricting and reapportionment.

At least every five years the committee shall review the geographic distribution of potato production in the production area and, if warranted, recommend to the Secretary the reapportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes, the Committee shall give consideration to:

(a) Shifts in potato acreage within the districts and within the production area during recent years;

(b) The importance of new production in its relation to existing districts;

(c) The equitable relationship of committee membership and districts; and

(d) Other relevant factors. No change in districting or in apportionment of members within districts may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than 6 months prior to such date.

§ 949.25 Nominations.

(a) Initial members. The nomination process for the initial committee shall be conducted by the Secretary. The nominations for each of the six (6) initial producer and four (4) initial handler members of the committee, together with the nominations for the initial alternate members for each position, shall be made as soon as practicable after the effective date of this subpart. The nominee for the initial public member shall be submitted to the Secretary not later than 90 days after the first meeting of the committee.

(b) Successor members. (1) The committee shall hold or cause to be held not later than October 1 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of producers and handlers in each district for the purpose of designating at least one nominee for each position as member and for each position as alternate member of the committee. The committee may conduct nominations by mail in a manner recommended by the committee and approved by the Secretary.

(2) The names of nominees shall be submitted to the Secretary at such time and in such manner and form as may be prescribed;

(3) Only producers may participate in designating producer nominees and only handlers may participate in designating handler nominees to the committee;

(4) Only producers and handlers who are present at such nomination meetings, or represented at such meetings by a duly authorized employee, may participate in the nomination and election of nominees for members and their alternates.

(5) Any person who operates in more than one district or is engaged in both producing and handling potatoes shall elect the classification, and the district in which to participate in designating nominees.

(6) Regardless of the number of districts in which a person produces or handles potatoes, such persons are entitled to cast only one vote for each position to be filled in the district and classification in which the person is eligible and elects to vote in designating nominees for committee members and alternates. Such vote would be cast on behalf of the voter, the voter's agents, subsidiaries, affiliates, and representatives.

(c) The public member shall be nominated by the members of the committee. The committee may establish procedures for receiving names of persons to be considered for nomination as the public member. The name of the person nominated as the public member shall be submitted by the incumbent committee to the Secretary by November 1, or such other date recommended by the committee and approved by the Secretary, of the year the term expires together with information deemed pertinent by the committee or as requested by the Secretary.

§ 949.26 Selection.

Committee members and alternates shall be selected by the Secretary on the basis of representation provided for in § 949.20 or as modified pursuant to § 949.24.

§ 949.27 Failure to nominate.

If nominations are not made within the time and manner prescribed in § 949.25, the Secretary may, without regard to nominations, select the members and alternates on the basis of the representation provided for in § 949.20 or as modified pursuant to § 949.24.

§ 949.28 Acceptance.

Any person prior to selection as a member or alternate member of the committee shall qualify by filing with the Secretary a written acceptance within the time period specified by the Secretary of the person's willingness to serve.

§ 949.29 Vacancies.

To fill any vacancy occasioned by the failure of any person selected as a member or as an alternate to qualify, or in the event of the death, removal, resignation, or disqualification of a member or alternate, a successor for the unexpired term may be selected by the Secretary from nominations made pursuant to § 949.25, from previously unselected nominees on the current nominee list, or from other eligible persons

§ 949.30 Expenses.

Members and alternates, when serving as members of the committee, shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under this part: Provided, that the committee at its discretion may request the attendance of one or more alternates at any or all meetings notwithstanding the expected, or actual, presence of the respective members and may pay expenses as aforesaid.

§ 949.31 Procedure.

(a) A majority of all members of the committee shall be necessary to constitute a quorum or to pass any motion or approve any committee action.

(b) The committee may provide for the members thereof, including the alternate members when acting as members, to vote by mail, telegraph, telephone, or other means of communication, provided that any such vote cast orally shall be confirmed promptly in writing. If any assembled meeting is held all votes shall be cast in person.

§ 949.32 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this subpart as specified herein;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 949.33 Duties.

The committee shall have, among others, the following duties:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees, and to adopt such rules, regulations, and bylaws for the conduct of its business as it deems necessary, and to recommend nominees for the public member and alternate;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary, to determine the compensation and define the duties of each such person, and to protect the handling of committee funds.

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to potatoes;

(f) To recommend research and development projects to the Secretary in accordance with this part;

(g) To notify handlers of each meeting of the committee to consider recommendations for regulations and of all regulatory actions taken, and to provide such notification to producers through appropriate news releases or such other means as may be available to the committee;

(h) To give the Secretary the same notice of meetings of the committee and its subcommittee(s) as is given to its members;

(i) To prepare a marketing policy;

(j) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee. Such minutes, books, and records shall be subject to examination at any time by the Secretary or the Secretary's authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(k) Prior to the beginning of each fiscal period, to submit to the Secretary a budget of projected income and expenses for such fiscal period, together with a report thereon;

(l) To prepare periodic statements of the financial operations of the committee and to make copies of each such statement available to producers and handlers for examination at the office of the committee;

(m) To prepare and submit to the Secretary, an annual report, and make a copy available to each producer and grower who requests it. This annual report shall contain at least:

(1) A complete review of the regulatory operations during the fiscal period;

(2) An appraisal of the effect of such regulatory operations upon the potato industry; and

(3) Any recommendations for changes in the program.

(n) To cause the books of the committee to be audited by a certified public accountant at least once each fiscal period and at such other times as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of such report shall be furnished to the Secretary. A copy of each such report shall be made available at the principal office of the

committee for inspection by producers and handlers; however, confidential information shall be removed from the report; and

(c) To consult, cooperate, and exchange information with other marketing order committees and other individuals or agencies in connection with all proper activities and objectives under this part.

Expenses and Assessments

§ 949.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for purposes determined to be appropriate for administration of this part. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expenses shall be proportionate to the ratio between the total quantity of potatoes handled by such handler as the first handler thereof during a fiscal period and the total quantity of potatoes handled by all handlers as first handlers thereof during such fiscal period.

§ 949.41 Budget.

Ninety days prior to the beginning of each fiscal period, the committee shall prepare an estimated budget of income and expenditures necessary for its administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall submit such budget to the Secretary with an accompanying report showing the basis for its calculations. An amended budget may be submitted as provided in § 949.42(c).

§ 949.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each person who first handles potatoes under this part shall pay assessments to the committee, which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's budget, recommendations, and other available information. Such rates may be applied to specified containers used in the production area.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the established rate of assessment.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(e) The committee may impose a late payment charge or an interest charge on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

(f) In order to provide funds to enable the committee to perform its functions under this part, handlers may make advance payment of assessments. Such advance assessments received from a handler shall be credited toward assessments levied against that handler during the fiscal year.

(g) In order to provide funds for the administration of this part before sufficient operating income is available from assessments, the committee may accept advance assessments and may also borrow money for such purpose.

§ 949.43 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in paragraph (a)(2) of this section, it shall be refunded proportionately to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided,* That the reserves are less than approximately two fiscal period's expenses. Such reserve funds may be used (i) to defray expenses, during any fiscal period, prior to the time assessment income is sufficient to cover such expenses; (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses; (iii) to defray expenses incurred during any period when any provisions of this part are suspended or are inoperative; (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified herein. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in such member's possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for such committee.

Research and Development

§ 949.48 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and development projects, not including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of potatoes. The expense of such projects shall be paid from funds collected pursuant to § 949.42.

Regulation

§ 949.50 Marketing policy.

Prior to beginning of each fiscal year, the committee shall submit to the Secretary a report setting forth its marketing policy for the ensuing season. Additional reports shall be submitted if it is deemed advisable by the committee to adopt a new marketing policy because of changes in the demand or supply situation with respect to potatoes. The committee shall publicly announce the submission of each such marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or any handler. In determining each such marketing policy the

committee shall give due consideration to the following:

(a) Supply of potatoes by grade, size, quality, and maturity in the production area;

(b) Estimates of supplies of potatoes in the production area and in competing areas;

(c) Estimates of supplies of other competing commodities;

(d) Market prices by grades, sizes, containers, and packs;

(e) Anticipated marketing problems;

(f) Level and trend of consumer income; and

(g) Other relevant factors.

§ 949.51 Recommendations for regulations.

(a) Whenever the committee's marketing policy considerations deem it advisable to regulate the handling of any variety or varieties of potatoes in a manner provided in §§ 949.53, 949.54, or 949.55 it shall recommend to the Secretary grade, size, quality, maturity, or pack regulation, or any combination thereof, or amendment thereto, or modification, suspension, or termination thereof.

(b) In arriving at its recommendations for regulation pursuant to (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for potatoes during the period or periods when it is proposed that such regulations should be effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 949.52 General cull regulation.

(a) A general cull regulation shall be in effect prohibiting the handling of potatoes for fresh market, except as otherwise provided in this subpart, which do not meet the requirements of the U.S. No. 2, or better, grade, 1-½ inches minimum diameter and larger.

(b) Upon recommendation of the committee, or on other available information, the general cull regulation may be suspended or modified by the Secretary during a specified period with respect to any or all varities of potatoes.

§ 949.53 Issuance of regulations.

(a) The Secretary shall issue regulations on the handling of potatoes whenever the Secretary finds from recommendations and information submitted by the committee, or from other available information, that such regulations would tend to effectuate the declared policy of the act. Such regulations may:

(1) Limit the handling of particular grades, sizes, qualities, maturities, or packs of any or all varities of potatoes, or any combination of the foregoing during any period.

(2) Limit the handling of particular grades, sizes, qualities, maturities or packs of potatoes differently, for different varieties, for different containers, for different packs, for different purposes under § 949.55, or for any combination of the foregoing, during any period.

(3) Fix the size, capacity, weight, dimensions, pack or marking of the container or containers which may be used in the packaging or handling of potatoes, or both.

(4) Establish in terms of grades, sizes, or both, minimum standards of quality and maturity.

§ 949.54 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 949.53 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments in order to effectuate the declared policy of the act, the Secretary shall modify, suspend, or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such suspension.

(c) The Secretary shall notify the committee of each regulation recommended by it and issued pursuant to this section. The committee shall give reasonable notice thereof to handlers.

(d) Nothing in this subpart shall authorize any regulation eliminating shipment of potatoes in bulk.

§ 949.55 Handling for special purposes.

(a) Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary, may modify, suspend, or terminate requirements in effect pursuant to § 949.42 or §§ 949.51 to 949.53 inclusive, or § 949.60 or any combination thereof, to facilitate handling of potatoes for:

(1) Relief or charity;

(2) Livestock feed;

(3) Export;

(4) Seed;

(5) Potatoes, other than certified seed, sold to a producer exclusively for planting within specific geographic limits;

(6) Other purposes recommended by the committee and approved by the Secretary.

(b) The committee, with the approval of the Secretary, shall prescribe rules and regulations to prevent potatoes handled pursuant to this section from entering trade channels other than those authorized by regulations and by such rules as may be necessary and incidental thereto.

Inspection

§ 949.60 Inspection and certification.

(a) During any period in which the handling of potatoes is regulated pursuant to §§ 949.52 through 949.55, inclusive, no handler shall handle potatoes unless such potatoes are inspected by an authorized representative of the Federal or a Federal-State Inspection Service and are covered by a valid inspection certificate, except when relieved of such requirements by §§ 949.54, 949.55, or 949.60(b).

(b) The committee may, with the approval of the Secretary, issue rules requiring inspection on regraded, resorted or repacked lots, or providing for special inspection requirements or relief therefrom. Such rules may provide distinctions, insofar as practical, between handling at shipping point and handling in receiving markets within the production area.

(c) Upon recommendation of the committee and approval by the Secretary, any or all potatoes so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the container by the handler under the direction and supervision of a Federal or Federal-State Inspector or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(4) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When potatoes are inspected in accordance with the requirements of this section, a copy of each inspection

certificate issued shall be made available to the committee by the inspection service.

(f) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of potatoes by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon, or other evidence of inspection acceptable to the Secretary such as a Positive Lot Identification stamp, to indicate that such inspection has been performed. Such certificate or document shall be surrendered to such authority as may be designated.

Reports and Recordkeeping

§ 949.80 Reports and recordkeeping.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and form and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following:

(1) The quantities of potatoes received by variety by a handler during any or all periods of a season;

(2) The quantities disposed of by the handler, segregated as to quantities subject to regulation, and where necessary, segregated as to types of outlets and special or modified regulations applicable to alternative outlets, and includng quantities not subject to regulation;

(3) The date of each such disposition and the identification of the carrier transporting such potatoes;

(4) Information essential to identification of any or all specific quantities, lots, and disposition or potatoes handled under §§ 949.52 to 949.55, inclusive, which may include identification of inspection certificates, exemption certificates, certificates of privilege, or other appropriate identification, including the destination of each special shipment, where necessary.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of an individual handler identity or operations.

(c) Each handler shall maintain for at least 2 succeeding years such records and documents on potatoes received by such handler as may be necessary to verify reports submitted to the committee pursuant to this section.

(d) For the purpose of assuring compliance with recordkeeping requirements and verifying reports of handlers, the Secretary and the committee, through their duly authorized employees or agents, shall have access to any premises where applicable records are located, and where potatoes are handled, and at any time during reasonable business hours shall be permitted to inspect such handler's premises and any potatoes held by such handler and examine any and all records of such persons with respect to matters within the purview of this part.

Compliance

§ 949.81 Compliance.

(a) Except as provided in this subpart, no person shall handle potatoes, the handling of which has been prohibited by the Secretary in accordance with provisions of this subpart, and no person shall handle potatoes except in conformity to the provisions of this subpart and the regulations issued thereunder.

(b) For the purpose of checking and verifying reports filed by handlers, the committee, through its duly authorized representatives, shall have access to any handler's premises during regular business hours, and shall be permitted at any such time to inspect such premises and any potatoes held by such handler.

Miscellaneous Provisions

§ 949.82 Right of the Secretary.

The members of the committee (including successors and alternates) and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 949.84 Termination or suspension.

(a) The Secretary may terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(b) Producer referendum. (1) The Secretary shall terminate in accordance with Section 8(c)(16)B of the Act, the provisions of this part at the end of any fiscal period whenever the Secretary finds that such termination is favored by a majority of producers, who during a representative period, as determined by the Secretary have been engaged in the production of potatoes for market: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such potatoes produced for market: *Provided further*, That termination shall be effective only if announced on or before the beginning of the ensuing fiscal period.

(2) The Secretary shall conduct a referendum every sixth fiscal year with the first such referendum to be conducted within 6 years from the effective date of this section, to ascertain whether continuance of this subpart is favored by producers. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of potatoes in the production area. Such termination of the part shall be effective only if announced on or before the end of the then current fiscal year.

(c) The provisions of this part shall in any event terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 949.85 Proceedings after termination

(a) Upon the termination of the provisions of this part the then functioning members of the committee shall continue as joint trustees for the purpose of liquidating the affairs of the committee of all funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committee and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments

or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in said committee or the trustees pursuant to this part.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committees and upon the said trustees.

§ 949.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued under this subpart; or (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart; or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 949.87 Duration of immunities.

The benefits, privileges and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§ 949.88 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 949.89 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 949.90 Personal liability.

No member or alternate of the committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct or gross negligence.

§ 949.91 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance or thing shall not be affected thereby.

§ 949.92 Amendments.

Amendments to this subpart may be proposed from time to time by the committee or by the Secretary.

Marketing Agreement

*** § 949.97 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

*** § 949.98 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges and immunities conferred by this agreement shall then be effective as to such new contracting party.

*** § 949.99 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the act, an order providing for regulating the handling of potatoes in the same manner as is provided for in the agreement.

Dated: March 30, 1988.

J. Patrick Boyle,

Administrator.

[FR Doc. 88-7300 Filed 4-1-88; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 1030

[Docket No. AO-361-A25]

Milk in the Chicago Regional Marketing Area; Extension of Time for Filing Exceptions on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rule.

SUMMARY: This notice extends the time for filing exceptions to a recommended decision issued March 8, 1988, concerning proposed amendments to the Chicago Regional milk marketing order. The Wisconsin Cheese Makers Association requested the additional time to complete exceptions to the recommended decision.

DATE: Exceptions now are due on or before April 11, 1988.

ADDRESS: Exceptions (four copies) should be filed with the Hearing Clerk, Room 1079, South Building, United States Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 2090-6456, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior documents in the proceeding:.

Notice of Hearing: Issued May 15, 1987; published May 19, 1987 (52 FR 18894).

Extension of Time for Filing Briefs: Issued July 31, 1987; published August 6, 1987 (52 FR 29196).

Emergency Partial Decision: Issued October 8, 1987; published October 15, 1987 (52 FR 38235).

Order Amending Order: Issued October 20, 1987; published October 23, 1987 (52 FR 39611).

Recommended Decision: Issued March 8, 1988, published March 14, 1988 (53 FR 8205).

Notice is hereby given that the time for filing exceptions to the recommended decision with respect to the proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Chicago Regional marketing area which was issued March 8, 1988, is hereby extended to April 11, 1988.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Part 1030

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1030 continues to read as follows:

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

Signed at Washington, DC, on March 29, 1988.

J. Patrick Boyle,

Administrator, Agricultural Marketing Service.

[FR Doc. 88-7276 Filed 4-1-88; 8:45 am]

BILLING CODE 3410-02-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 7F3509/P448; FRL 3360-2]

Pesticide Tolerance for Paraquat

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to establish tolerances for the herbicide paraquat in or on various raw agricultural commodities (RACs). ICI Americas, Inc., requested the establishment of these maximum permissible levels for residues of the herbicide.

DATE: Comments must be received on or before April 19, 1988.

ADDRESS: Submit written comments, bearing the identification number [PP 7F3509/P448], by mail to:

Information Services Branch, Program Management and Support Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

In person, deliver comments to: Room 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this proposed rule 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 to the submitter. All written comments will be available for public inspection in Rm. 246 at the address given above from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail:

Robert J. Taylor, Product Manager (PM) 25, Registration Division (TS-767C), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460

Office location and telephone number: Room 245, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1800.

SUPPLEMENTARY INFORMATION:

EPA issued a notice, published in the **Federal Register** of May 13, 1987 (52 FR 18020), which announced that the ICI Americas, Inc., Agricultural Chemical Division, Concord Pike and New Murphy Rd., Wilmington, DE 19897, had submitted a pesticide petition (PP 7F3509), proposing to amend 40 CFR 180.205 by establishing tolerances to permit residues of the herbicide paraquat (1,1'-dimethyl-4,4'-bipyridinium-ion) in or on the RACs peanuts at 0.05 part per million (ppm), peanut hulls at 0.2 ppm peanut vines at 0.5 ppm, and peanut hay at 0.5 ppm.

There were no comments received in response to the notice of filing.

The petitioner subsequently amended the petition by submitting a revised section F petition proposing to establish tolerances for residues of paraquat in or on the RACs peanuts at 0.05 ppm; peanut hulls at 0.2 ppm; peanut vines at 0.5 ppm; peanut hay at 0.5 ppm; kidney of cattle, goats, hogs, horses, and sheep at 0.3 ppm and to increase the existing tolerances for meat, fat, and meat byproducts (except kidney) of cattle, goats, hogs, horses, and sheep from 0.01 to 0.5 ppm. Because there is a potential increase in risk to humans from the revision, the tolerance of 0.3 ppm in or on kidney of cattle, goats, hogs, horses, and sheep and the increase in tolerance for meat, fat, and meat byproducts (except kidney) of cattle, goats, hogs, horses, and sheep from 0.01 to 0.05 is being proposed for 15 days to allow for public comment.

The data submitted in the petition and other relevant material have been evaluated. The data evaluated include several acute studies; a 1-year feeding study in dogs fed dosages of 0, 0.45, 0.93, and 1.51 milligrams/kilogram (mg/kg) of body weight per day (bw/day) with a no-observed-effect level (NOEL) of 0.45 mg/kg/day; a 2-year chronic feeding/oncogenic study in mice fed dosages of 0, 1.87, 5.62, and 15/18.75 mg/kg/day (the highest dosage had to be increased from 15 to 18.75 mg/kg/day while the study was under way because no toxic signs appeared at 15 mg/kg/day) with no oncogenic effects observed under the conditions of the study at up to and including 15/18.75 mg/kg/day (the highest dose tested [HDT] and a systemic NOEL of 1.87 mg/kg/day; a 2-year chronic feeding/oncogenicity study in rats fed dosages of 0, 1.25, 3.75, and 7.5 mg/kg/day with oncogenic effects at 7.5 mg/kg/day (HDT, males) (squamous cell carcinomas in the head region) and an approximate NOEL of 1.25 mg/kg/day for systemic effect; a three-generation reproduction study with rats fed 0, 1.25, 3.75, and 7.5 mg/kg/day with no reproductive effects observed at 7.5 mg/kg/day (HDT) and a systemic NOEL of 1.25 mg/kg/day; a teratology study in mice fed dosages of 0, 1, 5, and 10 mg/kg/day with no teratogenic effects occurring at 10 mg/kg/day (HDT); a fetotoxic NOEL of 5 mg/kg/day and maternal toxicity NOEL of 1.0 mg/kg/day; a teratology study in rats fed dosages of 0, 1, 5, and 10 mg/kg/day with no teratogenic effects occurring at 10 mg/kg/day (HTD) and a fetotoxic and maternal toxicity NOEL of 1.0 mg/kg/day; and 16 acceptable mutagenicity studies, including six gene mutation assays with *S. typhimurium* (TA92, TA 98, TA100, TA1535, TA1537, TA1538, and G46 his-strains) and *A. nidulans* (strains 35 and P_3); and L5178Y mouse lymphoma cells in culture; four structural chromosome aberration assays; dominant lethal (Charles River CD-1 mice and Swiss-Webster mice); cytogenic (human lymphocytes and bone marrow of Wistar rats) and micronucleus in mice; and six DNA damage/repair assays: *S. typhimurim* (TA 1978 and TA1538 strains), *Saccharomyces cervesisiae* (D4, JDI, and "other" strains), human embryo epithelial cells; rat hepatocytes in culture; and sister chromatid exchange in Chinese hamster lung fibroblasts. Paraquat was negative in eight studies (mostly in gene mutation and chromosome aberration assays); weakly positive in four studies (two gene mutation, one chromosome aberration, and one DNA damage/repair assay), and positive in four studies (all DNA damage/repair assays).

The acceptable daily intake (ADI), based on the 1-year dog feeding study (NOEL of 0.45 mg/kg/day) and using a hundredfold safety factor, is calculated to be 0.0045 mg/kg/day.

The theoretical maximum residue contribution (TMRC) from published tolerances for a 1.5-kg diet is calculated to be 0.001771 mg/kg/day. Published tolerances utilize 41.426 percent of the ADI. The current action will utilize an additional 2.069 percent of the ADI.

There are no desirable data lacking for this chemical. The chemical is classified as a class "C" oncogen and is weakly genotoxic. These tolerances are supported because there is only a 2-percent increase in percent of the ADI utilized, and there is no increase in paraquat in processed food and feed items.

The pesticide is useful for the purposes of this tolerance rule. The nature of the residues is adequately understood for the purpose of establishing the tolerances. Adequate analytical methodology (quantitation by spectrophotometry) is available for enforcement purposes. The method is listed in the Pesticide Analytical Manual (PAM), Vol. II, as method I for crops. There are currently no actions pending against the registration of this chemical. Any secondary residues occurring in meat will be covered by tolerances being concurrently proposed for meat, fat, meat byproducts (except kidney), and kidney. Any secondary residues occurring in milk, poultry, and eggs will be covered by existing tolerances on these commodities.

Based on the above information considered by the Agency, the tolerances established by amending 40 CFR Part 180 would protect the public health. It is proposed, therefore, that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number [PP 7F3509/P448]. All written comments filed in response to this proposed rule will be available in the Product Manager's office, Registration Division, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

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

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing 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).

(Sec. 408(e), 68 Stat. 514 (21 U.S.C. 346a(e)).)

List of Subjects in 40 CFR Part 180

Administrative practice and procedures, Agricultural commodities, Presticides and pests.

Dated: March 30, 1988.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR Part 180 be amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.205(a), by adding and alphabetically inserting entries for the raw agricultural commodities peanuts, peanut hay, peanut hulls, and peanut vines and kidney of cattle, goats, hogs, horses, and sheep and by revising the entries for meat, fat, and meat byproducts (except kidney) of cattle, goats, hogs, horses, and sheep, as follows:

§ 180.205 Paraquat; tolerances for residues.

(a) * * *

Commodities	Parts per million
* * * * *	
Cattle, fat	0.05
Cattle, kidney	.3
Cattle, meat	.05
Cattle, mbyp (except kidney)	.05
* * * * *	
Goats, fat	.05
Goats, kidney	.3
Goats, meat	.05
Goats, mbyp (except kidney)	.05
* * * * *	
Hogs, fat	.05
Hogs, kidney	.3
Hogs, meat	.05
Hogs, mbyp (except kidney)	.05
* * * * *	
Horses, fat	.05
Horses, kidney	.3
Horses, meat	.05
Horses, mbyp (except kidney)	.05
* * * * *	
Peanuts	.05
Peanut, hay	.5
Peanut, hulls	.2
Peanut, vines	.5
* * * * *	
Sheep, fat	.05
Sheep, kidney	.3
Sheep, meat	.05
Sheep, mbyp (except kidney)	.05
* * * * *	

[FR Doc. 88–7362 Filed 3–31–88; 11:17 am]

BILLING CODE 6560–50–M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 606

Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the National Science Foundation

AGENCY: National Science Foundation.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the National Science Foundation (NSF). This proposed regulation does not apply to recipients of financial assistance from NSF or to programs or activities that receive a benefit from such assistance because those matters are covered by NSF regulations at 45 CFR Part 605. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides definitions for "individual with handicaps" and "qualified individual with handicaps," and establishes a complaint mechanism for resolving allegations of discrimination.

DATE: To be assured of consideration, comments must be in writing and must be received on or before June 3, 1988. Comments should refer to specific sections in the regulation.

ADDRESS: Comments should be sent to: Dr. Brenda M. Brush, Director, Office of Equal Opportunity, National Science Foundation, Washington, DC 20550.

Comments received will be available for public inspection in the Office of Equal Opportunity, NSF, 1800 G Street NW., Washington, DC, between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday except legal holidays. Copies of this notice are available on cassette tapes for persons with impaired vision. They may be obtained from the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Brenda M. Brush, Director, Office of Equal Opportunity, National Science Foundation, 1800 G Street NW., Washington, DC 20550, Telephone (202) 357–9819 (Voice), (202) 357–9867 (TDD).

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), as it applies to programs and activities conducted by the National Science Foundation. As

amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95–602, 92 Stat. 2982) and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that no otherwise qualified individual with handicaps in the United States, * * * shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance *or under any program or activity conducted by any Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.*

(29 U.S.C. 794 (1978 amendment italicized))

The substantive nondiscrimination obligations of the Foundation, as set forth in this proposed rule, are virtually identical to those established by Federal regulations for programs or activities receiving Federal financial assistance. (*See* 28 CFR Part 41 (section 504 coordination regulations for federally assisted programs).) This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 *Cong. Rec.* 13,901 (1978) (remarks of Rep. Jeffords); 124 *Cong. Rec.* E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 *Cong. Rec.* 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this proposed rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. *See Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C. Cir. 1981) (*APTA*); *see also Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the recent decision of the Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300, and explicitly noted that "[t]he regulations implementing section 504 [for federally assisted programs] are consistent with the view that *reasonable* adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at 301 n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's section 504 regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*; therefore their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence the Foundation believes that there are no significant differences between this proposed rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice. This regulation is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies. This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp., p. 127) and therefore, a regulatory impact analysis has not been prepared.

This regulation does not have an impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601–612).

Section-by-Section Analysis

Section 606.1 Purpose.

Section 606.1 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 606.2 Application.

The proposed regulation applies to all programs or activities conducted by the Foundation but not programs or activities conducted by recipients of Federal financial assistance from the Foundation. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: Those involving general public contact as part of ongoing Foundation operations and those directly administered by the Foundation for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the Foundation's facilities. Activities in the second category include programs that provide Federal services or benefits. This regulation does not, however, apply to programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

Section 606.3 Definitions.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the Foundation's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids

are required explicitly only by § 606.60(a)(1), they may also be necessary to meet other requirements of the regulation.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the Foundation to investigate the complaint. The definition is necessary, because the 180 day period for the Foundation's investigation (*see* § 606.70(f)) begins when the Foundation receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)) except that the term "rolling stock or other conveyances" has been added. The other exception is that the phrase, "or interest in such property," has been deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulation applies to all programs and activities conducted by the Foundation regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the Foundation. The term "facility" is used in §§ 606.50, 606.51, and 606.70(e).

"Individual with handicaps." The definition of "individual with handicaps" is identical to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in the regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 coordination regulations for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without modifications in the program that the Foundation can demonstrate would result in a fundamental alteration in its nature. This definition reflects the decision of the Supreme Court in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of [the] program was to train persons who could serve the nursing profession in all customary ways," *id* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

We have incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the Foundation. The Foundation is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate modifications, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the Foundation does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the modifications do not fundamentally alter the nature of the program.

The Foundation has the initial burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the Foundation must follow the procedures established in § 606.51(a) and § 606.60(d), which are discussed below, for demonstrating that an action would result in undue financial and administrative burdens. That is, the decision must be made by the Foundation Director or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by an explanation of the reasons for the decision. If the Foundation Director or his or her designee determines that an action would result in a fundamental alteration, the Foundation must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (3) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 606.40. Nothing in this part changes existing regulations applicable to employment.

"Section 504." This definition makes clear that, as used in this regulation, "section 504" applies only to programs or activities conducted by the Foundation and not to programs or activities to which it provides Federal financial assistance.

Section 606.10 Self-evaluation.

The Foundation shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Section 606.11 Notice.

Section 606.11 requires the Foundation to disseminate sufficient information to employees, applicants, participants, beneficiaries, and other interested persons to apprise them of rights and protections afforded by section 504 and this regulation. Methods of providing this information include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the Foundation's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 606.30 General prohibitions against discrimination.

Section 606.30 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 606.30 establish the general principles for analyzing whether any particular action of the Foundation violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the Foundation violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 606.30. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The Foundation may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (*e.g.*, epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce; but it may not be permissible to automatically disqualify all those who are blind in just one eye.

In addition, section 504 prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a program if the facilities in which the program is conducted are inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that afforded to others. The later sections on program accessibility (§§ 606.50–606.52) and communications (§ 606.60) are specific applications of this principle.

Despite the mandate of paragraph (d) that the Foundation administer its programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the Foundation to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the Foundation's programs or activities. Paragraph (b)(1)(iv) requires that different or separate aids, benefits, or services be provided only when necessary to ensure that the aids, benefits, or services are as effective as those provided to others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(2) provides that a qualified individual with handicaps still has the right to choose to participate in the program that is not designed to accommodate individuals with handicaps.

Paragraph (b)(1)(v) prohibits the Foundation from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the Foundation from limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(3) prohibits the Foundation from utilizing criteria or methods of administration that deny individuals with handicaps access to the Foundation's programs or activities. The phrase "criteria or methods of administration" refers to official written Foundation policies and the actual practices of the Foundation. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(4) specifically applies the prohibition enunciated in § 606.30(b)(3) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the Foundation. Paragraph (b)(4) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(5) prohibits the Foundation, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d), discussed above, provides that the Foundation must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, *i.e.*, in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section 606.40 Employment.

Section 606.40 prohibits discrimination on the basis of handicap in employment by the Foundation. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner v. Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith v. United States Postal Service*, 742 F.2d 257, 259–260 (6th Cir. 1984); *Prewitt v. United States Postal Service*, 662 F.2d 292, 302–04 (5th Cir. 1981). *Contra McGuiness v. United States Postal Service*, 744 F.2d 1318, 1320–21 (7th Cir. 1984); *Boyd v. United States Postal Service*, 752 F.2d 410, 413–14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, section 606.40 (Employment) of this rule adopts the definitions, requirements, and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613.

Responsibility for coordinating enforcement of Federal laws prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR 1978 Comp., p. 206). Under this authority, the EEOC establishes government-wide standards on nondiscrimination in employment on the basis of handicap. In addition to this section, § 606.70(b) specifies that the Foundation will use the existing EEOC procedures to resolve allegations of employment discrimination.

Section 606.50 Program accessibility: Discrimination prohibited.

Section 606.50 states the general nondiscrimination principle underlying the program accessibility requirements of §§ 606.51 and 606.52.

Section 606.51 Program accessibility: Existing facilities.

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 606.51 requires that each Foundation program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the Foundation is not required to make each of its existing facilities accessible (§ 606.51(a)(1)). However, § 606.51, unlike 28 CFR 41.57, places explicit limits on the Foundation's obligation to ensure program accessibility (§ 606.51(a)(2)).

Paragraph (a)(2) generally codifies case law that defines the scope of the Foundation's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the Foundation is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 606.60(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of the program, and on the Court's statement that section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. *See, e.g., Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981).

Paragraphs (a)(2) and 606.60(d) are also supported by the Supreme Court's recent decision in *Alexander v. Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis* the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers," *id.* at 301, and that *"reasonable adjustments* in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require " 'changes,' 'adjustments,' or 'modifications' to existing programs that would be 'substantial' * * * or that would constitute 'fundamental alteration(s) in the nature of a program.' " *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and the earlier, lower court decisions, that in some situations, certain accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Thus, failure to include such an "undue burdens" provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation.

This paragraph, however, does not establish an absolute defense; it does not relieve the Foundation of all obligations to individuals with handicaps. Although the Foundation is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and services of the federally conducted program or activity.

It is our view that compliance with § 606.50(a) would in most cases not result in undue financial and administrative burdens on the Foundation. In determining whether financial and administrative burdens are undue, all Foundation resources available for use in the funding and operation of the conducted program or activity should be considered. The initial burden of establishing that compliance with § 606.51(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the Foundation. The decision that compliance would result in such alteration or burdens must be made by the Foundation Director or his or her designee and must be accompanied by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she or any specific class of persons has been injured by the Foundation's decision or failure to make a decision may file a complaint under the compliance procedures established in § 606.70.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provision of aides. In choosing among methods, the Foundation shall give priority consideration to those that will be consistent with provision of services in the most integrated setting appropriate to the needs of individuals with handicaps. Structural changes in existing facilities are required only when there is no other feasible way to make the Foundation's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features, such as removal of or alterations to a load-bearing structural member.) The Foundation may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirements. As currently required for federally assisted programs by 28 CFR 41.57(b), the Foundation must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the

effective date of this regulation. Aside from structural changes, all other necessary steps to achieve compliance shall be taken within 60 days.

Section 606.52 Program accessibility: New construction and alterations.

Overlapping coverage exists with respect to new construction and alterations under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). Section 606.51 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the Foundation shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101–19.600 to 101–19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act and because adoption of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the Foundation after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 606.51. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 606.52.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the Foundation believes the same program accessibility standard should apply to both owned and leased existing buildings.

In *Rose v. United States Postal Service*, 774 F.2d 1355 (9th Cir. 1985), the Ninth Circuit held that the Architectural Barriers Act requires accessibility at the time of lease. The *Rose* court did not address the issue of whether section 504 likewise requires accessibility as a condition of lease, and the case was remanded to the District Court for among other things, consideration of that issue. The Foundation may provide more specific guidance on section 504 requirements for leased buildings after the litigation is completed.

Section 606.60 Communications.

Section 606.60 requires the Foundation to take appropriate steps to ensure effective communication with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 606.60(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, the Foundation's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given special consideration by the Foundation (§ 606.60(a)(1)(i)). The Foundation shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 606.60(d). That paragraph limits the obligation of the Foundation to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (*see supra* preamble discussion of § 606.51(a)(3)). Unless not required by § 606.60(d), the Foundation shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 606.51(a), Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the Foundation's obligation to comply with § 606.60.

In certain circumstances, such as relatively simple requests for information by persons skilled in spoken or written language, a note pad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (*e.g.*, a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language and the potential for misunderstanding is high. Then a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the Foundation intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the Foundation's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The Foundation shall ensure effective communication with vision-impaired and hearing-impaired persons involved in hearings conducted by the Foundation. Auxiliary aids must be afforded where necessary to ensure effective communication at the proceedings. If sign language interpreters are necessary, the Foundation may require that it be given reasonable notice prior to the proceeding of the need for an interpreter. Moreover, the Foundation need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature (§ 606.60(a)(1)(ii)). For example, the Foundation need not provide eye glasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the Foundation to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the Foundation to provide information to individuals with handicaps concerning accessible services, activities, and facilities. Paragraph (c) requires the Foundation to provide signage at inaccessible facilities that directs users to locations with information about accessible facilities.

Section 606.70 Complaint procedures.

Paragraph (a) specifies that paragraphs (c) through (h) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) designates the official responsible for coordinating implementation of § 606.70 and paragraph (d) provides an address to which complaints may be sent.

The Foundation is required to accept and investigate all complete complaints (§ 606.70(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to the appropriate entity of the Federal Government (§ 606.70(d)).

Section 606.70(e) requires the Foundation to notify the Architectural

and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Section 606.70(f) requires the Foundation to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal. One appeal within the Foundation shall be provided (§ 606.70(g)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance (§ 606.70(g)).

List of Subjects in 45 CFR Part 606

Blind, Buildings, Civil rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

Erich Bloch,

Director, National Science Foundation.

For the reasons set forth in the preamble, Title 45, Public Welfare, of the Code of Federal Regulations is proposed to be amended by adding Part 606 as follows:

PART 606—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL SCIENCE FOUNDATION

Sec.

Authority: 29 U.S.C. 794

§ 606.1 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 606.2 Application.

This part applies to all programs or activities conducted by the Foundation, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States. Programs and activities receiving Federal financial assistance from the Foundation are covered by 45 CFR Part 605.

§ 606.3 Definitions.

For purposes of this part, the term—

"Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, Department of Justice.

"Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Foundation. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

"Complete complaint" means a written statement that contains the complainant's name and address and describes the Foundation's alleged discriminatory action in sufficient detail to inform the Foundation of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

"Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

"Foundation" means the National Science Foundation.

"Individual with handicaps" means any person in the United States who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Foundation as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the Foundation as having such an impairment.

"Qualified individual with handicaps" means—

(1) With respect to any Foundation program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity

that the Foundation can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) "Qualified handicapped person" as that term is defined for purposes of employment in 29 CFR 1613.702(f), which is made applicable to this part by § 606.40.

"Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); and the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 606.4–606.9 [Reserved]

§ 606.10 Self-evaluation.

(a) The Foundation shall, within one year of the effective date of this part, evaluate its current policies and practices, and the effects thereof, that do not or may not meet the requirements of this part, and, to the extent modification of any such policies and practices is required, the Foundation shall proceed to make the necessary modifications.

(b) The Foundation shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both oral and written).

(c) The Foundation shall, for at least three years following completion of the evaluation required under paragraph (a) of this section, maintain on file and make available for public inspection:

(1) A description of areas examined and any problems identified; and

(2) A description of any modifications made.

§ 606.11 Notice.

The Foundation shall make available to employees, applicants, participants, beneficiaries, and other interested persons such information regarding the provisions of this part and its applicability to the programs or activities conducted by the Foundation and make such information available to them in such manner as the Director of the Foundation finds necessary to apprise such persons of the protections against discrimination assured them by section 504 and this regulation.

§ 606.12–606.29 [Reserved].

§ 606.30 General prohibitions against discrimination.

(a) No qualified individual with handicaps shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the Foundation.

(b)(1) The Foundation, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Foundation may not deny a qualified individual with handicaps the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The Foundation may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(4) The Foundation may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(i) Exclude qualified individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Foundation; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The Foundation, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The Foundation shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps.

§§ 606.31–606.39 [Reserved]

§ 606.40 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Foundation. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 606.41–606.49 [Reserved]

§ 606.50 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 606.51, no qualified individual with handicaps shall, because the Foundation's facilities are inaccessible to or unusable by individuals with

handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Foundation.

§ 606.51 Program accessibility: Existing facilities.

(a) *General.* The Foundation shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not—

(1) Necessarily require the Foundation to make each of its existing facilities accessible to and usable by individuals with handicaps; or

(2) Require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Foundation has the initial burden of establishing that compliance with § 606.51(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Foundation Director or his or her designee after considering all Foundation resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or burdens, the Foundation shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The Foundation may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The Foundation is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. The Foundation, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the Foundation shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The Foundation shall comply with the obligations established under this section within 60 days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the Foundation shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The Foundation shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both oral and written). A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum—

(1) Identify physical obstacles in the Foundation's facilities that limit the accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 606.52 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Foundation shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in 41 CFR 101–19.600 to 101–19.607, apply to buildings covered by this section.

§§ 606.53–606.59 [Reserved]

§ 606.60 Communications.

(a) The Foundation shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The Foundation shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Foundation.

(i) In determining what type of auxiliary aid is necessary, the Foundation shall give primary consideration to the requests of the individual with handicaps.

(ii) The Foundation need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Foundation communicates with applicants and beneficiaries by telephone, telecommunications devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The Foundation shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) The Foundation shall provide signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the Foundation to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where Foundation personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Foundation has the initial burden of establishing that compliance with § 606.60 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Foundation Director or his or her

designee after considering all Foundation resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the Foundation shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 606.61–606.69 [Reserved]

§ 606.70 Complaint procedures—general.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs or activities conducted by the Foundation.

(b) The Foundation shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Opportunity (OEO), shall coordinate implementation of this section.

(d) Persons wishing to submit complaints should submit complete complaints (see § 606.3) to the Office of Equal Opportunity, National Science Foundation, 1800 G Street NW., Washington, DC 20550. In accordance with the procedures outlined below, the Foundation will accept all complete complaints and will either undertake to investigate them if they are within the jurisdiction of the Foundation and submitted within 180 days of the alleged acts of discrimination or in the case of complaints not within the jurisdiction of the Foundation, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity. Complete complaints submitted after the 180 day time limit may also be acted upon at the discretion of the Foundation if good cause for the delay in submission is found.

(e) The Foundation shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or a facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with handicaps.

(f) Within 180 days of the receipt of a complete complaint, the Director, Office of Equal Opportunity (OEO), or his or her designee or delegate, will investigate the complaint and shall notify the complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of a right to appeal to the Director of the Foundation.

(g)(1) A complainant may appeal findings of fact, conclusions of law, or remedies to the Director of the Foundation. Such appeals must be in writing and must state fully the basis for the appeal, proposed alternative findings of fact, conclusions of law, or remedies. They must be sent (as evidenced by an appropriate postmark or other satisfactory evidence) within 90 days after the date of receipt from the Foundation of the letter described in paragraph (f) of this section. The Foundation may extend this time for good cause.

(2) The Director shall notify the complainant of the results of the appeal within 30 days of the receipt of the appeal. If the Director determines that additional information is needed from the complainant, the Director shall have 30 days from the date such additional information is received from the complainant to make a determination on the appeal.

(h) The time limits for sending a letter to the complainant in paragraph (f) of this section and for deciding an appeal in paragraph (g)(2) of this section may be extended with the permission of the Assistant Attorney General.

§§ 606.71–606.99 [Reserved]

[FR Doc. 88–7235 Filed 4–1–88; 8:45 am]
BILLING CODE 7555–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 83–670]

Television Commercialization Guidelines for Children

AGENCY: Federal Communications Commission.

ACTION: Order accepting late-filed comments.

SUMMARY: Action taken herein accepts comments filed out-of-time in response to the Further Notice of Proposed Rule Making/Notice of Inquiry in MM Docket No. 83–670. This Further Notice requests comments regarding the issue of commercialization guidelines for children's television. Comments were filed out-of-time by the United States Catholic Conference, the Office of Communication of the United Church of Christ, Telecommunications Research and Action Center and CBS, Inc.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eugenia R. Hull, Mass Media Bureau, (202) 632–6302.

SUPPLEMENTARY INFORMATION:

List of Subjects in 47 CFR Part 73

Television broadcasting.

Order Accepting Late-Filed Comments

In the Matter of revision of programming and commercialization policies, ascertainment requirements, and program log requirements for commercial television stations; MM Docket No. 83–670.

Adopted: March 11, 1988.

Released: March 23, 1988.

By the Chief, Mass Media Bureau:

1. On October 20, 1987, the Commission adopted a *Further Notice of Proposed Rule Making/Notice of Inquiry* in the above-captioned proceeding, FCC 87–338, summarized at 52 FR 44616 (November 20, 1987), requesting comments regarding children's television commercialization guidelines and other closely related issues. Therein, the Commission established January 4, 1988 and February 19, 1988 a the dates by which comments and reply comments, respectively, could be filed. On December 4, 1987, the Commission extended the dates for filing comments and reply comments to February 19, 1988 and April 4, 1988, respectively.

2. On March 4, 1988, the Commission received late-filed comments in the above-captioned matter from the Office of Communication of the United Church of Christ (UCC) and the United States Catholic Conference (USCC). Simultaneous with submission of their comments, the UCC petitioned the Commission to accept their comments out of time. Also, on February 22, 1988 late-filed comments were received from CBS, Inc. (CBS) and Telecommunications Research and Action Center (TRAC). CBS and TRAC also petitioned the Commission to accept their comments out of time.

3. In the interest of establishing a thorough and comprehensive record in this proceeding, we are accepting all of these comments and have incorporated them into the public record of this proceeding. In view of the lengthy period provided for the filing of replies

in this proceeding and because more than three weeks remain in that period, we are not extending the date for the filing of replies in response to the above-referenced late-filed comments.

5. Accordingly, *it is ordered* that the motions of CBS, Inc., Telecommunications Research and Action Center and the Office of Communication of the United Church of Christ for acceptance of late-filed comments in this proceeding *are granted.* In addition, *it is ordered,* that the late-filed comments of the United States Catholic Conference in this *proceeding are accepted.* This action is taken pursuant to authority provided in section 4(i) of the Communications Act of 1934, as amended, and § 0.283 of the Commission's rules.

6. For further information concerning this proceeding, contact Eugenia R. Hull, (202) 632–6302.

Federal Communications Commission

Alex D. Felker,

Chief, Mass Media Bureau

[FR Doc. 88–7253 Filed 4–1–88; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket PS–100 Notice 1]

Gas Detection and Monitoring in Compressor Station Buildings

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: This ANPRM requests specific information to determine the need for additional regulations to require gas monitoring and alarm systems and automatically-controlled ventilation systems in compressor buildings or for more specific Operations and Maintenance (O&M) procedures for such buildings.

DATES: Interested parties are invited to submit comments by June 3, 1988. Late filed comments will be considered so far as is practicable.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8426 between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Bernard Liebler, (202) 366–2392, regarding the subject matter of this document, or the Dockets Unit, (202) 366–5046, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1982, an explosion occurred in The Trunkline Gas Company's (Trunkline) Compressor Building B at their Bonicord, Tennessee facility. Three Trunkline employees were killed, two others were seriously injured, and the compressor building was severely damaged. An investigation by the National Transportation Safety Board (NTSB) found eight gas leaks in the gasketed valve covers of the compressor prime mover, a 10,000-hp Cooper-Bessemer engine.

The explosion occurred after the five Trunkline employees tightened the gasketed valve covers on the engine and then successfully started the engine after several attempts. The engine was operating for a brief period several days before the accident and showed no signs of leakage at the valve cover. However, according to maintenance records, valve cover leaks had been detected on two occasions.

The building in which the accident occurred was equipped with roof louvers as a means of ventilation. The louvers were designed to fail closed if the manual adjustment cable broke. The NTSB investigation concluded that the louvers had been set in a position that would permit leaking gas in the building to accumulate. The building was not equipped with a gas detector. Installation of a gas detection system had been planned but not accomplished.

The NTSB concluded that the explosion was caused by the ignition of the gas leaking from the valve-cover gaskets by an undetermined ignition source. As a result they presented the following Safety Recommendation to RSPA:

> Amend 49 CFR § 192.173, regarding compressor station building ventilation systems equipped with restrictive devices, to require the installation of gas detection equipment that will alert employees to hazardous gas accumulations and automatically open fully all restrictive devices when accumulations of gas are detected. (P–83–20)

OPS has examined leak reports pertaining to incidents at compressor stations between 1982 and 1986, inclusive. The examination revealed 42 reports of incidents of gas leakage that either definitely or probably occurred inside compressor buildings. Of those 42, 17 resulted in fires with 8 of those being accompanied by explosions. Of these 17, 3 resulted in injuries (8) and one in fatalities (2). (The Bonicord incident resulted in the 2 fatalities and 3 of the 8 injuries. The numbers listed above, 3 fatalities and 2 injuries, differ because one person initially listed as injured on the leak report filed with OPS later succumbed.) None of the circumstances described in the other reports were sufficiently similar to the events at Bonicord such that the measures recommended by NTSB would likely have been effective in preventing those events. However, the frequency of incidents involving compressor buildings is significant and forms the basis for this rulemaking.

Discussion

Section 192.173 currently requires ventilation of each compressor station building readied for service after the effective date of the regulation. Section 192.173 provides that the ventilation must "ensure that employees are not endangered by the accumulation of gas in rooms, sumps, attics, pits, or other enclosed places." Under these rules, a properly designed, adjusted, and maintained ventilation system at Bonicord would likely have been adequate to prevent the hazardous gas accumulation. However, the gas standards do not require backup protection if the ventilation system fails to prevent the accumulation of gas. The deaths and injuries at Bonicord might have been avoided if there had been an indicator to warn the Trunkline workers of the existence of the hazardous gas. Either gas odorization or a gas monitoring and alarm system could potentially have provided that warning.

Since § 192.173 applies to the design of compressor buildings, the NTSB recommendation would apply only to buildings placed in service in the future. Since compressor buildings are not frequently constructed, OPS believes that limiting this rulemaking to future construction would have minimal benefit in solving any problem that now exists. Therefore, this ANPRM addresses several alternatives that would apply to all compressor buildings including those currently in service.

OPS is also concerned that automatic opening of restrictive ventilation devices might, by rapid ventilation, mitigate or nullify the effectiveness of a Halon or foam fire suppression system. However, OPS is similarly concerned that a ventilation system designed to fail

closed could result in the accumulation of a hazardous gas concentration were it to do so while gas is leaking in the building. In the context of this proceeding, OPS is interpreting the term "restrictive device" as used in the NTSB recommendation to mean a passive ventilation system for which the effective ventilation area can be adjusted mechanically.

Most of the gas in transmission pipelines is not odorized. In these cases, employees entering a compressor building containing a hazardous gas concentration cannot smell the leaking gas. Thus, the safety of a compressor building's atmosphere cannot be verified without additional external means, such as a portable gas detector or a permanent gas detector with an alarm. The Department's safety standards for hazardous liquid pipelines require that pump station buildings (which present risks similar to those presented by gas compressor station buildings) be constructed to include both ventilation and devices warning occupants of the presence of hazardous vapors (49 CFR 195.262 (a)).

To ensure the effectiveness of portable gas detectors, it would be necessary to include in the operator's operating and maintenance (O&M) plan procedures requiring their use verifying the absence of a combustible gas mixture before entering a compressor building. Permanently installed and alarmed detectors would not require such additions to the O&M plan. OPS has several available alternatives that could be applied individually or in combination:

1. Require operators to equip new and existing compressor buildings handling unodorized gas with continuously operating gas monitoring systems that will activate an alarm whenever a gas-in-air mixture above an established threshold is detected. The alarm would be capable of warning personnel of the presence of a flammable mixture prior to entering the building.

2. Require operators to equip new and existing compressor buildings handling unodorized gas with restrictive ventilation devices that open automatically upon detection of a hazardous gas accumulation and fail safe.

3. Revise § 192.605, Essentials of operating and maintenance plan, to include specific procedures for checking the atmosphere inside compressor buildings handling unodorized gas before entering such buildings.

4. Revise § 192.605, Essentials of operating and maintenance plan, to include requirements to maintain compressor building restrictive ventilation devices.

5. Do not revise the regulations.

Alternatives 1 and 2 appear initially to be the most effective, because they require the least action on the part of the employee. A properly designed alarm should be obvious to an employe who intends to enter a compressor building. Of course, the employe could then ignore the alarm, but such action is not in the employe's self-interest and is probably contrary to the operator's standard procedures. This alternative, however, could be expensive if a large number of compressor stations would require the installation of gas monitoring and alarm systems. OPS does not have sufficient information about the prevalence of gas monitoring and alarm systems in compressor buildings or the cost of installing such systems to conclude whether Alternative 1 would be expensive to implement.

Alternative 2 is similar to Alternative 1, since it would require a continuous gas monitoring system to initiate automatic venting of unanticipated gas accumulations. OPS is concerned about several aspects of this alternative, including the effect of its operation on fire protection/suppression systems (e.g., Halon), the benefits, if any, of the fail-safe feature, and the costs of implementation.

The third and fourth alternatives would not require investment in hardware to the same degree as the first two. They would rely on the creation of effective procedures for safe entry into compressor buildings or for maintenance of restrictive ventilation devices. Furthermore, each would depend on adherence to those procedures for full effectiveness. However, there would still be costs associated with these options in terms of procedure revision and distribution and employe education.

The final alternative would not impose further restrictions or requirements on operators. The effectiveness of this approach would depend on several factors. The primary factor being how widespread is the existence in the industry of monitored compressor buildings, standard operating procedures requiring that employees check the atmosphere of a compressor building before entry, and standard operating procedures requiring regular maintenance of compressor building restrictive ventilation devices.

Request for Information

To assist OPS in deciding which of the alternatives to implement, interested parties are invited to participate in this rulemaking by providing answers to the following questions and submitting relevant information:

1. (a) Are gas monitoring systems commonly installed in compressor buildings? Why, or why not?

(b) Are they used for automatic control of restrictive ventilation devices, e.g., louvers?

(c) Are such ventilation devices designed to fail safe?

(d) At what gas accumulation level are such alarms and controls set to operate?

2. (a) Where gas monitoring and alarm systems are not now installed in compressor buildings, what would be the cost of installing such systems, both unit and aggregate?

(b) What would be the added cost of including automatic control of restrictive ventilation devices designed for fail-safe operation?

(c) Are there any technical or operational difficulties that would prevent or make excessively difficult the installation of gas monitoring and alarm systems or automatic ventilation control systems in all compressor buildings?

3. (a) Do operator procedures require personnel normally to check for hazardous gas accumulations before entering compressor buildings?

(b) What follow-up action do they require when hazardous gas accumulations are detected?

4. (a) What procedures are followed in maintaining ventilation systems in compressor station buildings?

(b) How frequently is maintenance performed?

5. (a) Which of the first four alternatives or combination thereof would provide the most cost-effective means for preventing loss of life from incidents in compressor station buildings?

(b) Should the application of the selected alternative be limited, as suggested, to compressor stations handling unodorized gas?

Commenters are not limited to filing comments only on the questions presented above and may submit any facts and views consistent with the intent of this notice. In addition, commenters are encouraged to provide comments on (1) "major rule" considerations under the terms of Executive Order 12291; (2) "significant rule considerations under the terms of

DOT regulatory procedures (44 FR 11034); (3) potential environmental impacts subject to the National Environmental Policy Act; (4) information collection burdens that must be reviewed under the Paperwork Reduction Act; (5) the economic impact on small entities under the Regulatory Flexibility Act; and (6) impacts on Federalism under Executive Order 12612.

Authority: 49 App. U.S.C. 1672 and 1804; 49b CFR 1.53; Appendix A of Part 1 and App. A of Part 106.

Issued in Washington, DC, March 30, 1988.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 88-7314 Filed 4-1-88; 8:45 am]

BILLING CODE 4910-60-M

Notices

Federal Register
Vol. 53, No. 64
Monday, April 4, 1988

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.

ACTION

Drug Alliance; Funds Availability; Demonstration Grants

ACTION: Notice of availability of funds, Drug Alliance grants.

The Program Demonstration and Development Division of ACTION announces the availability of funds during fiscal year 1988 for Drug Alliance grants under the Special Volunteer Programs authorized by the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113, Title 1, Part C; 42 U.S.C. 4992).

A. Consideration will be limited to innovative proposals using volunteers to work with one or more of the following targeted at-risk youths: Low-income youth, public housing youth, children of substance abusers and youth from single parent families. Proposals must use one of the following four strategies for preventing the use of illicit substances by these youth:

1. Programs which use youth ages 18–24 to involve youth ages 9–14 in activities which would formally convey to the youth the development of critical life skills (including "just say no") to prevent illicit substance use,

2. Programs which use youth ages 18–24 to involve youth ages 9–14 in positive alternative activities which seek to prevent illicit substance use by offering other options and thereby, reducing the opportunities and motivation for youth to experiment with illicit substances,

3. Programs similar to #1, above, except that they would involve youth ages 14–17 with youth ages 9–14, and

4. Programs similar to #2, above, except that they would involve youth ages 14–17 with youth ages 9–14.

Applicants' proposal should focus on only one of the four strategies. Applicants have the option of submitting more than one proposal, but can only submit one proposal for each strategy. ACTION anticipates funding an equal number of proposals for each of the four strategies to facilitate an impact evaluation of this initiative.

Applications which advocate the responsible use of illicit substances will not be considered for funding.

B. Eligible Applicants: Only applications for private non-profit incorporated organizations and public agencies will be considered. Such organizations may include, but are not limited to, school districts, colleges, religious organizations, local governments, fraternities, sororities, community service groups, youth service organizations, vocational schools, and schools of performing and visual arts.

C. Available Funds and Scope of the Grant: Applicants may submit proposals for ACTION funding up to $35,000.

D. General Criteria for Grant Selection: Grant applications will be reviewed and evaluated in comparison with the criteria outlined below, as appropriate, as well as conformance to the instructions included in the application. Grant applicants with a demonstrated competence in using volunteers to prevent the use of illicit substances by youth will be given preference.

1. Plans to recruit, train and retain non-stipended volunteers in areas of priority.

2. Promise of developing innovations or knowledge in mobilizing and sustaining State and local volunteer efforts to prevent illicit substance use by youth.

3. Potential for replication of the project model including: plans for implementation and dissemination of results of the project including any products such as reports and manuals for use by others.

4. Plans for continuation of the activities and self-sufficiency of the program following the completion of the project supported by ACTION funds.

5. Carefully formulated measurable time phased objectives, including self-sufficiency, and feasibility of methods of meeting those objectives.

6. Capability of proposed staff.

7. Likelihood of completion of project within proposed timetable.

8. Feasibility of proposed budget.

9. Adequacy of plans for data gathering and evaluation.

10. Efforts to create public awareness of the illicit substance use problem and to address the community denial of and apathy for the problem.

11. Letters of support from collaborating agencies and organizations where such could be expected to contribute to the value or success of the project.

12. While specific levels of matching funds are not a requirement for grants, evidence of local public and private sector support (financial and in-kind) is strongly encouraged and will be considered in the decision making process. Applicants capable of such contributions should specify the sources and nature of in-kind and other non-federal contributions. These contributions must be deemed allowable costs in accordance with ACTION requirements.

E. The Associate Director of Domestic and Anti-Poverty Operations may use additional factors in choosing among applicants who meet the minimum criteria specified above, such as:

1. Geographic distribution;

2. Availability of project activities to all segments of society;

3. Applicants accessibility to alternate resources, both technical and financial;

4. Allocation of Program Demonstration/Drug Alliance resources in relation to other ACTION funds;

5. The overall quality of the project as determined by the Agency review process (Part D); and

6. The significance of the project in terms of increasing knowledge of successful strategies to the volunteer illicit substance use prevention and education projects.

F. Application Review Process: Applications submitted under this announcement will be reviewed and evaluated by their respective ACTION State and Regional Offices and ACTION's Program Demonstration and Development Division. ACTION's Associate Director for Domestic and Anti-Poverty Operations will make the final selection. ACTION reserves the right to ask for evidence of any claims of past performance or future capability.

G. Application Submission and Deadline: One signed original and two copies of all completed applications must be submitted to the appropriate ACTION State Office no later than 5:00 p.m. local standard time on May 13, 1988. Only those applications that are

received at the appropriate ACTION State Office by 5:00 p.m. local standard time on this date will be eligible.

All grant applications must consist of:

a. Application for Federal Assistance (ACTION Form A–1036) with narrative budget justification and a narrative of project goals and objectives, and assurances.

b. CPA certification of accounting capability.

c. Articles of incorporation.

d. Proof of non-profit status or an application for non-profit status, which should be made through documentation.

e. Resume of candidates for the position of project director, if available, or the resume of the director of the applicant agency or project.

f. Organization chart of the applicant organization showing how the project is related to the organization.

g. A written statement indicating a willingness to participate in an evaluation conducted by ACTION.

h. A written statement acknowledging that ACTION's funding is limited to a maximum one-year non-renewable grant.

To receive an application kit, please contact your ACTION State Office. Following is an address list of ACTION Regional Offices, along with the addresses of ACTION State Offices under their jurisdiction:

Region I

ACTION Regional Office, 10 Causeway Street, Room 473, Boston, MA 02222–1039

ACTION State Office, Abraham Ribicoff Federal Building, 450 Main Street, Room 524, Hartford, CT 06103–3002

ACTION State Office, Federal Building, Room 305, 76 Pearl Street, Portland, ME 04101–4188

ACTION State Office, 10 Causeway Street, Room 467, Boston, MA 02222–1038

ACTION State Office, Federal Post Office & Courthouse, 55 Pleasant Street, Room 316, Concord, NH 03301–3939, (New Hampshire/Vermont)

ACTION State Office, John E. Fogarty Building, Room 200, 24 Weybosset Street, Providence, RI 02903–2882

Region II

ACTION State Office, 6 World Trade Center, Room 758, New York, NY 10048–0206

ACTION State Office, 402 East State St., Room 426, Trenton, NJ 08608–1507

ACTION State Office, 6 World Trade Center, Room 758, New York, NY 10048–0206

ACTION State Branch Office, U.S. Courthouse & Federal Building, 445 Broadway, Room 103, Albany, NY 12207–2923

ACTION State Office, Frederico DeGetau Federal Office Building, Carlos Chardon Avenue, Suite 662, Hato Rey, PR 00918–2241, (Puerto Rico/Virgin Islands)

Region III

ACTION State Office, U.S. Customs House, 2nd & Chestnut Street, Room 108, Philadelphia, PA 19106–2912

ACTION State Office, Federal Building, Room 372–D, 600 Federal Place, Louisville, KY 40202–2230

ACTION State Office, Federal Building, 31 Hopkins Plaza, Room 1125, Baltimore, MD 21201–2814, (Delaware/Maryland)

ACTION State Office, Federal Building, Room 500, 85 Marconi Boulevard, Columbus, OH 43215–2888

ACTION State Office, U.S. Custom House, Room 108, 2nd & Chestnut Streets, Philadelphia, PA 19106–2998

ACTION State Office, 400 North 8th Street, P.O. Box 10066, Richmond, VA 23240–1832, (Virginia/District of Columbia)

ACTION State Office, 603 Morris Street, 2nd Floor, Charleston, WV 25301–1409

Region IV

ACTION State Office, 101 Marietta Street NW., Suite 1003, Atlanta, GA 30323–2301

ACTION State Office, 2121 8th Avenue North, Room 722, Birmingham, AL 35203–2307

ACTION State Office, 930 Woodcock Road, Suite 221, Orlando, FL 32803–3750

ACTION State Office, 75 Piedmont Avenue NE, Suite 412, Atlanta, GA 30303–2587

ACTION State Office, Federal Building, Room 1005–A, 100 West Capital Street, Jackson, MS 39269–1092

ACTION State Office, Federal Building, P.O. Century Station, 300 Fayetteville Street Mall, Room 131, Raleigh, NC 27601–1739

ACTION State Office, Federal Building, Room 872, 1835 Assembly Street, Columbia, SC 29201–2430

ACTION State Office, Federal Building/US Courthouse, 801 Broadway, Room 246, Nashville, TN 37203–3889

Region V

ACTION State Office, 10 West Jackson Boulevard, 6th Floor, Chicago, IL 60604–3964

ACTION State Office, 10 West Jackson Boulevard, 6th Floor, Chicago, IL 60604–3964

ACTION State Office, 46 East Ohio Street, Room 457, Indianapolis, IN 46204–1922

ACTION State Office, Federal Building, Room 339, 210 Walnut, Des Moines, IA 50309–2199

ACTION State Office, Federal Bldg., Room 652, 231 West Lafayette Blvd., Detroit, MI 48226–2799

ACTION State Office, Old Federal Bldg., Room 126, 212 Third Avenue South, Minneapolis, MN 55401–2596

ACTION State Office, 517 East Wisconsin Ave., Room 601, Milwaukee, WI 53202–4507

Region VI

ACTION Regional Office, 1100 Commerce, Room 6B11, Dallas, TX 75242–0696

ACTION State Office, Federal Building, Room 2506, 700 West Capitol Street, Little Rock, AR 72201

ACTION State Office, Federal building, Room 248, 444 SE. Quincy, Topeka, KS 66603–3501

ACTION State Office, 626 Main Street, Suit 102, Baton Rouge, LA 70801–1910

ACTION State Office, Federal Office Building, 911 Walnut, Room 1701, Kansas City, MO 64106–2009

ACTION State Office, Federal Building, Cathedral Place, Room 129, Santa Fe, NM 87501–2026

ACTION State Office, 200 NW 5th, Suite 912, Oklahoma City, OK 73102–6093

ACTION State Office, 611 East Sixth Street, Suite 107, Austin, TX 78701–3747

Region VIII (No Region VII)

ACTION Regional Office, Executive Tower Building, 1405 Curtis Street, Denver, CO 80202–2349

ACTION State Office, Columbine Bldg., Room 301, 1845 Sherman Street, Denver, CO 80203–1167

ACTION State Office, Federal Building, Room 8036, 2120 Capitol Avenue, Cheyenne, WY 82001–3649

ACTION State Office, Federal Office Bldg., Drawer 10051, 301 South Park, Room 192, Helena, MT 59626–0101

ACTION State Office, Federal Bldg., Room 293, 100 Centennial Mall North, Lincoln, NE 68508–3896

ACTION State Office, Federal Building, Room 213, 225 S. Pierre Street, Pierre, SD 57501–2452 (North & South Dakota)

Region IX

ACTION Regional Office, 211 Main Street, Room 530, San Francisco, CA 94105–1914

ACTION State Office, U.S. Post Office & Courthouse, 350 South Main St., Room 484, Salt Lake City, UT 84101–2198

ACTION State Office, 522 North Central, Room 205–A, Phoenix, AZ 85004–2190

ACTION State Branch Office, 211 Main Street, Room 534, San Francisco, CA 94105–1974

ACTION State Office, Federal Bldg., Room 14218, 11000 Wilshire Blvd., Los Angeles, CA 90024–3671
ACTION State Office, Federal Building, P.O. Box 50024, Honolulu, HI 96850 (Hawaii/Guam/American Samoa)

Region X

ACTION Regional Office, Federal Office Building, 909 First Avenue, Ste. 3039, Seattle, WA 98174–1103
ACTION State Office, 4600 Kietzke Lane, Suite E–141, Reno, NV 89502–1208
ACTION State Office, The Alaska Center, Suite 340, 1020 Main Street, Boise, ID 83702–5745
ACTION State Office, Suite 3039, Federal Office Bldg., 909 First Avenue, Seattle, WA 98174–1103 (Alaska)
ACTION State Office, Federal Bldg., Room 647, 511 NW Broadway, Portland, OR 97209–3416

Signed at Washington, DC, this 28th day of March.

Donna M. Alvarado,

Director.

[FR Doc. 88–7262 Filed 4–1–88; 8:45 am]

BILLING CODE 6050–28–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

State of New Jersey Farmland Preservation Soil and Water Conservation Cost-Share Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954, as Amended

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of determination.

SUMMARY: The Secretary of Agriculture has determined that cost-share payments made under the New Jersey Farmland Preservation Soil and Water Conservation Cost-Share Program are made primarily for the purpose of conserving soil and water resources and protecting or restoring the environment. This determination, which is made in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended, and the provisions of 7 CFR Part 14, permits recipients of these payments to exclude them from gross income for Federal income tax purposes if certain other conditions are met.

FOR FURTHER INFORMATION CONTACT: Director, Conservation and Environmental Protection Division, Agricultural Stabilization and Conservation Services, USDA, P.O. Box 2415, Washington, DC 20013, (202) 447–6221.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as added by the Revenue Act of 1978 and amended by the Technical Corrections Act of 1979, provides that certain payments made under State programs may be eligible for exclusion from gross income if certain determinations are made. The Secretary of Agriculture must determine whether payments made under a State program, as described in section 126(a)(10), are "made primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife." In making this determination, the Secretary of Agriculture must evaluate each program according to criteria set forth in 7 CFR Part 14.

The Farmland Preservation Bond Act of 1981, Ch. 276, 1981 N.J. Laws 988 (the "Bond Act"), established the policy of the State to assist, through cost-sharing programs, the long term development and management of farmland and the State's natural resources through soil and water conservation projects and programs. The Bond Act authorizes the administration of a cost-share program with agricultural producers who qualify for assistance.

The Bond Act further authorized the issuance of bonds of the State in the sum of $50,000,000.00 for the purchase of development easements on farmland and to provide State matching funds for soil and water conservation projects. The proceeds from the sale of these bonds were deposited in a special fund designated as the "Farmland Preservation Fund".

One of the State conservation programs is a soil and water conservation cost-share program that is authorized by the Agriculture Retention and Development Act (N.J.S.A. 4:1C–11 *et seq.*) (the "Act"). The Act, which was effective January 25, 1983, authorizes the State Agriculture Development Committee (SADC) and the State Soil Conservation Committee (SSCC) to administer a cost-share program with agricultural producers who qualify for assistance.

Section 4:1C–12 of the act provides that certain financial, administrative and regulatory benefits will be made available to landowners who choose to participate in the preservation of farmland. In accordance with the provisions of this Act, the New Jersey Farmland Preservation Soil and Water Conservation Cost-Share Program was established for the control and prevention of soil erosion and sediment damages, the control of pollution on agricultural lands, or the impoundment, storage and management of water for agricultural purposes.

The Act authorizes the appropriation of funds by the legislature for grants to counties and municipalities for up to 50 percent of the cost of the acquisition of development easements on farmland and for grants to landowners or farm operators for up to 50 percent of the cost of soil and water conservation projects. The Act provides that the SSCC is the agency designated for the approval of soil and water conservation projects eligible for State cost-sharing assistance. (See N.J.S.A. 4:1C–24.) The SSCC has approved eligible projects for participants in the New Jersey Preservation Soil and Water Conservation Soil and Water Conservation Program (N.J.A.C. 2:90–2) and developed procedural rules for program implementation (N.J.A.C. 2:90–3).

The State Agricultural Development Committee and the SSCC are responsible for State level review and approval of project applications for funding assistance and for verification that such applications are in comformance with program guidelines.

In order to be eligible for cost-share assistance a landowner must be enrolled in a county and State approved New Jersey Farmland Preservation Soil and Water Cost-Sharing Program and agree to retain the land in agricultural production for a minimum period of 8 years and also maintain the practice for the eight year duration.

Technical assistance is provided by the local soil conservation districts who also must approve farm conservation plans and cost-share applications for submission to the SSCC for review and approval.

Eligible Cost-Share Practices are as follows:

N.J.A.C. 2:90–2.5	Terrace systems
N.J.A.C. 2:90–2.6	Diversions
N.J.A.C. 2:90–2.7	Contour farming
N.J.A.C. 2:90–2.8	Stripcropping systems
N.J.A.C. 2:90–2.9	Sod waterways
N.J.A.C. 2:90–2.10	Windbreak restoration or establishment
N.J.A.C. 2:90–2.11	Stream protection

N.J.A.C. 2:90–2.12 Permanent vegetative cover on critical areas
N.J.A.C. 2:90–2.13 Land shaping or grading
N.J.A.C. 2:90–2.14 Water impoundment reservoirs
N.J.A.C. 2:90–2.15 Irrigation systems
N.J.A.C. 2:90–2.16 Sediment retention, erosion, or water control structures
N.J.A.C. 2:90–2.17 Permanent open drainage systems
N.J.A.C. 2:90–2.18 Underground drainage systems
N.J.A.C. 2:90–2.19 Developing facilities for livestock water
N.J.A.C. 2:90–2.20 Forest tree stand improvement
N.J.A.C. 2:90–2.21 Forest tree plantations
N.J.A.C. 2:90–2.22 Site preparation for natural regeneration
N.J.A.C. 2:90–2.23 Animal waste control facilities

The authorizing legislation, rules and regulations, and operating procedures for the New Jersey Farmland Preservation Soil and Water Conservation Cost-Share Program have been carefuly examined by the agencies of the U.S. Department of Agriculture using the criteria set forth in 7 CFR Part 14. The Department has concluded that the payments made under this cost-share program are made to financially assist eligible persons in carrying out soil and water conservation measures or protecting or restoring the environment. A "New Jersey Farmland Preservation Soil and Water Conservation Cost-Share Program Record of Decision Primary Purpose Determination for Federal Tax Purposes" has been prepared and is available upon request from the Conservation and Environmental Protection Division, ASCS. Requests may be sent to the address listed above.

Determination

It is hereby determined in accordance with section 126(b) of the Internal Revenue Code of 1954, as amended, and 7 CFR Part 14 that all cost-share payments made under the New Jersey Farmland Preservation Soil and Water Conservation Cost-Share Program are made primarily for the purpose of conserving soil and water resources and protecting or restoring the environment.

Signed at Washington, DC on March 28, 1988.

Richard E. Lyng,

Secretary of Agriculture.

[FR Doc. 88–7275 Filed 4–1–88; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 71275–7275]

Financial Assistance for Research and Development Projects To Provide Information for the Full and Wise Use of Enhancement of Fishery Resources in the Gulf of Mexico

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

ACTION: Notice of availability of financial assistance.

SUMMARY: For fiscal year 1988, Marine Fisheries Initiative (MARFIN) funds are available to assist persons in carrying out research and development projects which optimize the use of U.S. Gulf of Mexico fishery involving the U.S. fishing industry (recreational or commercial) including but not limited to harvesting methods, economic analyses, processing, fish stock assessment, and fish stock enhancement. NMFS issues this notice describing the conditions under which applications will be accepted and how NMFS will determine which applications will be funded.

DATE: Applications must arrive in the NMFS Office given below by May 19, 1988.

FOR FURTHER INFORMATION CONTACT: Dr. Donald R. Ekberg, Southeast Regional Office, 9450 Koger Blvd., National Marine Fisheries Service, St. Petersburg, Florida 33702, Telephone: 813–893–3720.

SUPPLEMENTARY INFORMATION:

Classification

NMFS reviewed this solicitation in accordance with Executive Order 12291 and the Department of Commerce guidelines implementing that Order. This solicitation is not "major" because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This notice does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under E.O. 12612. Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act. Information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB clearance No. 0648–0175) under the provisions of the Paperwork Reduction Act. This program is subject to the provisions of Executive Order 12372.

I. Introduction

Section 304(e) of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1854(e)) authorizes the Secretary to conduct research to enhance U.S. fisheries. The Departments of Commerce, Justice, and State, the Judiciary, and related Agencies Appropriation Act of 1988 makes funds available to the Secretary of Commerce for fiscal year 1988. This solicitation makes available approximately $2.5 million (including $686 thousand for continuing projects) for financial assistance under the MARFIN program to enhance the use of fishery resources in the Gulf of Mexico. There is no guarantee that sufficient funds will be available to make awards for all approved projects. U.S. fisheries [1] include any fishery that is or may be engaged in by U.S. citizens. The phrase "fishing industry" includes both the commercial and recreational sectors of U.S. fisheries.

II. Funding Priorities

Fisheries research and development proposals should be related to one or more of the priority areas listed below (in no rank order):

1. *Shrimp.* (1) Development of improved gear efficiency, on-board handling, grading, sorting and preservation methods, (2) determination of social and economic impacts of turtle excluder devices (TEDs), (3) economic evaluation of alternative harvesting (other than otter trawls), handling and processing systems, (4) identification of numbers and types of fishing vessels and gear now in use, trends in capital inputs into the fleet, and assessment of multiple uses of shrimp trawlers in other fisheries, (5) characterization (catch, effort, size, etc.) and determination of economic impacts of the bait shrimping industry, (6) characterization (catch, effort, size, etc.) and determination of

[1] For purposes of this notice, a fishery is defined as one or more stocks of fish, including tuna, and shellfish which are identified as a unit based on geographic, scientific, technical, recreational and economic characteristics, and any and all phases of fishing for such stocks. Examples of a fishery are Gulf of Mexico shrimp, groundfish, menhaden, etc.

economic impacts of recreational shrimping, and (7) assessment of impact of imported shrimp on domestic price structure, economics of the domestic industry and relationship to fisheries management actions which influence the size of shrimp being landed.

2. *Menhaden.* (1) Economic ehancement of products (surimi, oil, and food additives) for human consumption, and (2) prey-predator relationships.

3. *Coastal Pelagics.* (1) Determination of recruitment indices for king and Spanish mackerel, (2) identification of king and Spanish mackerel management units, (3) development of methods to solve problems of competition between recreational and commercial fishermen, and (4) economic analysis of fishing strategies to harvest blue runners, little tunny, related species.

4. *Reef Fish.* (1) Determination of recreational fishing participation, (2) determination of recruitment processes for shallow and deep-water reef fish, (3) development of a limited entry system for reef fish, (4) identification of reef fish management units, (5) development of methods to solve problems of competition between recreational and commercial fishermen, and (6) determination of trends in fishing effort for in-shore off-shore fisheries, and (7) evaluation of artificial reef site location as affecting reef-to-reef recruitment.

5. *Coastal Herrings.* (1) Handling and processing, shoreside methods, and product development, (2) resource surveys and gear development, (3) economic analysis of harvesting, handling, and processing systems, and (4) assessment of predator-prey relationships, particularly with respect to recreational and commercial impacts.

6. *Ocean Pelagics.* (1) Development of selective fishing gear, including longline methods, (2) determination of social and economic impacts of alternative fishing methods, and (3) development of methods to determine recreational fishing participation.

7. *Marine Mollusks.* (1) Development of methods for on-shore and off-shore oyster depuration systems, (2) development of guidelines for oyster reef expansion, rehabilitation, and management, and (3) development of improved oyster varieties, culture methods, and technology transfer.

8. *Crabs and Lobsters.* (1) Determination of safe harvest potential for deepwater crabs, and (2) study of a limited entry system for stone crab fishery, and (3) development of methods to quantify the recreational blue crab fishery.

9. *Bottomfish .* (1) Assessment of impact of shrimp trawling on bottomfish stocks, (2) determination of yield potentials, stock estimates, and life history of Gulf butterfish, (3) development of methods to reduce incidential catch of bottomfish, (4) assessment of biological, social, and economic impact of incidental catch reduction.

10. *Marine Mammals and Endangered Species.* (1) Assessment of non-shrimping mortality of sea turtles, using available data, and (2) development of methods to survey endangered sea turtles using platforms of opportunity, such as aircraft or vessels in use for other projects.

11. *Estuarine Fish.* (1) Stock assessment and identification (occurrence of separate stocks) of red drum, (2) improved estimate of age structures and catch of red and black drums, (3) measurement of escapement rate of inshore red drum juveniles to offshore stock, (4) enhanced knowledge of red drum life history and offshore recruitment, (5) social and economic analyses in support of fisheries management, (6) evaluation of socioeconoimic implications of alternative fishing strategies, such as purse seines versus gill nets, (7) determination of potential to develop an eel fishery, and (8) enhanced knowledge of black drum and spotted seatrout and coastal-estruarine recruitment.

12. *General.* Conduct social and economic research applicable to each Gulf of Mexico fishery: (1) Costs and returns including production function analysis, (2) demand analyses on recreational and commercial fisheries, (3) economic implication levels of capitalization and effort, and (4) economics of recreational or commercial multi-species fisheries, (5) economics of foreign trade barriers affecting Gulf of Mexico fisheries.

MARFIN financial assistance for projects started in fiscal years 1986 and 1987 totaled ($3,787 million). Funding by fisheries was as follows:

	$ thousand	Percent of total
1. Shrimp (includes TED technology transfer)	889.2	23.5
2. Menhaden	0	0
3. Coastal pelagics	451.4	11.9
4. Reef fish	201.6	5.3
5. Coastal herrings	239.3	6.3
6. Ocean pelagics	45.2	1.2
7. Marine mollusks	0	0
8. Crabs and lobsters	321.0	8.5
9. Bottomfish	0	0
10. Marine mammals and endangered species	70.0	1.8
11. Estuarine fish	1,514.8	40.0
12. General	54.7	1.4

Priority in program emphasis will be placed upon funding projects which have the greatest probability of maintenance and improvement of existing fisheries, improving our understanding of factors affecting recruitment success, generating increased yields from fisheries, and generating increased recreational opportunity and harvest potential. Projects will be evaluated as to the likelihood of achieving these benefits through both short-term and long-term research projects with consideration of the magnitude of the eventual benefit that may be realized. Both short-term projects that may yield more immediate benefits and long-term projects yielding greater benefits will receive equal emphasis. Planning emphasis will be placed upon attaining each discrete target benefit either through a single project or series of projects necessary to attain that goal.

Further information on current programs may be obtained from the NOAA National Marine Fisheries Service Southeast Regional Office.

III. How To Apply

A. Eligible Applicants

Applications for grants or cooperative agreements for MARFIN projects may be made, in accordance with the procedures set forth in this notice, by:

1. Any individual who is a citizen or national of the United States;

2. Any corporation, partnership, or other entity, non-profit or otherwise, if such entity is a citizen of the United States within the meaning of section 2 of the Shipping Act, 1916 as amended (46 U.S.C. 802).[2]

[2] To qualify as a citizen of the United States within the meaning of this statute, citizens or nationals of the United States or citizens of the Northern Mariana Islands (NMI) must own not less then 75 percent of the interest in the entity or, in the case of non-profit entity, exercise control of the entity that is determined by the Secretary to be equivalent to such ownership; and in the case of a corporation, the president or other chief executive officer and the chairman of the board of directors must be citizens of the United States, no more of its board of directors than a minority of the number necessary to constitute a quorum may be non-citizens; and the corporation itself must be organized under the laws of the United States, or of a State, including the District of Columbia, Commonwealth of Puerto Rico, American Samoa, the Virgin Islands of the United States, Guam, the NMI or any other Commonwealth, territory, or possession of the United States. Seventy-five percent of the interest in a corporation shall not be deemed to be owned by citizens of the NMI, if: (1) The title to 75 percent of its stock is not vested in such citizens or nationals of the United States or citizens of the NMI free from any trust or fiduciary obligation in favor of any person not a citizen or national of the United States or citizens of the NMI; (2) 75 percent of the voting power in such corporation is not vested in citizens or nationals of the United States or citizens of the NMI; (3) Through

Continued

No individual or organization that is in arrears on any outstanding debt to the U.S. Department of Commerce will be considered for funding. Any first time applicant for Federal grant funds is subject to a preaward accounting survey prior to execution of the award. Women and minority individuals and groups are encouraged to submit applications. NOAA employees including full, part-time, and intermittent personnel, (or their immediate families) and NOAA offices or centers are not eligible to submit an application under this solicitation, or aid in the preparation of an application, except to provide information about the MARFIN program and the priorities and procedures included in this solicitation.

B. Amount and Duration of Funds

Under this solicitation for fiscal year 1988 an estimated $2.5 million is available to fund fishery research and development projects ($1.81 million for new projects and $686 thousand for continuing projects). Although grants or cooperative agreements will generally be awarded for a period of one year, two or three year projects may be approved. Once approved, multi-year projects will not compete for funding in subsequent years. For multi-year projects, funding beyond the first year is contingent on the availability of new fiscal year program funds and the extent to which project objectives are met during the prior year. Publication of this announcement does not obligate NMFS to award any specific grant or to obligate any part or the entire amount of funds. Selection of successful applications generally will be provided by July 5, 1988. Awards will be generally made no later than 60 days after the funding selection is determined and negotiations completed.

C. Cost-Sharing Requirements

Applications must reflect the total amount of money necessary to accomplish the project. Cost sharing is not required for the MARFIN program. However, cost sharing is encouraged, and in case of a tie in considering proposals for funding, cost-sharing may affect the final decision.

any contract or understanding it is arranged that more than 25 percent of the voting power in such corporation may be exercised, directly or indirectly in behalf of any person who is not a citizen or national of the United States or a citizen of the NMI; or (4) by any means whatsoever, control of any interest in the corporation is conferred upon or permitted to be exercised by any person who is not a citizen or national of the United States.

D. Format

Applications for project funding must be complete. They must identify the principal participants and include copies of any agreements between the applicant and the participants describing the specific tasks to be performed. Project applications should give a clear presentation of the proposed work, the methods for carrying out the project, its relevance to enhancing the use of Gulf of Mexico fishery resources and cost estimates as they relate to specific aspects of the project. Budgets will include a detailed breakdown by category of expenditure with appropriate justification. Applicants may submit two or more related projects under one proposal but must identify project costs including administrative costs, separately for each individual project. Applicants should not assume prior knowledge on the part of the NMFS as to the relative merits of the project described in the application. Applications must be submitted in the following format:

1. *Cover Sheet.* An applicant must use OMB Standard Form 424 as the cover sheet for each project or group of consolidated projects. Applicants may obtain copies of the form from the NMFS Regional Office, or Department of Commerce's Central Administrative Support Center (CASC); addresses are set forth at Section E., Application Submission.

2. *Project Summary.* Each project must contain a summary of not more than one page which provides the following information:

a. Project title.

b. Project status: (new or continuing).

c. Project duration: (beginning and ending dates).

d. Name, address, and telephone number of applicant.

e. Principal Investigator(s).

f. Project objecive.

g. Summary of work to be performed.

For continuing projects the applicant is to briefly describe progress to date in addition to changes to the statement work previously submitted.

h. Total Federal funds requested (for multi-year projects, identify each year's requested funding).

i. Project costs to be provided from NOAA sources (for multi-year projects, identify each year's requested funding). Specify whether cash or in-kind contributions.

j. Total project cost.

3. *Project Description.* Each project must be completely and accurately described. Each project description may be up to 15 pages in length. The NMFS will make all portions of the project description available to the public and members of the fishing industry for review and comment; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

a. *Identification of Problem(s).* For new projects, describe how existing conditions prevent the full use of Gulf of Mexico fishery resources. In this description, identify (1) the fisheries involved, (2) the specific problem(s) that the fishing industry has encountered, (3) the sectors of the fishing industry that are affected, and (4) how the problem(s) prevent the fishing industry from using the fishery resources.

b. *Project Goals and Objectives.* State what the proposed project will accomplish and describe now this will eliminate or reduce the problem(s) described above. For multi-year projects, describe the ultimate objective of the projects and how the individual tasks contribute to reaching the objective. Describe the time frame in which tasks would be conducted.

c. *Need for Government Financial Assistance.* Explain why members of the fishing industry cannot fund all the proposed work. List all other sources of funding which are or have been sought for the project.

d. *Participation by Persons or Groups Other Than the Applicant.* Describe the level of participation required in the project(s) by NOAA or other Government and non-Government entities.

e. *Federal, State, and local government activities.* List any programs (Federal, state, or local government or activities, including State Coastal Zone Management Plans, Sea Grant, SEAMAP, 99-659 and Cooperative Statistics), this project would affect and describe the relationship between the project and those plans or activities. List names and addresses of persons providing the information.

f. *Project Outline.* Describe the work to be performed during the project starting with the first month's work and continuing to the last month. Identify specific milestones that can be used to track project progress. For multi-year projects, major project tasks and milestones for future years must also be identified. If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, the NMFS will not consider the

applications for funding and will return it to the applicant.

g. *Project Management.* Describe how the project will be organized and managed. List all persons directly employed by the applicant who will be involved in the project, their qualifications, and their level of involvement in the project.

h. *Monitoring of Project Performance.* Indentify who will participate in monitoring the project.

i. *Project Impacts.* Describe the impact of the project in terms of anticipated increased landings, production, sales, exports, product quality safety, or any other measurable factors. Describe the specific products or services that will be produced by this product. Describe how these products or services will be made available to the fishing industry.

j. *Evaluation of Project.* The applicant is required to provide an evaluation of project accomplishments in the final report. The application must describe the methodology or procedures to be followed to determine technical or economic feasibility, to evaluate consumer acceptability, or to quantify the results of the project in promoting increased landings, prodution, sales, exports, product quality, safety, or other measurable factors.

k. *Project Costs.* Costs must be provided in a detailed budget. No cost sharing can come from another Federal source. Costs must be allocated to the Federal share and non-NOAA share provided by the applicant. Applicant's non-NOAA costs are to be divided into cash and in-kind contributions. A standard budget form (ED–357 NG; Rev. 3–80) is available from the offices listed in section E. A separate budget must be submitted for each project. An applicant submitting a multi-year project must submit two budgets—one covering total project costs (including individual outyear costs) and one covering the initial funding request for the project. The initial funding request should cover funds required during the first 12-month period. NMFS will not consider fees or profits as allowable costs for grantees. To support its budget the applicant must describe briefly the basis for estimating the value of the non-NOAA funds derived from in-kind contributions. Costs for the following categories must be detailed in the budget.

(1) *Personnel.* (a) Identify salaries by position and percentage of time of each individual dedicated to the project.

(b) Fringe Benefits. Indicate benefits associated with personnel working on the project.

(2) *Consultants and contract services.* Identify all consultant and/or contractual service costs by specific task in relation to the project.

(3) *Travel and transportation.* (a) Identify major travel and transportation costs, number of people traveling and purpose of travel.

(b) Itemize costs, including approximate air fare, per diem rates, and/or any additional fees associated with the trip, such as conference fees, registration fees, etc.

(4) *Equipment, space or rental costs.* (a) Identify equipment purchases or rental costs with the intended use.

(b) Identify space rental costs with specific uses.

(5) *Other costs*—(a) *Consumable office supplies.* Include cost for pens, paper, typewriter ribbons, etc.

(b) *Postage and shipping.* Include postage for correspondence, material produced under grant as well as air freight, truck or rail shipping of bulk materials to be used in conferences and workshops.

(c) *Printing costs.* Include costs associated with producing materials in conjunction with the project.

(d) *Final audit.* Include costs of having a special audit of the project performed. This cost should not be included if an organizational audit will be used in place of a special audit for the project.

(e) *Telephone and telegraph.* Identify estimated calls and monthly bills.

(f) *Utilities.* Identify costs of utilities and percentage of use in conjunction with performance of project.

(g) *Additional costs.* Indicate any additional costs associated with the project which are allowable under OMB circulars A–21, A–87, and A–122.

4. *Supporting documentation.* This section should include any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed. The applicant should present any information which would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project to fisheries used may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in a lower ranking of the project. Reviewers will not necessarily examine all material provided as supporting documentation except where sufficient detail is lacking in the project description to properly evaluate the project. Therefore, information presented in this section should be clearly referenced in the project description.

E. Application Submission and Deadline

1. *Deadline.* The NMPS will accept applications for funding under this program between April 4, 1988 and May 19, 1988. An application will be accepted if the application is received by the office listed below on or before May 19, 1988 (6 PM EST).

2. *Submission of Applications to the NMFS.* Applications are not to be bound in any manner. Any applications not fully including all information called for herein, will be returned to the applicant. Applicants must submit one signed original and two (2) copies of the complete application to the address set forth below: Regional Director, Attn: D. Ekberg, National Marine Fisheries Service, Duval Bldg., 9450 Koger Blvd., St. Petersburg, Florida 33702, Telephone No.: (813) 893–3142.

Questions of an administrative nature should be referred to: NOAA RAS/CC31, Attn: Jean West, Central Administration Support Center, Federal Bldg., Room 1758, 601 East 12th Street, Kansas City, Missouri 64106, Telephone No.: (816) 374–7267.

IV. Review Process and Criteria

A. Evaluation and Ranking of Proposed Projects

For applications meeting the requirements of this solicitation, the NMFS will conduct a technical evaluation of each project prior to any other review. If an application contains two or more projects, the NMFS will evaluate the projects separately. All comments submitted to the NMFS will be taken into consideration in the technical evaluation of projects. The NMFS will provide point scores on proposals based on the following evaluation criteria:

a. Adequacy of research/development/demonstration for managing or enhancing Gulf of Mexico marine fisheries resources, addressing especially the possibilities of securing productive results (30 points).

b. Soundness of design/technical approach for enhancing or managing the use of Gulf of Mexico marine fisheries resources (25 points).

c. Organization and management of the project, including qualifications and previous related experience of the applicant's management team and other project personnel involved (20 points).

d. Effectiveness of proposed methods for monitoring and evaluating the project (15 points).

e. Justification and allocation of the budget in terms of the work to be performed (10 points).

The average technical scores will be ranked by NMFS into three groups: (1) Highly recommended (2) recommended and (3) not recommended, for presentation to the MARFIN Board. The Board will consider the significance of the problem addressed in the project along with the technical evaluation and need for funding. This evaluation and ranking will enable NMFS to determine the appropriate level of funding for each project.

B. Consultation With Others

NMFS will make project descriptions available for review as follows:

1. *Public review and comment.* Applications may be inspected at the National Marine Fisheries Service Regional Office in St. Petersburg, FL from May 19, 1988 to May 26, 1988.

2. *Consultation with members of the fishing industry.* The NMFS shall, at its discretion, request comments from members of the fishing and associated industries who have knowledge in the subject matter of a project or who would be affected by a project.

3. *Consultation with Government agencies.* Applications will be reviewed in consultation with the NMFS Southeast Fisheries Center and its Laboratories, CASC Grant Officer and, as appropriate, Department of Commerce Bureaus and other Federal agencies for elimination of duplicate funding. The Regional Fishery Management Councils may be asked to review projects and advise of any real or potential conflicts with Council activities.

C. Funding Decision

After projects have been evaluated, the MARFIN Board will develop and submit funding recommendations to the Director of the NMFS Southeast Regional Office. The Director of the NMFS Southeast Regional Office will (1) ascertain that the projects do not substantially duplicate other projects that are currently funded by or are approved for funding by the U.S. Government, (2) determine the projects to be funded, and (3) determine the amount of funds available for the program. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant, NMFS, and the Grants Office. The Department of Commerce will review all recommended projects and funding before an award is executed by the Grants Officer. The funding instrument will be determined by the Grants Officer. Projects may not be initiated by a recipient until a notice of award is received from the Grants Officer. For multi-year projects, funds will be provided as specified tasks are completed.

V. Administrative Requirements

A. Obligations of the Applicant

An Applicant must—

1. Meet all application requirements and provide all information necessary for the evaluation of the project.

2. Be available, upon request, in person or by designated representative, to respond to questions during the review and evaluation of the project(s).

3. If a project is awarded, manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are awarded, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award. This includes adherence to procurement standards set forth in the award and referenced OMB circulars.

If a project is awarded, keep records sufficient to document any costs incurred under the award, and allow assess to records for audit and examination by the Secretary, the Comptroller of the United States, or their authorized representatives. NMFS may provide a proportionate share of funds as part of the financial award to pay for an audit.

5. If a project is awarded, submit quarterly project status reports on the use of funds and progress of the project to NMFS within thirty days after the end of each calendar quarter to the individual specified as the program officer in the funding agreement. The content of these reports will include, at a minimum:

a. A summary of work conducted which includes a description of specific accomplishments and milestones achieved. A summary format is available from NMFS to track milestone achievements and budget plans;

b. The degree to which goals or objectives were achieveed as originally protected;

c. Where necessary, the reasons why goals or objectives are not being met; and

d. Any proposed changes in plans or redirection of resources or activities and the reason therefore.

6. if a project is funded, submit an original and two copies of a final report within 90 days after completion of each project. The report must describe the accomplishments of the project and include an evaluation of the work performed and the results and benefits of the work in sufficient detail to enable NMFS to assess the success of the completed project. Results must be described in relation to the project objectives of resolving specific impediments to managing or enhancing fisheries, and be quantified to the extent possible. Potential use of project results by private industry or fishery management agencies should be specified. Any conditions or requirements necessary to make productive use of project results should be identified.

7. Each recipient of MARFIN funding must comply with applicable Office of Management and Budget (OMB) Circulars, and Department of Commerce and NOAA policies. Each award contains standard terms and conditions and any special conditions which must be met by the recipient.

8. For each project funded three copies of all publications of reports printed with grant funds must be submitted to the Program Officer. Any publication printed with grant funds must identify NOAA as the funding source along with the grant award number.

B. Obligations of the National Marine Fisheries Service

The NMFS Southwest Region will—

1. Provide programmatic information necessary for the proper submission of applications.

2. Provide advice to inform applicants of NMFS fisheries management and development policies and goals.

3. Monitor all projects after award to ascertain their effectiveness in achieving project objectives and in producing measurable results. Actual accomplishments of a project will be compared with stated objectives.

4. Refer questions of an administrative nature from applicants/recipients to the Grants Office.

C. CASC Grants Officer Responsibility

The CASC Grants Officer is responsible for the administrative processing of NOAA Federal Assistance Awards and will provide all forms needed by an applicant. Processing includes review of applications to determine that they are in conformance with Federal requirements, determination of the funding instrument, clearance through administrative review once program funding has been determined, execution of awards, reports and administrative monitoring, and close out of awards. The official grant file will be maintained by the grants Officer.

D. Legal Requirements

The applicant will be required to satisfy the requirements of applicable local, state and Federal laws.

This program is not included in the Catalogue of Federal Domestic Assistance.

Authority: 16 U.S.C. 1854(e).

Dated: March 30, 1988.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries.

[FR Doc. 88-7330 Filed 4-1-88; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene a public meeting of its Coastal Migratory Pelagic (Mackerel) Advisory Panel, April 19, 1988, at the Holiday Inn Hotel, 4500 West Cypress Street, Tampa, FL, to review the report of the Council's Stock Assessment Panel to recommend levels of recreational and commercial harvest of king and Spanish mackerel within or below the range of acceptable biological catch.

For further information contact Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228-2815.

Date: March 29, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-7292 Filed 4-1-88; 8:45 am]

BILLING CODE 3510-22-M

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico, South Atlantic and Caribbean Fishery Management Councils will convene public meetings of their Scientific and Statistical Committees (SSC), at the Sheraton Brickell Point, 495 Brickell Avenue, Miami, FL.

The Gulf of Mexico SSC will review the reef fish stock assessment, aerial surveys of the offshore population, and tag/recovery data for red drum. *The Gulf of Mexico and South Atlantic SSCs* will review the status of the swordfish stock; discuss a regulatory amendment of drift gillnets for king and Spanish mackerel, along with review of stock assessment, stock assessments groups report, and the stock identification report for king and Spanish mackerel. *The Caribbean, Gulf of Mexico and South Atlantic SSCs* will review the conservation standard and threshold concept.

The Gulf of Mexico SSC public meeting will convene April 12, 1988, at 8 a.m., and recess at 5 p.m.; the Gulf of Mexico and South Atlantic public meeting will convene April 13 at 8 a.m., and adjourn at 5 p.m., and the Caribbean, Gulf of Mexico and South Atlantic SSCs will convene April 14 at 8 a.m., and adjourn at 3 p.m.

For further information contact Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228-2815.

Date: March 29, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-7293 Filed 4-1-88; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council has scheduled two separate public meetings of its Future of Groundfish Fisheries Committee to continue its work on development of a recommendation for the North Pacific Council for long-term management of the groundfish fisheries off Alaska. On April 7-9, 1988, and April 22-23 the Committee will convene at 10 a.m., at the National Marine Fisheries Service, Northeast and Alaska Fisheries Center, Montlake Auditorium, 2725 Montlake Boulevard, N.E., Seattle, WA.

For further information about the above meetings contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Date: March 29, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

FR Doc. 88-7294 Filed 4-1-88; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Amended Meeting Notice

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The agenda for the public meeting of the North Pacific Fishery Management Council as previously published in the **Federal Register** (53 FR 9349, March 22, 1988), has been amended as follows:

Also included on the agenda for the North Pacific Council's April 13-15, 1988, meeting at the Sheraton Hotel, Anchorage, AK,will be an April 13 working session with the Council's Advisory Panel to receive a summary of the sablefish management workshops held in Kodiak, Sitka, Petersburg, and Homer, AK, Seattle, WA, and discussion of development of management strategies.

The Council will also review a regulatory amendment reducing the percentage of sablefish allowed as incidental longline catch in the Gulf of Alaska; reports on the Senate Commerce Committee hearings in Bering Sea enforcement, and progress in initiating management controls for the international waters of the Bering Sea.

All other information in the original meeting agenda remains unchanged.

For further information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Date: March 29, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

FR Doc. 88-7295 Filed 4-1-88; 8:45 am]

BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will participate in a joint public meeting with the Gulf of Mexico Fishery Management Council, April 24-28, 1988, at the Holiday Inn Crown Plaza, New Orleans, LA, to discuss king and Spanish mackerel, spiny lobster, and habitat issues.

In a separate session, the South Atlantic Council will also meet to discuss snapper/grouper, king and Spanish mackerel, habitat issues, and other fishery management business. Also, the Council's Finance Committee will convene, and the Council's Personnel Committee will hold a closed session (not open to the public), to discuss personnel matters. A detailed agenda will be available to the public on or about April 11, 1988.

For further information contact Robert K. Mahood, Executive Director, South

Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (803) 571–4366.

Date: March 29, 1988.

Ann D. Terbush,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88–7296 Field 4–1–88; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, April 21, 1988 at 10:00 a.m. in the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discusss various projects affecting the appearance of Washington, DC, including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (566–1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC March 23, 1988.

Charles H. Atherton,

Secretary.

[FR Doc. 88–7222 Filed 4–1–88; 8:45 am]

BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Sri Lanka; Correction

March 30, 1988.

In the table in the letter to the Commissioner of Customs published in the **Federal Register** on March 17, 1988 (53 FR 8797), correct the limit for Category 648 from 73,811 dozen to 95,822 dozen. The heading of the table should be corrected to read "Five-Month Adjusted Limit."

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88–7298 Filed 4–1–88; 8:45 am]

BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket 88–C0002]

Bright Future Futon Co., Inc., a Domestic Corporation, and Lois S. Hamamoto, Individually and as an Officer of the Corporation; Provisional Acceptance of a Settlement Agreement

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a Settlement Agreement under the Flammable Fabrics Act.

SUMMARY: Under requirements of 16 CFR 1605.13, the Commission must publish in the **Federal Register** consent agreements which it provisionally accepts under the Flammable Fabrics Act. Published below is a provisionally-accepted Settlement Agreement with Bright Future Futon Co., Inc., a domestic corporation, and Lois S. Hamamoto, individually and as an officer of the corporation.

DATE: Any interested person may ask the Commission not to accept this agreement by filing a written request with the Office of the Secretary April 19, 1988.

ADDRESS: Persons wishing to comment on this Settlement Agreement should send written comments to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Directorate for Compliance and Administrative Litigation, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6626.

SUPPLEMENTARY INFORMATION: (attached).

Date: March 29, 1988.

Sheldon D. Butts,

Deputy Secretary.

Complaint

Nature of Proceedings

The staff of the Consumer Product Safety Commission believes that Bright Future Futon Co., Inc., and Lois A. Hamamoto, the principal officer of that corporation (hereinafter "Respondents"), 3110 Central Avenue, S.E., Albuquerque, New Mexico 87106, are subject to the provisions of the Flammable Fabrics Act, as amended (15 U.S.C. 1191 *et seq.;* hereinafter, the "FFA"); the Federal Trade Commission Act, as amended (15 U.S.C. 41 *et seq.;* hereinafter, the "FTCA"); and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632 (hereinafter, the "Mattress Standard"). The staff further believes that Lois A. Hamamoto, while doing business as a sole proprietorship under the name of Bright Future Futon Company prior the incorporation of that business as Bright Future Futon Co., Inc., has violated the aformentioned Acts and the Mattress Standard.

It appears to the Commission from the information available to its staff that it is in the public interest to issue this complaint. Therefore, by virtue of the authority vested in the Commission by section 30(b) of the Consumer Product Safety Act, as amended (15 U.S.C. 2079(b); hereinafter, the "CPSA") the Commission pursuant to sections 3 and 5 of the FFA, 15 U.S.C. 1192 and 1194, and section 5 of the FTCA, 15 U.S.C. 45, and in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR Part 1025, hereby issues this complaint and states the staff's charges as follows:

1. Respondent Bright Future Futon Co., Inc. is a corporation organized and existing under the laws of the State of New Mexico, with its principal place of business located at 3110 Central Avenue, S.E., Albuquerque, New Mexico 87106.

2. Respondent Lois S. Hamamoto is the principal officer of Respondent Bright Future Futon Co., Inc.; and in that capacity, is responsible for the acts, practices, and policies of the respondent corporation.

3. Respondents are now and have been engaged in the manufacturing for sale, sale, and offering for sale, in commerce, and has introduced, delivered for introduction, transported and caused to be transported in commerce, and have sold or delivered after sale of shipment in commerce, as the term "commerce" is defined in section 2(b) of the FFA, 15 U.S.C. 1191(b), futon mattresses.

4. Each futon mattress identified in paragraph 3 of the complaint is comprised of "ticking" that is made with 100 percent cotton, and a "batting" that is made with 100 percent cotton; and is intended or promoted for sleeping upon.

5. Each futon mattress identified in paragraph 3 of the complaint is, therefore:

(a) A "mattress" within the meaning of § 1632.1(a) of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR 1632.1(a); and

(b) An "interior furnishing" and a "product" as these terms are defined in sections 2 (e) and (h) of the Flammable

Fabrics Act, as amended, 15 U.S.C. 1191 (e) and (h).

6. Respondents are subject to, but Respondent Hamamoto has failed to comply with, the Mattress Standard in that:

a. Respondent failed to do the prototype testing required by § 1632.3 of the Mattress Standard, 16 CFR 1632.3.

b. Respondent failed to label the mattresses as required by § 1632.31(b) of the Mattress Standard, 16 CFR 1632.31(b).

c. Respondent failed to maintain the manufacturing or test specification or test records required by § 1632.31(c) of the Mattress Standard, 16 CFR 1632.31(c).

7. The acts by Respondent Hamamoto set forth in paragraph 6 of the complaint are unlawful and constitute an unfair method of competition and an unfair and deceptive practice in commerce under the FTCA, in violation of section 3(a) of the FFA, 15 U.S.C. 1192(a), for which a cease and desist order may be issued against Respondents pursuant to section 5(b) of the FFA, 15 U.S.C. 1194(b), and section 45 of the FTCA, 15 U.S.C. 45.

Relief Sought

Wherefore, the premises considered, the Commission hereby issues this Complaint on the 29th day of March 1988.

By direction of the Commission.

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Consent Order Agreement

Bright Future Futon Co., Inc., and Lois S. Hamamoto, the principal officer of that corporation (hereinafter "Respondents"), enter into this Consent Order Agreement (hereinafter, "Agreement") with the staff (hereinafter, the "staff") of the Consumer Product Safety Commission (Commission) pursuant to the procedure for Consent Order Agreements contained in § 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR Part 1605.

This Agreement and Order are for the sole purpose of settling allegations of the staff that Respondents sold futon mattresses that are subject to the Flammable Fabrics Act and the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72), amended) (hereinafter, the "Mattress Standard"); and that those futon mattresses sold by respondent Lois S. Hamamoto, while doing business as a sole proprietorship under the name of Bright Future Futon Company prior to the incorporation of that business as Bright Future Futon Co., Inc., failed to comply with those Acts and the Mattress Standard issued thereunder, as more fully set forth in the complaint accompanying this Agreement.

Respondent and the Staff Agree:

1. The Consumer Product Safety Commission has jurisdiction in this matter under the following acts: Consumer Product Safety Act (15 U.S.C. 2051 *et seq.*), Flammable Fabrics Act (15 U.S.C. 1191 *et seq.*), and Federal Trade Commission Act (15 U.S.C. 41 *et seq.*).

2. Respondent Bright Future Futon Co., Inc. is a corporation organized and existing under the laws of the State of New Mexico, with its principal place of business located at 3110 Central Avenue, S.E., Albuquerque, New Mexico 87106.

3. Respondent Lois S. Hamamoto is the principal officer of Respondent Bright Future Futon Co., Inc.; and in that capacity, is responsible for the acts, practices, and policies of the respondent corporation.

4. Respondents are now and have been engaged in one or more of the following: the manufacture for sale, the sale, or the offering for sale, in commerce, or the importation, delivery for introduction, transportation in commerce, or the sale or delivery after sale or shipment in commerce, of a product, fabric, or related material which is subject to the requirements of the Flammable Fabrics Act, 15 U.S.C. 1191 *et seq.*, and the Standard for the Flammability of Mattresses and Mattress Pads (FF4–72), amended), 16 CFR Part 1632.

5. This Agreement is for settlement purposes only, does not constitute an admission by Respondents that either of them have violated the law, and becomes effective only upon its final acceptance by the Commission and service of the incorporated Order upon Respondents.

6. Respondents waive (a) all requirements for findings of fact and conclusions of law in the disposition of this matter, and (b) administrative and judicial review of the facts and proceedings.

7. The requirements of this Order are in addition to, and not to the exclusion of, other remedies such as criminal penalties which may be pursued under section 7 of the FFA, 15 U.S.C. 1196.

8. Violation of the provisions of the Order may subject Respondents to a civil penalty for each such violation, as prescribed by law.

9. The Commission may disclose the terms of this Consent Order Agreement.

10. This Agreement and the Complaint accompanying the Agreement may be used in interpreting the Order.

11. No agreement, understanding, representation or interpretation not contained in this Agreement or Order may be used to vary or contradict the terms of the Order.

Upon acceptance of this Agreement, the Commission shall issue the following Order:

Order

I.

It is hereby ordered that Respondents, and their successors and assigns, agents, representatives, and employees of the Respondents, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from selling or offering for sale, in commerce, or manufacturing for sale, in commerce, or importing into the United States or introducing, delivering for introduction, transporting or causing to be transported, in commerce, or selling or delivering after sale or shipment in commerce, any product, fabric or related material which fails to conform to the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

II.

It is further ordered that Respondents conduct prototype testing for each futon mattress design, prior to production, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

III.

It is further ordered that Respondents prepare and maintain written records of the prototype testing specified in paragraph II of this Order for each futon mattress design, including photographs of the tested futon mattresses, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended) 16 CFR Part 1632.

IV.

It is further ordered that Respondents prepare and maintain a written record of the manufacturing specifications of each futon mattress prototype in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

V.

It is further ordered that Respondents conduct prototype testing or, if appropriate, obtain supplier certification to support any substitution of materials after prototype testing, in accordance with all applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

VI.

It is further ordered that Respondents prepare and maintain a written record of the manufacturing specifications of any new ticking or tape edge material substituted for those used in the original prototype testing, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR Part 1632.

VII.

It is further ordered that Respondents prepare and maintain all other records required by the Standard for the Flammability of Mattresses and Mattress Pads (FF 4-72, amended), 16 CFR Part 1632, including:

(a) Records to support any determination that a particular material other than ticking or tape edge material did not influence ignition resistance;

(b) Ticking classification test results or a certification from the ticking supplier;

(c) Tape edge substitution test results;

(d) Photographs of any futon mattress tested for purposes of making a tape edge substitution; and

(e) Records describing the disposition of all failing or rejected prototype futon mattresses.

VII.

It is further ordered that Respondents shall forthwith distribute a copy of this Order to each of its operating divisions.

IX.

It is further ordered that Respondents shall within sixty (60) days after service upon them of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this Order.

X.

It is further ordered that for a period of ten (10) years from the date this Order becomes final within the meaning of the Federal Trade Commission Act, Respondents notify the Commission at least thirty (30) days prior to any proposed change in the way Respondents do business which may affect their compliance obligations arising out of this Order.

XI.

It is further ordered that the Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register.**

Any agreement, understanding representation, or interpretation that is not contained in this Agreement and in the incorporated Order may not be used to vary or contradict the terms of the Order subsequently issued by the Commission.

Signed this 10th day of Febraury, 1988.

Lois S. Hamamoto,

President, Bright Future Futon Co., Inc., 3110 Central Avenue, S.E., Albuquerque, New Mexico 87106.

Lois S. Hamamoto,

Individually, 3110 Central Avenue, S.E., Albuquerque, New Mexico 87106.

David Schmeltzer,

Associate Executive Director, Directorate for Compliance and Administrative Litigation.

Alan H. Schoem,

Acting Director, Division of Administrative Litigation.

Earl A. Gershenow,

Trial Attorney Division of Administrative Litigation, Counsel for the Commission Staff, Consumer Product Safety Commission, Washington, DC 20207.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register.**

So ordered by the Commission, this 29th day of March, 1988.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 88-7274 Filed 4-1-88; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: DoD FAR Supplements part 15, Related Clauses in Part 52.215 and Related Forms; No Forms; and OMB Control Number 0704–0232.

Type of Request: Revision.

Annual Burden Hours: 932,900.

Annual Responses: 199,540.

Needs and Uses: The information collection concerns three areas: (1) Certain data required to enable evaluation of contractors' offers under the negotiated method of contracting; (2) information necessary to develop proposals to participate in the Industrial Modernization Incentives Program (IMIP); and (3) information necessary to develop and maintain an adequate estimating system.

Affected Public: Businesses or other for profit small businesses or organizations.

Frequency: Recordkeeping—On Occasion.

Respondent's Obligation: Mandatory.

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: Ms. Pearl Rascoe-Harrison.

A copy of the information collection proposal may be obtained from, Ms. Rascoe-Harrison WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone (202) 746–0933.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 30, 1988.

[FR Doc. 88–7332 Filed 4–1–88; 8:45 am]

BILLING CODE 3810-01-M

Defense Advisory Committee on Military Personnel Testing

Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 5:00 p.m. on April 29–30, 1988. The meeting will be held at the Radisson Annapolis Hotel, 126 West Street in Annapolis, Maryland 21401. The purpose of the meeting is to review the Department of Defense's research and development of enlistment selection/classification tests. Persons

desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Anita R. Lancaster, Executive Secretary, Defense Advisory Committee on Military Personnel Testing, Office of the Assistant Secretary of Defense (Force Management and Personnel), Room 2B271, the Pentagon, Washington, DC 20301–4000, telephone (202) 697–9271, no later than April 15, 1988.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

March 29, 1988.

[FR Doc. 88–7333 Filed 4–1–88; 8:45 am]

BILLING CODE 3810–01–M

Defense Science Board 1988 Summer Study on Defense Industrial and Technology Base

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board 1988 Summer Study on Defense Industrial and Technology Base will meet in closed session on June 23, 1988 at the Lockheed Corporation, Calabasas, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review trends of the US industry's ability to respond (or surge) in time of crisis or war, recommend improvements, and suggest enhancements to acquisition policy.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92–463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaision Officer, Department of Defense.

March 29, 1988.

[FR Doc. 88–7334 Filed 4–1–88; 8:45 am]

BILLING CODE 3810–01–M

Advisory Committee on Women in the Services; Meeting

AGENCY: Defense Advisory Committee on Women in the Services (DACOWITS), DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the Defense Advisory Committee on Women in the Services (DACOWITS). The purpose of the meeting is to review the recommendations, requests for information, and continuing concerns made by the Committee at the 1988 spring conference; review the subcommittee issue agenda; discuss current issues relevant to women in the Services; and draft the program for the next semiannual meeting scheduled for November 13–17, 1988. All meeting sessions will be open to the public.

DATE: June 27, 1988, 9:30 a.m—5:00 p.m.

ADDRESS: SecDef Conference Room 3E869, The Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Major Ilona E. Prewitt, Director, DACOWITS and Military Women Matters, OASD (Force Management and Personnel), The Pentagon, Room 3D769, Washington, DC 20301–4000; telephone (202) 697–2122.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Dated: March 30, 1988.

[FR Doc. 88–7335 Filed 4–1–88; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10a(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: 19 and 20 April 1988.

Time: 0800–1600 hours, 19 April; 0800–1200 hours, 20 April.

Place: Fort Leavenworth, Kansas.

Agenda: The Army Science Board Ad Hoc Subgroup on Close Combat Training Strategy for the 1990's will meet for the purpose of familiarizing panel members with the functions and responsibilities of the Combined Arms Center, Fort Leavenworth, Kansas, in conjunction with the development of Close Combat (Heavy) strategies for the future. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

Richard E. Entlich,

Colonel, GS, Executive Secretary, Army Science Board.

[FR Doc. 88–7223 Filed 4–1–88; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Procurement and Assistance Management Directorate; ICEED Energy Conferences

AGENCY: Department of Energy (DOE).

ACTION: Notice of solicitation for a grant application.

SUMMARY: DOE announces that it is conducting negotations with the International Research Center for Energy Economic Development (ICEED) to support two international energy conferences. These negotiations are expected to result in the renewal of Grant No. DE–FG01–86IE10538 in which DOE will provide $30,000 of the total estimated cost of $133,650 for the performance period of fourteen months estimated to begin April 5, 1988.

Scope of Study: The grant will provide assistance for two international conferences. The first conference, "The Other Gulf: Output, Downstream Operations and Marketing of Red Sea Oil and Gas," will discuss such topics as; exploration and development policies of the Red Sea, impact of Red Sea output and exports on world crude oil product and petrochemical supply, geopolitical significance of the region, geological evaluation of the Red Sea area, U.S. energy policy toward the region and Arabian peninsula. The second conference, "Energy Supply and Trade Policies: Balancing National and Global Imperatives" will examine the mid-versus long-term supply outlook and changes, rising U.S. and consumer-nation protectionism, evaluation of the Canadian-U.S. trade pact for energy trade, exploration and development approach through round tables on Europe, Middle East, Pacific Basin and Latin America, oil pricing as related to other energy sources, particularly gas and electric utilities and the status of the superconductor.

Thomas S. Keefe,

Director, Contract Operations "B", Office of Procurement Operations.

[FR Doc. 88–7429 Filed 4–1–88; 8:45 am]

BILLING CODE 6450–01–M

Operation of Naval Petroleum Reserve No. 1; Intent To Prepare a Supplemental Environmental Impact Statement and Conduct Public Scoping Meetings

AGENCY: Office of Naval Petroleum and Oil Shale Reserves, U.S. Department of Energy.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement, and to hold public scoping meetings, to assess the environmental effects of the expansion of steamflood activities at Naval Petroleum Reserve Number 1.

SUMMARY: In 1979, the Department of Energy (DOE) published an Environmental Impact Statement (EIS) which analyzed the impact of oil and gas production at Naval Petroleum Reserve No. 1 (NPR-1, or Elk Hills) using conventional primary and secondary production methods. In 1985, an Environmental Assessment (EA) was prepared for a pilot project involving steamflood oil recovery, a tertiary production method. DOE is now planning an expanded steamflood project, and anticipates the possibility of implementing other primary, secondary and tertiary oil recovery activities at NPR-1. DOE has determined that the expansion of the pilot steamflood project and other proposed future development activities at NPR-1 constitute a major Federal action with significant impacts upon the environment within the meaning of the National Environmental Policy Act (NEPA). For this reason, DOE intends to prepare a supplement to the 1979 EIS to cover foreseeable future operations at the site.

DOE invites interested agencies, organizations, and members of the public to submit comments or suggestions to assist in identifying significant environmental issues and determining the appropriate scope of the Supplemental EIS. Comments may be submitted by mail or presented at scoping meetings to be held at Bakersfield, Taft, and Sacramento, California, on the dates and at the times indicated below.

ADDRESSES: Written comments or suggestions on the scope of the supplemental EIS, and requests to speak at the scoping meetings, may be submitted to: Director, Naval Petroleum Reserves in California, U.S. Department of Energy, P.O. Box 11, Tupman, CA 93276, Phone: 805-763-6000. Envelopes should be labeled "Scoping for NPR EIS".

For further information on the NEPA compliance process, contact: Carol M. Borgstrom, Acting Director, Office of NEPA Project Assistance (EH-25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Phone: 202-586-4600.

DATES:

Tuesday, April 19, 1988, at 7:00 p.m., Franklin School Cafeteria, 2400 Truxtun Avenue, Bakersfield, California

Wednesday, April 20, 1988, at 7:00 p.m., The Fort Auditorium, 915 North 10th Street, Taft, California

Thursday, April 21, 1988, at 1:30 p.m., California Energy Commission Building, 1st Floor, Hearing Room A, 1516 Ninth Street, Sacramento, California

Written comments postmarked by April 29, 1988, will be considered in the preparation of the Draft Supplemental EIS. Those postmarked after that date will be considered to the maximum extent practicable. Requests to speak at any of the meetings should be received by the Director, Naval Petroleum Reserves in California, at the above address on or before April 13, 1988. Requests to speak may also be made at the time of registration for the meeting. However, persons who submitted written requests to speak by April 13, 1988 will be given priority if time should become limited during the meeting.

Background Information

NPR-1 comprises 47,985 acres and is located about 35 miles west of Bakersfield in Kern County, California. It was created by an Executive Order issued by President Taft in 1912 to provide an emergency source of liquid fuels for the armed forces. Except for brief periods of production in the 1920's and during World War II, Elk Hills was maintained in an essentially undeveloped status until the 1973-74 Arab oil embargo demonstrated the Nation's vulnerability to oil supply interruptions. As a result of the embargo, the Congress in 1974 authorized and directed that the Reserve be explored and developed to its full economic and productive potential. Congress subsequently passed the Naval Petroleum Reserves Production Act of 1976 (Public Law No. 94-258), which required that Elk Hills be produced at the maximum efficient rate (MER) consistent with sound engineering practices for six years. The law also provided the President discretionary authority to extend production subsequently, in increments of up to three years each, if continued production is found to be in the national interest. Such findings have been made and production is presently authorized through April 5, 1991.

Elk Hills reached its peak rate of production, 181,000 barrels of oil per day (BOPD), in July 1981, and is currently producing approximately 110,000 BOPD, 345 million cubic feet per day (mmcf/d) of natural gas, and 600 thousand gallons per day (GPD) of natural gas liquids. All production is sold on the open market via competitive bids. NPR-1 ranks eighth among domestic producing oil fields based on daily oil production, and sixth domestically based on recoverable reserves of approximately 671 million barrels. Since its establishment, NPR-1 has produced over 856 million barrels of oil and revenues in excess of $12 billion.

The EIS published in 1979 by DOE described the development activities which were anticipated at that time to be necessary to achieve MER production at NPR-1. These activities included: basic production work, such as drilling new wells and oil and gas withdrawal using conventional primary (natural flowing wells and artificial lift) and secondary (injection of natural gas and water into the oil bearing formations) production methods; oil and gas gathering and processing systems, such as pipelines, tank settings, gas processing plants, other product handling and distribution systems, and facilities for injection of gas and water into existing and new wells; and support systems, such as water supply, waste disposal, power requirements, and upgrading of transport facilities, security, and fire protection. The EIS did not anticipate the use of tertiary oil production techniques such as steamflooding, and hence did not analyze any impacts from these activities.

In 1985, DOE initiated a pilot tertiary oil recovery project using steamflooding in the Shallow Oil Zone (SOZ) to evaluate the technical and economic aspects of this technique at Elk Hills. The environmental impacts of this project were analyzed in an Environmental Assessment published in April 1985 (DOE/EA-0261). Based on the information in the EA, DOE determined that the pilot steamflood project did not constitute a major Federal action with significant impacts upon the environment, and that an EIS was not necessary. In order to continue the routine development of NPR-1, DOE is proposing to expand the use of steamflooding beyond the limited scope of the pilot project. It is also likely that other development activities, such as new in-fill drilling, expanded water and gas injection, and new support facilities (compressor stations, roads, waste

disposal facilities, cogeneration plants, etc.), will be initiated during the next 3 to 10 years. DOE has determined that the potential impacts from the expansion of the steamflood project and the other development activities listed above have the potential to exceed the scope of the 1979 EIS and the 1985 EA.

Preliminary Identification of Alternatives

One of the major purposes of an EIS is to define and analyze the reasonable alternatives to the proposed action, and the environmental impacts to be expected from each alternative. As background for public comments and suggestions concerning reasonable alternatives to be considered, DOE has tentatively identified three alternatives for the future development of NPR–1 which will be analyzed in the Supplemental EIS:

1. No Future Development ("No Action")

Under this alternative, no future development would occur at NPR–1. Oil and gas production would thus significantly decline. Some site restoration would likely be undertaken.

2. Continued Development Without Expansion of Tertiary Recovery

This scenario would continue current operations with the planned implementation over the next 1 to 10 years of additional conventional and secodary production activities, such as in-fill drilling and increased gas and water injection into oil-bearing formations. These activities are projected to require about 500 acres of surface land distrubance for new wells and facilities and will generate large amounts of criteria air pollutant emissions and produced wastewater. No expansion of the steamflood pilot project or other tertiary recovery activities would occur.

3. Continued Development With Expansion of Tertiary Recovery ("Proposed Action")

Through analysis of data obtained from the pilot steamflood project and the monitoring of other development activities, DOE believes that it may be necessary to expand steamflooding activities at NPR–1 over the next 3 to 10 years beyond the limited extent of the pilot steamflood project in order to meet the statutory requirement to produce the Reserve at the MER. This potential expansion would create an additional 200 acres of surface disturbance beyond that caused by continuing conventional development (Alternative 2, above), and would generate significant additional amounts of criteria air pollutants and produced wastewater.

The Administration has submitted legislation to the Congress requesting authorization to sell the government's ownership interests in NPR–1 (and also Naval Petroleum Reserve No. 3 in Wyoming). This divestitute initiative creates two "ownership" cases within each of the three alternatives described above: the development specified in the alternative under Federal ownership, which would occur if the legislation was withdrawn or was not enacted; and the development specified in the alternative under private sector ownership, which would occur if the government's share of Elk Hills was sold. DOE would no longer have authority or responsibility for the management of Elk Hills, and and all development and production decisions would be vested solely with the private sector owner(s).

DOE has prepared an Environmental Assessment (EA), DOE/EA–0334, which analyzed the differences in the environmental and socioeconomic impacts of the development and operation of NPR–1 which would be caused by changing its ownership from the public to the private sector. No significant environmental impacts are predicted for the proposal to sell NPR–1.

Preliminary Identification of Environmental Issues

The purpose of this notice is to solicit comments and suggestions for consideration in preparation of the EIS Supplement. As background for public comment, it is useful to list those environmental issues which have been tentatively identified for analysis in this document. This is not intended to be all inclusive or to imply any predetermination of impacts. Following is a preliminary list of major issues that may require analysis in the NPR–1 Supplemental EIS:

1. *Air Quality:* A significant reduction in release of air pollutants from the Reserve would probably occur under Alternative 1. Implementation of either Alternative 2 or Alternative 3 would result in the continued and possibly increased release of gaseous and particulate residuals from the Reserve.

2. *Impacts to Wildlife:* Alternative 1 could result in improvement of on-site wildlife habitat, but operation under the other alternatives would continue to produce some potentially adverse impacts to some wildlife inhabiting the Reserve. Of particular concern would be the continued and expanded disturbance of habitat, and other related interactions, involving the three Federal- and state-listed endangered animal species known to exist on the NPR–1 site (the San Joaquin kit fox, giant kangaroo rat, and blunt-nosed leopard lizard).

3. *Socioeconomic Effects:* Adoption of Alternative 1 by DOE could potentially have adverse impacts in a number of Kern County communities, due to direct loss of jobs by NPR–1 workers, indirect economic impacts on businesses supported in whole or in part by operation of the Reserve, and by community loss of other revenues. Implementation of either Alternative 2 or 3 with continued Federal ownership could maintain socioeconomic benefits for the area through the interaction of the substantial employment, subcontracting, and supply requirements of the Reserve with the local economy and residents. Either Alternative 2 or 3 under private sector ownership could result in a combination of positive and negative impacts in the local area, depending on possible changes in state and local taxation of the new privately-owned Reserve lands and revenues, and in the alteration of existing Federal purchasing and contracting practices by a private sector owner.

4. *Geological Impacts:* Alternative 2 or 3 could create accelerated erosion, due to increased land disturbance. Increased erosion could in turn produce a significant biological impacts.

5. *Water Resources:* Some concern exists regarding the potential for additional impacts to groundwater resources near the Reserve as a result of continued and possibly expanded reinjection of wastewater and disposal of other production wastes onsite. This concern is associated with Alternatives 2 and 3.

6. *Cumulative Impacts:* NEPA requires that the EIS evaluate the potential cumulative effects of the various alternatives in relation to the impacts of past, present, and foreseeable future development (of any kind), both on- and offsite. Cumulative impacts will be evaluated within the Supplemental EIS for all important issues, e.g., air quality, wildlife species, and socioeconomic conditions in nearby areas.

Scoping

The above preliminary lists of major environmental issues and reasonable alternatives are not meant to be exhaustive or final. For instance, even though some potential environmental impact areas, such as cultural resources, land use, and recreation, are not specified above as major issues, they will be evaluated as part of the NEPA analysis and will be discussed in the Supplemental EIS. DOE identifed the reasonable alternatives and

environmental issues listed above based on its experience with major issues that have been raised relative to other DOE proposals of this nature. DOE considers the scoping process to be open and dynamic in the sense that alternatives other than those given above may warrant examination, and new issues may be identifed and evaluated. Interested parties are invited to participate in the scoping process to both refine the preliminary alternatives and environmental issues to arrive at the significant issues to be analyzed in depth, and to eliminate from detailed study those alternatives and environmental issues that are not significant or pertinent.

The scoping process will involve all interested agencies (Federal, state, county, and local), groups, and members of the public. Comments are invited on both the alternatives and the issues to be considered in the Supplemental EIS. Public scoping meetings will be held at the locations on the dates and at the times indicated above. These scoping meetings will be informal, with a DOE presiding officer who will establish procedures governing the conduct of the meetings. The meetings will not be conducted as evidentiary hearings, and those who choose to make statements may not be cross-examined by other speakers. To ensure that everyone who wishes to speak has a chance to do so, five minutes will be allotted to each speaker. Depending on the number of persons requesting to be heard, DOE may allow longer times for representatives of organizations. Persons wishing to speak on behalf of an organization should identify that organization in their request to speak. Persons who have not submitted a request to speak in advance may register to speak at the scoping meeting. They will be called on to present their comments if time permits. Both oral and written comments will be considered and will be given equal weight by DOE.

The scoping meeting held at the California Energy Commission Building in Sacramento is intended to primarily receive scoping information from state and Federal agencies. This scoping meeting will also be open to the public, but priority in presentation of oral comments will be given to state and Federal agencies. Others will be accorded the opportunity to speak as time allows.

A complete transcript of all public scoping meetings will be retained by DOE and made available for inspection during business hours, Monday through Friday, at the Department of Energy Freedom of Information Reading Room, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, and at the Department of Energy San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612. Additional copies of the public scoping meeting transcripts will also be made available during normal business hours at the following locations:

Beale Memorial Library—Main Branch, 1315 Truxtun Avenue, Bakersfield, California

Taft Branch—Kern County Library, 27 Emmons Park Drive, Taft, California

A notice of locations where documents will be available will be published in the **Federal Register** at the time of announcement of the availability of the Draft Supplemental EIS. In addition, copies of the public scoping meeting transcripts will be made available for purchase. Those interested parties who do not wish to submit comments or suggestions at this time, but who would like to receive a copy of the Draft Supplemental EIS, should notify the Director, Naval Petroleum Reserves in California, at the address given in the address section of this notice.

Dated at Washington, DC, this 30th day of March, 1988, for the United States Department of Energy.

Garry W. Gibbs,

Acting Assistant Secretary Environment, Safety and Health.

[FR Doc. 88-7323 Filed 4-1-88; 8:45am]

BILLING CODE 6450-01-M

Divestiture of Naval Petroleum Reserves Nos. 1 and 3; Finding of No Significant Impact

AGENCY: Office of Naval Petroleum and Oil Shale Reserves.

ACTION: Finding of No Significant Impact (FONSI) for the Divestiture of Naval Petroleum Reserves Nos. 1 and 3.

SUMMARY: On December 10, 1987, as part of its effort to increase revenues to the Federal government, the Administration submitted a legislative proposal to sell the government's ownership interests in Naval Petroleum Reserve No. 1 (NPR-1, or Elk Hills) in California and Naval Petroleum Reserve No. 3 (NPR-3, or Teapot Dome) in Wyoming, two oil fields presently operated by the Department of Energy (DOE). Proceeds from the sale will be used to complete the filling of the Strategic Petroleum Reserve (SPR), and to establish a 10-million barrel Defense Petroleum Inventory (DPI) of petroleum products to be stored in the SPR.

DOE has prepared an Environmental Assessment (EA), DOE/EA-0334, for this proposal. The EA analyzed the differences in the environmental and socioeconomic impacts of the development and operation of these Reserves which would be caused by changing their ownership from the public to the private sector. In addition, the EA addressed the impacts of not selling the Reserves ("no action"), and of establishing the DPI at the SPR.

No significant environmental or socioeconomic impacts are predicted for the proposal to sell NPR-1. Based on petroleum engineering and economic factors, it is anticipated that a private owner would substantially follow DOE's existing Long Range Plan for the continued development and operation of these Reserves over the next 7 to 10 years. If so, no change to impacts on geological resources, acoustic conditions, cultural resources and land use at NPR-1 would be caused by its sale to a private owner. There may be some change in the impacts on biological resources, air quality, water quality and waste management practices caused by the change in ownership. However, a variety of regulatory factors make it likely that these changes will be minimal. A number of socioeconomic impacts are anticipated. A beneficial impact from the sale of NPR-1 will be an increase in state and local tax receipts.

Only minor differences in impacts on geologic, biological, water resources and air quality are projected if a private owner temporarily increases oil production at NPR-1 by 5 percent over the production projected in DOE's Long Range Plan. No other impact areas will be affected adversely. State and local tax revenues will increase somewhat, a beneficial impact.

Virtually no differences in projected impacts from the developent of NPR-3 are anticipated if its ownership changes to the private sector. Establishing the DPI at the SPR would have no significant effect on the risks and impacts previously assessed for the SPR.

It is the determination of DOE that the legislative proposal is not a major Federal action signficantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA). Therefore, an environmental impact statement (EIS) will not be prepared.

Public Availability

The Environmental Assessment and Finding of No Significant Impact are being made available to the public. Anyone wishing to receive copies of

either document, or further information on the proposal, should contact: Captain William W. Rumbold, Director, Office of Naval Petroleum and Oil Shale Reserves (FE–44), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Phone: 202–586–4685.

For further information on the NEPA compliance process, contact: Carol M. Borgstrom, Acting Director, Office of NEPA Project Assistance (EH–25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, Phone: 202–586–4600.

SUPPLEMENTARY INFORMATION: Naval Petroleum Reserve No. 1 (NPR–1, or Elk Hills) comprises 47,985 acres and is located about 35 miles west of Bakersfield in Kern County, California. NPR–1 is presently the seventh largest oil field in the United States, with production of about 115,000 barrels of oil per day. The Federal government owns about 78 percent of NPR–1, with the remaining 22 percent owned by Chevron U.S.A. Inc.

Elk Hills' climate is very dry, with an average annual rainfall of less than 6 inches. One third of the year's daily mean maximum temperatures are at or above 100 degrees F. Due to natural erosion and the low rainfall, much of the surface soil at NPT–1 has elevated salt concentrations, which tends to inhibit plant growth. Sand, gravel and petroleum are the only known mineral resources present on the Reserve. Elk Hills' biological resources exhibit some characteristics of a "biological island," with a greater abundance and diversity of plants and animals than is found on much of the surrounding area. Three endangered animal species currently are found on the Reserve.

Air quality date for Bakersfield show exceedances of the ambient air standards for ozone, particulate matter and sulfate. Water resources in the immediate area are not substantial, and both surface and groundwaters are of poor quality. At NPR–1, surface flow consists entirely of intermittent streams after periods of heavy precipitation.

The grater Bakersfield metropolitan region had a population of about 454,000 as of early 1984. The unemployment rate has decreased from 13.4 percent in 1983 to 10.4 percent in 1986. Elk Hills presently employs 753 persons. The local economy is based upon a solid foundation of agriculture and petroleum production.

Naval Petroleum Reserve No. 3, or Teapot Dome, comprises 9,481 acres and is located 35 miles north of Casper, Wyoming, in Natrona County. It is a mature, stripper field with a current average production of about 3,000 barrels of oil per day and is owned in its entirety by the Federal government.

The climate at NPR–3 is semi-arid, with between 10 to 15 inches of precipitation per year. NPR–3 supports an abundant biological resource base. No endangered species are known to be present on the Reserve. Natrona County has a population of about 75,000, 75 percent of which live in Casper. NPR–3 employs about 120 persons.

As part of an effort to increase revenues to the Federal government, the Administration is proposing to sell the government's ownership interests in Naval Petroleum Reserves 1 and 3. Proceeds from the sale will be used to complete the filling of the Strategic Petroleum Reserve (SPR), and to establish a Defense Petroleum Inventory (DPI) of 10 million barrels of petroleum products to be stored at the SPR. DOE has prepared an Environmental Assessment (EA), DOE/EA–0334, which analyzes the differences in environmental and socioeconomic impacts associated with the operation of these Reserves which may be caused by changing their ownership from the public to private sectors. The EA also addresses the impacts of establishing the DPI at the SPR.

Based on standard petroleum engineering and economic factors, it is anticipated that a private owner would substantially follow DOE's present Long Range Plan for the operation of NPR–1 over the next 7 to 10 years. If so, sale of the Reserve would not cause any changes in impacts on the geological resources, acoustic conditions, cultural resources and land use at NPR–1. There may be some adverse changes to the impacts on biological resources, air quality, water quality and waste management practices caused by the change in ownership of the Reserve. However, a variety of regulatory factors make it likely that a private owner will be constrained to continue the existing endangered species impact mitigation and air and water pollution control programs. For this reason, any changes in impacts between Federal and private operation of the Reserve should be minimal.

A number of socioeconomic impacts are projected if Elk Hills is sold to a private owner. These include the potential loss of employment for the present Federal and some portion of the private work force on site; loss of employment opportunities for minority and other disadvantaged workers; loss of income for local small and disadvantaged businesses; and the loss of a competitive supply of crude oil for several small, independent refineries. Mitigating measures exist to ameliorate these impacts. A beneficial impact from the transfer of ownership would be an increase in tax receipts to the State of California and to Kern County, which would likely result in either a decrease in revenue requirements from the existing state and local taxpayers, or an increase in the ability of state and local governments to provide services to residents. Overall, these tax effects are expected to be 2 to 3 times the amount of any cost reductions associated with the private ownership and operation of NPR–1.

There is a possibility that a private owner might increase oil production from Elk Hills by about 5 percent over the production projected in DOE's Long Range Plan over the next 3 to 4 years through various facility improvements and modifications. The additional environmental impacts of this temporary increase in production would be minimal.

NPR–3 is a mature stripper field whose operating strategy is mainly driven by economic considerations, and it is anticipated that a private owner would substantially follow DOE's existing Long Range Plan for the continued operation of this field over the next 7 to 10 years. For this reason, virtually no differences in any of the environmetal or socioeconomic impacts associated with the operation of NPR–3 would be caused by the transfer of ownership from the public to the private sector.

The accommodation of the DPI within existing SPR storage facilities would be well within the envelope of the 1-billion barrel SPR program assessed in a number of programmatic and site-specific environmental impact statements. At any of the four SPR sites, the DPI would be a relatively minor increment that would have no significant effect on the risks and impacts previously assessed for the respective sites.

Determination

Based on the findings of the EA, DOE has determined that the legislative proposal does not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* Therefore, an environmental impact statement (EIS) is not required.

Issued in Washington, DC, January 11, 1988.

Garry W. Gibbs,

Acting Assistant Secretary Environment, Safety and Health.

[FR Doc. 88-7324 Filed 4-1-88; 8:45 am]

BILLING CODE 6450-01-M

[Solicitation Number DE-PS01-88CE26540]

Announcement of Competitive Grant Program; District Cooling Assessment Program

Purpose: The United States Department of Energy, Office of Conservation and Renewable Energy, Office of Buildings and Community Systems is entering into a competitive grant program to encourage the development of technically advanced and innovative District Cooling (DC) systems. The forthcoming solicitation will be solely for DC and does not include District Heating.

Background: The U.S. Department of Energy (DOE) is interested in promoting the use of technically advanced and innovative district cooling systems where they could substantially increase the efficiency of building air conditioning supply, substitute renewable energy resources for the use of premium fuels, or both. Locations in which such opportunities exist will generally be characterized by high levels of demand, high costs for building air conditioning due to climate and building density, or both.

For purposes of the forthcoming solicitation, a district cooling system is defined as "an energy system that generates thermal energy from one or more central sources to supply a multiple number of buildings and customers with building cooling, air conditioning or industrial process refrigeration services through a common piping distribution network and, where necessary, a storage facility". The piping system may extend through part of a built area, or may be limited to a relatively small group of buildings.

The purpose of the solicitation will be to assess and develop advanced district cooling technologies. Assessment includes the capacity to (1) identify and characterize potential district cooling service areas, cooling supply options and distribution networks; (2) specify potential district cooling configuration and assess their technical, economic, market, institutional and financial feasibility; and (3) develop and undertake implementation plans for those district cooling projects that are feasible.

District cooling system development is a multi-step process requring feasibility assessment, system concept development, detailed development, financing and construction. The solicitation will be directed at any single stage of the system development process. Research is to be completed in 12 months.

Multiple awards for assessment projects are expected to be made under this 1988 program. At least $500,000 will be allocated for this program.

Eligibility: Any public or private entity may respond to this solicitation.

It is anticipated that a formal solicitation will be issued April 12, 1988. Written requests for copies of this solicitation should be sent to: U.S. Department of Energy, Office of Procurement Operations, Forrestal Building, Room 1J-005, 1000 Independence Avenue, SW., Washington, DC 20585, ATTN: Document Control Specialist, MA-451.1

Issued in Washington, DC on March 29, 1988.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 88-7246 Filed 4-1-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Denial of Waiver of Furnace Test Procedures From The Carrier Corporation (F.015)

AGENCY: Conservation and Renewable Energy Office, DOE.

ACTION: Denial of waiver.

SUMMARY: Today's notice publishes a denial of a waiver to Carrier Corporation (Carrier). Carrier in its petition for waiver asks for variance from the existing DOE test procedures for furnaces when testing its gas-fueled forced-air condensing furnace identified as model series 58SXB (Carrier brand) and model series 398B (Bryant, Day and NIght, and Payne brands). The denial is based on DOE's determination that Carrier is able to test its units in accordance with the exising test procedures and that the existing test procedures fo not provide materially inaccurate comparative data.

FOR FURTHER INFORMATION CONTACT:

Esher R. Kweller, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE.132, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586.9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586-9507.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(l), notice is hereby given of the issuance of the Decision and Order as set out below. The Carrier Corporation has been denied a waiver for its gas-fueled forced-air condensing furnances identified as model series 58SXB (Carrier brand) and model series 398B (Bryant, Day and Night, and Payne brands).

Issued in Washington, DC, March 28, 1988.

Donna R. Fitzpatrick,

Assistant Secretary, Conservation and Renewable Energy.

Decision and Order of the Department of Energy Office of Conservation and Renewable Energy

In the Matter of The Carrier Corporation [Case No. F-015]

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94-163, as amended by the National Energy Conservation Policy Act, Pub. L. 95-619, and the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100-12, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the test procedure regulations by adding § 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. DOE further amended the Department's appliance test procedure waiver process to allow the Assistant Secretary for Conservation and Renewable Energy to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed product test procedures. 51 FR 42823, November 26, 1986. The waiver process allows the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which

prevent testing of the basic model according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data.

The Carrier Corporation (Carrier) filed a "Petition for Waiver" dated August 3, 1987, in accordance with § 430.27 of 10 CFR Part 430. DOE published in the **Federal Register** Carrier's petition and solicited comments, data, and information respecting the petition. 52 FR 45233, November 25, 1987. Carrier subsequently, filed an "Application for Interim Waiver" under § 430.27(g) and DOE denied the request on November 12, 1987. 52 FR 45233, November 25, 1987. Subsequent to the denial of interim waiver, Carrier reapplied for interim waiver on December 4, 1987. In its reapplication, Carrier provided additional information on the economic hardship Carrier would experience absent a favorable determination on the application, where the economic hardship information was not show in the original application. In addition, Carrier stated that it would need to develop software to override its control in order to force the furnace blower to operate as prescribed in furnace test procedures. DOE granted the second application on December 23, 1987. 53 FR 68, January 4, 1988.

Four comments were received concerning the "Petition for Waiver." DOE notified Carrier by letter dated January 12, 1988 that a rebuttal of comments may be submitted within 10 working days of receipt of comments. Carrier rebutted the four comments by letter dated January 22, 1988. DOE consulted with the Federal Trade Commission on January 29, 1988, concerning the Carrier petition.

Assertions and Determinations

Carrier's petition requests a waiver from the maximum air temperature rise specification in the existing test procedure for furnaces, and to be allowed to test at the nominal air temperature rise. Generally, the lower the temperature rise, the better the measured efficiency.

Nominal temperature rise is the manufacturer's recommended operating condition when installed in a home and maximum temperature rise is the manufacturer's recommended upper limit of operating conditions. Both nominal and maximum temperature rise are specified on the manufacturer's rating plate. Carrier contends that since its patented control package incorporated in the above-mentioned furnace allows operation only at nominal temperature rise, testing at nominal temperature rise is appropriate.

In developing the test procedures for condensing furnaces, DOE found that the temperature rise specification was very important to the performance evaluation of condensing furnaces, i.e., not only is the sensible flue loss reduced by lower temperature rise but the rate of condensate production is enhanced by a lower temperature rise. For non-condensing furnaces, the temperature rise specification is less of an issue, i.e., less measured efficiency difference. Consequently, the testing specification of temperature rise for non-condensing furnaces is not as rigorous as the specification for condensing furnaces. For non-condensing furnaces, the existing test procedures allow testing at a nominal temperature rise. If during laboratory testing, the nominal temperature rise is not readily attainable, the test procedures provide for testing at a higher temperature rise thereby resulting in lower efficiency. DOE determined that in order to improve repeatability, a single temperature rise for condensing furnaces was specified. To avoid overestimating the efficiency of condensing furnaces, the test specification established was the maximum temperature rise. Although nominal temperature rise is the manufacturer's preferred field condition, maximum and near maximum temperature rise is often encountered in the field. Therefore, the maximum temperature rise test specification was specified for the test procedure to provide a conservative rating. However, DOE believes most furnaces are installed in a manner that results in less than the maximum temperature rise; this would result in more efficient operation than measured by the DOE test procedure.

Carrier's design of condensing furnaces which are the subject of the petition, differ from other condensing furnace designs by virtue of a control system which only allows operation at a single, pre-set temperature rise regardless of field conditions. Because of this difference, Carrier seeks allowance to test said furnaces at the pre-set temperature rise in lieu of the conservative testing specification for condensing furnaces.

All comments were opposed to the requested allowance, citing their belief that an unfair advantage would result if the requested allowance was granted and that a uniform test specification should apply to all manufacturers of condensing furnaces. Further, the commenters stated that the conservative test specification for condensing furnaces should be eliminated for all condensing furnaces at the same time. The commenters believe that the maximum temperature rise specification represents a nearly equal underestimation of performance for all designs of condensing furnances. York in its comments pointed out that competitive furnaces, without pre-set controls, could operate at a higher efficiency in the field than the Carrier design. This possibility exists when a furnace operates in the field below a nominal temperature rise. This possibility cannot exist in the Carrier design.

Carrier's contention that special software would need to be developed to test its furnace at maximum temperature rise is true; however, York in its comments stated: "This may be true, but it should not be any more of a burden than is imposed on the rest of the furnace manufacturers having to change blower speed taps, and/or varying supply voltage to achieve maximum temperature rise. In both cases, adjustments are made for test purposes only."

In addition, Trane stated: "existing furnaces also operate at the nominal air temperature rise when installed and maintained properly * * *. [W]e strongly oppose selectively changing the test procedures for one manufacturer if he is allowed to perform the test in such a manner that it gives him an unfair competitive advantage."

York stated: "The basis for Carrier's petition is that their furnaces would never operate above the midpoint of the rise range; hence, it would be more efficient than competitive furnaces that *could* operate above the midpoint of the rise range. However, Carrier ignores installations where competitive furnaces could operate *below* the midpoint of the rise range. Since the Carrier furnace would never operate below the midpoint of the rise range, the Carrier furnace would be less efficient than a competitive furnace. There is no basis to believe that, *on the average* an installed Carrier furnace would be more efficient than an equivalent competitive product with a multispeed blower."

Lennox stated: "our furnaces and all others certified under the ANSI Central Furnace Standard are capable of delivering a sufficient air throughput to maintain the midpoint, or lower temperature rise in normal applications. Therefore, there is no probability that the Carrier furnace will produce a higher operating efficiency (due to its blower control) in actual installations."

Amana stated, "The Carrier furnaces can be tested and rated at the maximum temperature rise by simply increasing the external static pressure * * *. The primary virtue of the Carrier's device is the prevention of an increase in air flow at static pressure below the rating point. However, most furnaces have multi-speed motors or other means by which air flow can be kept relatively constant at lower static pressures."

Carrier rebutted Amana's comments by stating that its control prevents furnace operation if excessive static pressure is encountered. Furthermore, Carrier rebutted these comments, stating that installers and homeowners often select a slower blower speed tap in order to obtain benefits of reduction in circulating air noise and the improved warmer feel due to the increased air temperature rise.

DOE has reviewed these comments and Carrier's rebuttal and the Department agrees with the comments that forced warm air furnaces are not operated at any one specific air temperature rise and that the maximum temperature rise specified in the test procedure is a conservative rating for condensing furnaces. DOE intends to review the appropriateness of the existing test method now applicable to all condensing furnaces. If a revision of the procedure is appropriate, it will be proposed to be applicable for all condensing furnaces in a future rulemaking.

In consideration of all of the above, DOE believes that although the Carrier design has many consumer perceived virtues, it does not constitute an inherently more efficient design when compared to other designs of condensing furnaces. Notwithstanding the argument that testing at the nominal temperature rise is more appropriate than testing at maximum temperature rise for the Carrier design, granting this allowance to Carrier alone would claim an inherent efficiency improvement due to the pre-set control design. Granting of the request to Carrier alone would provide materially inaccurate comparative data to consumers. Consequently, the Carrier petition for waiver (Case No. F-015) is hereby denied.

It is, therefore, ordered that:

(1) The "Petition for Waiver" filed by the Carrier Corporation (F-015) is hereby denied subject to the provision of paragraph (2).

(2) Effective April 4, 1988, this waiver supersedes the Interim Waiver granted Carrier on December 23, 1987, 53 FR 68, January 4, 1988. (Case No. F-015).

[FR Doc. 88-7243 Filed 4-1-88; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Final Consent Order With Phillips Petroleum Co.

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final action on proposed consent order.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that a proposed Consent Order between the Department of Energy (DOE) and Phillips Petroleum Company shall be made final as proposed. This Consent Order resolves matters relating to Phillips' compliance with the Federal petroleum price and allocation regulations administered and enforced by DOE during the period November 1, 1979 through December 18, 1987. The Consent Order requires Phillips to pay the sum of $30 million within (30) days of the effective date of the Consent Order. Persons claiming to have been harmed by Phillips' alleged overcharges will be able to present their claims for refunds in an administrative claims proceeding before the Office of Hearings and Appeals (OHA). The decision to make the Phillips Consent Order final was made after a full review of written comments from the public.

FOR FURTHER INFORMATION CONTACT: Dorothy Hamid, Economic Regulatory Administration, 1000 Independence Avenue, SW., Washington, DC 20585. (202) 586-8900.

SUPPLEMENTARY INFORMATION:

I. Introduction

On January 11, 1988, ERA issued a Notice announcing a proposed Consent Order between DOE and Phillips Petroleum Company which would resolve matters relating to Phillips' compliance with the Federal petroleum price and allocation regulations during the period November 1, 1979 through December 18, 1987. The proposed Consent Order, which requires Phillips to pay DOE $30,000,000 is for the settlement of Phillips' potential liability for $50,849,950 in alleged overcharges excluding interest. The January 11 Notice described the bases for ERA's preliminary view that the settlement was favorable to the government and in the public interest. The **Federal Register** notice solicited written comments from the public relating to the adequacy of the terms and conditions of the settlement and whether the settlement should be made final.

II. Comments Received

One written comment was received after the 30 day written comment period had expired. The comment, which was on behalf of certain utilities, transporters, and manufacturers was considered in determining whether to make the proposed Consent Order with Phillips final.

III. Analysis of Comment

The January 11 Notice solicited written comments to enable the ERA to receive information from the public relevant to the decision as to whether the proposed Consent Order should be finalized as proposed, modified or rejected. To ensure public understanding of the bases for the proposed settlement, the January 11 Notice provided information regarding Phillips' possible liability, and the considerations that went into the government's preliminary agreement to the proposed terms.

ERA received one written comment that arrived after the written comment period had closed, which was, nevertheless, considered in making the decision as to whether the proposed Consent Order should be made final. The one comment received stated the commenter's objection to the proposed settlement because the amount of the settlement was inadequate. As well, the commenter urged that a distribution of settlement proceeds should be the subject of a proceeding pursuant to 10 CFR Subpart V (Subpart V). Inasmuch as the distribution of settlement proceeds will be made pursuant to the final Stripper Well Settlement Agreement in *In re: The Dept. of Energy Stripper Well Exemption Litigation*, M.D.L. 378 (D. Kan.), and the DOE Modified Restitutionary Policy (51 FR 27899, Aug. 4, 1986), which calls for the implementation of the Subpart V procedures, comments in that regard will not be further addressed herein. The following, therefore, addresses the commenter's objection to the settlement amount.

The comments objecting to the settlement's adequacy appear to be based on a premise which reflects a misunderstanding of the Department's claims against Phillips. Specifically, the commenter argues throughout that because Phillips deliberately defrauded the Entitlements Program, no "forgiveness" is warranted. The

Department, however, did not allege, and has not ever alleged, that Phillips deliberately defrauded the Entitlements Program. Moreover, the Department has no evidence of fraud and, in any event, Phillips' intent was not an element of the Department's legal claim.

The commenter also failed to address the litigation risks specific to this case, which were described in the January 11, 1988 **Federal Register** (53 FR 635, Jan. 11, 1988). In that Notice, the Department explained, *inter alia*, that the scope of the 1979 Consent Order with Phillips presented significant litigation risks for the Department. With regard to litigation risks, the commenter simply argued that the 1979 Consent Order was for a period ending October 31, 1979, whereas the PRO alleged violations in the period beginning November 1, 1979, and that Phillips' fraudulent concealment or misrepresentation of evidence permitted ERA to prosecute pursuant to the terms of the 1979 Consent Order. As discussed above, the Department has no evidence that Phillips willfuly and fraudulently concealed or misrepresented evidence.

The respective time periods covered by the 1979 Consent Order and the PRO were not the most significant issues; the most difficult issue involved paragraph 449 of the 1979 Consent Order which arguably resolved differences between Phillips and the Department about the property of Phillips' future compliance practices to the extent Phillips had engaged in those practices during the time period covered by the Consent Order. The type of conduct which was the subject of the PRO had occurred during such period. Given this argument on this issue, coupled with the fact that Phillips might have obtained enforcement of the 1979 Consent Order and the adjudication of this threshold issue in a federal district court, the Department considered its risk as significant. The commenter's arguments do not address these concerns.

The commenter also dismisses the litigation risks associated with the merits of the PRO as not significant claiming, *inter alia*, there is no factual dispute. The Department agrees that it would have a good chance of succeeding on the merits of the PRO in litigation. However, if the 1979 Consent Order issue were lost, there would be no opportunity to succeed on the underlying merits of the PRO. Accordingly, the overall likelihood of success was considered lower than that of either the PRO merits or the 1979 Consent Order issues considered separately. In any event, the case is at its earliest litigation phase, and until the matters are actually litigated, there are always factors, unknown presently, which can adversely affect the likely outcome.

The commenter further takes issue with the reasonableness of the settlement amount on the basis that ERA considered only that portion of the benefit actually received by Phillips. The commenter's concern is misplaced. While Phillips' net benefit was significantly less than the amount of violation asserted in the PRO, and ERA considered in its risk analysis the possibility of such an alternative outcome, the PRO overcharge quantification of $15 million was not reduced for that consideration. Consideration of the benefit actually received, however, is especially appropriate to consider in the context of settlement, along with the litigation probabilities.

Upon consideration of the comment received and addressed herein, and inasmuch as there were no other bases proferred for rejecting or modifying the settlement as proposed, the Department has determined that it is in the best interest of the public to make the proposed Consent Order final without change.

IV. Decision

By this notice, and pursuant to 10 CFR 205.199J, the proposed Consent Order between Phillips and DOE is made a final order of the Department of Energy, effective the date of publication of this Notice in the **Federal Register.**

Issued in Washington, DC on March 28, 1988.

Chandler L. van Orman,

Deputy Administrator, Economic Regulatory Administration.

[FR Doc. 88-7244 Filed 4-1-88; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 87-74-NG]

North Canadian Resources, Inc., Order Granting Blanket Authorization To Import Natural Gas

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of order granting blanket authorization to import natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice that it has issued an order granting North Canadian Resources, Inc., (North Canadian) authorization to import natural gas. The order issued in ERA Docket No. 87-74-NG authorizes North Canadian to import up to 146 Bcf of natural gas over a two-year period beginning on the date of first delivery.

A copy of this order is available for inspection and copying in the Natural Gas Division Docket Room, GA-076, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, 20585, (202) 586-9478. 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, March 28, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-7325 Filed 4-1-88; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. ERA C&E 88-08; Certification Notice—13]

Filing of Certification of Compliance; Coal Capability of New Electric Powerplants

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Notice of filing.

SUMMARY: Title II of the Powerplant and Industrial Fuel Use Act of 1978, as amended ("FUA" or "the Act") (42 U.S.C. 8301 *et seq.*) provides that no new electric powerplant may be constructed or operated as a base load powerplant without the capability to use coal or another alternate fuel as a primary energy source (section 201(a)). In order to meet the requirement of coal capability, the owner or operator of any new electric powerplant to be operated as a base load powerplant proposing to use natural gas or petroleum as its primary energy source may certify, pursuant to section 201(d) to the Secretary of Energy prior to construction, or prior to operation as a base loan powerplant, that such powerplant has capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish in the **Federal Register** a notice reciting that the certification has been filed. One owner and operator of a proposed new electric base load powerplant has filed a self certification in accordance with section 201(d). Further information is provided in the **SUPPLEMENTARY INFORMATION** section below.

SUPPLEMENTARY INFORMATION:

The following company filed a self certification:

Name	Date received	Type facility	Megawatt capacity	Location
Decker Energy International, Winter Park, Fla..	5-19-87	Cogeneration Combined Cycle	28	Bakerfield, CA.

Amendments to FUA on May 22, 1987 (Pub. L. 100-42) altered the general prohibitions to include only new electric baseload powerplants and to provide for the self certification procedure.

Issued in Washington, DC on March 28, 1988.

Robert L. Davies,

Director, Office of Fuels Programs, Economic Regulatory Administration.

[FR Doc. 88-7245 Filed 4-1-88; 8:45 am]

BILLING CODE 6450-01-M

Office of Hearings and Appeals

Issuance of Decisions and Orders; Week of February 8 Through February 12, 1988

During the week of February 8 through February 12, 1988, the decisions and orders summarized below were issued with respect to appeals and applications for exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Request for Modification and/or Rescission

Arkansas, 2/11/88, KER-0037

The DOE issued a Decision and Order regarding a Motion for Reconsideration filed by the State of Arkansas. The State's Motion sought reconsideration of a DOE denial of a Petition for Special Redress that the State filed on May 28, 1987. *Arkansas*, 16 DOE ¶ 82,503 (1987) (*Arkansas*). In *Arkansas*, the DOE concluded that the State's proposal to use $400,000 to fund a Natural Gas Line Extension Project was not consistent with the terms of the Stripper Well Settlement Agreement. In denying the State's Motion for Reconsideration of *Arkansas*, the DOE found that the project was not an "energy assistance" project as defined in the 1981 Chevron consent order. Furthermore, the DOE found that additional information submitted by Arkansas supported the DOE's previous determination that the program did not further the policy objectives of timely restitution, balance or energy conservation. Accordingly, the Motion for Reconsideration was denied.

Request for Stay

Little America Refining Company, The True Companies/Little America Refining Company, 2/10/88, KES-0008, KET-0008, RR195-0001

Little America Refining Company (Larco) filed Applications for Stay and Temporary Stay with the DOE. Larco requested that the DOE stay consideration of all refund applications from a consent order fund provided by the True Companies, pending a determination on the merits of Larco's appeal of a denial of its own refund application from the True fund. The DOE determined that Larco had failed to meet any of the criteria necessary for granting a stay. In particular, the DOE found that there would be sufficient funds to satisfy Larco's refund request as well as all other pending requests. The DOE also considered new facts raised by Larco in its stay application and determined that the firm had failed to demonstrate that the denial of its refund request should be modified. Accordingly, Larco's Applications for Stay and Temporary Stay were denied.

Refund Applications

Cranston Oil Service Company, Inc./ Neptune-Benson, Inc., Et Al., 2/11/ 88, RF276-2, et al.

The DOE issued a Decision and Order concerning 12 Applications for Refund filed by end-users of No. 2 heating oil covered by a consent order that the agency entered into with Cranston Oil Service Company, Inc., and its successor-in-interest, Galego Oil Company. The Applications were evaluated in accordance with procedures set forth in *Cranston Oil Service Co.*, 14 DOE ¶ 85,499 (1986). The sum of the refunds approved in this Decision is $2,327, representing $2,010 in principal and $317 in interest.

Getty Oil Company/Gagnon's Market, Et Al., 2/8/88, RF265-53, Et Al.

The DOE issued a Decision and Order concerning 36 Applications for Refund filed by resellers or retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty refined petroleum products that were indirectly purchased from Getty jobbers/distributors during the consent period. In 35 of these cases, the applicants were eligible for a claim below the $5,000 threshold. In the remaining case, the applicant elected to limit its claim to $5,000. The sum of the refunds approved in this Decision is $102,492, representing $50,649 in principal and $51,843 in accrued interest.

Getty Oil Company/Roger's Getty, Et Al., 2/8/88, RF265-2, Et Al.

The DOE issued a Decision and Order concerning 40 Applications for Refund filed by resellers or retailers of products covered by a consent order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty refined petroleum products that were indirectly purchased from Getty jobbers/distributors during the consent order period. In 32 of these cases, the applicants were eligible for a claim below the $5,000 threshold. In the remaining eight cases, the applicants elected to limit their claim to $5,000. The sum of the refunds approved in this Decision is $182,098, representing $89,988 in principal and $92,110 in accrued interest.

Joseph H. Nesmith, Sr., 2/11/88, RF272-980

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the Applicant's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. The Applicant used the products for various agricultural activities, and based his claim on the number of acres he farmed. To estimate his fuel consumption in the cultivation of flue-cured tobacco, the Applicant used the USDA estimate for annual petroleum product consumption per acre among the nation's farmers for flue-cured tobacco. To estimate its fuel consumption in the cultivation of all its other crops, the Applicant used the USDA estimate for average annual petroleum product consumption per acre among the nation's farmers. As an end-user, the Applicant was entitled to receive a refund of its full volumetric share. The refund granted in this Decision is $38.

Marathon Petroleum Company/High Point Oil Company, 2/11/88, RF250-2623, RF250-2624

The DOE issued a Decision and Order concerning Applications for Refund filed by High Point Oil Company in the Marathon Petroleum Company special refund proceeding. The Applicant demonstrated the volume of its Marathon purchases, and declined to

submit a demonstration that it was injured by the alleged overcharges. Therefore, the Applicant was granted a refund under the 35 percent presumption of injury. The total refund granted to High Point Oil company is $17,390, representing $15,216 in principal and $2,174 in interest.

Mobil Oil Corporation/Bergen Fuel Oil Co. John Budek's Service, 2/10/88, RF225-3766, Et Al.

The DOE issued a Decision and Order regarding Applications for Refund from the Mobil Oil Corporation escrow account filed by Bergen Fuel Oil Co. (Bergen) and John Budek's Service (Budek), two retailers of Mobil refined petroleum products. Bergen and Budek elected to apply for refunds based upon the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). However, each firm included in its application purchases from Mobil made outside the period of price controls. The DOE disapproved these portions of the firms' claims and adjusted the firms' volumes accordingly. Bergen was therefore granted a refund of $1,731 ($1,394 in principal plus $337 in interest) and Budek was granted a refund of $142 ($114 in principal plus $28 in interest).

Mobil Oil Corporation/Dirkse Oil Company, 2/11/88, RF225-9263, RF225-9264

The DOE issued a Decision and Order granting an Application for Refund from the Mobil Oil Corporation escrow account, filed by Dirkse Oil Company, a reseller of Mobil refined petroleum products. In its Application, Dirkse elected to submit documentation that it was injured by Mobil's pricing practices rather than rely on the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). Dirkse submitted information demonstrating that in April 1980, the firm had approximated banks of unrecouped increased product costs totalling $1,005. Therefore, although a competitive disadvantage analysis demonstrated that Dirkse suffered a competitive disadvantage due to its purchases of Mobil motor gasoline, the DOE determined Dirkse's refund for motor gasoline should be limited to the level of its banks, or $1,005. Because this amount is less than the $5,000 small claims level and because the firm had not attempted to demonstrate an additional injury, the DOE also granted Dirkse a refund based on its purchases of middle distillates. The total refund granted to Dirkse was $2,327, representing $1,874 in principal plus $453 in interest.

Mobil Oil Corporation/Ed Niemi Oil Company, 2/11/88, RF225-9381, RF225-9382, RF225-9383

The DOE issued a Decision and Order granting an Application for Refund from the Mobil Oil Corporation escrow account, filed by Ed Niemi Oil Company, a reseller of Mobil refined petroleum products. In its Application, Niemi elected to submit documentation that it was injured by Mobil's pricing practices rather than rely on the presumptions set forth in the *Mobil* decision. *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985). With regard to the first part of a showing of injury, the DOE was unable to accept the approximated banks of unrecouped increased product costs submitted by Niemi. The DOE found that the annual data submitted by the firm as a basis for these calculations was inadequate for a showing of injury. In *Mobil*, however, applicants who attempt to rebut the level-of-distribution presumption and fail are nonetheless eligible for a refund under these presumptions. The DOE reviewed the application made by Niemi to insure that all necessary information has been provided for a refund under these presumptions. Accordingly, Niemi's Application for Refund was granted. The total refund granted to Niemi was $4,721, representing $3,803 in principal and $918 in interest.

Quarles Petroleum, Inc./Dulles Shell Service Center, 2/11/88, RF287-1

The DOE issued a Decision and Order concerning the Application for Refund filed by Dulles Shell Service Center (Dulles) in the Quarles Petroleum, Inc. (Quarles) special refund proceeding. Dulles applied for a refund based on the procedures outlined in *Quarles Petroleum, Inc.*, 14 DOE ¶ 85,271 (1986), governing the disbursement of settlement funds received from Quarles pursuant to an October 1981 consent order. Because Dulles sought a refund less than $5,000, Dulles was presumed to have been injured by Quarles' alleged overcharges. After examining the application and supporting documentation submitted by Dulles, the DOE granted the firm a refund of $3,155, representing $1,855 in principal and $1,300 in accrued interest.

Robert J. Heffner, Et Al., 2/9/88, RF272-04495, Et Al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 40 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used the products for various agricultural activities, and each determined its claim by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the DOE. The sum of the refunds granted in this Decision is $934.

Dismissals

The following submissions were dismissed:

Name	Case No.
C.G. Maichle Oil Co	RF225-9615
C.T. Weidenfeller	RF225-4341
H.G. Chala	RF225-6400
Hartung Oil Company	RF225-10863
Joseph W. Doyle	RF225-4716
Osterloh Oil Co	RF225-9704
Queen City Oil Co., Inc	RF225-648
	RF225-649
	RF225-650
	RF225-651
Spruce Oil Corporation	RF83-163
Texaco, Inc	KRR-0036

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 29, 1988.

[FR Doc. 88-7326 Filed 4-1-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Decisions and Orders; Week of February 15 Through February 19, 1988

During the week of February 15 through February 19, 1988, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Remedial Order

Apex Oil Company, 2/28/88; HRO-0241

Apex Oil Company objected to a Proposed Remedial Order that was issued to it by the Economic Regulatory Administration on July 5, 1984. The PRO alleged that the firm violated the price and certification regulations that were

applicable to its resales of crude oil during the April 1978 through December 1979 audit period.

The crude oil involved in some of the Apex transactions was sold to a refiner which asserted that it was to be used in a non-refining use. The DOE rejected Apex's contention that the price and certification regulations did not apply to such resales of crude oil. The DOE found that the obligations of a crude oil reseller did not depend upon the ultimate use of the crude oil by the purchaser.

The PRO also involved Apex's sales of crude oil blended with other substances as residual fuel oil, a product that was uncontrolled during the audit period. The DOE found that the crude oil content of these blends remained subject to the price and certification regulations notwithstanding the fact that the blends met the physical specifications for residual fuel oil. In doing so, the DOE rejected Apex's contentions that the crude oil lost its identity for purposes of the regulations in the blending process and that the blending process made Apex a refiner rather than a reseller. Accordingly, the DOE found that Apex should have provided certifications with respect to the crude oil content in its fuel oil blends. Because Apex had failed to provide complete information concerning its pricing of blends as requested by the ERA, the DOE upheld the ERA's use of estimates and assumptions in its calculation of the violation amount. The DOE found, however, that the overcharge amount should be reduced by the amount of overcharges attributable to the crude oil contained in the blending tanks at the end of the audit period.

The PRO contained a reporting requirement concerning the firm's pricing practices for periods both before and after the audit period. The DOE agreed with Apex that inclusion of such a reporting requirement in a Remdial Order would be inappropriate, and therefore deleted the requirement from the PRO. The DOE found, however that the information sought by the ERA was reasonable, and stated its intention to issue a separate Special Report Order. Issuance of the SRO would be delayed for 30 days in order to allow the ERA to request a modification of its reporting request. As so modified, PRO was issued as a final order.

Interlocutory Order

Go-Tane Service Stations, Inc., 2/16/88; KRZ-0076, KRZ-0077, KRZ-0078, KRZ-0079

Go-Tane Service Stations, Inc. filed a Request to Participate in each of four enforcement proceedings involving Proposed Remedial Orders (PROs) issued to Clark Oil and Refining Corporation, Apex Oil Company, Novelly Oil Company, Goldstein Oil Company and Apex Holding Company. In two of the PRO proceedings, the DOE denied Go-Tane's Requests because the firm failed to show that it had sufficient interest in those proceedings, and failed to show that its participation would contribute to a complete resolution of the issues to be considered. The DOE granted Go-Tane a limited right to participate in the other two PRO proceedings. The DOE based this determination in part on Go-Tane's claim that it had obtained information about Clark in prior litigation with the firm which would be of assistance to the DOE in resolving the issues presented in those PRO's. Therefore, the DOE granted Go-Tane the right to file responses to any Statements of Objections which Clark files in those two proceedings, and to participate in any evidentiary hearings or oral arguments which may be held.

Refund Applications

Albany International Et Al., 2/16/88; RF 272-4868 Et Al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to six applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of petroleum products, and established its claim either by consulting actual purchase records or by estimating its consumption based on annual usage or partial records. As end-users, each applicant was presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is $1,870. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Aminoil U.S.A. Inc./Mobil Oil Corporation, 2/19/88; RF139-29

The DOE Issued a Decision and Order concerning an Application for Refund filed by Mobil Oil Corporation (Mobil). Mobil applied for a refund based on the procedures outlined in *Aminoil U.S.A., Inc.* 12 DOE ¶ 85,217 (1985), governing the disbursement of settlement funds received from Aminoil pursuant to a Consent Order between that firm and the DOE. Mobil submitted cost banks well in excess of the refund it claimed and price comparison material in support of a refund of more than $5,000. After examining Mobil's application and supporting documentation, the DOE concluded that the firm should receive a refund of $312,428, representing $183,112 in principal and $129,316 in accrued interest.

Apco Oil Corp./Johnsons Apco Oil Co. Inc., 2/18/88; RF83-58

The DOE issued a Decision and Order concerning an Application for Refund filed by Johnsons Apco Oil Company, Inc. Johnsons, a motor gasoline and distillate fuel oil reseller, sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Apco Oil Corporation. The DOE determined that Johnsons met the criteria for a refund, but had not made an adequate showing of injury to merit a refund in excess of the $5,000 small claims threshold. Accordingly, Johnsons was awarded a small claims refund of $5,000 plus $2,761 in accrued interest based upon its motor gasoline purchases. Johnsons' request for an additional refund based upon its purchase of Apco distillate fuel oil was denied.

Arkla Chemical Corp./Clark Equipment Co., Wilkerson Diesel, Inc., Arkla Louisiana Gas Company/Clark Equipment Co., Wilkerson Diesel, Inc., 2/18/88; RF153-37, RF153-38, RF154-36, RF154-35

The DOE issued a Decision and Order concerning Applications for Refund filed by customers of Arkla Chemical Company (Arkla I) and Arkansas Louisiana Gas Company (Arkla II). The applicants certified that they purchased covered products from Arkla I during the Arkla I consent order period and they were therefore granted refunds for the full amount allocated to them in the Arkla I proceeding. In addition, the applicants were granted refunds from the Arkla II funds. In support of their applications, the applicants submitted schedules of monthly purchases during the Arkla II consent order period; however, they were not required to prove injury because they were resellers whose refunds did not exceed $5,000. The total amount of refunds approved in this Decision and Order is $5,522, consisting of $369 from Arkla I and $5,153 from Arkla II.

Charles Rhoads, 2/19/88; RF272-4038 Et Al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 50 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Forth-eight of the applicants used

the products for various agricultural activities, and each established its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. The remaining two applicants are businesses which used the products to operate trucks and machinery. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is $2,368. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Clyde v. Small Et Al., 2/16/88; RE272–4149 Et Al.

The DOE issued a Decision and Order granting refunds to 19 claimants that filed Applications for Refund in OHA's Subpart V crude oil overcharge refund proceedings. Each applicant provided evidence of the volume of refined petroleum products that it purchased during the period August 19, 1973 through January 27, 1981. As an end-user of petroleum products, each claimant was found to have been injured as a result of the crude oil overcharges. The refunds granted totalled $4,307.

Cranston Oil Service Company, Inc./ Joseph L. Pilosa Et Al., 2/16/88; RF276–17 Et Al.

The DOE issued a Decision and Order concerning 15 Applications for Refund filed by end-users of No. 2 heating oil covered by a consent order that the agency entered into with Cranston Oil Service Company, Inc., and its successor-in-interest, Galego Oil Company. The Applications were evaluated in accordance with procedures set forth in *Cranston Oil Service Co.*, 14 DOE ¶ 85,499 (1986). The sum of the refunds approved in this Decision is $870, representing $750 in principal and $120 in interest.

Cranston Oil Service Company, Inc./ Martelli Jewelry Co. Et Al., 2/18/88; RF276–41 Et Al.

The DOE issued a Decision and Order concerning five Applications for Refund filed by end-users of No. 2 heating oil covered by a consent order that the agency entered into with Cranston Oil Service Company, Inc., and its successor-in-interest, Galego Oil Company. The Applications were evaluated in accordance with procedures set forth in *Cranston Oil Service Co.*, 14 DOE ¶ 85,499 (1986). The sum of the refunds approved in this Decision is $638, representing $552 in principal and $86 in interest.

David H. Bork, Et Al., 2/19/88; RF272–3224, Et Al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to five claimants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each of the claimants used the products for various agricultural activities and determined its eligible fuel consumption by consulting actual purchase records. Because each applicant calculated its amount of grease in pounds rather than gallons, the DOE converted its total pounds of grease into gallons. As an end-user, each applicant was entitled to receive a refund of its full volumetric share of the currently available crude oil monies. The sum of the refunds granted in this Decision is $93.

Frank D. Helm Et Al., 2/16/88; RF272–4857 Et Al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 46 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used the products for various agricultural activities, and each established its claim either by consulting actual purchase records or by estimating its consumption based on the acres it farmed. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is $788. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Getty Oil Company/Hudson Foods, Inc., Et Al., 2/18/88; RF265–1570 Et Al.

The DOE issued a Decision and Order concerning three Applications for Refund filed by two end-users and one retailer of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty refined petroleum products that was indirectly purchased from Getty during the consent order period. The end-user applicants were eligible for the full amount claimed. In the remaining case, the reseller applicant elected to limit its claim to $5,000. The sum of the refunds approved in this Decision is $18,601, representing $9,192 in principal and $9,409 in accrued interest.

Getty Oil Company/Larry's Skelly, Inc. Et Al., 2/16/88; RF265–446 Et Al.

The DOE issued a Decision and Order concerning 60 Applications for Refund filed by resellers, retailers and an end-user of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty refined petroleum products that was indirectly purchased from Getty during the consent order period. In 53 of these cases, the applicants were eligible for a refund below the $5,000 threshold. In the remaining seven cases, the applicants elected to limit their claims to $5,000. The sum of the refunds approved in this Decision is $165,077, representing $81,573 in principal and $83,504 in accrued interest.

Getty Oil Company/Leitch's Skelly Service, Et Al., 2/17/88; RF265–2363 Et Al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed by retailers of products covered by a Consent Order that the DOE entered into with Getty Oil Company. Each applicant submitted information indicating the volume of Getty motor gasoline that was indirectly purchased from Getty during the consent order period. In all of these cases, the applicants were eligible for a refund below the $5,000 threshold. The sum of the refunds approved in this Decision is $12,411, representing $6,134 in principal and $6,277 in accrued interest.

Gibbs Industries, Inc./William Bourassa Et Al., 2/18/88; RF262–2 Et Al.

The Department of Energy (DOE) issued a Decision and Order approving applications submitted by five customers of Gibbs Industries, Inc. (Gibbs). Each of the applicants submitted a written statement indicating that it had a supplier-purchaser relationshp with Gibbs and did not receive products from alternative suppliers during the Gibbs consent order period. The applicants were named in the ERA audit file as firms that did not receive their adjusted base period allocations from Gibbs and all chose to rely on the compilation of misallocated volumes contained in that audit file. Based on the procedures established for this proceeding, each applicant was granted a refund equal to the volumetric refund amount ($0.096437) multiplied by the number of gallons to which the firm was entitled but did not receive from Gibbs during the consent order period. Each applicant was granted an additional $0.094301 per gallon as a pro rata share of interest which has accrued on the consent order fund since its remittance to the DOE on January 7, 1981. The total amount of refunds

approved in this Decision is $5,500 ($2,780 principal and $2,720 interest).

ICI Americas, Inc. 2/16/88; *RF272–3163*

The DOE issued a Decision and Order concerning an Application for Refund filed by ICI Americas, Inc. (ICI) in connection with the Subpart V crude oil refund proceedings. The DOE determined that ICI was reimbursed on a dollar-for-dollar basis for the full cost of its purchases during the crude oil price control period. Therefore, the DOE concluded that ICI was not injured by any crude oil overcharges associated with the gallons purchased. Accordingly, ICI's Application for Refund was denied.

Johnson's Dairy, Inc., Et Al., 2/16/88; *RF272–891 Et Al.*

The DOE issued a Decision and Order granting five Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant purchased refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant determined the volume of its fuel purchases by consulting actual purchase records. As an end-user, each applicant was entitled to receive a refund of its full volumetric share of the currently available crude oil monies. The sum of the refunds granted in this Decision is $1,578.

Marathon Petroleum Co./C.A. Murphy Oil Co., 2/19/88; RE250–2486, RF250–2487

The DOE issued a Decision and Order concerning Applications for Refund filed by C.A. Murphy Oil Company in the Marathon Petroleum Company refund proceeding. C.A. Murphy claimed that it purchased 34,078,516 gallons of refined products from Marathon during the Marathon consent order period. The applicant provided a market price survey to demonstrate that it was competitively injured as a result of Marathon's alleged overcharges. Since the prices that Murphy paid Marathon generally exceeded average market prices, the DOE granted Murphy a refund equal to its allocable refund share. The amount of the refund was $9,137 in principal plus accured interest of $1,305.

Marathon Petroleum Co./Hauck Oil Company, 2/17/88; RF250-2394, RF250–2395

The DOE issued a Decision and Order concerning Applications for Refund filed by Hauck Oil Company in the Marathon Petroleum Company refund proceeding. Hauck Oil claimed that it purchased 147,481,135 gallons of refined products from Marathon during the Marathon consent order period. The applicant, however, did not provide a conclusive showing that it was injured as a result of Marathon's alleged overcharges. The DOE granted Hauck Oil a refund equal to 35 percent of its allocable refund share. The amount of the refund was $21,218 in principal plus accured interest of $3,031.

Marathon Petroleum Co./Peerless Distributing Co., 2/16/88; RF250–2390, RF250–2391, RF250–2392

The DOE issued a Decision and Order concerning Applications for Refund filed by Peerless Distributing Co. in the Marathon Petroleum Company refund proceeding. Peerless claimed that it purchased 122,213,775 gallons of refined products from Marathon during the Marathon consent order period. Since the applicant did not claim a refund in excess of 35 percent of its allocable refund share, the DOE granted its request without requiring a showing of injury. The refunds granted in this Decision were $17,965 in principal plus $2,566 in accrued interest.

Mobil Oil Corp./Auburn Car Et Al., 2/18/88; *RF225–969 Et Al.*

The DOE issued a Decision and Order granting applications filed by 65 purchasers of Mobil refined petroleum products requesting refunds from the Mobil Oil Corp. consent order fund. According to the procedures set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), each applicant was found to be eligible for a refund based on the volume of products it purchased from Mobil. The total amount of refunds approved in this Decision was $75,655, representing $60,958 in principal plus $14,697 in accrued interest.

Mobil Oil Corporation/Brucker's Mobil, 2/17/88; RF225–10855

The DOE issued a Decision and Order regarding applications for refund from the Mobil Oil Corporation escrow account filed by Brucker's Mobil, a retailer of Mobil refined petroleum products. In the Decision, the DOE determined that Brucker's Mobil had been granted duplicate refunds and that the firm should remit the smaller of the two refunds granted to it. The DOE therefore ordered that Brucker's Mobil remit $399.

Mobil Oil Corp./Crowley Maritime Corp., U&R Express, Caterpillar, Inc., 2/16/88; RF225–6185, RF225–6187, RF225–10546, RF225–10849

The DOE issued a Decision and Order granting Applications for Refund from the Mobil Oil Corporation consent order fund filed by Crowley Maritime Corporation, U&R Express, and Caterpillar, Inc., end-users of Mobil refined petroleum products. Each applicant presented evidence that it purchased refined petroleum products directly from Mobil during the Mobil consent order period. According to the methodology set forth in *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), each applicant was found to be eligible for a refund from the Mobil consent order fund based on the volume of its purchases times 100 percent of the volumetric refund amount. The refunds granted in this Decision totalled $3,311 ($2,668 principal plus $643 interest).

Mobil Oil Corporation/Gray's Automotive, 2/16/88; RF225–10919

The DOE issued a Supplemental Order regarding an Application for Refund from the Mobil Oil Corporation escrow account filed by Gray's Automotive (Gray's), a retailer of Mobil refined petroleum products. In the Supplemental Order, the DOE determined that because the refund check issued to Gray's in *Mobil Oil Corp./Alfred Community Enterprises*, 15 DOE ¶ 85,428 (1987), had been returned as undeliverable, it should be redeposited in the Mobil deposit fund escrow account. Accordingly, the DOE ordered that the $42 granted to Gray's be redeposited in the Mobil escrow account.

Moore Regional Hospital, 2/18/88; RF272–2253

The Department of Energy issued a Decision and Order approving an Application for Refund in the Crude Oil Subpart V refund proceedings. The Claimant was a hospital which used diesel fuel to heat and to cool its facilities during the period of crude oil price controls. The Applicant estimated its fuel consumption during this period based on the gallons of diesel fuel it consumed per square foot. This figure was derived from actual purchase figures for the years 1978 through 1981 and from the square footage of the hospital from 1973 through 1981. Because the claimant relied on the end-user presumption it was not required to demonstrate injury. A total of $531 was approved in this Decision and Order.

Roland H. Roth, Kenneth W. Johnson, 2/18/88; RF272–2102, RF272–2208

The DOE issued a Decision and Order approving two Applications for Refund from crude oil overcharge funds. The two claimants were farmers who used tax records, local fuel supplier records or sales receipts to calculate the number of gallons of petroleum products they used during the period August 19, 1973 through January 27, 1981. When calculating the amount of grease used

during this period, however, each Applicant used pounds rather than gallons as the standard measure. Accordingly, the DOE converted the pounds of grease to gallons and added this converted figure to each Applicant's gallonage. Because the claimants relied on the end-user presumption, they were not required to demonstrate injury. A total of $21 was approved in this Decision and Order.

State Escrow Distribution, 2/17/88; RF302-2

The Office of Hearings and Appeals ordered the DOE's Office of the Controller to distribute $41,737,000.00 to the State Governments. Those funds had been set aside for distribution to the States in two previously issued decisions: *Atlantic Richfield Co.*, 17 DOE ¶ 85,069 (1988), and *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988). The use of the funds by the States is governed by the Stripper Well Settlement Agreement.

Suburban Propane Gas Corporation/ Carter Bell Manufacturing Co. Et Al., 2/17/88; RF299-60 Et Al.

The DOE issued a Decision and Order granting applications filed by eight end-users of propane requesting refunds from the Suburban Propane Gas Corporation consent order fund. According to the procedures set forth in *Suburban Propane Gas Corp.*, 16 DOE ¶ 85,382 (1987), each applicant was found to be eligible for a refund based on the volume of propane it purchased from Suburban. The total amount of refunds approved in this Decision is $1,491, representing $1,338 in principal plus $153 in accrued interest.

Verne Skjefte, Et Al., 2/17/88; RF272-2156, Et Al.

The DOE issued a Decision and Order approving twenty-seven Applications for Refund from crude oil overcharge funds. The twenty-seven claimants were farmers who used U.S. Department of Agriculture data on fuel usage per acre to derive the number of gallons of petroleum products they used during the period August 19, 1973 through January 27, 1981. Because the claimants relied on the end-user presumption, they were not required to demonstrate injury. A total of $1,400 was approved in this Decision and Order.

White Rose, Inc., 2/16/88; RF272-896

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the Applicant's purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. To estimate its fuel purchase volume, the Applicant divided its annual dollar expense for fuel products by $0.80, its estimated average per gallon price for its fuel purchases during the period of price controls. The refund granted in this Decision is $334.

Zook, Inc., 2/19/88; RF272-3622

The DOE issued a Decision and Order granting an Application for Refund from crude oil overcharge funds based on the Applicant's purchases of refined petroleum products from August 19, 1973 through January 27, 1981. To estimate its fuel purchase volume, the Applicant divided the actual number of miles its trucks drove during the claim period by an average fuel efficiency of 4.5 miles per gallon. The DOE determined that the Applicant should be presumed injured because it was an end-user of the gallons claimed. The refund granted in this Decision is $1,016.

Dismissal

The following submission was dismissed:

Name and Case

The National Treasury Employees Union; KFA-0160

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 29, 1988

[FR Doc. 88-7327 Filed 4-1-88; 8:45 am]

BILLING CODE 6450-01-M

Issuance of Proposed Decisions and Orders; Period of February 22 through March 11, 1988

During the period of February 22, 1988, through March 11, 1988, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an Application for Exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decison and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decison and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 29, 1988.

Proposed Decison and Order

Arizona Trails, Incorporated, Flagstaff, Arizona, KEE-0159 Motor Gasoline

Arizona Trails, Inc. filed an Application for Exception on January 27, 1988. The firm sought relief from the requirement that it file Form EIA-782B, the "Retailer/Resellers Monthly Petroleum Product Sales Report." On March 10, 1988, the Department of Energy issued a proposed decison and order which determined that the exception request be denied.

[FR Doc. 88-7328 Filed 4-1-88; 8:45 am]

BILLING CODE 6450-01-M

Objection to Proposed Remedial Order Filed; Period of March 7 through March 18, 1988

During the period of March 7 through March 18, 1988, the notice of objection to proposed remedial order listed in the Appendix to this Notice was filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10

CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in this proceeding should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

March 25, 1988.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Oasis Petroleum Corp., Culver City, CA, KRO–0650 Crude Oil

On March 18, 1988, Oasis Petroleum Corporation (Oasis), 5901 Green Valley Circle, Culver City, California 90230, filed a Notice of Objection to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firm on February 24, 1988. In the PRO, the ERA alleges that during the period January 1978 through December 1980, Oasis committed pricing violations of 10 CFR 212.183, the crude oil reseller price rule. According to the PRO, the violations resulted in overcharges amounting to $1,915,564.39.

[FR Doc. 88–7329 Filed 4–1–88; 8:45 am]

BILLING CODE 6450–01–M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy announces the procedures for disbursement of $200,000 obtained as a result of a Consent Order which the DOE entered into with Martinoil Company (Martinoil), a reseller-retailer of petroleum products located in Fresno, California. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Applications for refund from the Martinoil consent order funds must be filed in duplicate and must be received within 90 days of publication of this notice in the **Federal Register**. All applications should refer to Case Number HEF–0124 and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Jon F. Leyens, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–6602.

SUPPLEMENTARY INFORMATION: In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(c), notice is hereby given of the issuance of the Decision and Order set out below. The Decision relates to a Consent and Order entered into by the DOE and Martinoil Company (Martinoil) that settled all claims and disputes between the firm and the DOE regarding the firm's compliance with the Federal Petroleum Price and Allocation Regulations in its sales of covered products during the period August 20, 1973, through January 27, 1981 (consent order period). A Proposed Decision and Order tentatively establishing refund procedures and soliciting comments from the public concerning the distribution of the Martinoil consent order funds was issued on December 7, 1987, 52 FR 47632 (December 15, 1987).

The Decision set forth procedures and standards which the Office of Hearing and Appeals (OHA) of the DOE has formulated to distribute the contents of an escrow account funded by Martinoil prusuant to the Consent Order. OHA has determined that a portion of the consent order funds should be distributed to firms and individuals that purchased covered products from Martinoil during the consent order period. In order to obtain a refund, each claimant will be required to submit a schedule of its monthly purchases of covered products from Martinoil and to demonstrate that it was injured by Martinoil's alleged regulatory violations. The specific requirements for proving injury are set forth in the following Decision and Order. Applications for Refund will now be accepted provided they are filed in duplicate and received no later than 90 days after publication of this Decision and Order in the **Federal Register**.

Residual funds in the Martinoil escrow account will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99–509, Title III.

Dated: March 25, 1988.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

March 25, 1988.

Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Martinoil Company.

Date of Filing: October 13, 1983.

Case Number: HEF–0124

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special procedures to distribute funds received as a result of an enforcement proceeding in order to remedy the effects of actual or alleged violations of the DOE regulations. *See* 10 CFR Part 205, Subpart V. On October 13, 1983, ERA filed a Petition for the Implementation of Special Refund Procedures in connection with a Consent Order entered into with the Martinoil Company (Martinoil).[1]

I. Background

Martinoil is a "reseller-retailer" of refined petroleum products as that term is defined in 10 CFR 212.31, and is located in Fresno, California. A DOE audit of Martinoil's records found that between November 1, 1973, and April 30, 1977, Martinoil may have violated the Mandatory Petroleum Price Regulations with respect to its sales of covered petroleum products. *See* 10 CFR Part 212, Subpart F.

In order to settle all claims and disputes between Martinoil and the DOE regarding the firm's compliance with the Mandatory Petroleum Price and Allocation Regulations during the period August 20, 1973, through January 27, 1981, Martinoil and the DOE entered into a Consent Order on August 8, 1983. The Consent Order refers to ERA's allegations of regulatory violations, but states that Martinoil does not admit committing any such infractions. Under the terms of the Consent Order, Martinoil was required to deposit $200,000 into an interest-bearing escrow account, for ultimate distribution by the DOE. These consent order monies were paid in full on October 6, 1983.

On December 7, 1987, we issued a Proposed Decision and Order (PD&O) setting forth a tentative plan for the

[1] Martinoil also owned and controlled three related firms, El Monte Liquid Gas Co., El Monte Gas Co., Inc. and Marco Tank Lines. References in this Decision to Martinoil include Martinoil and its three subsidiaries.

distribution of the Martinoil consent order funds. In order to notify all interested parties, the PD&O was published in the **Federal Register**, 52 FR 47632 (December 15, 1987), and mailed to various petroleum dealers' associations and others who had expressed interest in the proceedings. We allowed 30 days for interested parties to comment on the proposed refund procedures. The only comments received were submitted by Energy Refunds, Inc. of Hardin, Kentucky. These comments concerned the injury presumptions for resellers and retailers of Martinoil petroleum products set forth in the PD&O. In this Decision and Order, we will address those comments and adopt final procedures for the distribution of the funds in the Martinoil escrow account.

II. Final Refund Procedures

The procedural regulations of the DOE set forth general guidelines to be used by OHA in formulating and implementing a plan of distribution for funds received as a result of an enforcement proceeding. *See*, 10 CFR Part 205, Subpart V. The Subpart V process may be used in situations where the DOE is unable to identify readily those persons who may have been injured by the alleged regulatory violations or to determine the amount of such injuries. A more detailed discussion of Subpart V and the authority of OHA to fashion procedures to distribute refunds is set forth in the cases of *Office of Enforcement*, 9 DOE ¶ 82,508 (1981); and *Office of Enforcment*, 8 DOE ¶ 82,597 (1981) (*Vickers*).

Pursuant to the goals of the Subpart V regulations, we will attempt to provide refunds to claimants who demonstrate that they were injured by Martinoil's alleged regulatory violations during the August 20, 1973 through January 27, 1981 consent order period.[2] Any funds remaining in the Martinoil escrow account after all direct refunds are made will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. No. 99-509, Title III. *See* Fed. Energy Guidelines (Petroleum Regulations 1974-1981) ¶ 11,702 et seq.

A. *Calculations of Refund Amounts.* In order to determine the potential refund amounts for applicants in this proceeding, we adopt the presumption that the alleged overcharges were spread evenly over all the gallons of covered products that Martinoil sold during the consent order period. Under this volumetric presumption, a claimant's maximum potential refund generally will be computed by multiplying $0.000726 per gallon, the per-gallon refund amount, by the number of gallons of covered products that it purchased from Martinoil during the consent order period.[3] The resulting figure is referred to as the claimant's "full volumetric share" of the Martinoil consent order funds.[4] Successful applicants will also receive proportionate shares of the interest that has accrued on the Martinoil escrow account.

The volumetric refund presumption is rebuttable. Because we realize that the impact on an individual claimant may have been greater than its full volumetric share, a claimant may submit evidence detailing the specific overcharge that it allegedly incurred in order to be eligible for a larger refund. *See Standard Oil Co. (Indiana) Army and Air Force Exchange Service*, 12 DOE ¶ 85,015 (1984).

B. *Determination of Injury.* The assignment of potential refund amounts is only the first step in the distribution process. We must also determine whether claimants were injured by the alleged overcharges. That is, whether they were forced to absorb the alleged overcharges. Our experience in Subpart V refund proceedings has led us to adopt a number of presumptions concerning injury. The presumptions we will adopt in this case are designed to allow claimants to participate in the refund process without incurring inordinate expenses, and to enable OHA to consider refund applications in the most efficient way possible. The use of presumptions in refund cases is specifically authorized by DOE procedural regulations. 10 CFR 205.282(e). An applicant that is not covered by one of the presumptions set forth below must demonstrate injury in accordance with the non-presumption procedures outlined in the latter part of this Decision.

1. *Injury Presumptions.* In the PD&O, we proposed adopting the presumption that resellers and retailers of Martinoil covered products claiming refunds of $5,000 or less, excluding accrued interest, were injured by Martinoil's alleged overcharges. In its comments to the PD&O, Energy Refunds suggests that we also adopt an injury presumption for resellers and retailers with "mid-level" claims. Previously used only in large refund proceedings, this mid-level presumption allows resellers and retailers to receive 40 percent of their full volumetric shares up to $50,000, without making detailed demonstrations of injury. *See Gulf Oil Corporation*, 16 DOE ¶ 85,381 (1987) (*Gulf II*).[5] By lowering the costs incurred by claimants participating in the refund process and easing the administrative burden placed on OHA, the mid-level presumption has served to further OHA's restitutionary duty in Subpart V proceedings. We see no reason why it should not also be applied prospectively in smaller refund proceedings. Accordingly, resellers and retailers of Martinoil covered products

[2] The Appendix to this Decision and Order contains the names of some customers that may have purchased petroleum products from Martinoil during the consent order period.

In its audit of Martinoil, ERA did not allege that the firm committed any allocation violations. Because the Consent Order covers Martinoil's compliance with all aspects of the Federal Petroleum Price and Allocation Regulations, however, the escrow funds may be used to provide restitution to firms that show that they were injured by Martinoil's allocation practices. For these claimants, we will follow the same procedures that have been used in prior Subpart V proceedings involving alleged allocation violations. *See, e.g.*, Power Pak Co., Inc., 14 DOE ¶ 85,001 (1986). The remainder of this Decision concerns only the filing of claims involving Martinoil's alleged pricing violations.

[3] The volumetric factor of $0.000726 per gallon was computed by dividing the $200,000 received from Martinoil by the 275,590,149 gallons of covered products sold by the firm during the consent order period. Purchases of deregulated products, *i.e.*, products that were no longer covered by the Mandatory Petroleum Price and Allocation Regulations, cannot be used in the calculation of an applicant's potential refund amount. Below is a list of products sold by Martinoil and the dates on which they were deregulated:

Product	Deregulation date
Diesel Fuel, Kerosene	7/1/76
Napthas, Lubricants	9/1/76
Motor Gasoline, L.P. Gas	1/28/81

[4] Only claims for at least $15 in principal will be processed. This minimum has been adopted because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those situations. *See, e.g., Urban Oil Co.*, 9 DOE at 85,225. *See also* 10 CFR 205.286(b).

[5] Based on national average profit margin data for resellers and retailers and our experience in past proceedings, we presumed that resellers and retailers were injured by 40 percent of the alleged overcharges incurred in their purchases. Gulf II at 88,737.

will be allowed to apply to refunds using a mid-level presumption of injury.[6]

In the PD&O we also proposed adopting presumptions that spot purchasers of Martinoil covered products and those selling Martinoil covered products on consignment were not injured by the alleged overcharges. Citing *Tresler Oil Company/Swifty Oil Company*, 16 DOE ¶ 85,659 (1987) (*Tresler*), Energy Refunds suggests that we allow spot purchasers to receive 20% of their full volumetric shares without demonstrating injury. There is nothing in *Tresler*, however, to support such a suggestion,[7] and Energy Refunds has not provided any other reasoning that would support its suggestion regarding spot purchasers. Consequently, we will adopt the presumption of non-injury for spot purchasers outlined in the PD&O.

Similarly, citing *Gulf II*, Energy Refunds suggests that we allow Martinoil consignees to receive 10 percent of their full volumetric shares without demonstrating injury. We explicitly stated in *Gulf II*, however, that the decision to adopt a 10 percent injury level presumption for consignees was based solely on our previous experience in Gulf refund proceedings. *Gulf II* at 88,739. There is no basis for assuming that the factual body underlying the consignee presumption in *Gulf II* is applicable to this case. Consequently, we will not adopt Energy Refunds' suggestion with regard to consignees. Each injury presumption that we will adopt in this proceeding is outlined below, along with the rationale underlying its use.

a. *End Users.* In accordance with prior Subpart V proceedings, we will presume that end-users, *i.e.*, ultimate consumers, of Martinoil covered petroleum products whose businesses are unrelated to the petroleum industry were injured by Martinoil's alleged overcharges. Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *See Marion Corporation*, 12 DOE ¶ 85,014 (1984) and cases cited therein. Therefore, end users need only document their purchase volumes of Martinoil covered products to show that they were injured by the alleged overcharges.

b. *Regulated Firms and Cooperatives.* Public utilities, agricultural cooperatives, and other firms whose prices are regulated by government agencies or cooperative agreements do not have to submit detailed proof of injury. Such firms would have routinely passed through price increases to their customers. Likewise, their customers would share the benefits of cost decreases resulting from refunds. *See e.g. Office of Special Counsel*, 9 DOE ¶ 82,538 (1982) (*Tenneco*); *Office of Special Counsel, 9 DOE ¶ 82,545 at 85,244 (1982) (Pennzoil)*. Such firms applying for refunds should certify that they will pass through any refund received to their customers and should explain how they will alert the appropriate regulatory body or membership group to monies received. Purchases by cooperatives that were subsequently resold to nonmembers will not be covered by this presumption.

c. *Reseller and Retailer Small Claims.* Resellers and retailers of Martinoil covered products claiming refunds of $5,000 or less, excluding accrued interest, are presumed to have been injured by Martinoil's alleged overcharges. Without this presumption, such an applicant would have to gather and analyze records dating as far back as 1973 to gather proof that it absorbed the alleged overcharges. The cost to the applicant of gathering this information, and to OHA of analyzing it, could exceed the actual refund amount. Under this presumption, a small claimant must only document the volume of Martinoil covered products that it purchased in order to demonstrate injury. *See Texas Oil & Gas Corp.*, 12 DOE ¶ 85,069 at 88,210 (1984). Resellers and retailers of Martinoil's covered products that are seeking full volumetric refunds in excess of $5,000 must follow the non-presumption procedures outlined below in Section 2.

d. *Reseller and Retailer Mid-Level Claims.* Resellers and retailers whose full volumetric shares of the Martinoil consent order funds exceed $12,501 may elect to receive 40 percent of their full volumetric shares up to $50,000, without providing detailed demonstrations of injury.[8] As we indicated above, *see supra* note 5, this option is based on the presumption that resellers and retailers absorbed 40 percent of Martinoil's alleged overcharges. Resellers and retailers that wish to receive refunds in excess of $50,000 must follow the non-presumption procedures outlined below in Section 2.

e. *Spot Purchasers.* Resellers and retailers that were spot purchasers of covered products from Martinoil, *i.e.*, made only sporadic, discretionary purchases, are presumed not to have been injured by Martinoil's pricing practices, and therefore generally will not be eligible for refunds. The basis for this presumption is that spot purchasers tended to have considerable discretion as to where and when to make purchases and therefore would not have made purchases unless they were able to pass through the full amount of their purchase price to their customers. *See Vickers* at 85,396–97. The spot purchaser presumption, however, is rebuttable. In past refund proceedings, we have waived the presumption of non-injury for spot purchasers that demonstrated that (i) they did not have discretion in making the spot purchasers; and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped. If a spot purchaser is able to rebut the non-injury presumption, its application will be evaluated according to the standards applicable to the refund claims of all other resellers and retailers. *See, e.g., Saber Energy, Inc./Mobil Oil Corp.*, 14 DOE ¶ 85,170 (1986).

f. *Consignees.* Finally, as in previous cases, we will presume that consignees of Martinoil covered products were not injured by Martinoil's alleged pricing violations. *See, e.g., Jay Oil Company*, 16 DOE ¶ 85,147 (1987). A consignee agent is an entity that sold products pursuant to an agreement wherby its supplier established the prices to be charged by the consignee and compensated the consignee with a fixed commission based upon the volume of products sold.

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[6] Citing Getty Oil Company, 15 DOE ¶ 85,064 (1986) (Getty). Energy Refunds also suggests that when calculating refund amounts under the mid-level presumption, we adopt a variety of absorption fractions for the different products sold by Martinoil, *i.e.*, 40% for motor gasoline, 50% for middle distillates, and 60% for L.P. gas. The different absorption fractions that we adopted in Getty, however, were based strictly on Getty's pricing data. Getty at 88,117. They are not relevant to the present proceeding. In addition, the use of a single average absorption fraction simplifies the refund procedures for the benefit of both the claimants and the DOE. Therefore, we will not adopt Energy Refunds' suggestion in this regard.

[7] In Tresler, the applicant was granted a refund on its purchases that were made under a long-term contract with the consent order firm, but was denied a refund on its spot purchases.

[8] A reseller or retailer whose full volumetric share is $12,501 or less could receive a larger refund under the small claims presumption than under the 40-cent mid-level injury presumption.

Large resellers and retailers, *i.e.*, those whose full volumetric shares exceed $125,001 may elect to limit their claims to $50,000 and thereby qualify for a refund under the mid-level injury presumption.

A consignee may rebut this presumption of non-injury by showing that its sales volumes and corresponding commission revenues declined due to the alleged uncompetitiveness of Martinoil's pricing practices. *See Gulf Oil Corporation/C.F. Canter Oil Co.*, 13 DOE ¶85,388 at 88,962 (1986).

2. *Non-Presumption Demonstration of Injury.* A reseller or retailer with a full volumetric share in excess of $5,000 that does not elect to receive a refund under either the small claims presumption or the 40-percent mid-level presumption will be required to document its injury. There are two aspects to such a demonstration. First, a firm is generally required to provide a monthly schedule of its banks of unrecouped increased product costs for each covered product that it purchased from Martinoil during the consent order period. Cost banks for a product should cover the period November 1, 1973, through the product's price decontrol date.[9] If a firm no longer has records of contemporaneously calculated cost banks for a particular product, it may approximate those banks by submitting the following information regarding its purchases of that product from all of its suppliers:

(1) The weighted average gross profit margin that the firm received for the product on May 15, 1973;

(2) a monthly schedule of the weighted average gross profit margins that it received for the product during the period, November 1, 1973, through the products' price decontrol date; and

(3) a monthly schedule of the firm's sales of the product during the period November 1, 1973, through the product's price decontrol date.[10]

Demonstrating the existence of banks of unrecouped increased product costs that exceed an applicant's potential refund amount is only the first part of a demonstration of injury. A firm must also show that market conditions forced it to absorb the alleged overcharges. Generally, we will infer this to be true if the prices the applicant paid Martinoil were higher than average market prices for the same level of distribution.[11] Accordingly, a claimant attempting to demonstrate injury should submit a monthly schedule of the weighted average prices that it paid Martinoil for each covered product that it purchased between August 20, 1973, and the product's price decontrol date. *See supra* note 3.

If a firm provides the above-mentioned cost bank and price data and subsequent analysis by this office shows that the firm is entitled to a smaller refund than it would have received under the small or mid-level claims presumptions, the firm cannot elect to received a refund using either of those injury presumptions. If our analysis shows that the firm was not injured by any of its purchase, the firm will not be eligible to receive any refund.

III. Applications for Refund

We will now accept Applications for Refund from purchasers of covered products sold by Martinoil during the period August 20, 1973, through January 27, 981. All Applications for Refund must contain the following information:

(1) A conspicuous reference to the "Martinoil Refund Proceeding—Case No. HEF–0124", the applicant's present name and address, and the name and address of the applicant during the consent order period;

(2) The name, title, and telephone number of a person who may be contacted for additional information concerning the application;

(3) An explanation of how the claimant used the Martinoil products, *i.e.*, whether the applicant was a reseller, retailer, consignee, end user, public ulility, cooperative, etc.;

(4) For each covered product, a monthly schedule of the number of gallons that it purchased from Martinoil during the August 20, 1973 through January 27, 1981 consent order period.[12] If a claimant was an indirect purchaser of Martinoil covered products, it must also submit the name of its immediate supplier and indicate why it believes the products were originally sold by Martinoil;

(5) All relevant material necessary to support its claim in accordance with the injury presumptions and requirements outlined above in Section II, Part B;

(6) If the applicant was or is in any way affiliated with Martinoil, an explanation of the nature of that affiliation;

(7) A statement as to whether there was a change in ownership of the applicant's firm during or since the consent order period. If there was such a change, the applicant must submit a detailed explanation of the transaction, as well as provide the names and addresses of the previous or subsequent owners;

(8) A statement as to whether the claimant is or has been involved in any DOE enforcement proceedings or private actions filed under section 210 of the Economic Stabilization Act. If these actions have been concluded, the applicant should furnish a copy of any final order issued in the matter. If the action is still in progress, the applicant should briefly describe the action and its current status. The applicant must inform OHA of any change in status while its Application for Refund is pending. *See* 10 CFR 205.9(d);

(9) A statement as to whether the applicant has received a refund, from any source, for the alleged overcharges identified in the ERA audits underlying this proceeding;

(10) A statement as to whether the applicant or a related firm has filed any other Application for Refunds in this proceeding;

(11) A statement as to whether the claimant or a related firm has authorized any other firm or individual(s) to file an Application for Refund on the claimant's behalf in the Martinoil proceeding; and

(12) The following statement signed by the applicant or a responsible official of the business or organization claiming the refund: "I swear [or affirm] that the information submitted is true and accurate to the best of my knowledge and belief." *See* 10 CFR 205.283(c).

All Applications for Refund should be sent to: Martinoil Refund Proceeding, Case No. HEF–0124, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Each claimant must file *two copies* of its Application for Refund within 90 days of the date this Decision and Order is published in the **Federal Register.** A copy of each application will be available for public inspection in the Public Reference Room of the Office of Hearings and Appeals. Any claimant that believes that its Application for Refund contains confidential information must submit two additional copies of the application from which the confidential information has been deleted, together with a statement

[9] Retailers and resellers of motor gasoline were required to maintain cost banks only until July 15, 1979 and April 30, 1980, respectively. Therefore, in showing injury with respect to their purchases of motor gasoline, such claimants will not be required to submit cost bank materials up to the January 28, 1981 decontrol date of motor gasoline.

[10] For motor gasoline, retailers and resellers have to submit the information detailed in Parts (2) and (3) only through July 15, 1979 and April 30, 1980, respectively. *See supra* note 9.

[11] We generally obtain average market price information from Platt's Oil Price Handbook and Oilmanac (Platt's). If price data for a particular product is not available in Platt's, the burden of supplying alternative information will be on the claimant.

[12] Because we will not process claims for less than $15 in principal, *see supra* note 4, an applicant must have purchased at least 19,973 gallons of covered products from Martinoil during the consent order period in order for us to consider its application.

If an applicant submits estimated purchase volume figures, it must provide a detailed explanation of how it derived the estimates.

specifying why the information is confidential.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by Martinoil Company pursuant to the Consent Order executed on August 8, 1983, may now be filed.

(2) All applications must be filed no later than 90 days after publication of this Decision and Order in the **Federal Register.**

Thomas O. Mann, for George B. Breznay
Director, Office of Hearings and Appeals.
Date: March 25, 1988.

Appendix

Martinoil Company, Case No.: HEF-0124

First Purchasers

A.C. Petroleum
Ace Service
Ahwahnee Hill School
Alles Brothers
Allstate Charter
American Bridge
Anderson, Chester
Armor Transport
B & C Ranches
Bennett Tank
Bervan Rug
Bill's ARCO
Blands ARCO
Broadview Co-op
Broth, Vera
Brown, Clayton
Cal Gas
California Fresno Oil
Cardwell, Bob
Cardwell, Herk
Cardwell, Jack
Carnation Company
Castro, Dave
Central Union School
Cerini Truck
Cleveland & D ARCO
Clovis ARCO
Collins, Joe
Consolidated Freight
Davis & Hughey
Eastman, H.B.
El Camino Construction
Ellis, Wilbur
Elm & Church ARCO
Elm & Manning ARCO
F & B Heinrick
Finch, Jim
Fleming Transportation
Frank's ARCO
Fresno Community Hospital
Fresno Meat Pack
Furr Caruther ARCO
Gentry Farms
Georgeson, Arlan
Georgeson, C.E.
Geogeson, Marvin
Georgia Pacific
Goodman Tractor
Gordon Brothers
Grange Company
Guisti Farms
Hardy, Bob
Hardy, Leroy
Horn, Fred
J & D Trucking
Jan Win Farms
J.E. O'Neill Ranch
Jensen Pilegard
Joe's ARCO Chowchilla
Kerman Co-op
Kings Canyon ARCO
Kromberg Brothers
Lamona Service
Lawson, Bill
Lawson, John
Madron & Son
Mailovich, Mark
Manchini Brothers
Modern Welding
Montecito Turkey Farms
Newhall Land & Cattle Co.
Newhall Land and Farming
Noble Land
Norlake Turkey Farms
O'Neill Truck Stop
Pellet, Morse
Perry's ARCO
Peterson Travers ARCO
Porras, Pete
Rathman, Robert
Rau Dairy
Red Triangle
River Farms
S & J Ranch
St. Agnes Hospital
San Joaquin Bakery
Schaad, Steve
Shaver Lake Garage
Smith Tank Service
Stake, Carley
Swift & Co.
Tutunjian, Harry
United Vintgers
Valley Kenworth
Von Flue Brothers
Walts Truck Stop
Weldon, F.M.
Western Grain and Milling
Westside Farmers
Whirlwind Car Wash
W.N. Trucking Zachy Farms

[FR Doc. 88-7321 Filed 4-1-88; 8:45 am]
BILLING CODE 6450-01-M

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of implementation of special refund procedures.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy solicits comments concerning the appropriate procedures to be followed in refunding to adversely affected parties $925,000, plus accrued interest, obtained through a Consent Order between DOE and Empire Gas Corporation, a reseller/retailer of refined petroleum products located in Lebanon, MO. The money is being held in escrow following the settlement of enforcement proceedings brought by the DOE's Economic Regulatory Administration.

DATE AND ADDRESS: Comments must be filed within 30 days of publication of this notice in the **Federal Register** and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. All comments should conspicuously display a reference to case number KEF-0048.

FOR FURTHER INFORMATION CONTACT: Matthew Paul, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-6602.

SUPPLEMENTARY INFORMATION: In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision sets forth procedures and standards that the DOE has tentatively formulated to distribute to adversely affected parties $925,000, plus accrued interest, obtained by the DOE through a Consent Order with Empire Gas Corporation (Empire). The funds were provided to the DOE by Empire in order to settle all claims and disputes between the firm and the DOE regarding the firm's adherence to Federal price regulations for refined petroleum products during the period August 19, 1973, through January 31, 1981 (the consent order period).

The Office of Hearings and Appeals proposes that the funds should be distributed to purchasers of the Empire's refined products during the consent order period. In order to obtain a portion of the funds, a claimant must submit a schedule of its monthly purchases from Empire and demonstrate that it was injured by the alleged violations. The specific requirements for demonstrating injury are set forth in the following Proposed Decision and Order. Any residual funds will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986, Pub. L. No. 99-509, Title III. *See* 51 FR 43964 (December 5, 1986). Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized.

Any member of the public may submit written comments regarding the

proposed refund procedures. Such parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of publication of this notice. All comments received in this proceeding will be available for public inspection between 1:00 and 5:00 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in Room 1E–234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: March 25, 1988.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

March 25, 1988.

Proposed Decision and Order of the Department of Energy

Implementation of Special Refund Procedures

Name of Firm: Empire Gas Corporation.

Date of Filing: August 5, 1986.

Case Number: KEF-0048.

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request the Office of Hearings and Appeals (OHA) to formulate and implement procedures for the distribution of funds obtained by the DOE as a result of the agency's enforcement of the Mandatory Petroleum Price and Allocation Regulations. *See* 10 C.F.R. Part 205, Subpart V. Pursuant to the provisions of Subpart V, on June 10, 1987, the ERA filed a Petition for the Implementation of Special Refund Procedures to distribute funds received from Empire Gas Corporation (Empire) under the terms of a January 6, 1986 Consent Order with Empire. In its Petition, the ERA requests that the OHA establish special procedures to make refunds in order to remedy the effects of the alleged regulatory violations that were settled in the Empire Consent Order.

I. Background

Empire purchased and resold refined petroleum products during the period of federal price controls. The firm was therefore subject to the Mandatory Petroleum Price and Allocation Regulations set forth at 6 CFR Part 150 and 10 CFR Parts 210, 211, and 212. During the period of price controls, the ERA conducted an extensive audit of Empire's operations and, as a result of the audit, alleged that Empire had violated certain of the DOE's price and allocation regulations in its sales of refined petroleum products. Settlement discussions were held, and on January 6, 1986, the ERA and Empire finalized a Consent Order (Consent Order No. 720T000521) that resolved issues pertaining to Empire's refined petroleum product operations during the period August 19, 1973 through January 27, 1981 (the consent order period). Pursuant to the terms of the Consent Order, Empire remitted a total of $943,238.60 (the consent order fund [1] to the DOE for distribution through Subpart V. These funds are being held in an interest-bearing escrow account maintained at the Department of the Treasury, pending a determination regarding their proper distribution. As of January 31, 1988, the amount in the Empire consent order escrow account, with interest, had grown to $1,055,162.64.

II. Jurisdiction and Authority

The Subpart V regulations set forth general guidelines which may be used by the OHA in formulating and implementing a plan of distribution of funds received as a result of enforcement proceedings. The DOE policy is to use the Subpart V process to distribute such funds. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, *see Office of Enforcement*, 9 DOE ¶ 82,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

We have considered the ERA's petition that we implement a Subpart V proceeding with respect to the Empire consent order fund and have determined that such a proceeding is appropriate. This Proposed Decision and Order sets forth the OHA's tentative plan to distribute these funds. Comments are solicited.

III. Proposed Refund Procedures

We propose to implement a two-stage refund process by which firms and individuals who purchased Empire refined petroleum products during the consent order period may submit Applications for Refund in the initial stage. From our experience with Subpart V proceedings, we expect that potential applicants will fall into the following categories of Empire refined product purchasers: (i) end-users, i.e. ultimate consumers; (ii) regulated entities, such as public utilities or cooperatives; and (iii) retailers, resellers, and refiners that resold Empire products.

In order to receive a refund, each claimant will be required to submit a schedule of its montly purchases of Empire refined petroleum products during the consent order period. If the product was not purchased directlly from Empire, the claimant must provide a statement setting forth its reasons for maintaining that the product originated with Empire.

In addition, a refiner, reseller, or retailer claimant, except one who chooses to utilize the injury presumptions set forth below, will be required to make a detailed showing that it was injured by the alleged overcharges. This showing will generally consist of two distinct elements. First, a claimant will be required to show that it maintained "banks" of unrecouped increased product costs (banked costs) in excess of the refund claimed.[2] Second, because a showing of banked costs alone is not sufficient to establish injury, a claimant must provide evidence that market conditions precluded it from increasing its prices to pass through the additional costs associated with the alleged overcharges. *See National Helium Corp./Atlantic Richfield Co.*, 11 DOE ¶ 85,257 (1984), *aff'd sub nom Atlantic Richfield Co. v. DOE*, 618 F. Supp. 1199 (D. Del. 1985). Such a showing could consist of a demonstration that the firm suffered a competitive disadvantage as a result of its purchases from Empire. *Id.; see also Sid Richardson Carbon and Gasoline Company and Richardson Products Company/Shupbach and Streitmatter Gas Company*, 14 DOE ¶ 85,186 (1986).

1. *Presumptions For Refund Claims.* Our experience also indicates that the use of certain presumptions permits claimants to participate in the refund process without incurring inordinate expense, and ensures that refund claims are evaluated in the most efficient manner possible. *See, e.g., Marathon Petroleum Company*, 14 DOE ¶ 85,269 (1986) (*Marathon*). Presumptions in refund cases are specifically authorized by the applicable DOE procedureal regulations at 10 CFR 205.282(e). Accordingly, we propose to adopt the presumptions set forth below.

First, we will adopt a presumption that the alleged overcharges were dispersed equally in all of Empire's sales of refined petroleum products during the

[1] This figure consists of the principal consent order amount of $925,000 plus interest which accrued prior to Empire's payment to the DOE. For accounting purposes, the interest remitted by Empire shall be considered as additional principal. Upon completion of payment, the consent order fund equalled $943,238.60.

[2] Claimants who have previously relied upon their banked costs in order to be eligible to receive refunds in other special refund proceedings should subtract those refunds from the cumulative banked costs submitted in this proceeding. *See* Husky Oil Co./Metro Oil Products, Inc., 16 DOE ¶ 85,090 at 88,179 (1987).

consent order period. In accordance with this presumption, refunds are to be made on a pro-rata or volumetric basis. In the absence of better information, a volumetric refund approach is appropriate because the DOE price regulations generally required a regulated firm to account for increased costs on a firm-wide basis in determining its prices.

Under the volumetric approach, a claimant's allocable share of the consent order fund is equal to the number of gallons purchased times the per gallon refund amount (plus an appropriate share of the interest which has accrued on the Empire consent order fund).[3] In the present case, the per gallon refund amount is $0.00134. We derived this figure by dividing the consent order funds ($943,238.60) by the approximate number of gallons of refined products subject to price and allocation controls sold by Empire during the consent order period (703,917,847 gallons). As in previous cases, we will establish a minimum refund amount of $15.00. The administrative costs of processing claims for amounts less than $15.00 outweigh the benefits of restitution in those instances. *See, e.g., Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985).[4]

a. *End-users.* In accordance with prior Subpart V proceedings, we propose to adopt the presumption that an end-user or ultimate consumer of Empire regulated products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the Consent Order. *See, e.g., Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069 at 88,209 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period, and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of a special refund proceeding. *Id.* We therefore propose that end-users of Empire refined products need only document their purchase volumes from Empire during the consent order period in order to make the requisite showing that they were injured by the alleged overcharges.

b. *Regulated Firms and Cooperatives.* We further propose that, in order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, e.g., a public utility, or by the terms of a cooperative agreement, need only submit documentation of purchase volumes used by itself or, in the case of a cooperative, sold to its members.[5] A regulated firm or cooperative, however, will also be required to certify that it will: (i) pass through any refund received to its customers or member-customers; (ii) provide us with a full explanation of how it plans to accomplish the restitution; and (iii) certify that it will notify the appropriate regulatory body or membership group of its receipt of the refund. *See Marathon*, 14 DOE at 88,515; *Office of Special Counsel*, (DOE ¶ 82,538 at 85,203 (1982). The latter requirement assumes that a regulated firm or cooperative would have passed on any overcharges to its customers or member-customers through automatic rate adjustment mechnanisms or the terms of a cooperative agreement. Thus, any refunds received by a regulated firm or cooperative should also be passed through to its customers or customer-members. Because we require these firms to pass refunds through to their customers or customer-members on a dollar-for-dollar basis, we do not require them to make a detailed demonstration of injury.

c. *Refiners, Resellers, and Retailers Seeking Refunds of $5,000 or Less.* We propose to adopt a small claims presumption under which a refiner, reseller, or retailer seeking a refund of $5,000 or less, exclusive of interest, will not be required to submit evidence of injury.[6] These applicants would only be required to document the volume of Empire covered products they purchased during the consent order period. *See TOGCO*, at 88,207. As we have noted in numerous prior proceedings, considerable expense may be involved in gathering the types of data necessary to support a detailed claim of injury. In some cases, that expense might exceed a refund of $5,000 or less. Consequently, without simplified application procedures for small claims, many injured parties would effectively be denied an opportunity to obtain a refund. Furthermore, use of the small claims presumption allows the OHA to process a large number of routine refund claims in an efficient manner.[7]

d. *Reseller and Retailer Mid-Level Presumption.* We also propose to adopt the mid-level presumption which allows resellers and retailers of Empire refined products to receive 40 percent of their full volumetric shares up to $50,000, without making detailed demonstrations of injury.[8] *See Gulf Oil Corporation*, 16 DOE ¶ 85,381 (1987) (*Gulf II*). As we stated in *Gulf II*, this option is based on the presumption that resellers and retailers absorbed 40 percent of Empire's alleged overcharges.[9] By reducing the costs incurred by claimants participating in the refund process and easing administrative burdens, the mid-level presumption has advanced OHA's restitutionary duty in prior Subpart V proceedings. Accordingly, we plan to adopt this presumption in the Empire refund proceeding as well. Resellers and retailers that wish to receive refund in excess of $50,000 must follow the non-presumption procedures outlined above in Section III.

e. *Spot Purchasers.* We proposes to adopt a rebuttable presumption that a refiner, reseller or retailer that made

[3] Because we realize that the impact on an individual claimant may have been greater than the volumetric amount, we will allow any purchaser to file a refund application based upon a claim that an allocation on the basis of a specifically alleged overcharge amount should be used in considering its refund application. *See, e.g.*, Standard Oil Co. (Indiana)/Army and Air Force Exchange Service, 12 DOE § 85,015 (1984).

[4] Applicants claiming volumetric refunds must have purchased at least 10,829 gallons of refined products from Empire during the consent order period to be eligible for a refund.

[5] A cooperative's sales to non-members will be treated in the same manner as sales by other resellers. *See* Marathon, 14 DOE at 88,515.

[6] In order to qualify for a refund under the small claims presumption, a refiner, reseller or retailer must have purchased less than 3,731,343 gallons of Empire refined petroleum products during the consent order period.

[7] Under these proposed procedures, claimants who attempt to make a detailed showing of injury in order to support a refund claim but, instead, provide evidence that leads us to conclude that they passed through all of the alleged overcharges or are eligible for a refund of less than $5,000, will not be entitled to a $5,000 small claims presumption refund. Such claimant, however, will be eligible to receive a refund for the amount of injury that they demonstrate. *See* Union Texas Petroleum Corp./Arrow Enterprises, Inc., 15 DOE ¶ 85,087 (1986); Quaker State Oil Refining Corp./Campbell Oil Co., 15 DOE ¶ 85,089 (1986).

[8] A reseller or retailer whose full volumetric share is $12,501, or less could receive a larger refund under the small claims presumption than under the 40-percent mid-level injury presumption. Large resellers and retailers, *i.e.*, those whose full volumetric shares exceed $125,001 may elect to limit their claims to $50,000 and thereby qualify for a refund under the mid-level injury presumption. Resellers or retailers who elect to demonstrate injury will not be eligible for a mid-level presumption refund in the event that their demonstration of injury indicates that they were not injured or were injured by an amount less than 40 percent of their volumetric share. *See, supra*, note 6.

[9] National average profit margin data for resellers and retailers and our experience in past proceedings indicates that resellers and retailers were injured by 40 percent of the alleged overcharges incurred in their purchases. *Gulf II* at 88,737.

only spot purchasers from Empire did not suffer injury as a result of those purchases. Spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases, and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. *See Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981). Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Empire.[10]

f. *Consignees.* A consignee agent is a firm that distributed covered products pursuant to a contractual agreement with a refiner, under which the refiner retained title to the products, specified the price to be paid by the purchaser and paid the consignee a commission based upon the volume of covered products it distributed. 10 CFR 212.31 (definition of "consignee agent"). As in previous decisions, we propose to adopt the rebuttable presumption that consignees of Empire refined petroleum products were not injured as a result of their arrangement with their refiner/supplier. *See, e.g., Jay Oil Company*, 16 DOE ¶ 85,147 (1987). A consignee, however, may rebut this presumption of non-injury by establishing that "[its] sales volumes, and [its] corresponding commission revenues, declined due to the alleged uncompetitiveness of [the consent order firm's] practices. *See Gulf Oil Corp./C.F. Canter Oil Co.*, 13 DOE ¶ 85,388 at 88,962 (1986).

2. *Allocation Claims.* We may also receive claims based upon Empire's alleged failure to furnish petroleum products that it was obliged to supply under the DOE allocation regulations. *See* 10 CFR Part 211. Any such applications will be evaluated with reference to the standards set forth in cases such as *Amoco*, 10 DOE at 88,220, and *OKC Corp./Town & Country Markets, Inc.*, 12 DOE ¶ 85,094 (1984). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR Part 211. In addition, the claimant should provide evidence that it has contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

3. *Distribution of Product Funds Remaining after First Stage.* We propose that any refined product funds that remain after all first stage claims have been decided be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), Pub. L. 99–509, Title III. *See* Fed. Energy Guidelines ¶ 11,702 et seq. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. PODRA, Sections 3003(c) and (d). PODRA delegated these responsibilities to the OHA, and any refined product pool funds in the Empire consent order escrow account that the OHA determines will not be needed to effect direct restitution to injured Empire customers will be distributed in accordance with the provisions of PODRA.

IV. Applications for Refund

Applications or Refund should not be filed at this time. Detailed procedures for filing Applications will be provided in a final Decision and Order. Before disposing of any of the funds received as a result of the Empire consent order, we intend to publicize the distribution process in order to solicit comments on all aspects of the foregoing Proposed Decision and Order from interested parties. All comments must be filed within 30 days of the publication of this Proposed Decision in the **Federal Register.**

It Is Therefore Ordered That:

The refund amount remitted to the Department of Energy by Empire Gas Company pursuant to Consent Order No. 720T00521, finalized on January 6, 1986, will be distributed in accordance with the foregoing Decision.

[FR Doc. 88–7322 Filed 4–1–88; 8:45 am]

BILLING CODE 6450-01-M

[10] In prior proceedings we have stated that refunds will be approved for spot purchasers who demonstrate that (i) they made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases, and (ii) they were forced by market conditions to resell the product at a loss that was not subsequently recouped. *See* Quaker State Oil Refining Corp./Certified Gasoline Co., 14 DOE ¶ 85,465 (1986).

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

March 23, 1988.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857–3815. Persons wishing to comment on an information collection should contact J. Timothy Sprehe, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395–4814. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632–7513.

OMB No.: 3060–0066
Title: Application for Renewal of Instructional Television Fixed Station and/or Response Station(s) and Low Power Relay Station(s) License
Form No.: FCC 330–R
Action: Extension
Respondents: State or local governments, Non-profit institutions
Frequency of Response: Every 10 years
Estimated Annual Burden: 40 Responses; 100 Hours
Needs and Uses: Used by licensees to file for renewal of their licenses. The Data are used to ensure that the licensee continues to meet basic statutory requirements, and compliance with Commission policies and rules.

OMB No.: 3060–0110
Title: Application for Renewal of License for Commercial and Noncommercial AM, FM or TV Broadcast Station
Form No.: FCC 303–S
Action: Revision
Respondents: Business (including small business)
Frequency of Response: Every 5 years for TV; every 7 years for radio
Estimated Annual Burden: 1,732 Responses; 866 Hours
Needs and Uses: Filing is required by licensees for renewal of license. The data are used to ensure that all documents required for renewal have been filed, and that the licensee

continues to meet basic statutory requirements.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-7250 Filed 4-1-88; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1717]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

March 16, 1988.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor, International Transcription Service (202-857-3800). Oppositions to these petitions must be filed on or before April 20, 1988. § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Inquiry into Policies to be Followed in the Authorization of Common Carrier Facilities to Meet Caribbean Region Telecommunications Needs During the 1985-1995 Period. (CC Docket No. 83-525)

Number of petitions received: 1.

Subject: Basic Exchange Telecommunications Radio Service. (CC Docket No. 86-495, RM-5442)

Number of petitions received: 2.

Federal Communications Commission.

H. Walker Feaster II,

Acting Secretary.

[FR Doc. 88-7249 Filed 4-1-88; 8:45 am]

BILLING CODE 6712-01-M

Application for Consolidated Hearing; Blair Broadcasting Corp. and Grinnell Broadcasting Co., Inc.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicants, city and State	File No.	MM Docket No.
A. Blair Broadcasting Corporation; Grinnell, IA.	BPH-861114MA	88-102
B. Grinnell Broadcasting Co., Inc.; Grinnell, IA.	BPH-861126MO	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Comparative, all
2. Ultimate, all

3. If there is any nonstandardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, Inc., 2100 M Street, NW., Washington, DC, 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-7254 Filed 4-1-88; 8:45 am]

BILLING CODE 6712-01-M

Hearing Designation Order Concerning Roscoe Clifford Burwell Jr. et al for a New FM Station in Fort Polk, LA, Correction

On February 29, 1988, the Commission published a Hearing Designation Order in this proceeding concerning mutually exclusive applications for a new FM Station in Fort Polk, LA (53 FR 6032). The docket number (appearing in column one) is corrected to read: MM docket No. 88-53.

Federal Communications Commission.

H. Walker Feaster III,

Acting Secretary.

[FR Doc. 88-7251 Filed 4-1-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Proceeding; Heartland Communications, Inc., et al.

Applicant City, and State	File No.	MM Docket No.
A. Heartland Communications, Inc.; Springfield, Ky.	BPH-870306KB	88-112
B. Jamie Whitlock; Springfield, Ky.	BPH-870312MK	
C. Ronald H. Livengood; Springfield, Ky.	BPH-870313MB	
D. Washington-Marion Sound Corp.; Springfield, Ky.	BPH-870313MG	
E. Cunningham Communications; Springfield, Ky.	BPH-870313NC	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

1. Air Hazard: B
2. Comparative, All
3. Ultimate, All

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief Audio Services Division, Mass Media Bureau.

[FR Doc. 88-7255 Filed 4-1-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Leemay Broadcasting Services, Inc., et al.

1. The Commission has before it the following mutually exclusive application for a new FM station:

Applicant, City and State	File No.	MM Docket No.
A. Leemay Broadcasting Services, Inc.; Ketchum, OK.	BPH-870304MB	88-106
B. Gary Scott Lanier; Ketchum, OK.	BPH-870309MH	
C. Quinton D. Burge, Jr.; Ketchum, OK.	BPH-870309MJ	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347 (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. Air Hazard, C
2. Comparative, A, B, C
3. Ultimate, A, B, C

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-7256 Filed 4-1-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Larry S. Magnuson, et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Larry S. Magnuson; South Sioux City, NE.	BPH-861112MM	88-103
B. Fornia Communications; South Sioux City, NE.	BPH-861113MH	
C. Rudy Leroy Spirk; South Sioux City, NE.	BPH-861112ML (Previously dismissed)	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to the particular applicant.

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-7257 Filed 4-1-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Three States Broadcasting, Co., Inc., and Hometown Broadcasting of Matewan

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Three States Broadcasting, Co., Inc.; Matewan, WV.	BPH-861112MK	88-101
B. Hometown Broadcasting of Matewan; Matewan, WV.	BPH-861125MD	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to the particular applicant.

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88-7258 Filed 4-1-88; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing; Tony J. Trunkel and Phyllis Rice

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City, and State	File No.	MM Docket No.
A. Tony J. Trunkel; Tomah, WI.	BPH-861203MD	88-104
B. Phyllis Rice; Tomah, WI.	BPH-861203MG	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, (May 29, 1986). The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to the particular applicant.

Issue Heading and Applicants

1. Comparative, A, B
2. Ultimate, A, B

3. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037 (Telephone No. (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 88–7259 Filed 4–1–88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200104.

Title: Port of Vancouver Terminal Agreement.

Parties:

Port of Vancouver (POV)
ELMA S.A. (ELMA)

Synopsis: The proposed agreement provides for a sharing by POV and ELMA of terminal revenue consisting of dockage, wharfage, and service and facility charges.

By Order of the Federal Maritime Commission.

Dated: March 30, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–7238 Filed 4–1–88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010982–005.

Title: Bahamas Shipowners and Operators Association Agreement.

Parties:

Tropical Shipping & Construction Co., Ltd.
Universal Alco Ltd.
Pioneer Shipping Line

Synopsis: The proposed amendment would permit any two members to meet and agree pursuant to the agreement. Under the terms of the agreement, adherence is voluntary.

Agreement No.: 202–010982–006.

Title: Bahamas Shipowners and Operators Association Agreement.

Parties:

Tropical Shipping & Construction Co., Ltd.
Universal Alco Ltd.
Pioneer Shipping Line

Synopsis: The proposed amendment would establish procedures to permit the parties to charter space from one another in the agreement trade.

Agreement No.: 202–011182.

Title: The U.S./Red Sea & South Asia Rate Agreement.

Parties:

American President Lines, Ltd.
Waterman Steamship Corporation

Synopsis: The proposed agreement would permit the parties to meet, discuss and agree upon rates, charges and practices in the trade from United States ports and points to ports and points in India, the Red Sea, Pakistan, Bangladesh, Sri Lanka and Burma. No agreement reached shall require any party to act in conflict with any of its obligations under any other agreement which is effective under the Commission's regulations.

By Order of the Federal Maritime Commission.

Dated: March 30, 1988.

Joseph C. Polking,

Secretary.

[FR Doc. 88–7239 Filed 4–1–88; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC, Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretrary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

AGREEMENT NO: 224–010749–001

Title: Georgia Ports Authority Terminal, Lease Agreement.

Parties: Georgia Ports Authority, Yangming Marine Transport Corp.

Synopsis: The proposed agreement modifies the basic lease agreement to (1) extend the term of the lease for an additional three years; (2) provide for a consolidated rate based upon an agreed upon rate per container; and (3) stipulate that this agreement and any subsequent amendment shall not become effective

until filed with this Commission for its determination of an effective date.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: March 30, 1988.

[FR Doc. 88-7311 Filed 4-1-88; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

National Committee on Vital and Health Statistics; Open Meeting

ACTION: Notice of Meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that the National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Ambulatory Care Statistics established pursuant to 42 U.S.C. 242k, section 306(k)(2) of the Public Health Service Act, as amended, announces the following meeting (working session).

Name: National Committee on Vital and Health Statistics Subcommittee on Ambulatory Care Statistics.

Time and Date: 9:00 am—5:00 pm—April 26, 1988; 9:00 am—5:00 pm—April 27, 1988.

Place: Hubert H. Humphrey Building, Room 337A, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open.

Purpose: The purpose of this meeting is for the Subcommittee to develop a first draft of a revised Uniform Ambulatory Medical Care Minimum Data Set.

Contact Person for More Information: Substantive program information as well as summaries of the meeting and roster of Committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, National Committee on Vital and Health Statistics, Room 2-12, Center Building, 3700 East West Highway, Hyattsville, Maryland 20782, telephone (301) 436-7050.

Dated: March 29, 1988.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control.

[FR Doc. 88-7260 Filed 4-1-88; 8:45 am]

BILLING CODE 4160-18-M

Family Support Administration

Low Income Home Energy Assistance; Announcement of the Fiscal Year 1989 State Median Income

AGENCY: Family Support Administration, HHS.

ACTION: Announcement of estimated median income.

SUMMARY: This notice announces the estimated median income for four-person families in each state and the District of Columbia for Fiscal Year (FY) 1989. This listing of state median incomes concerns maximum income levels for households to which the states may make payments under the Low Income Home Energy Assistance Program (LIHEAP).

FOR FURTHER INFORMATION CONTACT: Leon Litow, (202) 245-2951.

SUPPLEMENTARY INFORMATION: Under the provisions of section 2603(7) of Title XXVI of the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), we are announcing the median income of a four-person family for each state, the District of Columbia, and the United States for the period of October 1, 1988 through September 30, 1989. Section 2605(b)(2)(B)(ii) of Pub. L. 97-35 provides that 60 percent of the median income for each state, as annually established by the Secretary of Health and Human Services, is one of the income criteria that states can use in determining a household's eligibility for LIHEAP. The purpose of this announcement is to provide estimates of state median income for use in FY 1989.

LIHEAP is currently authorized through the end of FY 1990 by provisions of title V of The Human Services Reauthorization Act of 1986, Pub. L. 99-425, enacted on September 30, 1986. Under this Act, the current income eligibility provisions relating to state median income remain unchanged.

Estimates of the median income of four-person families for each state and the District of Columbia for fiscal year 1989 were developed by the Bureau of the Census. In developing the median income estimates, the Bureau of the Census used the following three sources of data: (1) The March 1987 Current Population Survey; (2) the 1980 Census of Population; and (3) 1986 per capita personal income estimates from the Bureau of Economic Analysis.

The estimating method for FY 1989 is similar to that used in previous years. Beginning with the estimating method for FY 1987, Current Population Survey sample estimates for three- and five-person families and their statistical relationships to four-person family medians are now used in addition to the Current Population Survey sample estimates of four-person family medians already in use. For further information, contact John Coder, Chief of Income Statistics Branch, at the Bureau of the Census (301-763-8240).

A state-by-state listing of median income, and 60 percent of median income, for a four-person family for fiscal year 1989 follows. The listing describes the method for adjusting median income for families of different sizes as specified in 45 CFR 96.85(b), which was published in the **Federal Register** on March 3, 1988 at 53 FR 6827.

Dated: March 28, 1988.

Wayne A. Stanton,

Administrator, Family Support Administration.

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, FISCAL YEAR 1989 [1] [2]

State	Estimated State median income, 4-person families	60 percent of estimated State median income, 4-person families
Alabama	$29,799	$17,879
Alaska	41,292	24,775
Arizona	33,477	20,086
Arkansas	27,157	16,294
California	37,655	22,593
Colorado	36,026	21,616
Connecticut	44,330	26,598
Delaware	35,766	21,460
District of Columbia	35,424	21,254
Florida	33,368	20,021
Georgia	34,602	20,761
Hawaii	36,618	21,971
Idaho	27,075	16,245
Illinois	36,163	21,698
Indiana	32,026	19,216
Iowa	30,556	18,334
Kansas	32,512	19,507
Kentucky	28,464	17,078
Louisiana	29,614	17,768
Maine	31,297	18,778
Maryland	42,250	25,350
Massachusetts	42,295	25,377
Michigan	36,088	21,653
Minnesota	36,746	22,048
Mississippi	26,763	16,058
Missouri	33,149	19,889
Montana	29,190	17,514
Nebraska	31,484	18,890
Nevada	33,604	20,162
New Hampshire	39,503	23,702
New Jersey	44,591	26,755
New Mexico	27,474	16,484
New York	36,796	22,078
North Carolina	31,787	19,072
North Dakota	29,424	17,654
Ohio	34,038	20,423
Oklahoma	29,071	17,443
Oregon	31,392	18,835
Pennsylvania	32,700	19,620
Rhode Island	35,837	21,502
South Carolina	31,025	18,615
South Dakota	27,008	16,205
Tennessee	29,568	17,741
Texas	32,442	19,465

ESTIMATED STATE MEDIAN INCOME FOR 4-PERSON FAMILIES, FISCAL YEAR 1989 [1] [2]—Continued

State	Estimated State median income, 4-person families	60 percent of estimated State median income, 4-person families
Utah	30,635	18,381
Vermont	32,490	19,494
Virginia	37,885	22,731
Washington	35,071	21,043
West Virginia	27,094	16,256
Wisconsin	33,739	20,243
Wyoming	28,742	17,245

Note.—The estimated median income for 4-person families living in the United States is $34,716 for the period of October 1, 1988 through September 30, 1989.

[1] In accordance with 45 CFR 96.85, each state's estimated median income for a 4-person family is multiplied by the following percentages to adjust for family size: 52% for one person, 68% for two persons, 84% for three persons, 100% for four persons, 116% for five persons, and 132% for six persons. For family sizes greater than six persons, add 3% to 132% for each additional family member and multiply the new percentage by the state's dollar amount for 4-person families.

[2] Prepared by the Bureau of the Census from the March 1987 Current Population Survey, 1980 Census of Population and Housing, and 1986 per capita personal income estimates from the Bureau of Economic Analysis.

Food and Drug Administration

[Docket No. 84N-0154]

Biological Products; Cell Lines Used To Produce Biologicals; Availability of Points To Consider for New Technologies; Request for Comments

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised document entitled "Points to Consider in the Characterization of Cell Lines Used to Produce Biologicals (1987)." The revised "points to consider" replaces a similar document originally offered in June 1984 and is intended to assist manufacturers in characterizing cell lines used to produce biological products for which a manufacturer intends to apply to FDA for approval for investigation or marketing. FDA is also requesting comments on the document to assist the agency in the continuing development of the points to consider.

ADDRESSES: Requests for single copies of the document to Biologics Freedom of Information Staff (HFN-20), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892. Written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. A copy of the document is also on display at the Dockets Management Branch (address above).

FOR FURTHER INFORMATION CONTACT:

Regarding this notice:

Steven Falter, Center for Biologics Evalaution and Research (HFN-322), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8046.

Regarding the draft criteria:

Martha Wells, Center for Biologics Evaluation and Research (HFB-840), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-496-0389.

SUPPLEMENTARY INFORMATION: Continuous nondiploid (abnormal) cell lines are being used increasingly in the production of new biological products, such as monoclonal antibody or recombinant deoxyribonucleic acid (DNA) products. When such products are being developed for clinical testing or marketing, the use of abnormal cell lines present unique quality control and safety issues. As announced in the **Federal Register** of June 6, 1984 (49 FR 23456), FDA offered a "points to consider" document containing advice to assist manufacturers in the development and evaluation of biological products produced using cell lines and in submitting to FDA applications for approval of the products for investigation and marketing. FDA also invited public comment on the document and announced a public workshop, held in July 1984, to discuss the use of abnormal mammalian cells in the production of biological products. In response to the comments from the public and with added research and experience with products derived from cell lines, FDA's Center for Biologics Evaluation and Research has revised the "points to consider" document. The revised document places emphasis on the identification and characterization of the cell substrate and testing of the bulk and final product. FDA is offering the revised document to the public and inviting public comment. FDA will again consider the received comments when revising the document.

For the convenience of the reader, below is a list of "points to consider" documents, including the document described in this notice, currently being offered by the Center for Biologics Evaluation and Research and the date that each document was last revised.

1. "Points to Consider in the Characterization of Cell Lines Used to Produce Biologicals (1987)," November 18, 1987.

2. "Points to Consider in the Manufacture and Testing of Monoclonal Antibody Products for Human Use (1987)," June 1, 1987.

3. "Points to Consider in the Manufacture of In Vitro Monoclonal Antibody Products Subject to Licensure," June 20, 1983.

4. "Points to Consider in the Production and Testing of New Drugs and Biologicals Produced by Recombinant DNA Technology," April 10, 1985.

5. "Interferon Test Procedures, Points to be Considered in the Production and Testing of Interferon Intended for Investigational Use in Humans," July 28, 1983.

Each "points to consider" document is available from the Biologics Freedom of Information Staff (address above).

Interested persons may submit written comments on the document to the Dockets Management Branch (address above). These comments will be considered in determining whether further revisions to the "points to consider" document are warranted. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 29, 1988.

John M. Taylor.

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88-7301 Filed 4-1-88; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 88N-0130]

Drug Export; Recombigen ™ HIV Latex Agglutination Test Kits

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cambridge BioScience has filed an application requesting approval for the export of the biological product Recombigen ™ HIV Latex Agglutination Test Kits to Canada, West Germany, Italy, Sweden, The Netherlands, Norway, Finland, Austria, Japan, United Kingdom, Switzerland, Spain, Belgium, Denmark, and Ireland.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-

305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of biological products under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Boyd Fogle, Jr., Center for Biologics Evaluation and Research (HFN–322), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8095.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99–660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Cambridge BioScience, 365 Plantation St., Biotechnology Research Park, Worcester, MA 01605, has filed an application requestig approval for the export of the biological product Recombigen ™ HIV Latex Agglutination Test Kits to Canada, West Germany, Italy, Sweden, The Netherlands, Norway, Finland, Austria, Japan, United Kingdom, Switzerland, Spain, Belgium, Denmark, and Ireland. The product is intended for use as an invitro qualitative assay for the detection of antibody to Human Immunodeficiency Virus (HIV), which is also known as Lymphadenopathy Virus (LAVI) or Human T-lymphotropic Virus Type III (HTLV III). The application was received and filed in the Center for Biologics Evaluation and Research on March 14, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by April 14, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30–day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99–660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated under 21 CFR 5.44.

Dated: March 18, 1988.

Thomas S. Bozzo,

Director, Office of Compliance Center for Biologics Evaluation and Research.

[FR Doc. 88–7302 Filed 4–1–88; 8:45 am]

BILLING CODE 4160–01–M

National Institutes of Health

Cancer Center Support Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Cancer Center Support Review Committee, National Cancer Institute, National Institutes of Health, April 11–12, 1988, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on April 11, from 8:30 a.m. to 9:30 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on April 11, from approximately 9:30 a.m. to 6:00 p.m. and April 12, from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, the Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. John Abrell, Executive Secretary, Cancer Center Support Review Committee, National Cancer Institute, Westwood Building, Room 834, National Institutes of Health, Bethesda, Maryland 20892 (301–496–9767) will furnish substantive program information.

Dated: March 28, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–7279 Filed 4–1–88; 8:45 am]

BILLING CODE 4140–01–M

Biometry and Epidemiology Contract Review Committee; Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, May 10, 1988, Building 31C, Conference Room 9, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on May 10, 1988, from 9 a.m. to 10 a.m. to discuss administrative matters. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on May 10 from 10 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496–5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20892 (301/496–7030) will furnish substantive program information.

Dated: March 28, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-7280 Filed 4-1-88; 8:45 am]

BILLING CODE 4140-01-M

National Arthritis Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Arthritis Advisory Board on April 17 and 18, 1988. The subcommittee will meet April 17, 6 p.m. to approximately 10 p.m., and the full board will meet April 18, 8 a.m. to approximately 5 p.m., at the University City Sheraton, 36th and Chestnut Streets, Philadelphia, Pennsylvania 19104. The meeting, which will be open to the public, is being held to review the immunology programs of the Veterans Administration as they relate to rheumatic and skin diseases and to conduct a site visit at the Philadelphia Veterans Administration Medical Center. The Board will also continue its evaluation of the implementation of the long-range plan to combat arthritis. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. John R. Abbott, Executive Secretary, National Arthritis Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-0801, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: March 14, 1988.

Betty J. Beveridge,

NIH Committee Management Office.

[FR Doc. 88-7281 Filed 4-1-88; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Neurological and Communicative Disorders and Stroke; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the committees of the National Institute of Neurological and Communicative Disorders and Stroke.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Summaries of meetings, rosters of committee members, and other information pertaining to the meetings can be obtained from the Executive Secretary indicated.

Name of Committee: National Advisory Neurological and Communicative Disorders and Stroke Council and Its Planning Subcommittee.

Date: June 1, 1988 (Planning Subcommittee).

Place: National Institutes of Health, Building 31, Conference Room 8A23, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: 1 p.m.-3 p.m.

Agenda: To discuss program planning, program accomplishments and special reports.

Closed: 3 p.m.-5 p.m.

Closure Reason: For review of grant applications.

Dates: June 2-3, 1988 (Council).

Place: National Institutes of Health, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892.

Open: June 2, 9 a.m.-1 p.m.

Agenda: To discuss program planning, program accomplishments and special reports.

Closed: June 2, 1 p.m.-recess; June 3, 8:30 a.m.-adjournment.

Closure Reason: For review of grant applications.

Executive Secretary: John C. Dalton, Ph.D., Associate Director for Extramural Activities, NINCDS, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496-9248.

Name of Committee: Neurological Disorders Program Project Review B Committee.

Dates: June 8-10, 1988.

Place: Holiday Inn, 550 C Street, SW., Washington, DC 20024.

Open: June 8, 8:30 a.m.-9 a.m.

Agenda: To discuss program planning, program accomplishments and special reports.

Closed: June 8, 9 a.m.-recess; June 9, 8 a.m.-recess; June 10, 8 a.m-adjournment.

Closure Reason: To review grant applications.

Executive Secretary: Dr. A. Beau White, Federal Building, Room 9C-14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496-9223.

Name of Committee: Communicative Disorders Review Committee.

Dates: June 9-10, 1988.

Place: Holiday Inn, Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

Open: June 9, 8:30 a.m.-9 a.m.

Agenda: To discuss program planning, program accomplishments and special reports.

Closed: June 9, 9 a.m.-recess; June 10, 8 a.m.-adjurnment.

Closure Reason: To review grant applications.

Executive Secretary: Dr. Marilyn Semmes, Federal Building, Room 9C-14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496-9223.

Name of Committee: Neurological Disorders Program Project Review A Committee.

Dates: June 16-18, 1988.

Place: Hyatt Regency, Bethesda, One Metro Center, Bethesda, Maryland 20814.

Open: June 16, 8:00 p.m.-8:30 p.m.

Agenda: To discuss program planning, program accomplishments and special reports.

Closed: June 16, 8:30 p.m.-recess; June 17, 8 a.m.-recess; June 18, 7:30 a.m.-adjournment.

Closure Reason: To review grant applications.

Executive Secretary: Dr. Herbert Yellin, Federal Building, Room 9C-14, National Institutes of Health, Bethesda, Maryland 20892, Telephone: 301/496-9223.

(Catalog of Federal Domestic Assistance Program No. 13.853, Clinical Basis Research; No. 13.854, Biological Basis Research)

Dated: March 28, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88-7282 Filed 4-1-88; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO-150-08-4830-11]

National Public Lands Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the National Public Lands Advisory Council.

SUMMARY: Notice is hereby given that the National Public Lands Advisory Council will meet May 4 and 7, 1988. The May 4 meeting will be held from

8:00 a.m. to 12:00 p.m. at the Holiday Inn, 1400 W. 200 N., Cedar City, Utah. The May 7 meeting will be held from 8:00 a.m. to 12:00 p.m. at the Ramada Inn, 1825 South Main, Moab, Utah. The Council will also participate in a field tour of BLM-managed lands in southern Utah. The proposed agenda for the meeting is:

Wednesday, May 4: Election of Council officers for 1988; Presentation on Recreation 2000—A Strategic Plan; Panel discussion on the local economic benefits of recreation; Council old and new business, to include Department responses to previous Council resolutions; Public statement period.

Saturday, May 7: Discussion of agendas for future Council meetings; Presentation on the national economic benefits of recreation; Meeting of Council Subcommittees (Energy and Minerals, Lands, and Renewable Resources); Reports from Subcommittees to full Council and consideration of Council resolutions.

All meetings of the Council are open to the public. Opportunity will be given for members of the public to make oral statements to the Council, beginning at 10:45 a.m. on Wednesday, May 4. Speakers should address specific national public lands issues on the meeting agenda and are encouraged to submit a copy of their written comments by April 27 to the Bureau of Land Management's Utah State Office at the address listed below. Depending on the number of people who wish to address the Council, it may be necessary to limit the length of oral presentations.

DATES: May 4 and 7—Council Meeting. May 4—Public Statements.

ADDRESS: Copies of public statements should be mailed by April 27 to: Director, Utah State Office (912), Bureau of Land Management, 324 South State Street, Salt Lake City, Utah 84111–2303.

FOR FURTHER INFORMATION CONTACT: Karen Slater, Washington, DC, Office, BLM, telephone (202) 343–5101; or Jerry Meredith, Utah State Office, BLM, telephone (801) 524–3146.

SUPPLEMENTARY INFORMATION: The Council advises the Secretary of the Interior through the Director, Bureau of Land Management, regarding policies and programs of a national scope related to public lands and resources under the jurisdiction of BLM.

Robert F. Burford,

Director.

March 29, 1988.

[FR Doc. 88–7304 Filed 4–1–88; 8:45 am]

BILLING CODE 4301–84–M

[AZ–050–4333–12]

Arizona; Revision of Camp Limit

AGENCY: Bureau of Land Management, Interior.

ACTION: Revision of camping limit on the public lands around the Mittry Lake area in the Yuma Resource Area.

SUMMARY: The following area is designated as having a camping limit of 10 days in a calendar year:

Area and Activity

Mittry Lake, Camping.

Location—G&SRM

T. 6 S., R. 21 W.,
Sec. 30 SW¼, 31.
T. 7 S., R. 21 W.,
Sec. 5, 6, 7, 8, 18;
Sec. 19, N½.
T. 7 S., R. 22 W.,
Sec. 13, 14;
Sec. 23, 24, N½.

DATES: Effective April 4, 1988.

FOR FURTHER INFORMATION CONTACT: Sue E. Richardson, Area Manager, Yuma Resource Area, 3150 Winsor Avenue, Yuma, Arizona 85365, 602–726–6300.

SUPPLEMENTARY INFORMATION: Authority for this camping limit is found in 43 CFR 8364.1 and 8365.1–2(a). This camping limit is being established to protect wildlife and wildlife habitat in the Mittry Lake area. This camping limit will provide more consistent wildlife and recreation management in the area. Currently there are two camping limits in the area. BLM regulations allow camping for 14 days in a 28-day period. Arizona Game and Fish Department has a camping limit of 10 days in a calendar year. The BLM change to 10 days will result in less confusion to the visitors since the same camping limit will now be enforced by both BLM and Arizona Game and Fish Department. Some locations around the Mittry Lake area are closed to camping under existing regulations. This revision does not affect those areas. Maps are availabile in the Yuma BLM Office.

Sondra L. Berger,

Acting District Manager.

Date: March 23, 1988.

[FR Doc. 88–6998 Filed 4–1–88; 8:45 am]

BILLING CODE 4310–32–M

[ES–940–08–4520–13; ES–038340, Group 11]

North Carolina; Filing of Plat of Dependent Resurvey

March 28, 1988.

1. The plat of the dependent resurvey of a portion of the Cherokee Indian Land within Tract No. 374 and the Upper Cornsilk Tract, District No. 9, Graham County, North Carolina, will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on May 12, 1988.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 12, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88–7224 Filed 4–1–88; 8:45 am]

BILLING CODE 4310–GJ–M

[ES–940–08–4520–13; ES–038341, Group 11]

North Carolina; Filing of Plat of Dependent Resurvey

March 28, 1988.

1. The plat of the dependent resurvey of the boundary between the Nantahala National Forest, Tract Nos. 1047r and 1073Ah and the Cherokee Indian Land, Tract Nos. 17 and 93, District No. 9, Graham County, North Carolina, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on May 12, 1988.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 12, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88–7225 Filed 4–1–88; 8:45 am]

BILLING CODE 4310–GJ–M

[ES-940-08-4520-13; ES-038342, Group 11]

North Carolina; Filing of Plat of Dependent Resurvey

March 28, 1988.

1. The plat of the dependent resurvey of the boundary between the Nantahala National Forest, Tract Nos. 252K and 1047 and the Cherokee Indian Land, Tract No. 364, District No. 10, Graham County, North Carolina, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on May 12, 1988.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 12, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-7226 Filed 4-1-88; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-940-08-4520-13; ES-038343, Group 10]

North Carolina; Filing of Plat of Dependent Resurvey

March 28, 1988.

1. The plat of the dependent resurvey of a portion of the Qualla Indian Boundary and the remonumentation of the 60½ mile corner plus 15.90 chain point in Jackson and Swain Counties, North Carolina, will be officially filed in the Eastern States Office, Alexandria, Virginia, at 7:30 a.m., on May 12, 1988.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 12, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-7227 Filed 4-1-88; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-940-08-4520-13; ES-038343, Group 10]

North Carolina; Filing of Plat of Dependent Resurvey

March 28, 1988.

1. The plat of the dependent resurvey of a portion of the Cherokee Indian Land and perpetuation of AP54 and AP59, within the 3200 Acre Tract, Swain County, North Carolina, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on May 12, 1988.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 12, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-7228 Filed 4-1-88; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-940-08-4520-13; ES-038345, Group 11]

North Carolina; Filing of Plat of Dependent Resurvey

March 28, 1988.

1. The plat of the dependent resurvey of the boundary between the Nantahala National Forest, Tract Nos. 216 and 1047 and the Cherokee Indian Land, Tract No. 477, District No. 9, Graham County, North Carolina, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on May 12, 1988.

2. The dependent resurvey was made by the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 12, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-7229 Filed 4-1-88; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-940-08-4520-13; ES-038346, Group 11]

North Carolina; Filing of Plat of Dependent Resurvey

March 28, 1988.

1. The plat of the dependent resurvey of a portion of the west boundary of Tract No. 87, and the boundary between the Nantahala National Forest, Tract No. 1355, and the Cherokee Indian Land, Tract No. 87, District No. 9, Graham County, North Carolina, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on May 12, 1988.

2. The dependent resurvey was made by the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 12, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-7230 Filed 4-1-88; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-940-08-4520-13; ES-038347, Group 10]

North Carolina; Filing of Plat of Dependent Resurvey

March 28, 1988.

1. The plat of the dependent resurvey of a portion of the Cherokee Indian Land within Tract Nos. 99 and 100, and the perpetuation of the SE cor. of Tract No. 7, SE cor. of Tract No. 57, and NE cor. of Tract No. 58, all in District No. 1, and the perpetuation of the NE cor. of Tract No. 57, District No. 6, in Cherokee County, North Carolina, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on May 12, 1988.

2. The dependent resurvey was made by the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 12, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-7231 Filed 4-1-88; 8:45 am]

BILLING CODE 4310-GJ-M

[ES-940-08-4520-13; ES-038348, Group 10]

North Carolina; Filing of Plat of Dependent Resurvey

March 28, 1988.

1. The plat of the dependent resurvey of a portion of the Cherokee Indian Land and perpetuation of AP Nos. 21, 25, 33 and 75 within the Henson Donation Tract, District No. 5, in Cherokee County, North Carolina, will be officially filed in the Eastern States Office, Alexandria, Virginia at 7:30 a.m., on May 12, 1988.

2. The dependent resurvey was made at the request of the Bureau of Indian Affairs.

3. All inquiries or protests concerning the technical aspects of the dependent resurvey must be sent to the Deputy State Director for Cadastral Survey, Eastern States Office, Bureau of Land Management, 350 South Pickett Street, Alexandria, Virginia 22304, prior to 7:30 a.m., May 12, 1988.

4. Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Lane J. Bouman,

Deputy State Director for Cadastral Survey and Support Services.

[FR Doc. 88-7232 Filed 4-1-88; 8:45 am]

BILLING CODE 4310-GJ-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-390 (Preliminary)]

Digital Readout Systems and Subassemblies Thereof From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-390 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that 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 digital readout systems and subassemblies thereof,[1] provided for in item 710.80 of the Tariff Schedules of the United States (TSUS) or however provided for in Parts 4 or 5 Schedule 6 or Part 2 of Schedule 7 of the TSUS, that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in this case by May 12, 1988.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and B (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: George L. Deyman (202-252-1193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on March 28, 1988, by Anilam Electronics Corp., Miami, FL.

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 seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this 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.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on April 20, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact George L. Deyman (202-252-1193) not later than April 18, 1988, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before April 22, 1988, a written statement of information pertinent to the subject of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). 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 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

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[1] Digital readout systems subject to this investigation provide linear or rotational displacement information for high precision industrial equipment such as metalworking machine tools and coordinate inspection machines. The systems generally consist of an electronic console and one measurement transducer for each axis of linear or rotational displacement to be measured. Subassemblies of digital readout systems consist of consoles or transducers sold separately, and include the major component of consoles, namely printed circuit boards, and the two major components of transducers, namely glass strips with chrome grating, and reading heads. (The article subject to this investigation are also provded for in subheadings 9031.80.00 or 9031.90.60 of the proposed Harmonized Tariff Schedules of the United States (USITC Pub. 2030).)

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 § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: March 30, 1988.

[FR Doc. 88-7248 Filed 4-1-88; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[No. MC-F-18724 [1]]

Burlington Northern, Inc., et al.; Amended Notice of Intent

On September 25, 1987, pursuant to 49 CFR 1180.4(b), Burlington Northern, Inc. (BNI), a non-carrier holding company which also owns Burlington Northern Railroad Company (BNRR), and its wholly-owned non-carrier subsidiary Burlington Northern Motor Carriers, Inc. (BNMC), notified the Commission of their intent to file a formal application under 49 U.S.C. 11344 seeking Commission approval for acquisition of control by BNI, through BNMC, of the following Class I motor carriers: Victory Freightway System, Inc., Monkem Company, Inc., Monroe Trucking, Inc., Stoops Express, Inc., Wingate Trucking Company, Inc. (Wingate), and Taylor-Maid Transportation, Inc. (Taylor-Maid).[2] By decision served October 23, 1987, the Commission dismissed several exemption petitions that BNI and BNMC had previously filed under Section 11343(e) in connection with BNI's proposed acquisition of control of the motor carriers. The Commission also instituted an application proceeding under this docket number, and concluded that BNI's common control of BNRR (a Class I railroad) and BNMC's motor carrier subsidiaries constitutes a "minor" transaction under Commission regulations. A notice of BNI/BNMC intent to file a formal application was published in the **Federal Register** on October 23, 1987 at 52 FR 39,714.

However, in a pleading filed February 17, 1988, applicants sought to amend the notice of intent pursuant to 49 CFR 1180.4(b)(3) on the basis that BNI no longer planned to acquire the subject motor carriers, but rather planned to divest them. Accordingly, they requested a 9-month extension of time pursuant to 49 CFR 1163.2(a) for filing an application under 49 U.S.C. 11344, during which time they believed the divestiture process could be completed. By decision served April 1, 1988, the Commission has granted applicants' request to amend their notice of intent, authorized divestiture, and afforded applicants until December 27, 1988, in which to complete divestiture or, in the alternative, file a formal approval application under 49 U.S.C. 11344.[3]

Dated: March 25, 1988.

By the Commission, Chairman Gradison, Vice Chairman Andre, Commissioners Sterrett, Simmons, and Lamboley.

Noreta R. McGee,

Secretary.

[FR Doc. 88-7278 Filed 4-1-88; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collection(s) Under Review

Date: March 28, 1988.

The Office of Management and Budget (OMB) has been sent for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The name and telephone number of the Department's Clearance Officer from whom a copy of the form (if any) and/or supporting documentation is available; (2) the office, board, division or bureau of the Department of Justice issuing the form or administering the collection; (3) the title of the form or collection; (4) the agency form number, if any; (5) how often the form must be filled out or the information is collected; (6) who will be asked or required to respond, as well as a brief abstract; (7) an estimated of the total number of respondents and the amount of estimated time it takes each respondent to respond; (8) an estimate of the total public burden hours associated with the collection; (9) an indication as to whether section 3504(h) of Public Law 96-511 applies; and (10) the name and telephone number of the person or office responsible for the OMB review. Comments and/or questions regarding the item(s) contained in this notice should be directed to the OMB reviewer listed at the end of each entry AND to the Department of Justice's Clearance Officer. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer AND the Department of Justice's Clearance Officer of your intent as soon as possible.

The Department of Justice's Clearance Officer is Larry E. Miesse and can be reached on (202) 633-4312.

Existing Collection in Use Without an OMB Control Number

(1) Larry E. Miesse, (202) 633-4312

(2) National Institute of Justice, Department of Justice

(3) DRUG USE FORECASTING PROGRAM

(4) No form number

(5) On occasion

(6) State and local governments. The Drug Use Forecast program monitors the extent and types of drug use by arrestees in 25 cities. Data is collected every three months in each city from new samples of arrestees. Participation is voluntary and anonymous; data collection includes interviews and urine specimens.

(7) 35,000 annual responses, .166 hours per response.

(8) 5,833 estimated public burden hours.

(9) Not applicable under 3504(h).

(10) Robert Fishman, (202) 395-7340.

New Collection

(1) Larry E. Miesse, (202) 633-4312

(2) Office of Juvenile Justice and Delinquincy Prevention, Department of Justice

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[1] This matter was previously docketed under Nos. MC-F-16248, *Burlington Northern, Inc.—Control Exemption—Victory Freightway System, Inc.*; MC-F-16372, *Burlington Northern, Inc.—Control Exemption—Monkem Company, Inc.*; MC-F-16452, *Burlington Northern, Inc.—Control Exemption—Monroe Trucking, Inc.*; and MC-F-17030, *Burlington Northern, Inc. and Burlington Northern Motor Carriers, Inc.—Control Exemption—Stoops Express, Inc., Wingate Trucking Company, Inc., and Taylor-Maid Transportation, Inc.*

[2] By decision served November 21, 1986, in No. MC-152180, *Taylor-Maid Transportation, Inc.—Reentitled—Wingate/Taylor Maid Transportation Inc.*, the Commission amended its records to reflect the merger of Wingate and Taylor-Maid which it had exempted in a decision served July 28, 1986, and re-entitled the authority in the name of Wingate/Taylor Maid Transportation Inc.

[3] The Commission did not extend an October 8, 1987 temporary authority authorization of BNI's continuing control of BNMC and its motor carriers on grounds that the Commission's temporary authority rules did not apply to this situation, but concluded that even without such authorization BNI could lawfully continue to control and operate the motor carriers during the divestiture period.

(3) THE NATIONAL STUDY OF THE INCIDENCE OF MISSING CHILDREN

(4) No form number

(5) One time study

(6) Individuals or households. This collection will develop valid and reliable national estimates of the numbers of children reported or known to be missing; establish profiles of missing children and events through a national telephone survey.

(7) 40,000 annual responses, .2 hours per response.

(8) 7,979 estimated public burden hours.

(9) Not applicable under 3504(h).

(10) Robert Fishman, (202) 395-7340.

Larry E. Miesse,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 88-7283 Filed 4-1-88; 8:45 am]

BILLING CODE 4410-18-M

Drug Enforcement Administration

John R. Welch, M.D.; Revocation of Registration

On April 23, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Adminstration (DEA), issued an Order to Show Cause to John R. Welch, M.D., 505 N. Mollison Avenue, El Cajon, California 92021. The Order to Show Cause was returned unclaimed. Amended Orders to Show Cause were sent to Dr. Welch on May 5, 1987, and November 17, 1987. These Orders to Show Cause sought to revoke Dr. Welch's DEA Certificate of Registration AW1051173, because such registration was inconsistent with the public interest as that term is defined in 21 U.S.C. 823(f).

The Order to Show Cause was received by Dr. Welch on November 24, 1987, at Camp Barrett, Apline, California. More than 30 days have passed since the Order to Show Cause was received, and there has been no response. The Administrator finds that Dr. Welch has waived his right to a hearing and issues this final order based upon the findings of fact and conclusions of law as hereinafter set forth. 21 CFR 1301.54(d) and 1301.54(e).

The Administrator finds that Dr. Welch's license to practice medicine was revoked by the California Board of Medical Quality Assurance effective December 23, 1985. The revocation was stayed, and Dr. Welch was placed on probation for five years. The terms of the probation included that he could prescribe, administer, dispense and order Schedule II and III controlled substances only for hospital in-patients. The decision was based upon a finding that Dr. Welch prescribed various controlled substances to individuals without a good faith prior examination and medical indication.

On August 22, 1986, the California Board of Medical Quality Assurance filed a Petition for Temporary Restraining Order against John R. Welch, M.D. This petition was based upon Dr. Welch's violation of the terms of his probation, including that he continued to prescribe controlled substances for other than legitimate medical purposes. Dr. Welch created false and ficitious prescriptions for controlled substances and false medical records for individuals posing as patients. Effective November 25, 1986, a Stipulation relative to the Temporary Restraining Order was entered into between Dr. Welch and the Medical Board in which Dr. Welch was restrained and prohibited from practicing or attempting to practice medicine in the State of California; and from possessing, prescribing, dispensing, furnishing, administering or otherwise distributing controlled substances in California.

On March 6, 1987, a 22 count information was filed against Dr. Welch in the Municipal Court, El Cajon Judicial District, County of San Diego charging that he practiced medicine with a suspended license, that he issued false and fraudulent prescriptions, and that he prescribed controlled substances for other than a legitimate medical purpose. On June 12, 1987, Dr. Welch pled guilty to providing an addict with controlled substances, a felony violation of the California Health and Safety Code, Section 11153. On September 21, 1987, the court sentenced Dr. Welch to five years probation and ordered hime to serve 240 days in custody.

The Administrator finds that Dr. Welch is not authorized to practice medicine or to handle controlled substances in any manner in the State of California. Since the Drug Enforcement Administration does not have authority to maintain the registration of a practitioner who is not authorized to handle controlled substances in the state in which he conducts his business, Dr. Welch's DEA Certificate of Registration must be revoked. See: *Emerson Emery, M.D.*, Docket No. 85-46, 51 FR 9543 (1986); *Avner Kauffman, M.D.*, Docket No. 85-8, 50 FR 34208; *Agostino Carlucci, M.D.*, Docket No. 82-20, 49 FR 33184 (1984). The Administrator concludes that there is a lawful basis for the revocation of Dr. Welch's DEA Certificate of Registration.

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 AW1051173 be, and it hereby is revoked. The Administrator further orders that any outstanding applications for registration submitted by John R. Welch, be denied. This order is effective May 4, 1988.

Dated: March 29, 1988.

John C. Lawn,

Administrator.

[FR Doc. 88-7237 Filed 4-1-88; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W-20,446]

G.H. Bass and Co.; Rumford Distribution Center, Rumford, ME; Negative Determination Regarding Application for Reconsideration

By an application dated March 17, 1988, counsel for the former workers requested administrative reconsideration of the Department's notice of negative determination on the subject petition for trade adjustment assistance for workers at the Rumford Distribution Center of G.H. Bass Company, Rumford, Maine. The denial notice was signed on February 18, 1988 and published in the **Federal Register** on February 26, 1988 (53 FR 5842).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Counsel states that several of G.H. Bass' plants have been certified eligible to apply for adjustment assistance and claims that Bass consolidated its shoe operations because of the adverse impact imported shoes had on the company.

Findings in the investigative case file show that the Rumford distribution center did not produce an article within the meaning of section 222(3) of the Trade Act. The Department has consistently determined that the

performance of services (warehousing) does not constitute production of an article and this determination has been upheld in the U.S. Court of Appeals.

Workers of a firm providing services may be certified only if their separations were caused importantly by a reduced demand for their services from a firm related by ownership or control and whose workers are independently certified for adjustment assistance. Findings in the investigative case file show that these conditions were not met. All certifications for workers at G.H. Bass Company expired prior to the period applicable to the petition save the one at Berlin, New Hampshire (TA-W-19,827). However, the Berlin plant was mainly a shoe component plant which was integrated into the production of other Bass plants producing finished shoes. All of the production at Berlin was transferred to the Wilton plant in 1987.

The closure of the Rumford Distribution Center was due to a corporate decision to consolidate its warehouse operations with another domestic company facility. This domestic transfer of services would not form a basis for certification.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 24th day of March 1988.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 88-7218 Filed 4-1-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,372]

M and G Convoy, Inc.; New Stanton, PA; Negative Determination Regarding Application for Reconsideration

By an application dated March 18, 1988, Local #30 of the Teamsters Union requested administrative reconsideration of the Department's notice of negative determination on the subject petition for trade adjustment assistance for workers at M & G Convoy, Inc., New Stanton, Pennsylvania. The denial notice was signed on February 24, 1988 and published in the **Federal Register** on March 8, 1988 (53 FR 7432).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that the M & G Convoy employees are controlled by Volswagen of America.

Findings in the investigative case file show that M & G Convoy, Inc., in New Stanton, Pennsylvania, is an independent firm providing transportation services for Volswagen of America. The Department of Labor does not consider the performance of services as constituting the production of an article as required by Section 222 of the Trade Act of 1974. This point was addressed in the Department's initial notice of negative determination.

Workers of a firm providing a service may be certified only if their separations were caused importantly be a reduced demand for their services from a firm related by ownership or control and whose workers are independently certified for adjustment assistance. Findings in the investigative case file show that there is no corporate affiliation between M & G Convoy, Inc., and Volkswagen of America. Further, M & G Convoy, Inc., exclusively controls all its payroll transactions and personnel actions.

Conclusion

After reveiw of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of March 1988.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88-7219 Filed 4-1-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20,339]

Beaumont Co., Morgantown, WV; Affirmed Determination Regarding Application for Reconsideration

By an application dated March 11, 1988, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on behalf of workers and former workers of the Beaumont Company, Morgantown, West Virginia. The determination will soon be published in the **Federal Register.**

The company claims that the Department's survey was inadequate. The company submitted an additional list of customers and stated that a sales declined in constant dollars was incurred in 1987 compared to 1986. Also, according to the company, some customers were reluctant to provide import information because of the phrasing of particular parts of the Department's survey.

Conclusion

After careful review of the application, I conclude that the claims are of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 21st day of March 1988.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Service, UIS.

[FR Doc. 88-7220 Filed 4-1-88; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-20, 274]

Young Radiator Co., Racine, WI; Negative Determination Regarding Application for Reconsideration

By an application dated February 29, 1988, Region 10 of the United Auto Workers (UAW) requested administrative reconsideration of the Department's negative determination on the subject petition for trade adjustment assistance for workers at Young Radiator Company, Racine, Wisconsin. The denial notice was signed on January 14, 1988 and published in the **Federal Register** on February 3, 1988 (53 FR 3087).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the

determination complained of was erroneous;

(2) If it appears that the determiniation complained of was based on a mistake in the determination of facts not previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that U.S. imports of heat exchangers whether imported separately or assembled on heavy duty equipment has led to declines in employment at the subject firm.

The Racine plant producers heat transfer products (heat exchangers, air coolers, etc.) used as components on vehicles and equipment. Findings in the investigation did not substantiate that increased imports contributed importantly to worker separations. Sales and employment increased at the Racine plant of Young Radiator in 1986 compared to 1985. The Department surveyed the firm's customers for 1987. Respondents to the survey which accounted for over 100 percent of the January to October 1987 sales decline showed that none of the respondents imported heat transfer products.

Further, imports of heavy duty equipment are not like or directly competitive with heat transfer products. The courts addressed the issue of component parts in *United Shoe Workers of America, AFL–CIO* v. *Bedell*, 506 F2d 174 (D.C. Cir. 1974). In that case the court held that imported finished women's shoes were not like or directly competitive with shoe components—shoe counters. Similarly, heat transfer products which are incorporated into finished articles (heavy duty equipment) cannot be considered like or directly competitive heavy duty equipment.

Conclusion

After review of the application and investigation findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of March 1988.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 88–7221 Filed 4–1–88; 8:45 am]

BILLING CODE 4510–30–M

MERIT SYSTEMS PROTECTION BOARD

Amicus Briefs Concerning Performance Improvement Periods in Chapter 43 Actions

AGENCY: Merit Systems Protection Board.

ACTION: Notice of postponement of due date for amicus briefs.

SUMMARY: The Merit Systems Protection Board postpones the due date for amicus briefs solicited by **Federal Register** notice published March 2, 1988 (53 FR 6712).

FOR FURTHER INFORMATION CONTACT: Matthew D. Shannon, Counsel to the Clerk, Merit Systems Protection Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board has before it a number of cases which raise related issues concerning the proper interpretation and application of 5 U.S.C. 4302(b)(6), 5 U.S.C. 4303(c)(2)(A), and 5 CFR 432.203(b). In the **Federal Register** notice published March 2, 1988 (53 FR 6712), the Board posed a number of questions concerning the application of these statutory and regulatory provisions, and solicited amicus briefs from interested parties. The notice established a due date of April 4, 1988 for the filing of amicus briefs. All interested parties are hereby notified that the Board is postponing the filing date for these amicus briefs. Interested parties are also informed that in the event the Board establishes a new date for the filing of such briefs, it may amend the questions posed in the March 2 **Federal Register** notice.

Date: March 30, 1988.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 88–7241 Filed 4–1–88; 8:45 am]

BILLING CODE 7400–01–M

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The new guide is Regulatory Guide 3.63, "Onsite Meteorological Measurement Program for Uranium Recovery Facilities—Data Acquisition and Reporting." It provides guidance acceptable to the NRC staff on the meteorological parameters that should be measured, the siting of meteorological instruments, system accuracies, instrument maintenance and servicing schedules, and the recovery, reduction, and compilation of data for uranium recovery facilities.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Procedures Branch, Division of Rules and Records, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC. Copies of issued guides may be purchased from the Government Printing Office at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082, telephone (202) 275–2060 or (202) 275–2171. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 28th day of March 1988.

For the Nuclear Regulatory Commission.

Eric S. Beckjord,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 88–7285 Filed 4–1–88; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGUALTORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licenses Nos. NPF–9

and NPF–17 issued to Duke Power Company (the licensee), for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The amendments would change Technical Specification (TS) 3/4.7.7 "Auxiliary Building Filtered Ventilation Exhaust System" (VA system) and its associated Bases to reflect that the VA system consists of two shared safety-grade systems serving the common Auxiliary Building, rather than one safety-grade system for each of the two McGuire units. The VA system functions after a loss-of-coolant accident to ensure that the radioactive materials which may leak from the ECCS equipment within the ECCS pump rooms of the Auxiliary Building would be filtered by a filter package including a charcoal filter bed prior to reaching the environment.

The changes would relax the present action time (24 hours) to restore an inoperable VA system. Specifically, the change would provide a 7-day action time if one system of VA were inoperable because of an inoperable filter package or because it is unable to maintain a pressure of 0.25 inches (water gauge) at the ECCS pump room relative to outside atmosphere. A 72-hour action time would be provided if one VA system were inoperable because of an inoperable flowpath or because it was unable to maintain a negative pressure at the ECCS pump room relative to outside atmosphere. The present 24-hour action time would be applied only if both VA systems were inoperable, and would apply to both McGuire units until at least one system was restored.

The amendments would double the time period of charcoal absorber operation (from 720 hours to 1440 hours) after which laboratory analysis is required to verify that a carbon sample meets specified methyl iodide penetration criteria. The carbon sample test temperature (presently specified by referenced Regulatory Guide 1.52, Revision 2) would be changed from 80°C to a more conservative 30°C while the associated penetration acceptance criteria would be relaxed from 99% to 90% removal.

The amendments would also substitute the 1980 version for the 1975 version of ANSI N510 (referenced in TSs 4.7.7.e and 4.7.7f) for use as a procedural guide for surveillance testing, and would substitute the term "carbon whenever the term "charcoal" is used in TS 3/4.7.7.

By May 4, 1988, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose intersts may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by 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.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is required that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–800–325–6000 (in Missouri 1–800–342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence P. Crocker, Acting Director, Project Directorate II–3: (petitioner's name and telephone number); (date Petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242.

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 the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated October 15, 1987, and corrected October 22, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC.

and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223.

Dated at Rockville, Maryland, this 29th day of March 1988.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Acting Project Director Project Directorate II-3 Division of Reactor Projects—I/II.

[FR Doc. 88-7286 Filed 4-1-88; 8:45 am]

BILLING CODE 7590-01-M

Georgia Power Co. et al.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-68, issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia, (the licensees) for operation of the Vogtle Electric Generating Plant, Unit 1, located in Burke County, Georgia.

The proposed amendment would change Technical Specification 3.6.2.2, "Spray Additive System," and its bases. The proposed change revises the upper and lower volume limits for the sodium hydroxide solution in the spray additive tank. The proposed change to the bases is to explain that the specified volume limits represent the required solution to be delivered rather than a contained volume.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulation.

By May 4, 1988, the licensees 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 request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing 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.

These 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.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for 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 Kahtan Jabbour, Acting Director, Project Directorate II-3: (petitioner's name and telephone number; (date Petition was mailed); (plant name); and publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street NE., Atlanta, Georgia 30043, 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 the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated February 4, 1988, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Dated at Rockville, Maryland, this 29th day of March 1988.

For the Nuclear Regulatory Commission.

Darl S. Hood,

Acting Project Director, Project Directorate II-3, Division of Reactor Projects-I/II.

[FR Doc. 88-7287 Filed 4-1-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-245]

Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-21, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 1, located in New London County, Connecticut.

The amendment would change the Technical Specifications to provide for operational flexibility by allowing single loop operation at reduced power in the event maintenance of a recirculation pump or other component renders one loop inoperative.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By May 4, 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 request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that 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.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 1717 H Street NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Gerald R. Garfield, Esq., Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

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 the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its intent to make a no significant hazards consideration finding in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 17, 1987, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, DC and at the Waterford Public Library, 49 Rope Ferry Road, Waterford Connecticut 06385.

Dated at Rockville, Maryland, this 28th day of March 1988.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 88-7288 Filed 4-1-88; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-25529; File No. SR-OCC-88-2]

Self-Regulatory Organization; Proposed Rule Change by the Options Clearing Corp. Relating to Cash Index Participations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), notice is hereby given that on March 3, 1988, The Options Clearing Corporation ("OCC") 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.[1] The

[1] The proposed rule change is being filed subject to the approval of the Board of Directors of OCC, which is expected to be obtained at a meeting to be held on April 21, 1988.

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

OCC proposes to amend its By-Laws and Rules to provide for the issuance, clearance and settlement of Cash Index Participations, or "CIPs." The Philadelphia Stock Exchange ("PHLX") has proposed in SR–PHLX–88–7 to trade CIPs based on two stock market indexes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statments 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

General Description of CIPs

A CIP is a security whose value is determined by reference to the value of an underlying stock index.[2] A CIP is intended to place its holder in the economic position of a purchaser of a portfolio or "basket" of stocks comprising the underlying index, with each stock represented in the basket as the same percentage of the total value of the basket that it represents in the underlying index. Ownership of a CIP is therefore the functional equivalent of ownership of the underlying basket of stocks, except that the CIP holder is able to avoid the transaction costs and other practical difficulties inevitably associated with maintaining a position in a basket of stocks proportionate to the composition of an index. In furtherance of this economic purpose, and unlike an option, a CIP will have a potentially perpetual existence, unless and until the holder extinguishes the CIP by entering into an offsetting writing transaction or exercises the "cash-out privilege" of the CIP as described below.[3]

In addition to being able to extinguish a CIP position by entering into an offsetting transaction, a holder of CIPs will be entitled to exercise a "cash-out privilege" once each quarter. The cash-out privilege will be available on the third Friday of March, June, September and December, or on such other day as the Exchange on which the CIP is traded specifies pursuant to its Rules, to holders who submit exercise notices to OCC on the preceding business day. Exercise notices will be assigned to writing clearing members of CIPs in the same class using OCC's random assignment system.

A holder of a CIP will be entitled to receive, and a writer of a CIP will be obligated to pay, a quarterly "dividend equivalent." The dividend equivalent will closely approximate the dividends which the owner of the basket of stocks described above would be entitled to receive. A reporting authority designated by the Exchange will calculate the dividend equivalent and provide the data to OCC. The dividend equivalent will be credited to long positions and debited to short positions held at the close of business on the business day before the third Friday of March, June, September and December, or on such other day as the Exchange designates pursuant to its Rules. OCC will debit short positions and credit long positions with the dividend equivalent on the following morning.

Like an option, a CIP will not be certificated, and a holder's ownership right will be evidenced as a long position in the name of a clearing member on OCC's books.

Particular Changes to OCC's By-Laws

In Article I of OCC's By-Laws, many of the definitions are amended to incorporate references to CIPs. A definition of the term "CIP" is added, and the term "cleared security" is defined to mean an option contract or a CIP. The terms "exercise" and "Exercising Clearing Member" are defined to make clear that these terms can refer to the exercise of the cash-out privilege of a CIP as well as the exercise of an option.

Articles V, VI and VII are amended to incorporate references to CIPs. Section 7 of Article VI is amended to describe the information as to which a Purchasing Clearing Member and a Writing clearing Member must agree in a CIP transaction. Subsection 10(b) of Article VI is amended so that it conforms to current practice, which is that it is the Exchange, not OCC, which designates the unit of trading for each new series of options. A new Subsection 10(c) is added to Article VI to describe the conditions under which a new class of CIPs may be opened for trading; the subsection parallels existing subsection 10(b) for options.

Article VIII is amended to reflect that OCC's Non-Equity Securities Clearing Fund will cover losses suffered by OCC if a Clearing Member should default on any obligation to OCC with respect to CIPs.

A new Article XVIII is added to the By-Laws. Section 1 contains definitions applicable to CIPs. Most of the definitions parallel those used with respect to index options in existing Article XVII. The term "trade price" is defined as the price agreed upon by a purchaser and seller in an Exchange transaction; the term is the counterpart for CIPs of the term "premium" for options. The terms "current index value" and "aggregate current index value" are defined, as they are with respect to index options, to refer to the value of the index underlying a class of CIPs at the close of business on any business day. The terms "cash-out value" and "aggregate cash-out value" are defined because a CIP will be valued, for purposes of the cash-out privilege, at the opening of business, or at such other time as is specified by the Exchange, rather than at the close of business.

Section 2 states the general rights and obligations of holders and writers of CIPs. Subsections (a) and (b) parallel subsections 9 (a) and (b) of Article VI, which state the general rights and obligations of holders and writers of options. Subsection (c) gives OCC the right in extraordinary circumstances (primarily, when there is no active trading in CIPs) to close out the market. PHLX Rule 1008B gives the Exchange similar authority. A CIP by its terms never expires, and in the absence of this authority it could be very difficult to close out all outstanding positions in the event that active trading in CIPs ceased.

Sections 3 and 4 of proposed Article XVIII describe the effect of transactions on long and short positions in CIPs, and section 5 describes the agreements of a Writing Clearing Member in an opening writing transaction in CIPs. The three

[2] As noted above, PHLX intends to establish CIPs based on two underlying indexes. The indexes are described in SR–PHLX–88–7. For purposes of OCC's Rules, CIPs based on each underlying index will constitute a separate "class" of CIPs.

[3] Pursuant to the authority contained in proposed PHLX Rule 1008B and proposed Article XVIII, section 2(c) of OCC's By-Laws, however, in the event that an active market in a class of CIPs does not develop or under other exceptional circumstances, PHLX and OCC may exercise the CIP cash-out privilege on behalf of all holders of CIPs in a particular class, and thereby close out the market in that class.

sections parallel the provisions applicable to options in existing sections 12, 13 and 14 of Article VI. Section 6 addresses the unavailability or inaccuracy of the cash-out value; the section parallels section 4 of Article XVII, which addresses the unavilability or inaccuracy of the current index value for index options. OCC is evaluating whether circumstances could arise in which it would require authority to make adjustments in the terms of CIPs. If OCC concludes that such circumstances could arise, it will amend this filing to provide the necessary authority. Such authority would be similar to that described in section 3 of Article XVII will respect to index options.

Particular Changes to OCC's Rules

Conforming amendments are made in Rule 207, 401, and 402. OCC is reviewing the margin methodology for CIPs and will at a later date file, by amendment to this filing, proposed amendments to Chapter VI of the Rules.

Rule 1001 is amended to state that each Clearing Member's contribution to th Non-Equity Securities Clearing Fund will be calculated on the basis of its margin requirement for CIPs as well as non-equity securities options.

Chapter XI is amended to incorporate references to CIPs. Chapter XI may require additional amendments to conform its provisions to the CIPs margin methodology.

Chapter XIX sets out the Rules applicable only to CIPs. Rule 1902 describes the procedure for each effecting settlement of dividend equivalents. Rule 1903 describes the procedure for exercise of the cash-out privilege of a CIP. The procedure is similar to the general procedure for options described in Rule 801, except that exercise is limited to one day each quarter. OCC anticipates that late filing of an exercise notice for a CIP will be permitted, upon the payment of a late filing fee. OCC will amend Rule 1903(d) to provide the schedule of late filing fees when it determines what these fees should be.

Rule 1904 parallels Rule 802, and states that properly tendered exercise notices shall be accepted by the Corporation on the date of tender. The description in Rule 1905 of the assignment and allocation of CIP exercise notices parallels that in Rule 1803 for index options, and supplements Rules 803 and 804 just as Rule 1803 does. Rules 1906 and 1907 describe the settlement of CIP exercises, and parallel Rules 1805 and 1806, respectively, for index options. Rule 1908 describes the treatment of exercised CIPs to which a suspended Clearing Member is a party, and parallels Rule 1807 for index options.

The proposed changes to OCC's Rules are consistent with the purposes and requirements of Section 17A of the Act because they provide for the prompt and accurate clearance and settlement of transactions in CIPs. They do so by applying to CIPs substantially similar rules and procedures to those that have been used successfully in the clearance and settlement of transactions in index options. The proposed rule change is consistent with the safeguarding of funds and securities in OCC's custody or control or for which OCC is responsible in that it would apply to CIPs a system of safeguards which is substantially the same as OCC currently uses for options.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington DC 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 April 25, 1988.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: March 29, 1988.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-7318 Filed 4-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25513; File No. SR-MBS-87-6]

Self-Regulatory Organizations; MBS Clearing Corp.; Order Approving a Proposed Rule Change, on a Temporary Basis

On June 25, 1987, the MBS Clearing Corporation ("MBSCC") filed a proposed rule change (File No. SR-MBS-87-6), described below, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act") [1] to institute a recording, comparison, and margin collection service for government securities options contracts. MBSCC filed amendments to the proposed rule change on July 13, 1987, September 24, 1987, November 24, 1987, and March 8, 1988. On July 21, 1987, the Commission published notice of this proposed rule change in the **Federal Register** to solicit comments from interested persons.[2] No comments were received. As discussed below, this order approves the proposal on a temporary basis until July 1, 1988.

I. Description

MBSCC proposes to offer recording, comparison, and margin collection services for non-standardized options contracts [3] on U.S. Treasury notes and

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 24706 (July 15, 1987), 52 FR 27485.

[3] Non-standardized options differ from options commonly traded on the stock and commodities exchanges in that features selected by an exchange can not be varied by the parties. In contrast, parties to non-standardized options contracts may establish their own terms (*e.g.*, quantity, price, and expiration date) to meet their needs. Generally,

Continued

bonds.[4] MBSCC will not offer settlement services for exercised options. Options exercise and related delivery and payment obligations will not be eligible for processing through either the Settlement Balance Order ("SB)") or the Trade-for-Trade Systems.

The new government securities options recording service provides trade comparison and reporting services as well as collection of a good faith deposit (the Market Margin Differential) for each recorded options contract.[5] MBSCC will not guarantee any government securities trades and does not stand between participants as a party to trades in these options or securities.

Under the proposed recording service, participants on both sides of the trade will report information to MBSCC on T+1. Participants report information such as: The quantity of options traded, the price, the type of underlying issue (T-bond, or note), the interest rate, and the date the option contract expires. MBSCC will this information to prepare a Purchase and Sales Report, which MBSCC will distribute to each participant daily.

On T+2 MBSCC will collect the Market Margin Differential ("MMD") from the appropriate participant.[6] The collection of MMD protects participants from the exposure risk posed by adverse market movements between the time the government options contract is made and the time it expires, and provides participants with a greater assurance that the *contra party* will complete its obligation under the terms of the trade.

MBSCC will compute MMD only for "in the money" trades. Trades are "in the money" when the contract (strike) price is greater than the current market value [7] for puts and less than the current market value for calls.

MBSCC will calculate the MMD as follows: MBSCC will prepare a list of each participant's trades in each government security options contract (participants often make several trades in the same underlying security). For each class of government security options contracts, MBSCC will net the puts and calls to develop the participant's net buy or sell position. The net buy or sell position in each class will be multiplied by the current market value. If the participant is a net buyer, a credit position will be created. If the participant is a net seller, a debit position will be created. MBSCC then classifies the positions according to the month the option is to expire.

MBSCC will prepare a two-part report consisting of each participants' exceptional and basic requirements. The exceptional requirement displays all the participants' debits and credits which are to expire during the next month.[8] The basic requirement will display the participants' debits and credits which are to expire during the following months. MBSCC prepares a net position for the exceptional requirement and prepares a net position for the basic requirement. If the net figure for either the exceptional requirement or for the basic requirement is a credit, it is disregarded from further calculations. Debits from the exceptional requirement and from the basic requirement are added together. This total is multipled by 130%, and the resulting dollar figure is the participant's required MMD. Participants are notified of their MMD each day by telephone and by the Market Margin Differential Report.

After a government securities options trade is exercised or expires worthless, both sides of the trade report this fact to MBSCC and the trade is removed from the system. Then, upon request, MBSCC will refund the margin deposit to the appropriate participant.

MBSCC has proposed among others, the following changes to its rules: (a) The term "eligible securities" would be revised to include both mortgage backed securities and government securities; (b) only contracts for the purchase or sale of eligible mortgage backed securities would be eligible for clearance through the Trade-for-Trade or SBO system; (c) the provisions specifying the time for submitting trade input would be expanded to cover option contracts; (d) required trade data concerning participant's options trades in mortgage backed securities and in government securities would be specified; and (e) government securities would be eligible only for recording services and the computation and collection of market margin differential, not full clearing and settlement services. MBSCC also has made other minor changes to its rules.

II. MBSCC's Rationale

MBSCC states in its filing that the purpose of the proposal is to provide MBSCC with the authority to offer clearing and recording services for options contracts where the underlying contracts concern the purchase or sale of government securities. MBSCC believes there is a need for this service for two reasons: automated recording will provide processing efficiencies and cost savings similar to those achieved when MBSCC began providing similar services for mortgage-backed securities; [9] and several MBSCC participants have asked for such a service. Although settlement will be accomplished outside the system, MBSCC believes its recording and margin collection system will help to reduce the number of failed trades.

MBSCC believes that its facilities can provide the new service within its current operating systems. MBSCC expects to handle about 320 trades per month for options contracts on underlying securities valued at $3.2 billion. During two recent months, December 1987 and January 1988, MBSCC cleared approximately 366 and 461 mortgage-backed securities trades, evidencing contracts on approximately $3.7 and $4.6 billion in underlying mortgage-backed securities (respectively). MBSCC expects this new service to result in only about 16–24 additional trades per day, well within the capacity limits of its existing facilities.

III. Discussion

The Commission preliminarily believes that the proposal is consistent with the Act because it will facilitate the prompt and accurate clearing and recording of transactions in options contracts involving government securities. Accordingly, the Commission is approving MBSCC's proposal to provide this service to twelve firms on a temporary basis until July 1, 1988.

Although participants trade in non-standardized government options contracts because they like the flexibility such contracts offer to select

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options traded on securities exchanges have standard strike prices, quantities, and expiration dates; those terms are fixed to permit one option to be fungible with other options traded on the exchange.

[4] MBSCC Rule 1 defines government securities as "any securities other than Mortgage Backed Securities defined as government securities in section 3(a)(42) of the Securities Exchange Act of 1934, as heretofore or hereafter amended."

[5] MBSCC has informed the Commission that its government options recording service will use the same facilities and be provided in the same fashion as its mortgage backed securities recording service.

[6] The MMD formula MBSCC plans to use for these options is the same formula MBSCC uses to collect MMD from participants trading in Government National Mortgage Association (GNMA) options. *See* MBSCC Clearing Division Rules, Article IV, Rule 2, Section 2. *See also*, MBSCC's Clearing Division's Procedural Manual Exhibit B. II.

[7] Current market value is determined by polling 3–8 primary dealer participants at the end of each day.

[8] MBSCC also includes in the exceptional requirement government securities options trades with expiration dates which have passed until the participants submit cancellation reports requesting that these trades be removed from the system.

[9] Unlike the government options security service, mortgage-backed securities receive clearance and settlement services.

precise terms to meet their needs; such trading settlement preparation, and settlement is difficult. Trading in non-standardized government securities options contracts can be complicated because these contracts are not listed on the exchanges, so participants can not use exchanges to find *contra parties*. Instead they must negotiate the terms of each trade separately, and because the terms are non-standardized, the market for these options is more limited. They also must record and settle each trade manually. Preparation for settlement is difficult because there are no centralized recording, comparison, and margin collection services for non-standardized options contracts on government securities. MBSCC's proposed government securities options service may facilitate this type of trading by providing a centralized location to record information concerning each trade, allowing each side to review the records of each trade to resolve differences before settlement, decreasing the costs associated with resolving questioned trades, and providing for centralized collection of good faith deposits (*i.e.*, margin).

The proposal may provide several benefits to members that, taken together, potentially could promote the prompt and accurate clearance and settlement of government securities options contracts. Currently, each party to such a transaction keeps its own records of each transaction. Transmitting trade information to MBSCC may improve participants' recordkeeping by providing them with additional inventive to keep accurate information because their margin requirements will be based on this information. The proposed system also may decrease the number of failed trades by providing participants with a daily Purchase and Sales Report which lists attempted trades. Participants may use these reports to resolve differences before settlement and complete these trades.

The Commission believes that MBSCC has designed the proposal to be consistent with MBSCC's obligation to safeguard funds and securities directly within its control. MBSCC will use the same formula and facilities to calculate and collect MMD on government securities as it currently uses to calculate and collect MMD on mortgage-backed securities. Those facilities were reviewed in connection with MBSCC's registration as a clearing agency.[10]

[10] Securities Exchange Act Release No. 24046 (February 10, 1986), 52 FR 4218.

During the past five years, MBSCC has successfully handled numerous trades and safeguarded the association funds and securities.[11]

As noted above, the Commission has determined to approve the proposal on a temporary basis until July 1, 1988. The Commission believes that temporary approval is necessary to enable MBSCC, participants, and the Commission to gain experience with the government options contracts service and to identify any problems with or necessary changes to that service. During the temporary approval period, the Commission expects MBSCC to file under section 19(b) of the Act any changes to the proposal, including any expansion in the number of participants eligible to use this service. The Commission also directs MBSCC to report to the Commission, by June 15, 1988, statistics concerning the number of government options contracts which were cleared using this service. The Commission will consider permenant approval at the expiration of the temporary approval period.

IV. Conclusion

The the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act and, in particular, section 17A.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-MBS-87-6) be, and hereby is, approved on a temporary basis until July 1, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 25, 1988.

[FR Doc. 88-7268 Filed 4-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25520; File No. SR-NASD-87-43]

Self-Regulatory Organizations; Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Publication of Suspensions, Expulsions, Revocations and Monetary Sanctions

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") on October 23, 1987, and amended on March 11, 1988, the proposed rule change described in Items I, II, and III below, which Items have been prepared by the NASD. 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 NASD is filing herewith as a stated policy, practice or interpretation, amendments to the Resolution of the Board of Governors concerning Notice to Membership and Press of Suspensions, Expulsions, Revocations and Monetary Sanctions (the "Resolution") at Article V, section 1 of the NASD Rules of Fair Practice. The text of that part of the Resolution that is amended is set forth below. New text is italicized.

Notice to Membership and Press of Suspensions, Expulsions, Revocations, and Monetary Sanctions

The Association shall report to the membership and to the press pursuant to the procedures and at the times outlined herein any order of suspension, cancellation or expulsion of a member; or suspension or revocation of the registration of a person associated with a member; or suspension or barring of a member or person associated with a member form association with all members; or imposition of monetary sanctions of $10,000 or more upon a member or person associated with a member. *The Board of Governors may, in its discretion, determine to waive the notice provisons set forth herein as to an order of imposition of monetary sanctions of $10,000 or more upon a member or person associated with a member, under those extraordinary circumstances where notice would violate fundamental notions of fairness or work an injustice.*

* * * * *

(No change)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed

[11] From 1982 to 1986, the number of MBSCC's participants has doubled from 33 to 69, and the number of transactions successfully handled has increased at a greater rate. MBSCC's monthly settlement volume has increased from $3.5 billion to $55.6 billion, and its monthly trade volume has increased from 2,700 to 15,600. *See* MBSCC Clearing Corporation, Annual Report, at 1 (1986).

rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD 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 NASD recently amended the Resolution to provide for the publication of disciplinary actions resulting in monetary sanctions of $10,000 or more upon a member or person associated with a member. *See* SR-NASD-87-6. The NASD is proposing to amend the Resolution to permit the NASD to waive the publication of those disciplinary actions that would ordinarily be published by reason of the imposition of monetary sacntions of $10,000 or more in those cases where it is determined by the Board of Governors that publication would violate fundamental notions of fairness or work an injustice. The NASD believes that such discretionary authority will permit it to both effectuate its policy of publishing significant disciplinary actions in the public interest and for the guidance of its members and of refraining from publication when it would be manifestly unfair or unjust.

The statutory basis for the amendment to the Resolution can be found in section 15A(b)(6) of the Act, which provides, *inter alia*, that the rules of a national securities association shall be designed to promote just and equitable principles of trade and to protect investors and the public interest. Neither the promotion of just and equitable principles of trade nor the public interest will be compromised, because any decision to withhold publication will be premised upon a determination that publication is not necessary to serve these objectives.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the amendments to the Resolution will create no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR-NASD-87-43 and should be submitted by April 25, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: March 25, 1988.

[FR Doc. 88-7269 Filed 4-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-25523; File No. SR-NASD-88-10]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Extending Temporary Approval, on an Accelerated Basis, of the Proposal To Continue Operation of the Order Confirmation Transaction Service Enhancement to the NASDAQ System

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 17, 1988, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this ORDER to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD hereby files a proposed rule change, pursuant to section 19(b)(1) of the Act and Rule 19b-4 thereunder, to obtain a one-month extension of the Commission's temporary approval of the Order Confirmation Transaction ("OCT") service. The OCT service is a NASDAQ System enhancement that provides an auxiliary medium for NASD firms to communicate with one another and confirm the execution of orders. The operational parameters of this communications interface were described fully in the NASD's earlier rule filing, File No. SR-NASD-87-54, which the Commission approved on an interim basis for a ninety day period.[1] The instant filing proposes no change other than a brief extension of the Commission's temporary approval to May 11, 1988.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory 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 V below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this filing is to extend

[1] *See* Securities Exchange Act Release No. 25263 (January 11, 1988) approving File No. SR-NASD-87-54.

the Commission's temporary approval of the OCT service for a term of one month. This extension will allow the NASD to finalize a related filing that will see permanent approval of the OCT service. Additionally, the extension will permit continued availability of the OCT service while the Commission deliberates permanent approval of this NASDAQ System enhancement.

Commission approval of the instant filing is justified for the reasons set forth in the NASD's original filing (*i.e.*, File No. SR–NASD–87–54). Specifically, the OCT enhancement was designed to expand the communications facilities available to support the continuous, orderly operation of the NASDAQ marketplace during difficult or unusual market conditions like those experienced during October, 1987. The OCT service can facilitate processing orders during market extremes by supplementing the telephonic capacity of market makers to interact with one another. It is recognized that the OCT enhancement does not permit the same degree of information exchange and personal interactions normally attendant to the negotiation of transactions by telephone. However, from a functional standpoint, the OCT service permits members to continue to conduct business with one another by communicating the same basic elements of information that are needed to negotiate and confirm executions via telephone; the major difference is that electronic messages are substituted for verbal messages. Further, the OCT enhancement enables NASD members to realize certain efficiencies that are most desirable in periods of extreme market conditions, but unavailable when transactions are affected via telephone. For example, consummation of a transaction through the OCT service yields a printed confirmation to both parties to the transaction and obviates the separate entry of a trade report for round-lot executions in NASDAQ/NMS issues. Further, because orders executed through the OCT service yield locked-in trades, this feature can reduce the volume of uncompared trades (and the attendant allocation of resources needed to resolve them) during periods in which overall market volume surges dramatically. In sum, the OCT enhancement supplements both the communications and order processing capabilities of NASD members. Consequently, continuation of the OCT service buttresses the capacity of the NASDAQ marketplace to function efficiently during periods of extreme volume and/or price volatility.

The NASD believes that Sections 11A and 15A of the Act provide the statutory bases for an extension of the Commission's temporary approval of the OCT service. Specifically, subsections (A)–(D) of section 11A(a)(1) articulate the broad findings and policy goals which the Congress intended to guide the operational enhancement of the nation's securities markets. In this context, the Congress underscored the importance of applying new data processing and communications techniques to assure: (1) More efficient and effective market operations; (2) economically efficient execution of securities transactions; (3) broad availability of information with respect to quotations and transactions in securities; and (4) the optimal execution of investors' orders. The NASD posits that the design and operational features of the OCT enhancement comport fully with these Congressional directives.

The instant proposal is also supported by subsection (b)(6) of section 15A under the Act. Among other things, that provision requires that the NASD's rulemaking initiatives be designed to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities; (3) perfect the mechanism of a free and open market and a national market system; and (4) protect investors and the public interest. As described in File No. SR–NASD–87–54, the OCT service augments the communications and order handling capacities of NASDAQ market makers. Although usage of the OCT enhancement is voluntary, the NASD views it as a vital, auxiliary communications system that will enable market makers to conduct business with one another when telephonic communications are unavailable or infeasible due to unusual conditions. Continuing to provide such a back-up capability promotes continuity in market operations in order to service all classes of investors. This result is fully consistent with the above-cited portions of section 15A(b)(6) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

Continuation of the OCT Service does not involve the imposition of any competitive burden. This conclusion is supported by several factors. First, the OCT service is an enhancement of the facilities that support market making in NASDAQ securities by member firms. This type of enhancement does not alter the established terms of access respecting vendors' receipt of NASDAQ market information for redistribution to diverse groups of end-users. Second, the OCT enhancement does not pose a competitive burden upon NASDAQ market makers and other eligible members. By design, the OCT service is an auxiliary medium of communication that eligible firms may employ to conduct business when telephonic communication is not feasible. Accordingly, the OCT service has been structured to accommodate conveyance of the same basic elements of information which firms communicate in negotiating and executing transactions via the telephone. Third, the OCT enhancement does not impose more stringent market making obligations on participating firms. Rather, it provides an alternative, voluntary mechanism which market makers can use to conduct their routine business. Fourth, firms voluntarily electing to utilize the OCT service must have clearing arrangements through a registered national clearing entity. The NASD believes that this requirement does not constitute an undue limitation on voluntary use of the service. Moreover, the potential benefits to the industry and public investors from voluntary participation in the OCT service materially outweigh the clearing requirement's minimal impact upon ineligible firms during periods of extreme or unusual market activity.

It is believed, therefore, that no competitive burden will result from the Commission's approval of this filing.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

The NASD requests the Commission to find good cause for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register**, and, in any event, by April 11, 1988, the date the Commission's original

temporary approval of the OCT service will expire.[2] Absent accelerated approval, the NASD will be obliged to terminate the OCT service and thereby deprive the NASDAQ marketplace of a critical back-up capability which might be needed to cope with unusual market conditions. On the other hand, public investors and NASD member firms would benefit from maintenance of the technological safeguard embodied in the OCT enhancement. As a pure marketplace enhancement, the OCT service has no impact whatsoever on the ability of securities information vendors to service their customers. Additionally, continuation of the OCT service does not entail new or more stringent market making obligations on the affected market makers. Finally, retail firms that are eligible to use the OCT service do not incur any additional obligations beyond those already incurred in consummation of transactions via the telephone. In light of these factors, the NASD requests that the Commission approve the proposed rule change on an accelerated basis.[3]

IV. Commission Approval of the Proposed Rule Change

The Commission finds that the proposed rule change, which provides for the continued operation of the OCT service, is consistent with the statutory goals set forth in subsections (A)–(D) of section 11A(a)(1) of the Act. Those provisions stress the importance of implementing communications enhancements that advance the efficiency and effectiveness of a securities market in servicing the needs of all investors. The Commission also recognizes that the goal of the OCT enhancement is to provide an auxiliary communications medium that should assure continuous operation of the NASDAQ marketplace under extreme conditions like those that occured in October, 1987. Absent accelerated approval, the NASD would be obliged to terminate the OCT service on April 11, 1988 and thereby eliminate the technological safeguard that the OCT service was designed to provide. That result would impair the capacity of the NASDAQ marketplace to accommodate a surge in trading volume and/or price volatility. Because the OCT enhancement supplements the operational capabilities of NASD member firms in order that they may service investors under extreme or unusual market conditions, continuance of this service conforms with the Congressional goals expressed in subsections (A)(D) of section 11A(a)(1) of the Act.

Additionally, continuation of the OCT service is consistent with various policy goals contemplated by section 15A(b)(6) of the Act. In this regard, the Commission notes that the design and operational features of the OCT service should serve to: (1) Promote just and equitable principles of trade; (2) foster cooperation and coordination among persons engaged in regulating, clearing, and processing transactions in NASDAQ and NASDAQ/NMS securities; (3) perfect the mechanisms that support the continuous and orderly operation of the NASDAQ marketplace; and (4) foster protection of investors and of the public interest generally. Furthermore, the NASD must submit another proposed rule change seeking permanent approval for the OCT system. When notice of that proposed rule change is given, commentators will have an additional opportunity to comment on OCT.

Based on the foregoing factors, the Commission finds good cause for granting accelerated approval of the proposed rule change, prior to the thirtieth day after the date of publication of notice of filing thereof, pursuant to section 19(b)(2)(B) of the Act. This action effects a one-month extension of the Commission's temporary approval of the OCT service until May 11, 1988.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–88–10 and should be submitted by April 25, 1988.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular sections 15A(b)(6) and 11(A)(a)(1) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved for a period terminating on May 11, 1988.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

Dated: March 28, 1988.

[FR Doc. 88–7263 Filed 4–1–88; 8:45 am]

BILLING CODE 8010–01–M

[2] *See* footnote 1.

[3] During the term of the extension, the NASD will submit another filing, pursuant to Rule 19b–4 under the Act, to gain permanent approval for the OCT enhancement.

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

March 29, 1988

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:

Birmingham Steel Corporation
Common Stock, $0.01 Par Value (File No. 7–3165)

Meredith Corporation
Common Stock, $1.00 Par Value (File No. 7–3166)

Russ Berrie and Company, Inc.
Common Stock, $0.10 Par Value (File No. 7–3167)

Southdown, Inc.
Common Stock, $2.50 Par Value (File No. 7–3168)

Allegheny Ludlum Corporation
Common Stock, $.10 Par Value (File No. 7–3169)

Ball Corporation
Common Stock, No Par Value (File No. 7–3170)

Dover Corporation
Common Stock, $1.00 Par Value (File No. 7–3171)

Kellwood Company
Common Stock, No Par Value (File No. 7–3172)

Media General, Inc.
Class A Common Stock, $5.00 Par Value (File No. 7–3173)

Sunstrand Corporation
Common Stock, $1.00 Par Value (File

No. 7-3174]

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 April 18, 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. 88-7267 Filed 4-1-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-18096]

Application and Opportunity for Hearing; Piedmont Aviation, Inc.

March 29, 1988.

Notice is hereby given that Piedmont Aviation, 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 three indentures dated as of March 1, 1988 (the "Indentures") 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 the 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 that 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 Indentures, the Company will issue $58,851,000 aggregate principal amount of its Equipment Trust Certificates, (the "Certificates"), Series A-C ("Series"), respectively. A Series will be issued under each Indenture in the principal amount of $19,617,000. The Certificates were registered under the Securities Act of 1933 (the "1933 Act") and the Indentures were qualified under the Act.

(2) There is no default under any of the Indentures.

(3) The Company's obligations with respect to each series of Certificates are and will be secured under separate indentures by separate security interests in separate and distinct property.

(4) Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as obligor 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 any of the 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 22-18096, 450 Fifth Street, NW., Washington, DC 20549.

Notice is further given that any interested persons may, not later than April 22, 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 and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88-7264 Filed 4-1-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16344; File No. 812-6984]

Security Benefit Life Insurance Co. et al.; Application for Exemption

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940, as amended, (the "1940 Act").

Applicants: Security Benefit Life Insurance Company ("Security Benefit") and VARILIFE, a Separate Account of Security Benefit Life Insurance Company ("VARILIFE Separate Account" or the "Separate Account").

Relevant 1940 Act Sections: Exemption requested under section 6(c) from the provisions of sections 2(a)(32), 22(c), 27(c)(1), and 27(d) and Rule 22c-1 and Paragraphs (b)(12) and (b)(13) of Rule 6e-3(T) under the 1940 Act.

Summary of Application: Applicants seek an order granting exemptive relief to the extent necessary to permit state and local premium taxes to be collected on a deferred basis over ten years from the Policy Date and, where not fully recovered, upon lapse or surrender of a policy.

Filing Date: The application was filed on February 3, 1988.

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 request must be received by the SEC by 5:30 p.m., on April 23, 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 Fifth Street, NW., Washington, DC 20549. Applicants, c/o Allan S. Mostoff, Esq., 1730 Pennsylvania Avenue, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Wendell M. Faria, Staff Attorney, at (202) 272-3450, or Lewis B. Reich, Special Counsel, at (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

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. Security Benefit is a mutual life insurance company organized under the laws of the State of Kansas and authorized to conduct its business on January 2, 1950.

VARILIFE Separate Account is a separate investment account of Security Benefit established under Kansas law on June 19, 1984, and is used as a funding vehicle for flexible premium variable life insurance policies ("Policy" or "Policies") Security Benefit issues. The Separate Account is divided into five sub-accounts. Net amounts allocated by Policyowners to these sub-accounts are invested at net asset value in shares of a corresponding Series of the SBL Fund (the "Fund").

The Fund is a diversified, open-end management investment company of the series type. It currently has five separate portfolios ("Series"), each of which pursues different investment objectives and policies. The Series of the Fund are Series A (Equity Series), Series B (Equity Income Series), Series C (Cash Series), Series D (High Income Series), and Series E (High Quality Income Series).

All dividends and capital gains distributions received from a Fund Series are automatically reinvested in such Series at net asset value. Fund shares will be redeemed by Security Benefit at their net asset value to the extent necessary to make payments under the Policies. Security Management Company ("Security Management") serves as Investment Adviser to each Series of the Fund.

2. The Separate Account serves as a funding vehicle for Security Benefit's flexible premium variable life insurance Policies, which are designed to provide lifetime insurance protection on an insured while offering Policyowners flexibility in the payment of premiums and selection of benefits. VARILIFE Policies generally require large initial premium payments—normally at least $10,000—though Security Benefit may allow lower initial premiums under certain circumstances.

3. The initial premium is allocated at first to the Guaranteed Account, which is part of Security Benefit's general account. Ten days after a Policy is issued, the invested amount is allocated in accordance with a Policyowner's instructions among the VARILIFE Series comprised by the Separate Account and the Guaranteed Account. Any portion of the premium payments allocated to the VARILIFE Series is invested in one or more of the corresponding Series of the SBL Fund. The "Policy Value" under the Policy will vary based upon the investment performance of the Series to which it is allocated and charges and deductions under the Policy, among other things. No minimum amount of Policy Value is guaranteed.

4. Upon receipt of due proof of the Insured's death, Security Benefit will pay a death benefit to the named beneficiary. The death benefit is the greater of the Specified Amount under the Policy or a specified percentage of the Policy Value on the date of death, or, if the date of death is not a business day, on the next business day on which policy unit values are determined.

5. A Policyowner may fully surrender a Policy for the Policy's Cash Surrender Value. The Cash Surrender Value of the Policy equals the Policy Value net of any indebtedness less any applicable surrender charges. The Cash Surrender Value is computed as of the end of the valuation period during which the surrender request is received at Security Benefit's Home Office. No partial surrenders are allowed.

6. Security Benefit assesses various types of charges and deductions in connection with a VARILIFE Policy. A deduction of 2.5% of each premium represents the average amount of that Security Benefit considers necessary to pay all premium taxes imposed. Security Benefit reserves the right to increase the amount deducted for premium taxes if state taxes increase. A "Monthly Deduction" from Policy Value is made on a Policy's "Monthly Date" to cover the cost of insurance and administrative charges.

Security Benefit makes a daily charge against the net assets of the Separate Account to compensate Security Benefit for mortality and expense risks assumed. Investment advisory fees and operating expenses of the Fund are paid by the Fund.

Security Benefit imposes, upon full surrender of a Policy, a Surrender Charge (contingent deferred sales charge) computed by multiplying the total amount of premiums paid times the applicable surrender percent on the surrender date. The percentage of premiums paid declines with the number of years that the Policy has been in force.

7. Applicants propose to defer the collection of premium taxes and deduct the charge from a Policyowner's Policy Value in equal monthly installments over a ten-year period, starting with the first Monthly Date following payment of a premium. During the ten-year period, the charge for premium taxes will be deducted as part of the Monthly Deduction. Under the proposal, in the event of a full surrender of the Policy prior to the tenth anniversary of the Monthly Date following payment of a premium, a Policyowner would receive his or her Cash Surrender Value less any unrecovered premium tax. In the event that a Policy lapses before the tenth anniversary of the Monthly Date following payment of a premium, Security Benefit would retain any unrecovered premium tax under a Policy.

8. Applicants believe that imposition of the charge for premium taxes in this manner is more favorable to Policyowners than a charge that is deducted entirely from premiums at the time of payment.

9. Applicants represent that the deferred contingent premium tax charge is "cost-based" in accordance with its understanding of the Commission's interpretation of sections 26 and 27 and certain exemptions from these provisions in paragraph (b)(13) of Rule 6e-3(T). Applicants, therefore, do not anticipate making a profit from deducting such charge.

10. Applicants further represent that the total amount charged to any Policyowner is no greater than it would have been if it were designed as a front-end charge. The charge does not take into account the time value of money and the consequential cost to Security Benefit of deferring it.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,

Secretary.

Dated: March 29, 1988.

[FR Doc. 88-7265 Filed 4-1-88; 8:45 am]

BILLING CODE 8010-01-M

[File No. 22-18095]

Application and Opportunity for Hearing: USAir, Inc.

March 29, 1988.

Notice is hereby given that USAir, 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 ten indentures between the Company and the Bank, four dated as of March 1, 1988 (the "March Indentures") and six dated as of November 30, 1987 (the "November Indentures"), each of which were heretofore qualified under the Act (collectively, the "Indentures"), 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 the Bank from acting as trustee under any one of the 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 that 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 March Indentures, the Company will issue $78,498,000 aggregate principal amount of its Equipment Trust Certificates (the "March Certificates"), Series A–D (the "March Series"), respectively. Series A and B will be issued, each under a March Indenture, in the principal amount of $19,828,000. Series C and D will be issued, each under a March Indenture, in the principal amount of $19,421,000. The March Certificates were registered under the Securities Act of 1933 (the "1933 Act") and the March Indentures were qualified under the Act.

(2) Pursuant to the November Indentures, the Company has issued $124,800,000 aggregate principal amount of its Equipment Trust Certificates (the "November Certificates"), Series A–F (the "November Series"). A Series has been issued under each November Indenture in the principal amount of $20,800,000. The November Certificates were registered under the 1933 Act and the November Indentures were qualified under the Act. (Collectively, the March Certificates and November Certificates are referred to herein as the "Certificates" and the March Series and November Series are referred to herein as the "Series.")

(3) There is no default under any of the Indentures.

(4) The Company's obligations with respect to each Series of Certificates are and will be secured under separate Indentures by separate security interests in separate and distinct property.

(5) Such differences as exist among the Indentures referred to herein and the respective obligations of the Company as obligor 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 any of the 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 22–18095, 450 Fifth Street NW., Washington, DC 20549.

Notice is further given that any interested persons may not later than April 22, 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 and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 88–7266 Filed 4–1–88; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration, Region I Advisory Council, located in the geographical area of Hartford, Connecticut, will hold a public meeting at 8:00 a.m., on Monday, May 2, 1988, at the Yale Inn, 900 East Main Street, Meriden, Connecticut 06450, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Henry A. Povinelli, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut—(203) 240–4670.

Jean M. Nowak,

Director, Office of Advisory Councils.

March 29, 1988.

[FR Doc. 88–7307 Filed 4–1–88; 8:45 am]

BILLING CODE 8025–01–M

TENNESSEE VALLEY AUTHORITY

Privacy Act of 1974; Systems of Records

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notices of systems of records.

SUMMARY: In accordance with 5 U.S.C. 552a(e)(4), TVA is publishing a notice of the existence and character of each TVA system of records. TVA–2, "Personnel Files—TVA," contains three new routine uses; TVA–13, "Employment Applicant Files—TVA," contains one new routine use; and TVA–1, TVA–2, TVA–3, TVA–5, TVA–6, TVA–7, TVA–8, TVA–9, TVA–11, TVA–12, TVA–13, TVA–14, TVA–15, TVA–16, TVA–18, TVA–19, TVA–21, TVA–22, TVA–23, TVA–26, and TVA–31 each contain a revision to the routine use for litigation. TVA revised one routine use related to administrative proceedings contained in TVA–31, "OIG Investigative Records—TVA," and consolidated and made uniform the routine uses related to administrative proceedings in TVA–1, TVA–2, TVA–5, TVA–8, TVA–9, TVA–11, TVA–13, TVA–14, TVA–18, TVA–19, TVA–21, and TVA–23. TVA has deleted the notices covering systems of records entitled TVA–17, "Management Appraisal Records—TVA," and TVA–25, "Handicap Services and Planning Records—TVA," which records have been incorporated into other systems. TVA is also publishing notices covering three new systems of records: TVA–32, "Call Detail Records—TVA"; TVA–33, "Office of Nuclear Power Call Detail Records–TVA"; and TVA–34, "Project/Tract Files—TVA." TVA has also corrected minor typographical and stylistic errors in previously existing notices and has updated those notices to reflect TVA organizational changes.

FOR FURTHER INFORMATION CONTACT: Ronald E. Brewer at (615) 751–2520.

SUPPLEMENTARY INFORMATION: On October 23, 1987 (52 FR 39738), TVA published notices of systems of records; proposed new systems of records; deleted systems of records; and proposed new and revised routine uses for existing systems of records. TVA also made corrections to minor typographical and stylistic errors which appeared in TVA's publication of its notices of systems of records dated August 26, 1983 (48 FR 38922) and made changes to reflect TVA's current organizational structure. Reports were submitted to Congress and the Office of Management and Budget (OMB) on October 16, 1987 pursuant to the Privacy

Act and OMB Circular No. A-130. No comments were received in response to the reports. In addition, no public comments were received on the new and revised routine uses. Accordingly, TVA is today publishing notices of its systems of records in order to make available in one place in the **Federal Register** the most up-to-date information about those systems.

Further description of changes made in TVA's notices of systems of records can be found in the Supplementary Information section of TVA's October 23, 1987 notice (52 FR 39738). This document gives notice that the following TVA systems of records are in effect:

Table of Contents

TVA-1

SYSTEM NAME:

Apprentice Training Record System—TVA.

SYSTEM LOCATION:

Labor Relations Staff, Tennessee Valley Authority, Knoxville, Tennessee 37902; Division of Personnel, Information Management Systems Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902; Computing Operations Branch, Tennessee Valley Authority, Chattanooga, Tennessee 37401; all TVA locations where apprentices are employed.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TVA apprentices.

CATEGORIES OF RECORDS IN THE SYSTEM:

Employment, qualifications, and evaluation information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Apprenticeship Act of 1937, 50 Stat. 664; TVA Act of 1933, 16 U.S.C. 831-831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Bureau of Apprenticeship and Training, the Veterans' Administration, Tennessee Valley Trades and Labor Council, and the State and local government agencies for reporting and evaluation purposes.

To respond to a request from a Member of Congress regarding the status of an apprentice.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide the following information to a prospective employer of a TVA or former TVA employee: job description, dates of employment, reason for separation.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, microfiche, and in file folders.

RETRIEVABILITY:

Records are indexed by name, craft, job code, union code, and social security number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Records are maintained from two to five years in accordance with established TVA record retention schedules and are then transferred to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Labor Relations, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals seeking to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, craft, and location of employment.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the system manager named above. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise

that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualification for appointment or promotion in the Federal service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; General Aptitude Test Battery scores from State employment security office; references from employers and military and educational institutions; and evaluations from joint committee on apprenticeship.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f) (2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing and examination material would compromise the objectivity of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k) (5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA-2

SYSTEM NAME:

Personnel Files—TVA.

SYSTEM LOCATION:

Division of Personnel, Tennessee Valley Authority, Knoxville Tennessee 37902; Division of Personnel, Information Management Systems Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902; area employment offices in Knoxville, Chattanooga, Muscle Shoals, and Nashville; construction project employment offices; Computing Operations Branch, Tennessee Valley Authority, Chattanooga, Tennessee 37401; National Personnel Records Center, St. Louis, Missouri 63118. Security/suitability investigatory files are located separately from other records in this system. Information on education, career counseling, or job performance may be maintained by the TVA organization that provides the training or career counseling or that employs the individual and by Equal Opportunity Staff. Duplicate or certain specifically temporary information may be maintained by division personnel officers, supervisors, and administrative officers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TVA employees and applicants for employment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to education; qualifications; work history; interests and skills; test results; performance evaluation; career counseling; personnel actions; job description; salary and benefit information; service dates, including other Federal and military service; replies to congressional inquiries; medical data; and security investigation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 10577; Executive Order 10450; Executive Order 11478; Executive Order 11222; Veterans' Preference Act of 1944, 58 Stat. 387, as amended; Equal Employment Opportunity Act of 1972, Pub. L. 92–261, 86 Stat. 103; various sections of Title 5 of the United States Code related to employment by TVA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To disclose test results to State employment services.

To a State employment security office in response to a request relating to a former employee's claim for unemployment compensation.

To respond to a request from a Member of Congress regarding the status of an employee, former employee, or applicant.

To refer, where there is an indication of a violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To request from any pertinent source, directly or through a TVA contractor engaged at TVA's direction, information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide the following information, as requested, to a prospective employer of a TVA or former TVA employee: job descriptions, dates of employment, and reasons for separation.

To provide information as requested to the Office of Personnel Management pursuant to Executive Orders 10450 and 10577 and other laws.

To any agency of the Federal Government having oversight or review authority with regard to TVA activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To transfer information necessary to support a claim for life insurance benefits under Federal Employees' Group Life Insurance to Office of Federal Employees' Group Life Insurance.

To transfer information regarding claims for health insurance benefits to health insurance carrier.

To union representatives in exercising their responsibilities under TVA collective-bargaining agreements.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To TVA contractors and subcontractors engaged at TVA's direction in studies and evaluation of TVA personnel management and benefits or the investigation of nuclear safety, reprisal, or other matters involving TVA personnel practices or policies.

To provide pertinent information to local school districts and other government agencies in order to study

TVA project impacts and to aid school districts in qualifying for assistance under Pub. L. 81–874 and other laws.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To commemorate the month and day of employee birthday anniversaries.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices and microfiche.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Personal History Records:

Nonmicrofilmed records stored at National Personnel Records Center and microfilmed records stored at TVA are destroyed 75 years after birth date of employee or 60 years after date of earliest document in the record if the date of birth cannot be ascertained. Reference copies are destroyed when no longer needed.

Congressional inquiries are retained indefinitely; test records are retained 10 years; occupational register cards are retained 1 year, with the exception of apprentices which are retained for 5 years; some information maintained on magnetic tape is erased after 1 year, records are disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the Chief, Employment Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902. Requests should include the individual's full name, employing division, job title, and date of birth. A social security number is not required but may expedite TVA's response.

In addition, current employees should address inquiries also to their supervisors or personnel officers.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the Chief, Employment Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902. In addition, current employees may present requests for access to their supervisors or the personnel officer of the employing division. Requests should include the individual's full name, employing division, job title, and date of birth. A social security number is not required but may expedite TVA's response. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or access to classified information to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the Chief, Employment Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; educational institutions; former employers; and other reference sources; State employment services; supervisors and other TVA personnel or personnel records; medical officers; other Federal agencies.

In addition to the above sources, security/suitability investigatory files contain information from law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f) (2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k) (5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA–3

SYSTEM NAME:

Cooperative Training Program for Construction Craftsmen—TVA.

SYSTEM LOCATION:

Office of Natural Resources and Economic Development, Tennessee Valley Authority, Knoxville, Tennessee 37902; construction project offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Participants in the Cooperative Training Program for Construction Craftsmen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information; evaluations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To State employment services and prospective employers for use in placement of the student.

To request information from a Federal, State, or local agency or from private individuals, if necessary, to obtain information relevant to a TVA decision within the purposes of this system of records.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local

charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To the appropriate agency, whether Federal, State, or local in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Records will be retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Manager of Natural Resources and Economic Development, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to determine if information on them is maintained in this system of records should address inquiries to the system manager named above.

RECORD ACCESS PROCEDURES:

Requests for access should be addressed to the system manager named above.

Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualification for appointment or promotion in the Federal Service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest or amend information about them in this system of records should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains; instructors.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f) (2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k) (5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA-4

SYSTEM NAME:

Demonstration Farm Records—TVA.

SYSTEM LOCATION:

Agricultural Institute, Tennessee Valley Authority, Muscle Shoals, Alabama 35660.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Tennessee Valley farmers participating in TVA farm demonstration programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Agricultural, investment, income, and labor information. The information in this system is not used in any determination about the rights, benefits, or privileges of an individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system of records may be disclosed to State extension services and the U.S. Department of Agriculture for use in program evaluation and in assistance to program participants.

To request information from a government agency or private individual where such information may be relevant to providing additional assistance under this program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices, punched cards, microfilm and microfiche.

RETRIEVABILITY:

Records are indexed by an assigned code.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. All records are kept in secured facilities and locked when unattended.

RETENTION AND DISPOSAL:

Records are retained for an indefinite period.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Agricultural Institute, Tennessee Valley Authority, Muscle Shoals, Alabama 35660.

NOTIFICATION PROCEDURE:

Individuals upon whom information is maintained in this system of records are aware of the fact through participation in the program. However, inquiries may be addressed to the system manager named above. Requests should include the individual's full name and State and county of the farm.

RECORD ACCESS PROCEDURES:

All information maintained in this system of records has been supplied by the subject individual. However, requests for access may be directed to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The information in this system is solicited from the individual to whom the record pertains by State extension services and universities.

TVA-5

SYSTEM NAME:

Discrimination Complaint Files—TVA.

SYSTEM LOCATION:

The following locations of the TVA Equal Opportunity Staff: Tennessee Valley Authority, Knoxville, Tennessee 37902; Chattanooga, Tennessee 37401; Muscle Shoals, Alabama 35660.

Duplicate copies may be maintained in the files of the TVA division where the complaint originated.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or applicants who have received counseling or filed complaints of discrimination based on race, color, religion, sex, national origin, age, or handicap.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains information or documents relating to a decision or determination made by TVA or the Equal Employment Opportunity Commission affecting an individual. The records consist of the initial appeal or complaint, letters or notices to the individual, record of hearings when conducted, materials placed into the record to support the decision or determination, affidavits or statements, testimonies of witnesses, investigative reports, and related correspondence, opinions, and recommendations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 11478; 42 U.S.C. 2000e–16; 29 U.S.C. 633a.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

A report of each complaint is made to the Equal Employment Opportunity Commission. If an administrative appeal is filed, the entire file is disclosed to the Equal Employment Opportunity Commission.

To the employee's representative.

To respond to a request from a Member of Congress regarding the status of a complaint.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To TVA consultants, contractors, and subcontractors who are engaged in studies and evaluation of TVA's administration of its equal employment opportunity program or who are providing support services to the program.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in this system are kept in file folders.

RETRIEVABILITY:

Records in this system are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those personnel whose official duties require such access.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Equal Opportunity, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals who have filed discrimination complaints are aware of that fact. However, inquiries may be addressed to the system manager named above. Individuals should provide their full name, the approximate date of their complaint, and their employing organization, if employed.

RECORD ACCESS PROCEDURES:

Individuals who have filed a discrimination complaint have been provided a copy of the record. However, an individual may gain access to the official copy of the complaint record by writing the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals who have filed a discrimination complaint have had an opportunity during the complaint procedure to amend their record. However, request for amendment or correction of items not involving the complaint procedure may be addressed to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; TVA personnel and other records; witnesses.

TVA–6

SYSTEM NAME:

Employee Accident Information System—TVA.

SYSTEM LOCATION:

Division of Occupational Health and Safety, Muscle Shoals, Alabama 35660.

Accident reports may also be maintained in the file of the employing organization.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees who have sustained a work-related injury or illness or have been involved, as the operator of a TVA vehicle, in a vehicular accident.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information related to the accident, injury, or illness.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Occupational Safety and Health Act of 1970, Pub. L. 93–237, 87 Stat. 1024; Executive Order 12196.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of Labor as required by the Occupational Safety and Health Act.

To the Office of Workers' Compensation Programs in relation to an individual's claim for compensation.

To respond to a request from a Member of Congress regarding the status of an employee.

To provide information to a Federal agency, in response to its request in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is maintained on automated data storage devices and in file folders.

RETRIEVABILITY:

Records are indexed by name, date of birth, and social security number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Records are retained for five years, and after that period are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Tennessee Valley Authority, Director of Occupational Health and Safety, Muscle Shoals, Alabama 35660.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, date of birth, and approximate date of injury.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; TVA medical records; witnesses of accidents and injuries, including appraisers of property damage.

TVA-7

SYSTEM NAME:

Employee Accounts Receivable—TVA.

SYSTEM LOCATION:

Division of the Comptroller, Tennessee Valley Authority, Knoxville, Tennessee 37902; Office of the General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees who:

Authorize a payment for specified purposes in their behalf; receive overpayment of earnings; receive duplicate payments; are otherwise indebted to TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information concerning indebtedness and repayment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 55; Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on punch cards, printouts, invoices, and posting documents.

RETRIEVABILITY:

Records are indexed by payroll number, social security number, badge number, name, or invoice number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Punch cards disposed of in 3 months, printouts in 3 years, invoices in 7 years and posting documents in 50 years.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and employing organization. Provision of the social security number is not required, but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals who seek access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in the system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA payroll records; TVA disbursement voucher records.

TVA-8

SYSTEM NAME:

Employee Alleged Misconduct Investigatory Files—TVA.

SYSTEM LOCATION:

Office of the General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees about whom a complaint of misconduct during employment has been made.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information regarding conduct during employment with TVA which may be in violation of law or regulations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

TVA Act, 16 U.S.C. 831–831dd; Executive Order 10450; Executive Order 11222; Hatch Political Activity Act, 5 U.S.C. 7324–7327; 28 U.S.C. 535.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To provide information as requested to the Office of Personnel Management pursuant to Executive Orders 10450 and 10577 and other laws.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by individual name or investigation number.

SAFEGUARDS:

These records are stored in a locked GSA-approved security container. Access to the records is limited to TVA attorneys and their administrative assistants who have a need for them in the course of TVA business and to other TVA employees whose need is approved by Office of the General Counsel management.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

This system of records is exempt from the requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD ACCESS PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD SOURCE CATEGORIES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempted from subsections (c)(3); (d); (e)(1); (4)(G), (4)(H), (4)(I); and (f) of 5 U.S.C. 552a (Section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

TVA-9

SYSTEM NAME:

Medical Record System—TVA.

SYSTEM LOCATION:

Division of Medical Services, Tennessee Valley Authority, Chattanooga, Tennessee 37401; all TVA medical facilities; Computing Operations Branch, Chattanooga, Tennessee 37401; National Records Center, St. Louis, Missouri 63118; District Offices, Office of Workers' Compensation Programs.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for TVA employment, employees, former employees, official visitors, contractual assignees to TVA, interns, externs, employees of TVA

contractors, and other Federal agencies who are examined under contract.

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical information pertinent to an individual's employment, official visit, or contractual work with TVA or other Federal agencies, including medical and psychological history, examination, testing, counseling, treatment, and related information; workers compensation claim records; rehabilitation records; and information related to employee participation in the alcohol-drug abuse program.

Medical and psychological information relative to nuclear plant security.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; 5 U.S.C. 7902; Federal Employees' Compensation Act, 5 U.S.C. Chapter 81, 5 U.S.C. Chapter 87 (Medical information relating to life insurance program); 5 U.S.C. 3301; Occupational Safety and Health Act of 1970, Pub. L. 93–237, 87 Stat. 1024, Pub. L. 91–616, Federal Civilian Employee Alcoholism Program and Pub. L. 92–255, Drug Abuse Among Federal Civilian Employees, which are amended in regard to confidentiality of records by Pub. L. 93–282; Public health laws (State and Federal) related to the reporting of health hazards, communicable diseases or other epidemiological information; Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1233.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Compensation claim records are used for adjudicating claims and providing therapy. Appropriate information is exchanged with physicians, hospitals, and rehabilitation agencies approved by the Office of Workers' Compensation Programs for service to injured employees.

Medical records are used for employee population health monitoring which includes routine clinical and epidemiological investigations. Such studies may require the transfer of selected items of medical data to health-related agencies, organizations, or professionals for the purpose of obtaining specialized clinical consultation, compiling vital and health statistics, or conducting biomedical investigations.

Alcohol-drug program records may be exchanged with a physician or treatment center working with an employee, or in accordance with the provisions of Pub. L. 93–282.

Information in the Medical Record System provided to officials of other Federal agencies responsible for other Federal benefit programs administered by Office of Workers' Compensation Programs, Retired Military Pay Centers, Veterans' Administration, Social Security Administration, and private contractors engaged in providing benefits under Federal contracts.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, the issuance of a security clearance, the reporting of an investigation of an employee, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

To respond to a request from a Member of Congress regarding an employee.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To transfer information regarding claims for health insurance or disability benefits to the health insurance carrier or plan participant.

To request information from a Government agency or private individual, if necessary, to obtain information relevant to a TVA decision within the purposes of this system of records.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To TVA consultants, contractors, and subcontractors who are engaged in studies and evaluation of TVA's administration of its medical program or who are providing support sources to the program.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To provide information to private physicians and other health care professionals or facilities designated by an employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, microfilm, and in file folders.

RETRIEVABILITY:

Records are indexed by name, social security number, date of birth, and employee compensation case number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards. Special instructions issued to medical staff employees assure the confidentiality of medical records.

RETENTION AND DISPOSAL:

Records are maintained in accordance with TVA rules and regulations approved by the National Archivist. Retention schedules specify the length of time various records are kept. Active medical records are kept indefinitely. Inactive files are kept in the Division of Medical Services, TVA, for 6 years following the date of last medical record entry. They are then purged and essential record material is microfilmed. The paper records are destroyed by recycling. Microfilm records are destroyed 34 years from date of filming.

X-rays of employees are microfilmed 20 years after termination of employee and the original destroyed. The microfilm records are destroyed in TVA 20 years from date of filming. X-rays of nonemployees and all dependents are destroyed in TVA 6 years from date of film.

SYSTEM MANAGER(S) AND ADDRESS:

Medical Director, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

NOTIFICATION PROCEDURE:

Individuals should address inquiries to the system manager named above or

to the medical office at the TVA facility where employed, if a current employee.

Individuals should provide their full name, date of birth, employing organization, and date of last employment, and employee compensation case number, if any. Provision of social security number is not required but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact or address their inquiries to the system manager named above or the medical office at the TVA facility where currently employed.

CONTESTING RECORDS PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; TVA medical staff; private physicians and medical institutions; Office of Workers' Compensation Programs; TVA personnel records; other health agencies and departments.

TVA-10

SYSTEM NAME:

Employee Statement of Employment and Financial Interests—TVA.

SYSTEM LOCATION:

Office of the General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902. Original copies may be kept in division directors' offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All TVA employees at TVA grade M-8 and above who submitted a report prior to the enactment of the Ethics in Government Act of 1978; employees at TVA grades M-5, M-6, M-7 in positions designated by the General Manager or a division director as requiring submission of a statement; every TVA consultant who is a "special Government employee"; every TVA personal service contractor who is a "special Government employee" and who is determined to be an "expert" or who is otherwise required to submit a statement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Statement of employment and financial interests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11222; 18 U.S.C. 208; Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To report as requested to the Office of Personnel Management pursuant to Executive Order 10577 and other laws.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in the file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those persons designated by the General Manager or the Board of Directors to review statements of financial interest.

RETENTION AND DISPOSAL:

Records are retained in accordance with established records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

General Manager, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals upon whom records are maintained in this system of records are aware of that fact by having filed a statement. However, inquiries may be addressed to the Office of the General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902. Requests should include the individual's full name and employing division.

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to information about them in this system of records should contact the Office of the General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the Office of the General Counsel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains.

TVA-11

SYSTEM NAME:

Payroll Records—TVA.

SYSTEM LOCATION:

TVA Division of the Comptroller, Knoxville, Tennessee 37902; garnishment files are located at the Office of the General Counsel, Knoxville, Tennessee 37902; duplicate copies of some records may also be maintained in the files of the employing division; National Personnel Records Center, St. Louis, Missouri 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees and personal service contractors selected for certain training programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, pay, leave, and debt claim information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831-831dd; Internal Revenue Code; Fair Labor Standards Act, 29 U.S.C. Chapter 8; 5 U.S.C. Chapter 63.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To report earnings and other required information to Federal, State, and local taxing authorities as required by law.

To report earnings to the Civil Service Retirement System for members of that system.

To transmit payroll deduction information to financial institutions and employee organizations.

To report earnings to courts when garnishments are served or in bankruptcy or wage earner proceedings.

To report earnings to unions for those crafts on which TVA contributions to union welfare or pension funds are based on earnings. Reports of hours worked are made to unions for those

crafts on which such TVA contributions are based on hours worked.

To report earnings to the Department of Housing and Urban Development, State welfare agencies, and State employment security offices where an individual has made a claim for benefit with such agency.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information or disclose to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To disclose to any agency of the Federal Government having oversight or review authority with regard to TVA activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To transfer information necessary to support a claim for life insurance benefits under Federal Employees' Group Life Insurance to Office of Federal Employees' Group Life Insurance.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals, if necessary, to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To transfer information regarding claims for health insurance benefits to health insurance carriers.

To TVA contractors and subcontractors engaged in studies and evaluations of TVA payroll and personnel management.

To union representatives exercising their responsibilities under TVA collective bargaining agreements.

To report earnings to the Department of Housing and Urban Development, and State welfare agencies where an individual makes a claim for benefits and to report earnings to State employment security offices in both manual and automated form for use by these offices in determining unemployment benefits.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, hard-copy printouts, and in file folders.

RETRIEVABILITY:

Records are primarily indexed by name. They may also be retrieved by reference to employing organization, date of end of pay period, social security or badge number, date of birth, sex, job title.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

File folders are retained for 3 years after termination. Timesheets are retained for 7 years. Payroll registers are retained in active status for 1 year, transferred to TVA record storage for 5 years, and to National Personnel Records Center for an additional 50 years. Magnetic tapes are retained for 1 year after termination.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name, employing organization, and date of last employment. The social security number is not required but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information on them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals seeking to amend or correct information on them in this system of records should contact the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA personnel records; employee's supervisor for report of hours worked.

TVA–12

SYSTEM NAME:

Employee Travel Advance Records—TVA.

SYSTEM LOCATION:

Division of the Comptroller, Tennessee Valley Authority, Knoxville, Tennessee 37902.

Duplicate copies of these records may also be maintained in the files of the employee's division.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA employees requesting travel advances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, employing organization, date and amount of travel advance, and repayment information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 5701–5709, and related Federal travel regulations; Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil or regulatory in nature, to the appropriate agency whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12): Disclosures may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Debt Collection Act of 1982 (31 U.S.C. 3711(d)(4)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on computer printouts and microfiche.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

These records are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Comptroller, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and employing organization.

RECORD ACCESS PROCEDURES:

Individuals who seek access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA disbursement voucher records; TVA application for travel advance.

TVA-13

SYSTEM NAME:

Employment Applicant Files—TVA.

SYSTEM LOCATION:

Division of Personnel, Employment Branch and Information Management Systems Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902; area and project employment offices; Computing Operations Branch, TVA, Chattanooga, Tennessee 37401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for employment including former employees seeking reemployment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; 5 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding the status of an individual's application.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To request from any pertinent source, directly or through a TVA contractor engaged at TVA's direction, information relevant to a TVA decision concerning the hiring of an employea, the issuance of a security clearance, or other decision within the purposes of this system of records.

To disclose test results to State employment services.

To provide information as requested to the Office of Personnel Management pursuant to Executive Orders 10450 and 10577 and other laws.

To provide information to a Federal agency in response to its request in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the appropriate agency whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices and printouts.

RETRIEVABILITY:

Records are indexed by name and social security number.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Applications are kept for one year from last indication of interest, with the exception of apprenticeship applications, which are kept for five years.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individual wishing to learn if information on them is maintained in this system of records should address inquiries to Chief, Employment Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902, or to the area or project employment office to which application was sent. Requests should include the individual's full name, social security number, date of birth, and approximate date of application.

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to information on them in this system of records should contact the Chief, Employment Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902, or the area or project employment office to which the application was sent. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence.

Access will not be granted to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to Chief, Employment Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained; educational institutions, employers, and other references; state employment services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); and (f) (2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k) (5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA-14

SYSTEM NAME:

Grievance Records—TVA.

SYSTEM LOCATION:

Labor Relations Staff, Tennessee Valley Authority, Knoxville, Tennessee 37902.

Duplicate copies are also maintained in the files of the division concerned with the grievance.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA employees and former employees who have formally appealed to TVA for adjustment of their grievances.

CATEGORIES OF RECORDS IN THE SYSTEM:

Evidence and arguments relevant to the matter giving rise to the grievance and related correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding the status of an employee's grievance.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity Procedures, Merit Systems Protection Board, or similar procedures.

To request information from a Federal, State, or local agency, or private individual if necessary to obtain information relevant to a TVA decision within the purposes of this system of records.

To refer, where there is an indication of a violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Labor Relations, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals who have filed grievances are aware of that fact. Inquiries may, however, be addressed to the system manager named above. Requests should include the individual's full name and employing division.

RECORD ACCESS PROCEDURES:

Individuals who have filed a grievance may gain access to the official copy of the grievance record by contacting the system manager named above.

CONTESTING RECORD PROCEDURES:

The contest, amendment, or correction of a grievance record is permitted during the prosecution of that grievance. However, an individual may address

requests for amendment or correction of items not involved in prosecution of the grievance to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; TVA personnel records; statements and testimony of witnesses and related correspondence.

TVA-15

SYSTEM NAME:

Land Between The Lakes Hunter Records—TVA.

SYSTEM LOCATION:

Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231; Computing Operations Branch, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals to whom hunter use permits are issued and those who apply for participation in managed hunts at Land Between The Lakes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, State hunting license(s) number(s), and information related to the hunts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 6161.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding the status of an applicant.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as licenses, or to request information from a private individual to the extent necessary to obtain information relevant to a TVA decision concerning the issuance of a permit to hunt or any other privilege.

To provide hunt information to State agencies concerned with wildlife management practices.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To provide mailing lists to organizations or contractors cooperating with Land Between The Lakes in activities or events for the purpose of publicizing those activities or events.

To provide mailing lists to an independent Land Between The Lakes support organization for the purpose of soliciting members for the organization.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, card files, and computer printouts.

RETRIEVABILITY:

Records are indexed by name; automated files may be retrieved by any key data element.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Applications for managed hunts are maintained for one year; carbon copies of hunter use permits are maintained two years; and automated records on those permits are maintained five years. Other information may be retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address their inquiries to the Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231. Requests should include the name as listed on the application or hunter use permit or the hunter use permit number.

RECORD ACCESS PROCEDURES:

All information maintained in this system of records has normally been supplied by the subject individual. However, requests for access may be directed to the Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained.

TVA-16

SYSTEM NAME:

Land Between The Lakes Register of Law Violations—TVA.

SYSTEM LOCATION:

Land Between The Lakes, Tennessee Valley Authority, Patrol Office, Golden Pond, Kentucky 42231.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons cited or arrested for violation of State or Federal law at Land Between The Lakes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information related to the investigation and disposition of the violation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; 18 U.S.C. 7, 13; Kentucky Revised Statutes 150, Chapter 43, Kentucky Act 1974; Tennessee Public Acts 1972, Chapter 552.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA

attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on cards.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Records are kept indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

NOTIFICATION PROCEDURE:

This system of records had been exempted from this provision pursuant to 5 U.S.C. 552a(j)(2) and TVA regulations at 18 CFR 1301.23.

RECORD ACCESS PROCEDURES:

This system of records had been exempted from this provision pursuant to 5 U.S.C. 552a(j)(2) and TVA regulations at 18 CFR 1301.23.

CONTESTING RECORD PROCEDURES:

This system of records has been exempted from this provision pursuant to 5 U.S.C. 552a(j)(2) and TVA regulations at 18 CFR 1301.23.

RECORD SOURCE CATEGORIES:

This system of records has been exempted from this provision pursuant to 5 U.S.C. 552a(j)(2) and TVA regulations at 18 CFR 1301.23.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (c)(3), (4); (d); (e) (1), (2), (3), (4)(G), (4)(H), (4)(I), (5); (f); (g); and (h) of 5 U.S.C. 552a (Section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(j)(2) and TVA regulations at 18 CFR 1301.23.

TVA–18

SYSTEM NAME:

Employee Supplementary Vacancy Announcement Records—TVA.

SYSTEM LOCATION:

Office and division personnel offices in Knoxville and Chattanooga, Tennessee, and Muscle Shoals, Alabama; may also be maintained in other offices that issue or receive responses to supplementary vacancy announcements.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees applying for placement in positions covered by the supplementary vacancy announcement procedure.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications and supporting material submitted by employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 11478; Equal Employment Opportunity Act of 1972, Pub. L. 92–261, 86 Stat. 103; 5 U.S.C. 3101; Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Records are maintained in secured facilities.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals upon whom records are maintained in this system are aware of that fact through filing an application. However, inquiries may be addressed to the name and address to which application was submitted. Requests should include the individual's full name, position applied for, and location of job.

RECORD ACCESS PROCEDURES:

Individuals upon whom records are maintained in this system have supplied all information in this system. However, requests for access may be addressed to the name and address to which application was submitted.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the name and address to which application was submitted.

RECORD SOURCE CATEGORIES:

The individual upon whom the record is maintained.

TVA–19

SYSTEM NAME:

Consultant and Personal Service Contractor Records—TVA.

SYSTEM LOCATION:

Division of Personnel, Employment Branch and Information Management Systems Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902; Computing Operations Branch, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

Payment records are located at these TVA Division of the Comptroller offices: Knoxville, Tennessee 37902; Chattanooga, Tennessee 37401; Muscle Shoals, Alabama 35660.

Records related to personal service contractors employed under the Comprehensive Employment and Training Act of 1973, Pub. L. 93–203, are located at TVA, Office of Natural Resources and Economic Development, Knoxville, Tennessee 37902, and Land Between The Lakes, Golden Pond, Kentucky 42231.

Records on individuals who provide services under a TVA contract with an organization may be kept in the files of the office or division that receives the services.

Duplicate copies of some records may be kept in the files of the employing division.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who provide services to TVA; participants in TVA-State employment programs; individuals who provide services under a TVA contract with an organization; and participants in other special employment programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

The Division of Personnel maintains contracts, records of the qualifications, performance, and evaluation of the contractor, and related correspondence. For public service employment program participants, the Division of Personnel maintains information related to job placement such as test scores, interest inventories, and supervisor's evaluations. Payment information is maintained by the Division of the Comptroller.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Comprehensive Employment and Training Act, Pub. L. 93–203, 87 Stat. 839; Executive Order 11222; Executive Order 10450; Executive Order 10577; provisions of 5 U.S.C. applicable to employment with TVA; Internal Revenue Code.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To transmit reports as requested to the Office of Personnel Management, pursuant to 5 U.S.C. 3323, Executive Orders 10577 and 10450, and other laws.

To report earnings information to the Internal Revenue Service and the Social Security Administration.

To respond to a request from a Member of Congress regarding the status of a contractor or consultant.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulations, or order issued pursuant thereto.

To request information from a Federal, State, or local agency, maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals if necessary to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To transmit to the appropriate State contracting agency reports of hours worked by participants in the public service employment program, and to request reimbursement.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

To provide the following information to a prospective employer of a TVA or former TVA consultant or personal service contractor: Job descriptions, dates of employment, and reason for separation.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are indexed by name, social security number, or voucher number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Records are disposed of periodically as appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Personnel, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to know if records on them are maintained in the system should address inquiries to the system manager named above. Requests shall include the individual's full name, employing or contracting division, and whether the individual was a participant in the public service employment program. Social security numbers are not required but may expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals wishing to gain access to information on them in this system of records should contact the system manager named above. Access will not be granted to investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, Federal contracts, or access to classified information, to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. Access will not be granted to testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal Service, the disclosure of which would compromise the objectivity or fairness of the testing or examination process.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual to whom the record pertains; educational institutions, former employers, and other reference sources; State employment services; supervisors and other TVA personnel or personnel records; medical officers; other Federal agencies.

In addition to the above sources, security/suitability investigatory files contain information from law enforcement agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (d); (e)(4)(H); (f) (2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, and to the extent that disclosure of testing or examination material would compromise the objectivity or fairness of the testing or examination process. This exemption is pursuant to 5 U.S.C. 552a(k)(5) and (6) and TVA regulations at 18 CFR 1301.24.

TVA-21

SYSTEM NAME:

Nuclear Quality Assurance Personnel Records—TVA.

SYSTEM LOCATION:

Division of Nuclear Quality Assurance, Tennessee Valley Authority, Chattanooga, Tennessee 37402.

Copies of records for Quality Assurance Evaluators are maintained in the office of the Director of Nuclear Quality Assurance in Chattanooga.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees or former employees involved in quality assurance work.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information related to the qualifications of employees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1233 as implemented at Nuclear Regulatory Commission Regulatory Guide 1.58.

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Nuclear Regulatory Commission or its authorized representatives for inspection or evaluation of TVA Quality Assurance procedures.

To respond to a request from a Member of Congress regarding the status of an employee.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigation and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals if necessary to obtain information relevant to a TVA decision concerning the hiring, retention, or promotion of an employee, the issuance of a security clearance, or other decision within the purposes of this system of records.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

These records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Nuclear Quality Assurance, Tennessee Valley Authority, Chattanooga, Tennessee 37402.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Inquiries should include the individual's full name and employing organization.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained; TVA personnel records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system of records is exempt from subsection (d); (e)(4)(H); (f) (2), (3), and (4) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) to the extent that disclosure of material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. The exemption is pursuant to 5 U.S.C. 552a(k)(5) and TVA regulations at 18 CFR 1301.24.

TVA-22

SYSTEM NAME:

Questionnaire—Farms in Vicinity of Proposed Nuclear Power Plant—TVA.

SYSTEM LOCATION:

Agricultural Institute, Tennessee Valley Authority, Muscle Shoals, Alabama 35660.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals from whom TVA purchases land for proposed nuclear plant, individuals having vegetable gardens, irrigated land, dairy cows, and milk goats within two-mile radius of proposed plant site.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information and information related to agriculture, milk consumption, water resources, and farm product value.

This information is not used for making determinations about the rights, benefits, or privileges of any individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; National Environmental Policy Act, Pub. L. 91–190, 83 Stat. 852; Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1233.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this systems of records is used in developing environmental evaluations and impact statements. Certain relevant but nonsensitive information may be disclosed in these statements. Information may also be used:

In administrative and licensing proceedings including the presentation of evidence and disclosure to opposing counsel in the course of discovery.

To disclose to any agency of the Federal Government having oversight or review authority with regard to TVA activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders.

RETRIEVABILITY:

Records are indexed by assigned number and aerial photo number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Records are maintained indefinitely or for the life of the plant.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Agricultural Institute, Tennessee Valley Authority, Muscle Shoals, Alabama 35660.

NOTIFICATION PROCEDURE:

Individuals on whom information is maintained in this system are aware of that fact through response to the questionnaire. However, inquiries may be addressed to the system manager named above. Requests should include the individual's full name, farm address, and approximate date of survey.

RECORD ACCESS PROCEDURES:

Individuals on whom information is maintained in this system have supplied all such information. However, requests for access may be directed to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individual about whom the record is maintained.

TVA-23

SYSTEM NAME:

Radiation Dosimetry Personnel Monitoring Records—TVA.

SYSTEM LOCATION:

Division of Nuclear Services, Radiological Health Branch, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees, former employees, and visitors who might be exposed or are exposed to radiation while in TVA installations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information on the magnitude of exposure at TVA installations, exposure prior to employment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Energy Reorganization Act of 1974, Pub. L. 93–438, 88 Stat. 1233; 10 CFR Parts 19, 20; Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Nuclear Regulatory Commission for its use in evaluating TVA hazard control measures.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are indexed by name.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

These records are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Radiological Health Branch, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Requests should include the individual's full name and whether or not a TVA employee.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains; TVA personnel conducting radiation monitoring programs.

TVA-24

SYSTEM NAME:

Reforestation, Erosion Control, and Plantation Case History Records—TVA.

SYSTEM LOCATION:

Record Staging Area, Tennessee Valley Authority, Muscle Shoals, Alabama 35660, pending official transfer to Federal Archives, East Point, Georgia.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Private landowners involved in early TVA-Civilian Conservation Corps tree planting programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Forest acreage, performance, and yield information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 6161.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the appropriate agency, whether Federal, State, or local in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on file cards.

RETRIEVABILITY:

Records are indexed by State, county, and name.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Building is locked when unattended.

RETENTION AND DISPOSAL:

This information is kept permanently for archival purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Manager of Natural Resources and Economic Development, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals on whom records are maintained are aware of that fact through participation in the program. However, inquiries may be addressed to the system manager named above. Individuals should provide their full name, State, and county of residence.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should address their inquiries to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains; State forestry personnel; TVA surveys.

TVA-26

SYSTEM NAME:

Retirement System Records—TVA.

SYSTEM LOCATION:

Retirement Services Branch, Tennessee Valley Authority, Knoxville, Tennessee 37902.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active, retired, and former members of the TVA Retirement System; TVA employees and former employees who are members of the Civil Service Retirement System; designated beneficiaries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information; retirement, benefit, and investment information; related correspondence; and legal documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Internal Revenue Code.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To report earnings to the Internal Revenue Service.

To supply information on coverage to Blue Cross-Blue Shield of Tennessee, Provident Life Insurance Company, and other insurance carriers.

To disclose information to actuarial firms for valuation and projecting benefits.

To disclose information to the Medical Board of the TVA Retirement System for determinations related to disability retirement.

To certify insurance status to the Office of Personnel Management and the Office of Federal Employees' Group Life Insurance.

To respond to a request from a Member of Congress regarding the status of a system member.

To request information from a Federal, State, or local agency, maintaining civil, criminal, or other relevant enforcement information or other pertinent information and to request information from private individuals if necessary to obtain information relevant to a TVA decision within the purpose of this system of records.

To refer, where there is an indication of a violation or potential violation of law, whether criminal, civil, or regulatory in nature, to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating and prosecuting such violation or charged with enforcing or implementing the statute, rule, regulation, or order issued pursuant thereto.

To provide information to a Federal agency, in response to its request, in connection with the issuance of any benefit by the requesting agency to the extent that the information is relevant and necessary to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To provide the TVA Retirees Association, retired members of the TVA Retirement System, and retired former TVA employees who are covered by the Civil Service Retirement System, with names and mailing addresses of other retired members and retired employees.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, ledgers, and in file folders.

RETRIEVABILITY:

Records are indexed by name, sex, date of birth, address, social security number, active member number, retirement number, or salary.

SAFEGUARDS:

Records in this system are maintained in locked files or safes, in secure facilities. Access to and use of these records are limited to those persons whose official duties require such access.

RETENTION AND DISPOSAL:

Retention periods vary from two years to permanent depending on the nature of the information and the medium in which they are stored.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Retirement Services Branch, Division of the Comptroller, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager named above. Inquiries should include the individual's full name and date of birth. The social security number is not required but will expedite TVA's response.

RECORD ACCESS PROCEDURES:

Individuals who desire access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals wishing to correct or amend information maintained on them in this system should address inquiries to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual on whom the record is maintained; TVA personnel and payroll records.

TVA-27

SYSTEM NAME:

Test Demonstration Farm Records—TVA.

SYSTEM LOCATION:

Division of Technology Development, National Programs Branch, Tennessee Valley Authority, Muscle Shoals, Alabama 35660.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Farmers located outside the Tennessee Valley participating in TVA demonstration farm programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Agricultural, income, investment, labor, and food data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To request information from a Government agency or private individual where such information may be relevant to providing additional assistance under this program.

To disclose to State extension services and the U.S. Department of Agriculture for use in program evaluation and in assistance to program participants.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices, cards, and printouts.

RETRIEVABILITY:

Records are indexed by an assigned number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities and locked when unattended.

RETENTION AND DISPOSAL:

Records are retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Technology Development, Tennessee Valley Authority, Muscle Shoals, Alabama 35660.

NOTIFICATION PROCEDURE:

Individuals on whom information is maintained are aware of that fact through participation in the program. However, inquiries may be addressed to the system manager. Individuals should provide their full name, county, and State in which individual participated in a TVA farm demonstration program.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them in this system of records should contact the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

Information in this system is solicited from the individual to whom the record pertains by State extension services and universities.

TVA-28

SYSTEM NAME:

Woodland Resource Analysis Program Input Data—TVA.

SYSTEM LOCATION:

Office of Natural Resources and Economic Development, Tennessee Valley Authority, Knoxville, Tennessee 37902; Computing Services Branch, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Private landowners, agencies, and corporations owning woodlands in Valley region and participating in TVA woodland resource management demonstration program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal, financial, and land resource information pertinent to woodland resource planning. The information in this system is not used by TVA in the determination about the rights, benefits, or privileges of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 6161.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Evaluated information is supplied to State forestry personnel for use in assisting the landowner.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, hard-copy printouts, and in file folders.

RETRIEVABILITY:

Records are indexed by computer run number by State.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. Files are kept in secured facilities.

RETENTION AND DISPOSAL:

Records are retained for 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

Manager of the Office of Natural Resources and Economic Development, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals on whom information is maintained are aware of that fact through participation in the program. However, inquiries may be addressed to the system manager. Individuals should provide their full name, State of residence, and the calendar year(s) of participation in the program.

RECORD ACCESS PROCEDURES:

Individuals on whom records are maintained have been provided copies of all information in that record. However, requests for access may be directed to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains provides the information to State forestry personnel. The information is evaluated by TVA and returned to the State forestry personnel who utilize the information in evaluated form to assist the landowner.

TVA-29

SYSTEM NAME:

Electricity Use, Rate, and Service Study Records—TVA.

SYSTEM LOCATION:

Division of Conservation and Energy Management, Tennessee Valley Authority, Chattanooga, Tennessee 37402.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals residing in households which are participating in electricity use, rate, and service studies including those receiving electricity conservation assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information about an individual's income, employment, family size, characteristics of his dwelling including type of heating and cooling systems and number and kind of appliances, and other characteristics of study participants relevant to patterns of residential electrical use.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To distributors and contractors assisting TVA in the study.

To the appropriate agency, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are indexed by an identification number assigned to each household.

SAFEGUARDS:

Access to and use of these records are limited to those persons whose official duties require such access. All filing systems are locked when unattended.

RETENTION AND DISPOSAL:

Survey information will be retained until completion of the program and for two years thereafter.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Conservation and Energy Management, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

NOTIFICATION PROCEDURE:

Individuals about whom information is maintained in this system of records are aware of that fact through participation in the program. However, inquiries may be addressed to the system manager named above. Request should include the individual's full name and address.

RECORD ACCESS PROCEDURES:

Requests for access may be directed to the system manager named above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the system manager named above.

RECORD SOURCE CATEGORIES:

The information in this system is solicited from the individual to whom the record pertains.

TVA-30

SYSTEM NAME:

Land Between The Lakes Mailing Lists—TVA.

SYSTEM LOCATION:

Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons using, visiting, or having an interest in the activities, programs, or facilities of Land Between The Lakes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifying information, address, and information about their Land Between The Lakes associated interests, activities, or program participation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order No. 6161.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To provide mailing lists to organizations or TVA contractors cooperating with Land Between The Lakes in activities or events for the purpose of publicizing those activities or events.

To provide mailing lists to an independent Land Between The Lakes support organization for the purposes of soliciting members for the organization.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on card files, automated data storage devices, and computer printouts.

RETRIEVABILITY:

Records are primarily indexed by name and identification code. They may also be retrieved by reference to interests, organization, or address elements.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities. Access facilities are secured through physical, administrative, and system-based safeguards.

RETENTION AND DISPOSAL:

Records are kept for the period of time the individual is to receive mailings.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address their inquiries to the Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231. Request should include the individual's full name and address.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their requests to the Director of Land Between The Lakes, Tennessee Valley Authority, Golden Pond, Kentucky 42231.

RECORD SOURCE CATEGORIES:

Individuals on whom records are maintained, organization representatives, and TVA employees.

TVA-31

SYSTEM NAME:

OIG Investigative Records—TVA

SYSTEM LOCATION:

Office of the Inspector General, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902. Duplicate copies of certain documents may also be located in the files of other offices and divisions.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and entities who are or have been the subjects of investigations by the Office of the Inspector General (OIG) or who provide information in connection with such investigations, including but not limited to: Employees, former employees, current or former contractors and subcontractors and their employees, consultants, and other individuals and entities which have or are seeking to obtain business or other relations with TVA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to investigations, including information provided by known or anonymous complainants; information provided by the subjects of investigations; information provided by individuals or entities with whom the subjects are associated (e.g., coworkers, business associates, relatives); information provided by Federal, State, or local investigatory, law enforcement, or other Government or non-Government agencies; information provided by witnesses and confidential sources; information from public source materials; information from commercial data bases or information resources; investigative notes; summaries of telephone calls; correspondence; investigative reports or prosecutive referrals; and information about referrals for criminal prosecutions, civil proceedings, and administrative actions taken with respect to the subjects.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Executive Order 10450; Executive Order 11222; Hatch Act, 5 U.S.C. 7324–7327; 28 U.S.C. 535; Proposed Plan for the Creation, Structure, Authority, and Function of the Office of Inspector General, Tennessee Valley Authority, approved by the TVA Board of Directors on October 18, 1985; and TVA Code XIII INSPECTOR GENERAL, approved by the TVA Board of Directors on February 19, 1987.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal, State, or local entity (1) in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting entity to the extent that the information is relevant to a decision on such matters or (2) in connection with any other matter properly within the jurisdiction of such other entity and related to its prosecutive, investigatory, regulatory, administrative, or other responsibilities.

To the appropriate entity, whether Federal, State, or local, in connection with its oversight or review responsibilities or authorized law enforcement activities.

To respond to a request from a Member of Congress regarding an individual, or to report to a Member on the results of investigations, audits, or other activities of OIG.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decisionmakers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To the subjects of an investigation and their representatives in the course of a TVA investigation of misconduct; to any other person or entity that has or may have information relevant to the investigation to the extent necessary to assist in the conduct of the investigation, such as to request information.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To a consultant, private firm, or individual who contracts or subcontracts with TVA, to the extent necessary to the performance of the contract.

To request information from a Federal, State, or local agency maintaining civil, criminal, or other relevant or potentially relevant information and to request information from private individuals or entities, if necessary, to acquire information pertinent to the hiring, retention, or promotion of an employee, the issuance

of a security clearance, the conduct of a background or other investigation, or other matter within the purposes of this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on automated data storage devices, hard-copy printouts, and in file folders.

RETRIEVABILITY:

Records are indexed and retrieved by individual name or case file number.

SAFEGUARDS:

Access to and use of records is limited to authorized staff in OIG and to other authorized officials and employees of TVA on a need-to-know basis as determined by OIG management. Security will be provided by physical, administrative, and computer system safeguards. Files will be kept in secured facilities not accessible to unauthorized individuals.

RETENTION AND DISPOSAL:

These records are retained in accordance with TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Inspector General, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD ACCESS PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

CONTESTING RECORD PROCEDURES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

RECORD SOURCE CATEGORIES:

This system of records is exempt from this requirement pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system is exempt from subsections (c)(3), (d), (e)(1), (4)(G), (4)(H) and (4)(I), and (f) of 5 U.S.C. 552a (section 3 of the Privacy Act of 1974) pursuant to 5 U.S.C. 552a(k)(2) and TVA regulations at 18 CFR 1301.24.

TVA-32

SYSTEM NAME:

Call Detail Records—TVA.

SYSTEM LOCATION:

Data Center, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA employees, contractor personnel, and other individuals who make telephone calls from or charge telephone calls to TVA telephones.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of TVA telephones; records relating to long distance telephone calls charged to TVA; records indicating assignment of telephone numbers and authorization numbers; records relating to locations of TVA telephones.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

TVA Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding an individual.

To provide to the appropriate entity, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies, or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant to the requesting agency's decision on that matter.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To a telecommunications company as well as to other TVA contractors providing telecommunications support to permit servicing the account.

To TVA contractors engaged at TVA's direction in investigations of abuse of TVA telephone service or other related issues.

To TVA contractors and contractor personnel to determine individual responsibility for telephone calls.

To TVA contractors in connection with amounts due TVA for telecommunications services provided to them.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are retrieved by name, authorization number, or telephone number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities. Automated data is secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Telecommunications Staff, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to Chief, Telecommunications Staff, Tennessee Valley Authority, Chattanooga, Tennessee 37401. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the Chief, Telecommunications Staff, Tennessee

Valley Authority, Chattanooga, Tennessee 37401. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to Chief, Telecommunications Staff, Chattanooga, Tennessee 37401.

RECORD SOURCE CATEGORIES:

TVA Telecommunication Control System; telecommunications companies with which TVA contracts for telephone service; telephone and authorization number assignment records; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

TVA-33

SYSTEM NAME:

Office of Nuclear Power Call Detail Records—TVA.

SYSTEM LOCATION:

Emergency Operations Center, Computer Room, 1101 Market Street, Chattanooga, Tennessee 37401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

TVA employees, contractor personnel, and other individuals who make telephone calls from or charge telephone calls to TVA telephones located at TVA nuclear plant sites.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to use of TVA telephones at TVA nuclear plant sites; records relating to long distance telephone calls charged to TVA telephones at TVA nuclear plant sites; records indicating assignment of telephone numbers and authorization numbers at TVA nuclear plant sites; records relating to locations of TVA telephones at TVA nuclear plant sites.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

TVA Act of 1933, 16 U.S.C. 831–831dd.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM; INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding an individual.

To provide to the appropriate entity, whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies, or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant to the requesting agency's decision on that matter.

To the parties or complainants, their representatives, and impartial referees, examiners, administrative judges, or other decision makers in proceedings under the TVA grievance adjustment procedures, Equal Employment Opportunity procedures, Merit Systems Protection Board, or similar procedures.

To a telecommunications company as well as to other TVA contractors providing telecommunications support to permit servicing the account.

To TVA contractors engaged at TVA's direction in investigations of abuse of TVA telephone service or other related issues.

To TVA contractors and contractor personnel to determine individual responsibility for telephone calls.

To TVA contractors in connection with amounts due TVA for telecommunications services provided to them.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and on automated data storage devices.

RETRIEVABILITY:

Records are retrieved by name, authorization number, or telephone number.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities. Automated data is secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

These records are retained in accordance with established TVA records retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Nuclear Services, 1101 Market Street, Chattanooga, Tennessee 37401.

NOTIFICATION PROCEDURE:

Individuals wishing to learn if information on them is maintained in this system of records should address inquiries to the site director of the TVA nuclear plant from which the telephone calls were placed or to which the telephone calls were charged. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the site director of the TVA nuclear plant from which the telephone calls were placed or to which the telephone calls were charged. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their request to the site director of the TVA nuclear plant from which the telephone calls were placed or to which the telephone calls were charged. Requests should include the individual's full name, employing division, job title, and official TVA telephone number and authorization number.

RECORD SOURCE CATEGORIES:

Station message detail recording systems associated with telecommunications equipment at TVA nuclear plant sites; telecommunications companies with which TVA contracts for telephone service; telephone and authorization number assignment records; results of administrative inquiries relating to assignment of responsibility for placement of specific long distance calls.

TVA-34

SYSTEM NAME:

Project/Tract Files—TVA.

SYSTEM LOCATION:

Land Management Branch Files, Office Services Support Branch Records Center, and Chattanooga Data Center, Tennessee Valley Authority, Chattanooga, Tennessee 37401.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals or business entities from/to whom TVA is in the process of or has (1) acquired, transferred, or sold land or landrights, (2) made payment for construction, maintenance, or other damage to real property, or (3) made payment for relocation assistance. A project/tract file may name more than one individual and/or business entity involved in a transaction. (The system records that pertain to individuals and reflect personal information are subject to the Privacy Act. The system also contains records that are not subject to the Privacy Act. Noncovered records include public information and records on corporations and other business entities.)

CATEGORIES OF RECORDS IN THE SYSTEM:

Maps, property descriptions, appraisal reports, and title documents on real property; reports on contracts and transaction progress; contracts and options; records of investigations, claims, and/or payments related to land transactions, damage restitution, and relocation assistance; related correspondence and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Tennessee Valley Authority Act of 1933, 16 U.S.C. 831–831dd; Pub. L. 87–852, 76 Stat. 1129; Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To respond to a request from a Member of Congress regarding an individual.

To lienholders as necessary to secure subordinations or releases of liens or to protect lienholder rights.

To county clerk and register of deeds offices to document and put of record the title acquired by TVA.

To landowners, prospective landowners, claimants, or trespassers to establish or cure titles, to resolve encroachments, to resolve boundary disputes, or to resolve questions about easement rights or the application of Section 26a of the TVA Act, 16 U.S.C. 831y–1.

To contractors to secure appraisals and title abstracts.

To request information from a Federal, State, or local agency or from private individuals as necessary to obtain information relevant to a TVA decision to acquire or dispose of property or to pay claims or make payments related to land transactions, damage restitution, and relocation assistance.

To refer, where there is an indication of a violation of statute, regulation, order, or similar requirement, whether criminal, civil, or regulatory in nature, to the appropriate entity, including Federal, State, or local agencies, or other entities charged with enforcement, investigative, or oversight responsibility.

To provide information to a Federal agency, in response to its request, in connection with the hiring or retention of an individual, the letting of a contract, or issuance of a license, grant, or other benefit by the requesting agency to the extent that the information is relevant to the requesting agency's decision on that matter.

In litigation to which TVA is a party or in which TVA provides legal representation for a party by TVA attorneys or otherwise, for use for any purpose including the presentation of evidence and disclosure in the course of discovery. In all other litigation, to respond to process issued under color of authority of a court of competent jurisdiction.

To provide to the appropriate entity whether Federal, State, or local, in connection with its oversight review responsibilities or authorized law enforcement activities.

To report any required information to Federal, State, and local taxing authorities as required by law.

To genealogical researchers, relevant portions of maps, descriptions, appraisals, and title documents on real property, after 20 years to establish historical records.

To archaeological researchers, relevant portions of maps, descriptions, appraisals, and title documents on real property, after 20 years to reconstruct historical settings.

To respond to a request from a Member of Congress regarding the status of a matter relating to a specific project or tract.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on registers, index and aperture cards, microfilm, in file folders, and/or on automated data storage devices.

RETRIEVABILITY:

Records are primarily indexed by tract number and project symbol. Records may also be retrieved by cross-index reference to individual and business entity names.

SAFEGUARDS:

Access to and use of these records are limited to persons whose official duties require such access. Files are kept in secured facilities. Remote access facilities are secured through physical and system-based safeguards.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with established TVA record retention schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Land and Economic Resources, Tennessee Valley Authority, Knoxville, Tennessee 37902.

NOTIFICATION PROCEDURE:

Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the Chief, Land Management Branch, Tennessee Valley Authority, Norris, Tennessee 37828. Requests should include the individual's full name and, to the extent known, any project/tract identifying information such as the project name, tract number, address, or related data.

RECORD ACCESS PROCEDURES:

Individuals seeking to gain access to information about them in this system of records should contact the Chief, Land Management Branch, Tennessee Valley Authority, Norris, Tennessee 37828. Requests should include the individual's full name, and to the extent known, any project/tract identifying information such as project name, tract number, address, or related data. Access will be granted only to individually segregable personal information about the requester and to segregable nonpersonal information in accordance with TVA regulations on release of records relating to negotiations in progress involving contracts or agreements for the acquisition or disposal of real or personal property by TVA prior to the conclusion of such negotiations.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information about them maintained in this system should direct their requests to the Chief, Land Management Branch, Tennessee Valley Authority, Norris, Tennessee 37828.

RECORD SOURCE CATEGORIES:

Public records and directories; landowners, tenants, and other individuals and business entities (including financial institutions) having an interest in or knowledge related to land ownership, appraisal, or title history; TVA personnel and contractors including independent appraisers and commercial title companies.

W.F. Willis,

General Manager.

[FR Doc. 88-7236 Filed 4-1-88; 8:45 am]

BILLING CODE 8120-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Korea's Restrictions on Imports of High Quality Beef; Notice of Investigation

[Docket No. 301-65]

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of an investigation under section 302.

SUMMARY: Pursuant to 19 U.S.C. 2412, the U.S. Trade Representative has initiated an investigation of the Republic of Korea's policies and practices with respect to the importation of high quality beef.

EFFECTIVE DATE: March 28, 1988.

FOR FURTHER INFORMATION CONTACT: Sandra Kristoff, Deputy Assistant U.S. Trade Representative of Asia and the Pacific, (202) 395-4755; Les Glad, Advisor to the Assistant U.S. Trade Representative for Agricultural Trade, (202) 395-3077; or Amelia Porges, Associate General Counsel, (202) 395-7305, Office of the U.S. Trade Representative, 600 17th Street NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION: On Feb. 16, 1988, the American Meat Institute (AMI) filed a petition under section 302(a) of the Trade Act of 1974, as amended ("Act"), 19 U.S.C. 2412(a), alleging that the Government of the Republic of Korea engages in acts, policies and practices that violate obligations of Korea under the General Agreement on Tariffs and Trade ("GATT") and tariff concessions made by Korea in the Tokyo Round of Multilateral Trade Negotiations. The petition also alleges that these practices are unjustifiable, unreasonable and burden or restrict U.S commerce.

Specifically, the petition states that Korea maintains a restrictive import licensing system covering all bovine meat including high-quality beef. Since May 21, 1985, Korean government approval has been required for each shipment of beef imported. All import approvals have been denied since that date, except for a single shipment of 49 tons imported for the annual meeting of the International Monetary Fund in Seoul. Thus, except for this one shipment, Korea has prohibited all imports of beef for domestic consumption (including high-quality beef) since May 21, 1985.

AMI believes that this prohibition nullifies and impairs Korea's tariff concession on beef, and violates Article XI of the GATT. AMI also asserts that any restrictive licensing of beef imports would violate Article XI.

AMI states that before May 1985, Korea was the fourth largest market for United States beef exports; imports were $7 million in 1984 and were rapidly increasing in early 1985. AMI also states that Korea's import prohibition has resulted in complete denial of market opportunities to the United States meat packing and processing industry.

Effective March 28, 1988, the U.S. Trade Representative initiated an investigation of the Korean government's policies and practices restricting imports of high-quality beef into Korea. The United States Government has already begun proceedings under the dispute settlement procedures of Article XXIII of the General Agreement on Tariffs and Trade concerning Korea's prohibition of beef imports. We have held two rounds of consultations with Korea under Article XXIII:1; on Feb. 19-20 and March 21, 1988. These consultations are deemed to have fulfilled the requirement in section 303(a) of the Act (19 U.S.C. 2413(a)) that the USTR, on behalf of the United States, request consultations with the government concerned regarding issues raised in the petition. Furthermore, extensive consultations on the issues raised in the AMI petition have taken place between the United States and Korea since May 1985.

USTR will seek information and advice from the petitioner and the appropriate representatives provided for under section 135 of the Act (19 U.S.C. 2155) in preparing United States presentations for consultations and dispute settlement proceedings. Any interested person is invited to submit comments on the issues raised in the petition. Comments should be filed in accordance with the regulations at 15 CFR 2006.6 and are due no later than April 24, 1988. Comments must be in English and provided in 20 copies to: Chairman, Section 301 Committee, Room 222, USTR, 600 17th Street NW., Washington, DC 20506

Judith Hippler Bello,

Chairman, Section 301 Committee Acting General Counsel.

[FR Doc. 88-7261 Filed 4-1-88; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed During the Week Ending March 25, 1988

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 45544

Date Filed: March 23, 1988.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 20, 1988.

Description: Application of Delta Air Lines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a new or amended certificate of public convenience and necessity to provide scheduled foreign air transportation of persons, property and mail between Portland, Oregon and Taipei, Taiwan via Seoul, Korea.

Docket No. 45547

Date Filed: March 24, 1988.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: April 21, 1988.

Description: Application of Trans World Airlines, Inc. pursuant to section 401 of the Act and Subpart Q of the Regulations applies for a certificate of public convenience and necessity to permit TWA to provide air transportation services over U.S.-Mexico Routes B.15 and D.17.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 88-7315 Filed 4-1-88; 8:45 am]

BILLING CODE 4910-62-M

[Order 88-3-66; Docket 43446]

Order Proposing To Institute Reallocation Phase, Japan Charter Authorization Proceeding

ACTION: Issuance of a show-cause order tentatively establishing procedures and guidelines for reallocating unused charter authorizations for U.S.-Japan flights to be operated by September 30, 1988

SUMMARY: U.S. air carriers can operate only 300 one-way charter flights per year between the United States and Japan under the terms of the bilateral Interim Aviation Agreement. The Department awarded these allocations to thirteen carriers for the year ending September 30, 1988. These allocations are subject to forfeiture after seven months depending on flight usage. The Department is tentatively establishing the procedural framework and decisional guidelines for reallocating the forfeited flights for the last few months of this allocation year. We tentatively propose to announce the flights available in May 1988 and to invite carriers to apply for those flights. In the proposed show-cause proceeding, we would reallocate the available flights to interested U.S. carriers, based on criteria similar to those set forth in Order 87-8-5, with additional emphasis on avoiding waste by recognizing carrier performance during the first seven months of the allocation year. (Note: This proceeding will not consider 1988-1989 Japan charter allocations. A separate proceeding is being instituted for that purpose.)

DATES: Objections and comments regarding this reallocation, together with supporting information, are due not later than April 11, 1988. Answers are due not later than April 18, 1988.

ADDRESS: Objections, comments and supporting information should be filed in Docket 43446, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street SW., Room 4107, Washington, DC 20590, and should be served on all parties in Docket 43446.

Dated: March 29, 1988.

Matthew V. Scocozza,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 88-7316 Filed 4-1-88; 8:45 am]

BILLING CODE 4910-62-M

Federal Railroad Administration

[FRA General Docket No. H-88-2]

Petition for Exemption or Waiver for Test Program; Metro-North Commuter Railroad Co.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Metro-North Commuter Railroad Company (Metro-North) has submitted a petition, dated February 29, 1988, for a temporary waiver of compliance with the provisions of 49 CFR 213.57(b). This section specifies the mathematical formula by which curving speeds of trains, as functions of superelevation and curvature, are to be determined. The formula incorporates a term permitting train operation over curved track at up to, but not more than three inches of cant deficiency.

Note: The concept of cant deficiency or unbalanced superelation curve negotiation was discussed in an earlier FRA Notice appearing on pages 38035 and following of the Federal Register, Volume 52, Number 197, October 13, 1987.]

The subject petition requests relief from the requirements of § 213.57(b) in order to join with the National Railroad Passenger Corporation (Amtrak) in the performance evaluation of certain types of passenger rolling stock designed to safely and comfortably operate over curved track at speeds producing cant deficiencies exceeding three inches.

The test program supporting this evaluation is essentially an Amtrak endeavor; the role of the petitioner, as controller of all train movements between New Haven, Connecticut and New Rochelle, New York, is to serve as a bridge between the discontinuous segments of Amtrak-owned test track, Boston to New Haven and New Rochelle to Market (N.Y.).

The proposed Amtrak test program was comprehensively described in the **Federal Register**, Volume 53, Number 46, March 9, 1988, pages 7627/7628, under the heading: FRA General Docket No. H-87-2. All of the constraints specified in this discussion as applicable to the Amtrak program on its own tracks will also apply to test operations over tracks controlled by the petitioner.

In the March 9, 1988, notice it was stated that Metro-North "* * * may petition FRA for a waiver of 49 CFR 213.57(b)." The purpose of this notice is to resolve any uncertainty related to Metro-North's participation in the program.

Issued in Washington, DC, on March 28, 1988.

J.W. Walsh,

Associate Administrator for Safety.

[FR Doc. 88-7313 Filed 4-1-88; 8:45 am]

BILLING CODE 4910-06-M

Urban Mass Transportation Administration

Intent to Prepare an Environment Impact Statement for Proposed Transit Improvements to the South and Southeast of Boston, MA

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Notice to prepare an Environmental Impact Statement.

SUMMARY: The Urban Mass Transportation Administration (UMTA) and the Massachusetts Bay Transportation Authority (MBTA) are undertaking the preparation of an Environmental Impact Statement (EIS) for proposed transit improvements to the area south of Boston bounded on the west by Route 24, to the east by Massachusetts Bay, and to the south by the Cape Code Canal. This EIS is being prepared in conformance with 40 CFR Part 1500, Council on Environmental Quality, Regulations for Implementing the Procedural Requirements of the National Environmental Policy Act of 1969, as amended; and 49 CFR Part 622, Federal Highway Administration and Urban Mass Transportation Administration, Environmental Impact and Related Procedures.

FOR FURTHER INFORMATION CONTACT: Mr. Donald Sullivan,UMTA Region I, 55 Broadway, Cambridge, MA 02142, telephone (617) 494-2729.

Mr. Charles B. Steward, Assistant Director of Construction of Development, MBTA, 10 Park Plaza, 6th Floor, Boston, MA 02116, telephone (617) 722-3122.

SUPPLEMENTARY INFORMATION:

Scoping Process

The Commonwealth of Massachusetts Executive Office of Environmental Affairs (EOEA) held two non-Federal scoping meetings for the *Old Colony Railroad Rehabilitation Project.* The first was held on January 29, 1986 at 3:00 p.m. in the Transportation Building, Boston, and was designed to attract attendance from state, county, municipal, and regional agencies and organizations. The second meeting was held January 30, 1986 at 7:00 p.m. in Braintree Town Hall and was scheduled to be convenient for interested citizens.

municipal officials, and officials from other agencies unable to attend the scoping meeting held the previous day.

Notice of the meetings was given in the *Environmental Monitor* of January 24, 1986, was advertised in the *Boston Globe, Boston Herald,* Quincy *Patriot-Ledger,* and Brockton *Enterprise;* the two major statewide newspapers and the two major regional newspapers serving the entire Old Colony area. Conservation commissions, planning boards, boards of selectment, mayors and city councillors of the cities and towns affected by the project were contacted and notified of the two meetings. The meeting announcement was given to many regional environmental/conservation groups by mail or telephone. Comments on the proposed Scope of Work, alternatives to be assessed, impacts to be analyzed, and evaluation criteria to be used in decision-making were requested.

Subsequently, the MBTA, however, has conducted and will continue to conduct numerous public meetings throughout the study area in order to gain additional public input to the study process. On November 23, 1987, project staff conducted a briefing for Federal agencies with an interest in the study. In view of the MBTA's substantial public involvement program, an additional Federal scoping meeting is not planned.

The MBTA and UMTA invite written comments for a period of 30 days after the publication of this notice. Comments should focus on the appropriateness of the proposed alternatives, rather than individual preferences for a particular alternative as most desirable for implementation. Comments are also invited regarding the impacts being studied and the proposed evaluation criteria. Other impacts or criteria judged relevant to local decision-making should be identified. In addition, UMTA and the MBTA invite comments on the need for an additional public scoping meeting.

Written comments should be sent to: Mr. Richard Doyle, Regional Administrator, Urban Mass Transportation Administration, 55 Broadway, Cambridge, MA 02142, or Mr. James F. O'Leary, General Manager, Massachusetts Bay Transportation Authority, 10 Park Plaza, Boston, MA 02116.

Corridor Description

The Old Colony study area includes some 34 communities extending generally from Braintree south to the Cape Cod Canal, and from Massachusetts Bay west to Route 24. These communities, along with Quincy and Boston, represent the area which is likely to be affected by the set of transportation alternatives being examined. In total, the region encompasses approximately 450 square miles, including heavily urbanized areas (Brockton and Quincy), some large suburban towns (such as Weymouth and Braintree), and many areas with a rural character. In 1980 the total population of the study area as defined above was approximately 600,000 persons; by the year 2000 study area population is projected to increase by between fifteen and twenty percent. This growth rate exceeds that expected for the Boston Metropolitan area as a whole by approximately five to ten percent.

The study ares has a strong orientation to Boston: in 1980 more than 40,000 study area residents worked in Boston or Cambridge, an estimated 15 percent of the Boston area workforce. The number of commuters to Boston and Cambridge is expected to grow by 10 to 20 percent by the year 2000. Other important commercial centers which attract commuting and other trips are the urban centers of Quincy, Brockton, Fall River and New Bedford, and the new industrial and shopping centers along the major highways, particularly Route 3 and Route 128 (I95/I93).

Alternatives

Alternatives being studied by the MBTA in the corridor include:

(1) *No Build.* No further transportation improvements are made beyond those now funded.

(2) *Transportation Systems Management* consisting of improvements to express bus service to Boston, to feeder bus service to the Red Line and to feeder bus service to the communter boat service. Improvements to Red Line service and to commuter boat service may also be included.

(3) *Busway from Quincy-Adams Station to Southhampton Street.* In addition to improvements in express bus service listed in (2), the railroad right-of-way between Quincy-Adams Station in Quincy and Southhampton Street in Boston will be adapted to become a one-way peak period reversible exclusive busway.

(4a) *Commuter Rail Through Service to End Terminals* with locomotive-powered, push-pull commuter rail trains operating from South Station to a terminal in Middleborough only.

(4b) *Commuter Rail Through Service to End Terminals* with locomotive-powered, push-pull commuter rail trains operating from South Station to terminals in Middleborough and Plymouth.

(4c) *Commuter Rail Through Service to End Terminals* with locomotive-powered, push-pull commuter rail trains operating from South Station to terminals in Middleborough and Greenbush.

(4d) *Commuter Rail Through Service to End Terminals* with locomotive-powered, push-pull commuter rail trains operating from South Station to terminals in Middleborough, Plymouth and Greenbush.

Probable Effects

Impacts being analyzed include changes in the natural environment (air quality, noise, water quality, aesthetics), changes in the social environment (land use, development, communities), impacts on parklands and historic sites, changes in transit service and patronage, associated changes in highway congestion, capital costs, operating costs, and financial implications. Impacts will be identified both for the construction period and for the long term operation of the alternatives.

The proposed evaluation criteria include transportation, environmental, social, economic, and financial measures as required by current Federal (NEPA) and Massachusetts (MEPA) environmental laws and current CEQ and UMTA guidelines. Mitigating measures will be explored for any adverse impacts that are identified.

Issued on: February 29, 1988.

Richard H. Doyle,

Regional Manager.

[FR Doc. 88-7277 Filed 4-1-88; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: March 29, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0029.

Form Number: 941, 941E, 941PR, 941SS, Schedule A (Form 941).

Type of Review: Extension.

Title: Employer's Quarterly Federal Tax Return; Quarterly Return of Withheld Income Tax and Hospital Insurance (Medicare) Tax; and Record of Federal Backup Withholding Tax Liability.

Description: Form 941 is used by employers to report payments made to employees subject to income and FICA taxes and the amounts of these taxes. Form 941E is used primarily by State and local government to report withheld income and hospital insurance taxes only. Form 941PR is used by employers in Puerto Rico to report FICA taxes only and Form 941SS is used by employers in the possessions to report FICA tax only. Schedule A is used by payers subject to the backup withholding provisions who elected to report the liability as a separate tax.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Burden: 12,490 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-7309 Filed 4-1-88; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: March 29, 1988.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearnance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0171.

Form Number: ATF F 5220.3(3373).

Type of Review: Extension.

Title: Inventory-Export Warehouse Proprietor.

Description: AFT F 5220.3(3373) is used by export warehouse proprietors to record inventories that are required by statutes and regulations. The inventories are taken at the commencement of business and at any other time as prescribed by regulations and available for inspection by ATF officers.

Respondents: Businesses or other-for profit, Small businesses or organizations.

Estimated Burden: 50 hours.

OMB Number: 1512-0469.

Form Number: None.

Type of Review: Extension.

Title: Labeling of Sulfites in Alcoholic Beverages.

Description: In a final rule published in the **Federal Register** on July 9, 1986 (51 FR 34706), the Food and Drug Administration established 10 parts per million as the threshold for declaration of sulfites in food and wine products. The Bureau of Alcohol, Tobacco and Firearms on September 30, 1986, published a final rule (ATF-236) (51 FR 34706) establishing the same threshold for declaration of sulfites in alcoholic beverages.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Burden: 3,159 hours.

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011, 1200 Pennsylvania Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 88-7310 Filed 4-1-88; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "Olga Milles Emerges" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Cranbrook Academy of Art Museum, beginning on or about April 18, 1988 to on or about June 19, 1988, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: March 31, 1988.

C. Normand Poirier,

Acting General Counsel.

[FR Doc. 88-7430 Filed 4-1-88; 8:45 am]

BILLING CODE 8230-01-M

VETERANS ADMINISTRATION

Advisory Committee on Cemeteries and Memorials; Meeting

The Veterans Administration gives notice that a meeting of the Administrator of Veterans Affairs' Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 1001, will be held at the Hyatt Regency Westshore Hotel, 6200 Courtney Campbell Causeway, Tampa, Florida 33607, on May 28, 1988.

The session will begin at 9:00 a.m. to conduct routine business. The meeting will be open to the public up to the seating capacity which is about twenty persons. Those wishing to attend should contact Mrs. Ann Stone, Staff Assistant to the Deputy Chief Memorial Affairs Director (phone 202-233-2396) not later than 12 noon, EST May 13, 1988.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to the Chief Memorial Affairs Director (40) at 810 Vermont Avenue NW., Washington, DC 20420. In any such letters, the writers must fully identify themselves and state the organization or association or person they represent. Also, to the extent practicable, letters should indicate the subject matter they want to discuss. Oral presentations should be limited to 10 minutes in duration. Those wishing to file written statements to be submitted to the Committee must also

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel, USIA. The telephone number is (202) 485-8827, and the address is Room 700, U.S. Information Agency, 301-4th Street SW., Washington, DC 20547.

mail, or otherwise, deliver them to the Chief Memorial Affairs Director.

Letters and written statements as discussed above must be mailed or delivered in time to reach the Chief Memorial Affairs Director by 12 noon EST May 13, 1988. Oral statements will be heard only between 9 and 10 a.m.

Dated: March 28, 1988.

By direction of the Administrator.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 88-7305 Filed 4-1-88; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 53, No. 64
Monday, April 4, 1988

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).

CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, April 5, 1988.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

FY 89 Budget Adjustment.

The staff will brief the Commission on options for making adjustments to the budget for Fiscal Year 1989.

For a recorded message containing the latest agenda information, call: 301–492–5709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, Md. 20207, 301–492–6800.

Sheldon D. Butts,

Deputy Secretary.

March 30, 1988.

[FR Doc. 88–7336 Filed 3–30–88; 4:52 p.m.]

BILLING CODE 6355-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552(e)(2)), notice is hereby given that at its open meeting held at 2:00 p.m. on Tuesday, March 29, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C. C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 47,190—Des Moines Consolidated Office, Des Moines, Iowa

By the same majority vote, the Board further determined that no earlier notice of the change in the subject matter of the meeting was practicable.

Dated: March 30, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary.

[FR Doc. 88–7345 Filed 3–31–88; 9:17 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby give that at its closed meeting held at 2:30 p.m. on Tuesday, March 29, 1988, the Corporation's Board of Directors determined, on motion of Chairman L. William Seidman, seconded by Director C.C. Hope, Jr. (Appointive), concurred in by Director Robert L. Clarke (Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Merchants National Bank & Trust Company of Indianapolis, Indianapolis, Indiana, for consent to purchase certain assets of and to assume certain liabilities of the military banking facilities located in The Netherlands, West Germany, and Greece currently operated by American Express Bank, Ltd., New York City, New York, a noninsured institution.

Requests for financial assistance pursuant to section 13(c) of the Federal Deposit Insurance Act.

Matters relating to an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act.

The Board further determined, by the same majority vote, that no earlier notice of these changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matter added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: March 30, 1988.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary.

[FR Doc. 88–7346 Filed 3–31–88; 9:17 am]

BILLING CODE 6714-01-M

LEGAL SERVICES CORPORATION

Voucher Subcommittee to the Provision for the Delivery of Legal Services Committee

TIME AND DATE: The meeting will commence at 9:00 a.m. on Friday April 9, 1988, and continue until the close of business.

PLACE: The International Hotel, BWI, Scott Room, Elm Road, Baltimore, Maryland 21240.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
   —March 24, 1988
3. Report on the History of the LSC Voucher Program
4. Report on the Current Status of Voucher Studies

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863–1839.

Date Issued: March 31, 1988.

Maureen R. Bozell,

Secretary.

[FR Doc. 88–7418 Filed 3–31–88; 3:40 pm]

BILLING CODE 7050-01-M

POSTAL SERVICE

Board of Governors

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 53 FR 10035, March 28, 1988.

PREVIOUSLY ANNOUNCED DATE OF MEETING: April 5, 1988.

CHANGE: Addition of the following item to the open meeting agenda:

"Personnel Matters"

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

Paul J. Kemp,

Alternate Liaison Officer for the U.S. Postal Service.

[FR Doc. 88–7361 Filed 3–31–88; 10:28 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 4, 1988:

A closed meeting will be held on Tuesday, April 5, 1988, at 2:30 p.m. An open meeting will be held on Thursday, April 7, 1988, at 10:00 a.m.

The Commissions, Counsel of the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Cox, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, April 5, 1988, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceeding of an enforcement nature.

Institution of injunctive action.

Formal orders of investigation.

The subject matter of the open meeting scheduled for Thursday, April 7, 1988, at 10:00 a.m., will be:

1. Consideration of whether to adopt Rules 701, 702 and 703 and Form 701 to provide an exemption from the registration requirements of the Securities Act of 1933 for offers and sales of securities pursuant to certain compensation arrangements and amend Rule 144(a)(3) to add Rule 701 securities to the definition of "restricted securities." For further information, please contact John D. Reynolds at (202) 272–2644.

2. Consideration of whether to issue a release announcing adoption of amendments to Rule 81 of the Commission's regulations on Information and Requests, which would permit immediate publication of interpretative, no-action and certain exemption letters written by the Commission's staff at the time such letters are sent or given to the requesting party, unless confidential treatment is granted. For further information, please contact Michael Hyatte at (202) 272–2573.

3. Consideration of whether to authorize for publication (1) a release adopting certain amendments to Regulation S–K, Form 8–K and Schedule 14A regarding disclosure of registrants' changes in certifying accountants, and (2) a release publishing for comment proposals to increase the timeliness of disclosures on Form 8–K, including registrants' changes in certifying accountants. For further information, please contact Robert Burns or John Riley at (202) 272–2130.

At times changes in Commission priorities require alternations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Nancy Morris at (202) 272–2468.

Jonathan G. Katz,

Secretary.

March 30, 1988.

[FR Doc. 88–7319 Filed 3–30–88; 4:21 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 53, No. 64
Monday, April 4, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

Final Recommendations for Protecting the Health and Safety Against Potential Adverse Effects of Long-Term Exposure to Low Doses of Agents: GA, GB, VX, Mustard Agent (H, HD, T), and Lewisite (L)

Correction

In notice document 88-5573 beginning on page 8504 in the issue of Tuesday, March 15, 1988, make the following corrections:

1. On page 8504, in the second column, under **SUPPLEMENTARY INFORMATION**, in the second paragraph, in the seventh line, the last "the" should read "to".

2. On page 8506, in the second column, in the first complete paragraph, in the 29th line, "ambient" was misspelled.

3. On page 8507, in Table 2, in the second column, in the second and fourth lines, "$\cdot^{4}$" should read "^{2}".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 82N-0153]

Certain Fixed-Combination Antibiotic/Antifungal Products; Withdrawal of Approval of New Drug Applications; Availability of the Commissioner's Decision

Correction

In notice document 88-3624 appearing on page 5044 in the issue of Friday, February 19, 1988, make the following correction:

In the second column, in the first complete paragraph, the seventh line should read as follows: "Commissioner's Order withdraws provisions for certification of Mysteclin-V Capsules (NDA 50-".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8176]

Income Tax; Treatment of Certain Charitable Contributions Relating to Bargain Sales

Correction

In rule document 88-4037 beginning on page 5568 in the issue of Thursday, February 25, 1988, make the following correction:

§ 1.1011-2 [Corrected]

On page 5570, in the second column, in § 1.1011-2(c), Example (3), in the 13th line, "170(b)(F)" should read "170(b)(1)(F)".

BILLING CODE 1505-01-D

federal register

Monday
April 4, 1988

Part II

Department of Transportation

Office of Commercial Space Transportation

14 CFR Ch. III

Commercial Space Transportation; Licensing Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of Commercial Space Transportation

14 CFR Ch. III

[Docket No. 43810]

Commercial Space Transportation; Licensing Regulations

AGENCY: Office of Commercial Space Transportation, DOT.

ACTION: Final rule.

SUMMARY: The Office of Commercial Space Transportation is publishing final licensing regulations for commercial launch activities. These regulations constitute the procedural framework for reviewing and authorizing all proposals to conduct non-Federal launch activities, including the launching of vehicles, operation of launch sites, and payload activities that are not licensed by other Federal agencies. The Office also is publishing its general administrative procedures and a revised compilation of its information requirements. This final rule replaces all previous guidance, specifically the interim final rule, published February 26, 1986, and the Licensing Policy Statement, published February 25, 1985.

DATE: This rule becomes effective April 4, 1988.

FOR FURTHER INFORMATION CONTACT: Gerald Musarra, Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street SW., Room 10424, Washington, DC 20590, (202) 366-9305.

SUPPLEMENTARY INFORMATION:

Background

The Commercial Space Launch Act of 1984, Pub. L. 98-575, authorizes the Secretary of Transportation to oversee and coordinate United States commercial launch activities. The Secretary's mandate embraces the authority to license and otherwise regulate such activities, as well as the responsibility to encourage, facilitate and promote establishment of a competitive United States commercial space transportation industry.

The Department of Transportation is currently implementing its authority in this area through interim regulations published by the Office of Commercial Space Transportation on February 26, 1986. The interim regulations built upon the Office's Licensing Policy Statement, published February 25, 1985, which was the Office's initial exposition of the licensing process it had devised as the means for guiding both the planning and conduct of the private launch activities subject to its authority. In particular, the Office's approach to licensing was intended to ensure that certain national interests received appropriate attention when applications are reviewed. These interests are stated explicitly in the Act: Public health and safety, the safety of property, national security interests and foreign policy interests of the United States. The licensing process described in the policy statement involved two reviews designed specifically to address these interests. One focused on the safety operations that would be used to support launch activities, while the other focused on the proposed mission itself. In addition, the policy statement emphasized the need to streamline procedures for consulting with other Federal agencies on specific commercial launch proposals.

The Office received numerous comments on its licensing policy. These comments, as well as its own greater practical experience with the launch industry, were fully considered in the course of drafting proposed licensing regulations. Because the Office concluded that the launch industry required guidance upon which it could immediately rely, these regulations were published on an interim final basis. Although they went into effect immediately upon publication, the Office requested further comment on its licensing regulations in order to identify revisions or clarifications that might be needed to achieve maximum responsiveness to the wide range of launch activities American firms can be expected to propose.

In addition, much progress has been made since the interim regulations were published in developing the contractual arrangements covering access of commercial launch firms to government-developed launch technology and government-provided safety services. The greater definition that now exists in this area has, in turn, made it both necessary and possible to ensure that government range safety functions and launch firm licensing procedures are efficiently integrated.

The regulations published today constitute the administrative framework for according each proposal to conduct a commercial launch activity a prompt, well-defined, and thorough review. They also reflect the Office's on-going efforts to design a licensing program that will provide unqualified assurance to the public that private firms will operate safely and responsibly. This assurance is indispensable to the success of the American commercial launch industry.

The Office will continue to evaluate and, when necessary, re-shape its program in response to growth, innovation, and diversity in this critically important industry.

National Space Policy

The interim regulations were published within a month of the Space Shuttle Challenger accident, an event which resulted in the temporary grounding of the nation's primary means to space. This situation, combined with the rapidly growing backlog of government and commercial payloads, caused the government to reevaluate its reliance on a single space transportation system as well as its own role as provider of launch services for all the nation's space needs. Instead, the United States private sector would have to assume a new and significant role, alongside the government, in assuring the nation's access to space.

In August 1986, President Reagan announced a new launch policy, set forth in his United States Space Launch Strategy, which limits the Shuttle's role to certain missions and directs the Department of Defense to develop payloads compatible with both expendable vehicles and the Shuttle. Further, the President directed that virtually all routine commercial payloads be launched by commercial launch firms.

On February 11, 1988, the President issued a directive on National Space Policy, which consolidated and updated previous Presidential guidance on space activities. The National Space Policy identifies, for the first time, a separate and distinct commercial space sector. The policy is especially significant because of its emphasis on commercial launch services as an integral element of the robust transportation capability essential for maintaining United States space leadership. Further, the policy reaffirms the role of the Department of Transportation as lead agency for Federal policy and regulatory guidance pertaining to United States commercial launch activities.

National Space Launch Infrastructure

The National Space Policy is the culmination of a series of Presidential policies aimed at a fundamental redefinition of the traditional role of the Federal Government in space activities. In the past, the nation's space programs were conducted entirely by the Federal Government. Launch firms participated in these programs only as government contractors, operating in complete conformance to government program requirements and launch practices.

Now, however, launch firms will be operating on a commercial basis, in

direct response to the needs of their customers. In doing so, they will rely on the nation's existing launch infrastructure for the support they need to undertake missions vital to the technological and economic well-being of the United States.

The facilities that comprise this infrastructure are resources in which the nation has invested over the course of three decades to ensure United States preeminence in all activities. At present, demand for program support at these facilities is great and the supply, as with all resources, limited. This potential capacity problem highlights the need for management strategies that will maximize access to the national ranges for all sectors of the U.S. space program: Military, civil government, and private commercial. The Department of Defense, the National Aeronautics and Space Administration, and the Department of Transportation are working in concert to develop the means whereby Federal launch property and services can be made available to the commercial launch industry in a manner that enables it to compete effectively in the world market for launch services.

Pursuant to its authority under section 15 of the Commercial Space Launch Act and consistent with the President's directives in the National Space Policy, the Department of Transportation is working to ensure that government launch property and services requested by launch firms are priced in a manner that provides maximum encouragement to the United States commercial launch industry. The Department is also working, in consultation with other Federal agencies, to establish allocation of risk principles and insurance requirements that are appropriate for commercial launch activities conducted at national ranges.

Safety Roles and Responsibilities

The Federal Government plays two distinct roles related to safety in the context of commercial launch activities. The Department of Transportation bears responsibility for ensuring, through its licensing process, that proposed launch activities are not hazardous to public health and safety or the safety of property. The Department's exclusive and continuing safety authority extends to such activities regardless of whether they are staged at private or government launch facilities.

Before the Department's Office of Commercial Space Transportation can issue a launch license, it must review an applicant's proposed safety operations. In order to secure approval for its safety operations, an applicant must demonstrate that it can marshall the resources needed to prepare and launch a launch vehicle safely. These resources can be assembled in a number of ways: A company can choose to conduct all safety operations itself; it may rely on government-provided property and services to support its safety operations; or it may choose to perform safety operations through some arrangement whereby private and government resources are combined. In any case, the company must demonstrate that all aspects of its proposed launch activities will be conducted safely.

In addition, the Federal Government also operates, through the Air Force and NASA, a number of launch ranges and related launch facilities. Numerous safety-related operations are conducted at these ranges. Some of these operations, such as those pertaining to flight safety, can be provided under contract as a service to commercial launch firms. Range operators also conduct safety-related operations that derive from their responsibility to protect government property and personnel. These include safety inspections and monitoring, as well as certain other safety functions performed on a mandatory basis for all range users. Most commercial firms have indicated that they plan to contract with national range operators for flight safety support as the means for obtaining safety approval from the Department of Transportation.

Comments on the Interim Regulations

The Office received 13 comments on its interim licensing regulations. Of this total, two were submitted by private individuals, seven from launch firms and other aerospace companies, one from a coalition of media associations, one from a law firm that represents telecommunications clients, and one from a Federal agency. In addition, the Office also received comments from the House Committee on Science and Technology.

Most of the comments received by the Office expressed general support for the licensing policies and procedures articulated in the interim rule. Several commenters, however, raised questions concerning the standard for granting "mission approval", that is, the standard for determining that a proposed launch activity is not objectionable from the standpoint of safety, United States national security or foreign policy interests, or United States international obligations. Specifically, commenters expressed concern that the terms "national security" and "foreign policy" are not defined in the regulations and could be interpreted too broadly.

The Office wishes to emphasize again the guiding principle established by the Commercial Space Launch Act in this area: the "provision of launch services by the private sector is consistent with the national security interests and foreign policy interests of the United States and would be facilitated by stable, minimal and appropriate guidelines that are fairly and expeditiously applied." As the agency charged with implementing the Act, the Department of Transportation views this passage as forming the basis for a presumption that proposed commercial launch activities are consistent with national interests. Thus, the purpose of the licensing process, is so far as national security and foreign policy issues are concerned, is to identify and, whenever possible, ameliorate specific problems with a proposal, not to determine that each and every proposal is generally consistent with those interests.

However, the Office also wishes to emphasize again the consideration of national security and foreign policy factors is required in the first instance by the Commercial Space Launch Act, not commercial launch regulations: the Act requires the Office to consult with the Departments of Defense and State on all matters affecting United States national security or foreign policy interests.

The Office also received comments that focused on the treatment accorded payloads in the course of Mission Review. These comments were filed by a coalition of organizations representing entities engaged in news gathering and dissemination ("the Media Parties"), as well as by a law firm specializing in telecommunications matters. Specifically, the commenters expressed some concern that, as drafted, the regulations seemed to suggest the possibility of redundant regulation for payloads that are already subject to payload regulation by other Federal agencies, notably the Federal Communications Commission (FCC) and the National Oceanic and Atmospheric Administration of the Department of Commerce (NOAA). The Office recognizes that some clarification of its policies and procedures concerning approval of proposed missions may be helpful in order to eliminate any confusion concerning the Office's role relative to Federal agencies with exclusive responsibility for regulating satellites or satellite services. This matter is discussed in greater detail in the Section-by-Section Analysis.

The Media Parties also proposed modifications to Mission Review that

are intended to provide procedural safeguards to applicants whose commercial space proposals may involve activities protected by the First Amendment to the Constitution. In the view of the Media Parties, without these modifications, the regulations may impinge on the First Amendment rights of news organizations.

The Office has not adopted these proposed modifications because they would have the effect of distorting the licensing process. To the extent that a proposal to launch a communications or remote sensing satellite raises First Amendment issues, those issues will be addressed by the agencies with exclusive authority for regulating these satellites or the services provided by them: the FCC or NOAA. Such issues do not fall within the scope of the Office's authority for commercial launch activities and, thus, are not addressed in the course of its licensing process. The Office's sole non-safety concern regarding FCC or NOAA regulated payloads is that such satellites not be launched until they are licensed by those agencies.

Another commenter suggested that Mission Review should examine the impact of proposed new payloads on future, as well as current, uses of space. The Office does expect that its review of such a payload would focus on safety, national security or foreign policy implications associated with the payload. In addition, reviews would also focus on those impacts associated with a new payload that may occur in the reasonably foreseeable future. However, the Office does not consider open-ended speculation regarding possible future uses of space by public and private entities, both domestic and foreign, to be consistent with the well-defined and expeditious processing of applications required by the Act.

The Office received comments from the House Committee on Science and Technology that touched on a number of subjects in the regulations. First, the Committee directed the Office's attention to the fact that since "payloads" are defined as "objects", not people, by the Act, there could be a problem with the Office seeking to offer guidance to private entities who may be planning manned launch activities. Indeed, several such entities have consulted with the Office on a number of occasions and a representative of one start-up firm sits on the Department's Commercial Space Transportation Advisory Committee.

With regard to "payloads" as defined by the Act, the Office does not see this term, however defined, as an impediment to exercising its role as the point of contact within the Federal Government for private entities planning manned launch activities. Neither the Act nor the Report that accompanied the Act at passage indicates that "launch of a launch vehicle" should be read exclusively as launch of an *unmanned* launch vehicle. While it is clear that the Act was drafted primarily for the launch activities most likely to occur in the near term, commercial launches of unmanned rockets, the Report clearly states that "[t]he Act currently provides adequate supervision for all *non-Governmental* (commercial or noncommercial) space launches * * *." Regardless of the type of launch activity contemplated by a private entity, manned or unmanned, the Federal Government must be prepared to provide effective guidance. Only in this manner can the Government avoid the unsatisfactory administrative response that firms proposing commercial ELV launches experienced prior to issuance of Executive Order 12465 and passage of the Act.

The Committee also asked several questions concerning the Office's research and analysis program, which is intended to enhance the technical resources the Office needs for effective implementation of the Act. This program consists of studies to be conducted over the course of two years. The Committee asked how the Office can handle private launch site proposals on a case-by-case base, as provided in the regulations, within the statutorily prescribed 180 days or how a meaningful rulemaking proceeding on private launch sites can begin if the Office's safety research and analysis will not be completed for two years.

The Office will review proposed private launch site operations on an *ad hoc* basis relying, as an interim measure, on existing government launch expertise, experience, and safety practices as references. In this way reviews will be conducted thoroughly and within the statutory time limits even though there are not now published standards to guide firms planning to conduct private launch site operations. Indeed, such standards cannot be promulgated until adequate data and analysis has been assembled to support a rulemaking.

Any rulemaking initiated in the near-term on private launch site operations will focus on regulatory *policy* issues; that is, the appropriate approach the Office should take in developing policies and procedures for licensing commercial launch site operations. Thus, both review of private launch site operation proposals and pre-rulemaking notice and comment activity focused on licensing issues can be conducted concurrently with ongoing safety research. Further, although the entire safety research effort may take two years to complete, individual studies will be completed throughout that period, some within the next six months to a year. The results of these studies will form the basis for the Office's basic technical capability, including safety evaluation criteria and a data base for future safety standards. It should be noted that safety research is a continuing and critical component of every safety regulatory program, as demonstrated by the extensive on-going research and analysis conducted by other constituent agencies of the Department of Transportation, such as the Federal Aviation Administration or the National Highway Traffic Safety Administration.

In the area of worker safety, the Committee suggested that there is no need to duplicate the requirements of the Department of Labor's Occupational Safety and Health Administration (OSHA) which would apply to worker safety in the context of licensed launch activities. The Office has no intention of doing so. The Act gives the Office comprehensive safety authority for commercial launch operations, thus raising an issue concerning concurrent authority in this area. As in other areas where there is concurrent safety authority, such as aviation, there is a question concerning the more appropriate approach to safety, OSHA's or that of the agency with primary authority for the activity involved. At this time, the Office will not develop safety requirements for the specific purpose of protecting workers involved in commercial launch operations. OSHA requirements will apply to these activities until the Office and OSHA determine that it is appropriate to do otherwise.

The Committee also suggested that the Office prescribe a format for required information and use forms where appropriate. Although the Office has not ruled out adoption of a required format at some future time, it continues to believe that, for the time being, applicants should organize required information in a manner that reflects the organization of their safety operations. In order to encourage innovation, the Office has tried to accord applicants maximum flexibility and to emphasize content, rather than form. The information requested was identified and organized in close cooperation with NASA and the approach was discussed informally with launch companies before rulemaking was initiated. They all supported our approach then and, in

their formal comments on the rule, have continued to do so.

With regard to license fees, the Committee favors incorporating such fees in the regulations to cover the costs associated with processing applications. The Department strongly supports user fees in all transportation modes. The Office intends to consider establishing reasonable fees for licensing processing, balancing the desirability of reasonable fees with its responsibility to encourage and promote a private launch industry.

The committee also alerted the Office to the need for further clarification of some of the definitions contained in the regulations. The Office has made appropriate revisions to its definitions and these, along with other revisions, are discussed in the section-by-section analysis that follows.

Section-by-Section Analysis

Part 400—Basis and Scope

Section 400.1 indicates that the commercial space transportation regulations derive from both the Federal Government's domestic responsibilities for commercial launch activities as well as the obligations it has assumed under international agreements, particularly the obligation under Article VI of the 1967 Outer Space Treaty to provide authorization and continuing supervision for such activities.

Section 400.2 specifies the launch activities for which the regulations provide guidance: all United States launch activities except amateur rocket activities and the launch activities of the United States Government. As the Office stated in its initial policy statement on licensing, its licensing policies and procedures have been developed primarily for the private commercial launch activities that are currently being proposed: commercial expendable launch vehicle (ELV) launches. However, consistent with the legislative history of the Act, the Office's regulatory guidance also provides adequate supervision for any other non-Federal launch activity. Thus, launch activities falling within the scope of the Office's authority may include activities conducted for experimental, developmental, or research purposes as well as those conducted without any apparent profit motive.

At the same time, neither the Act nor its legislative history evinces an intention to require licenses for small scale rocket launches conducted for recreational or educational purposes at private sites. These launches, which number annually in the millions, are currently subject to state and local regulation, self-regulation by the organizations sponsoring these activities, and Federal airspace requirements. These existing guidelines and requirements have been effective for purposes of protecting public safety and any other national interest that may be associated with these activities.

Part 401—Organization and Definitions

Section 401.1 identifies the operating unit within the Department of Transportation with primary responsibility for implementing the Department's authority under the Act, the Office of Commercial Space Transportation. Section 401.3 identifies the Director of Commercial Space Transportation as the official within the Department to whom the Secretary's authority for commercial space transportation has been delegated.

Section 401.5 contains definitions of the major terms used in the regulations. The definitions of "launch" and "operation of a launch site" are intended to convey the complementary, but nevertheless distinct, nature of these two activities. A launch centers on the placement, or attempted placement, of a specified launch vehicle and/or its payload in a suborbital trajectory or in space. A launch license authorizes a launch to be conducted in order to achieve certain mission objectives. The license holder is legally responsible for the proper conduct of such a launch. Although a launch license would seem to be oriented toward singular events, one license could cover a specified series of launches where the same safety resources will support several identical or similar missions.

In contrast, the operation of a launch site involves continuing operations at a permanent location. A license covering such operations authorizes a person to operate a launch range facility and to offer approved services to launch companies.

The Office has determined that the inclusion of a definition for "commercial launch activities" in the Interim Final Rule was unnecessary and has deleted it.

Part 404—Regulations and Licensing Requirements

The Commercial Space Launch Act establishes the licensing standards for commercial launch activities. Section 9(b) of the Act directs the Office to issue a license once it has determined that an applicant meets the requirements for a license identified in section 8(a)(1) of the Act. These include current requirements of Federal agencies which apply specifically to the launch of a launch vehicle or operation of a launch site. If, however, the Office determines, in consultation with the appropriate agencies, that any such Federal requirement is not needed to protect public safety, the safety of property or the national security and foreign policy interests of the United States, then section 8(a)(2) permits the Office to eliminate that particular requirement as a requirement for a license. Moreover, section 8(b) authorizes the Office to prescribe new requirements for commercial launch activities. Together these provisions confer broad authority upon the Office to craft efficient regulatory guidance with specific applicability to private launch activities.

If the Office wishes either to eliminate an existing Federal requirement or to prescribe new ones in order to implement the provisions of the Act, a proceeding must be conducted that would involve notice to and comment by the public. Part 404 of the regulations sets out the procedures the Office will follow when conducting rulemaking proceedings and explains how interested parties may participate.

Section 8(c) of the Act gives the Office discretionary authority to waive a licensing requirement for a license applicant if that waiver would be in the public interest and would not jeopardize public health and safety, safety of property, or any national security or foreign policy interest of the United States. Part 404 also establishes procedures for waiver requests by individual applicants.

With regard to existing Federal requirements, the Office has determined that the only provisions with direct applicability to private launches are those of Part 101, Subpart C, of the Federal Aviation Regulations, 14 CFR 101.21–25, regulating all unmanned rocket activities. The Office of Commercial Space Transportation and the Federal Aviation Administration have agreed that, henceforth, requirements pertaining to the use of domestic United States airspace for commercial launch purposes will be handled by the Office as an intradepartmental matter on behalf of licensees.

It should be noted that the Office's safety authority extends to protecting workers at commercial launch sites. For the present, however, the Office will not prescribe any standards or requirements for worker safety in the context of licensed launch activities. Instead, the appropriate requirements of the Department of Labor's Occupational Safety and Health Administration will apply to privately conducted launch activities.

Part 405—Investigations and Enforcement

The Office will rely on the provisions of Part 405 to ensure compliance with the terms and conditions of licenses. Section 405.1 requires licensees to cooperate with anyone acting on behalf of the Office to monitor licensed activities, including payload-related activities covered by section 6(b)(2) of the Act. Monitoring will be conducted in the least intrusive manner possible and only for the purpose of determining whether such activities conform to applicable requirements.

Section 405.3 deals with modification, suspension or revocation of licenses. The Office may modify a license either on its own initiative or pursuant to a request by the licensee. All modifications must conform to the same standards, identified in the Act, that apply to initial licenses.

Paragraph (b) of § 405.3 indicates that noncompliance with any requirement applicable to a licensed activity is grounds for suspension or revocation of a license. Moreover, § 405.5 provides for emergency orders to halt any launch activity detrimental to national interests, while § 405.7 provides that acts of noncompliance may be punishable by civil penalties.

With regard to the Director's emergency order authority, which is explicitly mandated by section 11 of the Act, the Office is aware of the concern, expressed through the Commercial Space Transportation Advisory Committee, associated with the exercise of this authority. One of the Office's major goals has been to encourage and promote the industry through carefully considered policies and procedures designed to eliminate, wherever possible, regulatory uncertainties. Thus, the Office wishes to emphasize that it views the exercise of this authority as an extraordinary measure to be relied upon in truly emergency circumstances.

Part 406—Administrative Review

Part 406 describes the Office's procedures for implementing the Act's administrative review provisions. Section 12 of the Act requires that an opportunity for a hearing be accorded persons seeking reconsideration of certain decisions made by the Office. Specifically, persons who have applied for a license may challenge a decision not to issue a license or challenge the conditions attached to a license that has been granted. In addition, a person holding a license may dispute a decision to modify, suspend or revoke that license or to issue an emergency order. Similarly, a payload operator or owner may request a review of the facts or issues pertaining to a payload whose launch the Office has decided to prevent, as may a person against whom the Office has assessed a civil penalty. In these circumstances the Office will, if so requested, provide an opportunity for an impartial hearing on the matter at issue. Part 406 sets out the procedures governing initiation and conduct of such proceedings.

Part 411—Policy

Part 411 establishes the policies of the Office of Commercial Space Transportation for licensing commercial launch activities, including launches, launch site operations, or some combination of the two activities. These policies augment the general application procedures set out in Part 413 of the regulations and the launch license review procedures contained in Part 415 of the regulations.

Section 411.3 identifies the two reviews, Safety Review and Mission Review, through which the Office will evaluate proposed ELV launches. Although the Office will be responsive to proposals involving manned launches, such proposals may involve issues that require reviews different from or in addition to these two reviews.

In order to accord the industry both flexibility and certainty in the course of developing commercial launch proposals, the Office may conduct Safety Review and Mission Review independent of each other and in the order, sequential or concurrent, appropriate to the applicant's needs. For example, an applicant may secure approval for a proposed mission early in the planning stages of a launch activity and apply later for approval of the safety operations proposed to support an actual launch. The record upon which to base licensing decisions thereby can be developed in a manner that responds to the planning needs of applicants.

Section 411.3 also discusses requests for licenses authorizing the operation of commercial launch sites. Editorial revisions have been made to this section to make it clear that this activity is comparable to the operation of a commercial airport. Although a separate license covering the operation of a launch site is contemplated by the Act, the regulations were not developed specifically for implementing the Office's authority in that area. Devising an appropriate regulatory framework for commercial launch site operations involves careful consideration of a wide range of complex issues, particularly those relating to requirements or standards for implementing the Office's safety authority. The Office has begun investigating these issues as part of its comprehensive research and analysis program.

At the same time, the Office has received a number of inquiries expressing interest in establishing permanent commercial launch sites and wishes to be responsive to any proposal that may be submitted in the near future. In order to do so, the Office will rely on its Safety Review process, discussed below, as an appropriate general framework for initiating an assessment of commercial launch site proposals.

Section 411.5 addresses safety approval, one of two approvals an applicant must secure in order to be granted a license. At present, there are no safety standards or requirements that have been developed specifically for commercial launch activities. Therefore, pending completion of efforts to develop these standards and requirements, the Office will make case-by-case determinations regarding safety operations that commercial firms propose to conduct themselves. The Office will supplement the resources available to it, when necessary or appropriate, by relying on the experience and expertise of other Federal agencies. Minor editorial changes have been made to this section in the final rule.

Section 411.7 discusses mission approval. This is the other approval which must be secured in order for an applicant to be granted a launch license. The Office must assess proposed missions from the standpoint of both the national interests and international obligations of the United States. The review will encompass such factors as the nature and purpose of the proposed payload, the impact of the payload on existing uses of space, and the proposed flight plan.

With specific regard to national security and foreign policy interests, the Office is required to consult with the Departments of Defense and State, the Executive Branch agencies with primary responsibility for safeguarding U.S. national security and foreign policy interests, respectively. The Office must ensure that these agencies are apprised of potential commercial launch activities in order for their views to be taken into account. The Office wishes to emphasize again that, as a general matter, Congress has declared privately conducted commercial launches to be consistent with the national security and foreign policy interests of the United States. The Office fully recognizes that the commercial viability of providing such services on a routine basis requires

that review of proposed missions not be encumbered by unnecessary process. Therefore, the Office will seek to identify specific problems associated with a proposed mission, not seek to determine *de novo* that each launch proposal is consistent with United States interests.

However, the Office has revised § 411.7 of the regulations to correct any impression created in the Interim Rule that the Office was establishing an evidentiary standard for adverse licensing decisions that is higher than or different from that set forth in the Act.

The mission of most proposed orbital launches will be to place a payload in space. Thus, the most significant part of the Office's review of proposed missions will pertain to the payload to be launched. The Office wishes to clarify the nature and scope of its authority with regard to payloads launched by commercial launch firms. A launch license issued by the Office authorizes the licensee to launch a launch vehicle and any payload to be carried by the launch vehicle. In order to authorize a launch involving a payload, the Office must first identify the nature of the payload to be launched. This identification is necessary in order for the Office to determine how to proceed, in practical terms, with a review of a proposed mission. There are two general options: (1) The payload the applicant proposes to launch is identified as one which is subject to existing payload regulation. At present, this category includes only telecommunications satellites licensed by the Federal Communications Commission (FCC) and remote-sensing satellites licensed by the National Oceanic and Atmospheric Administration of the Department of Commerce (NOAA). (2) The payload the applicant proposes to launch is identified as one which is not subject to existing payload regulation. Only for this latter category will the Office initiate a review, pursuant to its authority under section 6(b)(2) of the Act, in order to determine that the proposed launch of the payload will not jeopardize public health and safety, safety of property or any national security or foreign policy interest of the United States. The Office does not conduct such a review for any payload that requries either an FCC or NOAA license to launch or operate. Rather, pursuant to section 6(b)(1) of the Act, the Office simply requires that the appropriate license be secured before the payload can be launched. The Office will not examine any issues pertaining to payloads licensed by the FCC or NOAA before license application is made to either of those agencies or during the pendency of any review of a license application at either agency. Nor will the Office re-examine any matter associated with a payload that was or could have been subject to FCC or NOAA review during their respective licensing processes. In order to eliminate any lingering ambiguities in this area, the policies and procedures in the regulations pertaining to proposed missions have been revised or clarified, as appropriate. It should be noted, however, that in the course of Safety Review the Office will seek to ascertain whether all applicants possess the requisite resources and expertise to conduct safely any planned payload-related operations as part of the process whereby a launch vehicle is prepared and launched.

Payloads that are subject to review by the Office under section 6(b)(2) of the Act include all domestic payloads not presently regulated by the FCC or NOAA and all foreign payloads. The Office is authorized to determine whether the launch of any such payload would jeopardize public safety, safety of property, or any national security or foreign policy interest of the United States. If necessary, the Office may act to prevent the launch of the payload in question. As it has done in other areas, the Office has molded its policies and procedures carefully in this area so that legitimate Federal interests associated with proposed launches of these payloads are not served at the unnecessary expense of commercial space enterprise. Thus, the Office will exercise its authority under section 6(b)(2) in a manner that minimizes regulatory uncertainties for those planning or sponsoring new space applications and missions involving foreign payloads.

Section 411.9 discusses the information the Office will require applicants to submit in order to initiate review of applications. The Office's approach to this information corresponds to its goal of fostering reliable, low-cost commercial space transportation services. The Office's information requirements have been organized intentionally into general categories that identify the basic information needed to initiate an appropriate review. However, although all the requested data must be provided for an application to be considered complete, the Office has not prescribed any particular format for submitting it. Because commercial firms may develop new approaches to the design of launch vehicles, the delivery of launch services, or the location and organization of launch operations, information, submissions may reflect the unique structure or organization of their launch operations.

The Office has made a number of changes to the information requirements identified in the Interim Rule. The Office expects to continue refining these requirements based on the products of its research program and consultations with other agencies, as well as formal and informal interaction with the commercial space industry. Therefore, the Office has concluded that this information should not be included in its published regulations. So that prospective applicants are assured of having ready access to the most current and accurate version of the Office's information requirements, they will be set out in a separate document that will be available upon request. The first such version of the Office's information requirements is published as an appendix to this preamble.

Part 413—Applications

Part 413 sets out general license application procedures. These procedures apply to all commercial launch activities, regardless of whether an applicant seeks a license to launch a vehicle, operate a launch site, or for a combination of the two. The application procedures in Part 413 are supplemented by the provisions of Part 415, which contains a detailed description of the review procedures for launch license applications. A separate part has been reserved for future regulations addressing applications for licenses authorizing launch site operations.

Since the nature of a proposed launch activity affects the timing and scope of the Office's review, as well as the degree to which other Federal agencies will be involved, § 413.3 encourages prospective applicants to initiate preapplication consultations with the Office of Commercial Space Transporation.

Section 413.7 contains revised procedures for handling confidential information. These revisions have been made to bring this section into conformity with section 9(c) of the Act, which directs that certain information provided to the office by applicants not be disclosed unless the Secretary determines that withholding such information is contrary to the public or national interest.

Section 413.9 outlines the process for reviewing all applications. Section 413.9(a) has been amended to indicate that information required to initiate a review of an application is available upon request.

Section 413.9(b) states that an application is accepted for review by the Director if it is substantially complete; that is, if it contains sufficient information for a meaningful review. Once an application is accepted for review, § 413.9(d) indicates that the Director will initiate an appropriate interagency review. The Office, not the applicant, will assume the burden of shepherding the application through the review process. Additionally, the reference in § 413.9(d) to an "appropriate" review is intended to make clear that the administrative response to an application may not be standard or uniform in all circumstances; the Office has taken great care to insure that each review is tailored to the application's particular characteristics. In this fashion, the Office intends to avoid any unnecessary regulatory stumbling blocks to proposed launch activities.

Section 413.9(e) indicates that a determination on a license application will be made within 180 days of receipt. As a matter of policy, however, the Office intends to conduct all application reviews on an expedited basis and anticipates that most determinations will be made well before this statutory deadline.

All licenses issued will contain terms defining the activity authorized by the license and the person responsible for conducting that activity. In addition, conditions will be incorporated into all licenses to ensure compliance with statutory and regulatory requirements. Section 413.15 addresses certain standard conditions, including the need for an on-site mechanism to verify that the licensed activity conforms to information that was submitted to and reviewed by the Office during the application review process.

Section 413.17 indicates that a license authorizing a launch activity is separate from the license required for any satellite to be launched. The Act preserves the existing authority of Federal agencies with primary responsibility for payload regulation. At present, this includes only the FCC and NOAA, which are responsible for licensing telecommunications and remote sensing satellites, respectively. Thus, issuance of a launch license has no effect on the exclusive authority of the FCC or NOAA to license such satellites or the services provided by them.

Section 413.19 establishes the applicant's responsibility for the continuing accuracy of information submitted as part of an application review.

Part 415—Launch Licenses

Part 415 establishes procedures for reviewing launch license applications and the general standards for approving such applications. The provisions of this part apply only to prospective launch license applications and should be read together with the general application procedures in Part 413. A future regulatory proposal addressing commercial launch site operations will establish procedures and standards specifically for license applicants seeking authorization for that activity in a separate part.

Section 415.3 identifies the proposed launch activities that will require a launch license. Any person proposing to launch from U.S. territory must obtain a license authorizing the launch. A U.S. citizen proposing to launch from U.S. territory or from international territory must also obtain such a license, unless (in the case of launches from international territory) another nation has agreed to exercise jurisdiction over the launch. Foreign corporations, partnerships, joint ventures, associations or other entities controlled by U.S. citizens do not need licenses to conduct a launch from foreign territory, unless the foreign nation involved has agreed that the U.S. shall exercise jurisdiction over the launch.

Section 415.5 identifies the two approvals that must be secured in order for a launch license to be issued: safety approval and mission approval. Safety Review and Mission Review are conducted to determine whether these approvals can, in fact, be given. Once secured, no other approval is required from the Office in order for an applicant to be granted a license for an ELV launch.

The Office will accept applications for Safety Review, Mission Review, or for a determination that the launch of a payload covered by section 6(b)(2) of the Act will not be prevented, independent of one another and before submission of an application for a license. Section 415.7 makes clear that any approval or determination made on such applications will be made part of a licensing record. Thus, when an applicant does apply for a launch license, any approval or determination previously made that relates to the activity for which a license is sought remains valid. The Office will not duplicate a relevant review as long as no material changes have been made in matters previously reviewed and approved.

Section 415.9 identifies standard conditions for launch licenses. One of these is securing third-party liability insurance coverage. In exercising its authority in this area, the Office will be looking to set required insurance amounts that accurately reflect the potential losses associated with launch failures. The Office has begun several studies to determine what these amounts should be. For the time being, the Office will prescribe insurance requirements for each licensed activity on a case-by-case basis.

The final regulations include a new provision, § 415.10, which sets out requirements pertaining to the registration of objects launched into space.

Subpart B of Part 415 focuses on Safety Review. Section 415.13 identifies the major elements of Safety Review: the proposed launch site, procedures, personnel and equipment. Section 415.15 notifies applicants that Safety Review can be requested either as part of the license request or before a license request is submitted. This provision responds to the need some prospective licensees may have for explicit approval of their safety operations at an early planning stage.

Section 415.17 of the interim regulations set out the information requirements for Safety Review applicants. This section has been deleted. The information currently required for a Safety Review is contained in the appendix to this preamble. It should be noted that launches from sites with pre-approved safety operations will be treated differently from those occuring at other sites. At present, the only sites with pre-approved safety operations are Federal launch ranges. In the future, this category would also include commercial launch sites operated under the authority of a license issued by the Office.

Subpart C of Part 415 focuses on Mission Review. Section 415.23 states that for Mission Review, as for Safety Review, applicants may request approval either as part of a license request or before such a request is made. Sections 415.25 and 415.27 of the interim regulations set out the information requirements for applicants seeking mission review or a determinations on a payload not regulated by FCC or NOAA. These sections have been deleted. Information required for Mission Review, including information pertaining to payloads that are not regulated by the FCC or NOAA, is set forth in the appendix of this preamble. The nature of the proposed mission will affect both the nature and the quantity of information needed by the Office to conduct its review. For

proposals which involve licensed payloads, the payload requirements of Mission Review will be satisfied by the issuance of a license by the responsible Federal agency. Proposals involving other kinds of domestic payloads or foreign payloads must be accompanied by more extensive information, reflecting the more extensive review such proposals must receive from the Office.

Subpart D of Part 415 identifies circumstances wherein applicants may be required to submit information to the Office as part of Safety Review, Mission Review, or both, in order to satisfy the requirements of the National Environmental Policy Act. This information will be needed when some element of a proposal is not covered or addressed by existing environmental documentation on the effects of launch activities.

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act

The interim regulations were evaluated under Executive Order 12291, "Federal Regulation," dated February 17, 1981, and the Department of Transportation's Regulatory Policies and Procedures, dated February 26, 1979. The regulations were not considered to be "major," as defined by E.O. 12291, because they will not have an annual cost impact exceeding $100 million; they will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or regions; and they will not have a significant adverse impact on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The regulations were considered to be "significant" as defined by the Department's Regulatory Policies and Procedures because of the novelty of space transportation as a private sector activity, the interest of the public and other Federal agencies, and the effect of the regulations on the competitive position of United States launch firms. The Office prepared a Regulatory Evaluation to accompany the interim regulations, which was made available for public review and comment in the rulemaking docket. Since the final regulations are not materially different from the interim ones, the Office considers all regulatory analysis prepared for the interim regulations to be applicable to the final ones. The regulations are largely procedural in nature and are intended to eliminate regulatory obstacles to private launch firms, large or small. Small entities are likely to be involved in launch activities and, as a consequence, affected by the regulations.

The regulations do not impose significant economic costs on them. Therefore, it is certified that the regulations will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

The Office completed an environmental assessment of the commercial space transportation program and made the assessment available for public inspection and comment. The programmatic assessment did not identify any significant impacts that the conduct of commercial launch activities would have on the human environment. However, certain factors associated with individual launch proposals were not addressed in the assessment and may require further review during the licensing process.These include use of new propellants, new site development, or environmental effects associated with some payloads in the event of a launch accident. Copies of the assessment may be requested from: Office of Commercial Space Transportation, S–50, Washington, DC 20590. Based on the assessment and comments received on it, the Office published a finding of No Significant Impact in the **Federal Register** on November 19, 1986.

List of Subjects in 14 CFR Parts 400, 401, 404, 405, 406, 411, 413, 415

Administrative practice and procedure, Space transportation and exploration.

(Commercial Space Launch Act of 1984, Pub. L. 98–575, October 30, 1984)

Issued in Washington, DC, on March 24, 1988.

Courtney A. Stadd,

Director, Office of Commercial Space Transportation.

Appendix—Commercial Space Launches: Information Required for Applications

(References: 14 U.S.C. Parts 411–415)

I. General Requirements

(A) Applications must be in writing and filed in duplicate with the Office of Commercial Space Transportation, S–50, 400 Seventh Street, SW., Washington, DC 20590. Attention: Applications Review Staff.

(B) The original of the application must be signed in accordance with § 413.5 of the regulations, 14 CFR 413.5.

(C) Applications should identify the name and address of the applicant, and the name, address, and telephone number of person(s), including counsel, to whom inquiries and correspondence should be directed.

II. Safety Review

(A) Launches from Federal or Licensed Launch Sites

Applicants proposing to launch from Federal launch ranges or commercial sites operated under the authority of a license issued by the Office must provide:

(1) Documentation verifying that the applicant has been accepted by the operator of a launch range or site appropriate for the proposed mission; and

(2) A statement identifying the party (operator or applicant) responsible for conducting or providing, whether in whole or in part, any element of safety operations discussed in §§ 415.11 and 415.13 of the regulations, 14 CFR 415.11 and 415.13. In instances where the applicant will assume primary responsibility for one of these elements, detailed information must be provided describing how responsibility and accountability for safety will be assigned between the operator and applicant; and

(3) An analysis of any hazardous activity that will be solely under the control of the commercial applicant, such as orbital transfer stage operations. The analysis must describe the specific hazards associated with the activity and procedures planned to minimize public exposure to such hazards.

(B) Other Launches

All applicants not covered by paragraph (A) of this section must provide a Safety Analysis of their proposed operations in sufficient detail for the Office to conduct an indepth review of safety operations, as discussed in §§ 411.3, 411.5 and 415.11–415.17 of the regulations, 14 CFR 411.3, 411.5, 415.11–415.17. The applicant's Safety Analysis must identify and evaluate all hazards to public health and safety or to off-site property that may occur during prelaunch, launch or on-orbit operations; procedures to be employed to control the hazards identified; qualifications of range safety personnel and other critical personnel responsible for assuring hazard controls; design characteristics of range safety systems (flight and ground) and their effectiveness in assuring a safe launch operation; and any residual risks to public health and safety or to off-site property that may be associated with the applicants proposed launch

operations. The following information typifies the data that should be addressed and included in the application:

(1) An identification and description of the launch site from which the proposed launch will take place, specifically describing:

(i) The location, size, shape and geographic characteristics of the site;

(ii) The proximity to populated areas;

(iii) Any local activities that may be affected by the launch such as air traffic, shipping, and offshore fishing; and

(iv) Proposed launch corridors from the site and predicted impact areas.

(2) A description of the role and responsibilities of personnel performing safety or safety related functions for the proposed launch operation. Details should include:

(i) A description of the planned organization, key personnel, and lines of authority and responsibility for accomplishing pre-launch and launch safety functions.

(ii) The methodology proposed for selection, training and testing of the Launch Safety Office and other key personnel critical to assuring Launch Safety System readiness for launch, as well as prior experience, training, etc. of such personnel.

(iii) Description and explanation of how the methodology proposed relates to assuring the successful control of the proposed launch.

(3) A description of tracking and/or data acquisition equipment to be used for safety purposes. This description should include:

(i) An identification of the types of tracking equipment to be used and their performance capabilities;

(ii) The location and placement of equipment; and

(iii) The types, performance capabilities and specifications of other aids to be used including computational equipment, display systems, and recording systems.

(4) A description of proposed flight safety systems including:

(i) The type, design and performance specifications of the flight termination system including transmitters, receivers, ordinance, etc.;

(ii) Schematics and wiring diagrams; and

(iii) Certification and verification procedures for the proposed flight safety system.

(5) Documents outlining the proposed process and procedures to be followed for prelaunch ground safety, flight safety analysis, and flight safety operations, including copies of safety analyses performed to determine potential impacts, establish destruct criteria, unique hazards identified, etc. Examples of documents to be included are set forth below:

(i) Description of ground safety measures taken to protect public safety;

(ii) Flight safety analysis performed, analytical models used, etc. In order to demonstrate efficacy of the proposed process, the applicant is requested to provide examples of safety analyses it has performed to determine potential impacts, establish flight termination criteria, identify/control unique hazards, etc.;

(iii) Flight safety operation to be conducted, criteria proposed for flight termination, practice and testing exercises to be performed, emergency procedures, etc.;

(iv) Quality control and testing procedures for critical safety equipment components including tracking and flight termination; and

(v) Recovery procedures if applicable.

(6) Flight plan data as a function of time for launch vehicle and spacecraft including trajectory, azimuth, flight profile, and orbital elements. Examples of data to be included are set forth below:

(i) Profile plot of the planned flight trajectory, showing altitude versus range and trajectory for each expended stage;

(ii) A plan view of the flight trajectory, showing launch and trajectory azimuth, impact points for each stage, jettisoned component, or other impacting body;

(iii) Launch vehicle ground and IIP ground tracks with respect to all significant land masses shown in true geographical location; and

(iv) Description and definition of orbit.

(7) Description of the launch vehicle and its performance characteristics, as well as a description of any payload with a particular emphasis on hazardous systems. Examples of descriptions to be included are set forth below:

(i) Description of the launch vehicle configuration; major sections and components; weights and dimensions of each; rocket motors and propulsion systems, guidance system for each stage; and destruct system(s);

(ii) Description of payload design sufficient to determine unique flight safety hazards, hazardous materials involved, etc.; and

(iii) Thrust time history of each stage, maximum turn rates, plot of estimated vehicle weight versus time, analysis of vehicle integrity to meet flight environment.

(8) Other categories of data as determined by the applicant to demonstrate unique capabilities.

(C) Accidents and Mission Failures

All applicants must submit a plan which identifies:

(1) The procedures and criteria proposed for reporting accidents, incidents and mission failures to the Office.

(2) The applicant's investigation process and criteria for impounding data, establishing investigation boards, committees or officials.

(3) Individuals responsible for establishing an investigative process and for reporting accidents, incidents, and mission failures to the Office.

III. Mission Review

(A) The applicant must describe the launch vehicle and the location of the launch site.

(B) The applicant must submit a flight plan and staging data sufficient for evaluating such factors as the potential for land overflight, impacts of spent stages, and debris issues.

(C) The applicant must identify any unique hazards that may be posed by the launch derived from the nature of materials to be launched or potential abort or re-entry hazards.

(D) The applicant must identify the nature and ownership of any payload to be launched.

(E) The applicant must—

(1) Provide proof of application for or issuance of any license, authorization or other permit required by either the Federal Communications Commission (FCC) or the National Oceanic and Atmospheric Administration (NOAA) for the payload which is to be launched; or

(2) If no FCC or NOAA license, authorization or permit is required for the payload which is to be launched, indicate whether the Office has made a determination on the payload, as provided in §§ 411.7, 415.21, and 415.23 of the regulations, 14 CFR 411.7, 415.21 and 415.23.

IV. Payload Determinations

(A) An applicant proposing to launch a payload not subject to FCC or NOAA regulation must provide:

(1) An assessment of safety issues anticipated by the applicant;

(2) A statement of the number of missions planned for payloads of the same or similar design;

(3) A description of the design and construction plans of the payload; and

(4) A description and definition of the proposed orbit, including altitude and inclination.

(B) The Office may require an applicant to submit other information, as appropriate.

Accordingly, Title 14, Code of Federal Regulations is amended by revising Chapter III to read as follows:

CHAPTER III—OFFICE OF COMMERCIAL SPACE TRANSPORTATION DEPARTMENT OF TRANSPORTATION (Parts 400–499)

SUBCHAPTER A—GENERAL

Part 400—Basis and scope.
Part 401—Organization and definitions.

SUBCHAPTER B—PROCEDURE

Part 404—Regulations and licensing requirements.
Part 405—Investigations and enforcement.
Part 406—Administrative review.

SUBCHAPTER C—LICENSING

Part 411—Policy.
Part 413—Applications.
Part 415—Launch licenses.

SUBCHAPTER A—GENERAL

PART 400—BASIS AND SCOPE

Sec.
400.1 Basis.
400.2 Scope.

Authority: Secs. 3, 6, 13, and 21, Pub. L. 98–575 (49 U.S.C. App. 2601 note).

§ 400.1 Basis.

The basis for the regulations in this chapter is the Commercial Space Launch Act of 1984, and applicable treaties and international agreements to which the United States is party.

§ 400.2 Scope.

These regulations set forth the procedures and requirements applicable to the authorization and supervision of all space launch activities conducted from United States territory or by United States citizens. The regulations in this chapter do not apply to amateur rocket activities or to space activities carried out by the United States Government on behalf of the United States Government.

PART 401—ORGANIZATION AND DEFINITIONS

Sec.
401.1 The Office of Commercial Space Transportation.
401.3 The Director of Commercial Space Transportation.
401.5 Definitions.

Authority: Sec. 4, Pub. L. 98–575 (49 U.S.C. App. 2601 note); 49 CFR 1.68.

§ 401.1 The Office of Commercial Space Transportation.

The Office of Commercial Space Transportation, referred to in these regulations as the "Office," is a unit within the Office of the Secretary of Transportation and is located in the Department of Transportation Headquarters, 400 Seventh Street, SW., Washington, DC 20590.

§ 401.3 The Director of Commercial Space Transportation.

The Office is headed by a Director appointed by the Secretary of Transportation to exercise the Secretary's authority to license and otherwise regulate commercial space launch activities and to discharge the Secretary's responsibility to encourage, facilitate and promote commercial space launches by the United States private sector.

§ 401.5 Definitions.

As used in this chapter—

"Act" means the Commercial Space Launch Act of 1984, Pub. L. 98–575.

"Amateur rocket activities" means launch activities conducted at private sites involving rockets powered by a motor or motors having a total impulse of 200,000 pound-seconds or less and a total burning or operating time of less than 15 seconds, and a rocket having a ballistic coefficient—i.e., gross weight in pounds divided by frontal area of rocket vehicle—less than 12 pounds per square inch.

"Director" means the Director of the Office of Commercial Space Transportation, or any person designated by the Director to exercise the authority or discharge the responsibilities of the Director.

"Launch" means to place, or attempt to place, a launch vehicle and/or payload in a suborbital trajectory, in Earth orbit in outer space, or otherwise in outer space.

"Launch activity" means the launch of a launch vehicle and any payload, the operation of a launch site, or both.

"Launch vehicle" means any vehicle constructed for the purpose of operating in, or placing a payload in, outer space, and any suborbital rocket.

"Licensee" means the person authorized by a license to conduct specified commercial launch activities and responsible for conducting such activities in conformance with applicable requirements.

"Mission" means the objective to be accomplished by a proposed launch and includes the general plan for achieving that objective.

"Operation of a launch site" means the conduct of approved safety operations at a permanent site to support the launching of vehicles and payloads.

"Payload" means an object which a person undertakes to place in outer space by means of a launch vehicle, and includes subcomponents of a launch vehicle specifically designed or adapted for that object.

"Person" means any individual and any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of any State or Nation.

"Safety operations" means the personnel, equipment, facilities, documented plans and procedures, and any other resource needed for safe preparation and launch of a launch vehicle and its payload.

"State" and "United States" when used in a geographical sense, mean the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, The United States Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States; and

"United States citizen" means:

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

(b) Any corporation, partnership, joint venture, association, or other entity organized or existing under the laws of the United States or any State; and

(c) Any corporation, partnership, joint venture, association, or other entity which is organized or exists under the laws of a foreign nation, if the controlling interest in such entity is held by an individual or entity described in paragraph (a) or (b) of this definition. "Controlling interest" means ownership of an amount of equity in such entity sufficient to direct management of the entity or to void transactions entered into by management. Ownership of at least fifty-one percent of the equity in an entity by persons described in paragraph (a) or (b) of this definition creates a rebuttable presumption that such interest is controlling.

SUBCHAPTER B—PROCEDURE

PART 404—REGULATIONS AND LICENSING REQUIREMENTS

Subpart A—General

Sec.
404.1 Scope.
404.3 Filing of petitions to the director.
404.5 Action of petitions.

Subpart B—Rulemaking

404.11 General.
404.13 Petitions for extension of time to comment.
404.15 Consideration of comments received.
404.17 Additional rulemaking proceedings.
404.19 Hearings.

Authority: Secs. 8 and 13, Pub. L. 98–575 (49 U.S.C. App. 2601 note).

Subpart A—General

§ 404.1 Scope.

Pursuant to sections 8 and 13 of the Act, this part sets forth the procedures for issuing regulations to implement the Act and for eliminating or waiving requirements of Federal law otherwise applicable to the licensing of commercial space launch activities.

§ 404.3 Filing of petitions to the director.

(a) Any interested person may petition the Director to issue, amend or repeal a regulation, to eliminate as a requirement for a license any requirement of Federal law applicable to commercial launch activities, or to waive any such requirement in the context of a specific application for a license.

(b) Each petition filed under this section shall:

(1) Be submitted in duplicate to the Documentary Services Division, Attention Docket Section, Room 4107, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590;

(2) Set forth the text or substance of the regulation or amendment proposed, the regulation to be repealed, or the licensing requirement to be eliminated or waived;

(3) In the case of a petition for a waiver, explain the nature and extent of the relief sought;

(4) Contain any facts, views, and data available to the petitioner to support the action requested; and

(5) In the case of a petition for a waiver, be submitted at least 60 days before the proposed effective date of the waiver unless good cause for later submission is shown in the petition.

(c) A petition for rulemaking filed under this section shall contain a summary, which the Director may cause to be published in the **Federal Register**, which includes:

(1) A brief description of the general nature of the action requested; and

(2) A brief description of the pertinent reasons presented in the petition for instituting the rulemaking.

§ 404.5 Action on petitions.

(a) *General.* No public hearing, argument or other proceeding is held on a petition before its disposition under this section.

(b) *Grants.* In the case of a petition for a waiver, the Director may grant the waiver if the Director determines that the waiver is in the public interest and will not jeopardize public health and safety, the safety or property, or any national security or foreign policy interest of the United States. In all other cases, if the Director determines that the petition contains adequate justification, the Director initiates a rulemaking action under Subpart B of this part.

(c) *Denials.* If the Director determines that the petition does not justify initiating rulemaking action or granting the waiver, the petition is denied.

(d) *Notification.* Whenever the Director determines that a petition should be granted or denied, the petitioner is notified of the Director's action and the reasons supporting it.

Subpart B—Rulemaking

§ 404.11 General.

(a) Unless the Director finds, for good cause, that notice is impractical, unnecessary, or contrary to the public interest, a notice of proposed rulemaking is issued and interested persons are invited to participate in proceedings related to each substantive rule proposed.

(b) Unless the Director determines that notice and comment is necessary or desirable, interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice are issued as final rules without notice or other proceedings.

(c) In the Director's discretion, interested persons may be invited to participate in the rulemaking proceedings described in § 404.19 of this Supbpart.

§ 404.13 Petitions for extension of time to comment.

(a) Any person may petition the Director for an extension of time to submit comments in response to a notice of proposed rulemaking. The petition shall be submitted in duplicate not less than three days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments.

(b) The Director grants the petition only if the petitioner shows a substantive interest in the proposed rule and good cause for the extension, and if the extension is in the public interest. If an extension is granted, it is granted as to all persons and is published in the **Federal Register**.

§ 404.15 Consideration of comments received.

All timely comments are considered before final action is taken on a rulemaking proposal. Late filed comments may be considered to the extent possible, provided they do not cause undue additional expense or delay.

§ 404.17 Additional rulemaking proceedings.

The Director may initiate any additional rulemaking proceedings, if necessary or desirable. For example, the Director may invite interested persons to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceedings.

§ 404.19 Hearings.

(a) Sections 556 and 557 of Title 5, United States Code, do not apply to hearings held under this part. As a fact-finding forum, each hearing held under this part is nonadversarial and there are no formal pleadings or adverse parties. Any rule issued in a proceeding in which a hearing is held is not based exclusively on the record of the hearing, but on the entire record of the rulemaking proceeding.

(b) The Director designates a representative to conduct any hearing held under this part. The General Counsel designates a legal officer for the hearing.

PART 405—INVESTIGATIONS AND ENFORCEMENT

Sec.

Authority: Secs. 14, 17 and 19, Pub. L. 98–575 (49 U.S.C. App. 2601 note).

§ 405.1 Monitoring of licensed and other activities.

Each licensee shall allow and cooperate with Federal officers or employees or other individuals authorized by the Director to observe licensed activities, including launch sites, production facilities or assembly sites used by any contractor or a licensee in the production or assembly of a launch vehicle and in the integration of a payload with its launch vehicle. Such observations are conducted in order to monitor the activities of the licensee or contractor at such time and to such extent as the Director considers reasonable and necessary to determine compliance with the license or to carry out the Director's responsibilities pertaining to payloads for which no Federal license, authorization, or permit is required.

§ 405.3 Authority to modify, suspend or revoke.

(a) Upon application by the licensee or upon the Office's own initiative, the Office may modify a license issued

under this chapter if the Office finds that the modification is consistent with the requirements of the Act.

(b) If the Office finds that a licensee has substantially failed to comply with any requirement of the Act, any regulation issued under the Act, the terms and conditions of a license, or any other applicable requirement, or that public health and safety, the safety of property or any national security or foreign policy interest of the United States so require, the Office may suspend or revoke any license issued to such licensee under this chapter.

(c) Unless otherwise specified by the Office, any modification, suspension or revocation made by the Office under this section:

(1) Takes effect immediately; and

(2) Continues in effect during any review of such action under Part 406 of this chapter.

(d) Whenever the Office takes any action under this section, the Office immediately notifies the licensee in writing of the Office's finding and the action which the Office has taken or proposes to take regarding such finding.

§ 405.5 Emergency orders.

The Office may immediately terminate, prohibit or suspend a licensed launch or launch site operation if the Office determines that—

(a) Such launch or operation is detrimental to public health and safety, safety of property, or any national security or foreign policy interest of the United States; and

(b) The detriment cannot be eliminated effectively through the exercise of other authority of the Office.

§ 405.7 Civil penalties.

(a) Pursuant to section 19 of the Act, any person found by the Office, after notice and opportunity to be heard on the record in accordance with section 554 of Title 5, United States Code, to have violated a requirement of the Act, a regulation issued under the Act, or any term, condition or restriction of any license issued or transferred by the Office, shall be liable to the United States for a civil penalty. Each day of a continuing violation shall constitute a separate violation. The amount of such civil penalty shall be assessed by the Office by written notice. The Office may compromise, modify, or remit with or without conditions, any civil penalty which is subject to imposition or which has been imposed under this section.

(b) If any person fails to pay a civil penalty assessed against such person after the penalty has become final or if such person appeals an order of the Office, and the appropriate court has entered final judgment in favor of the Office, the Office shall recover the civil penalty assessed in any appropriate district court of the United States.

(c) For purposes of conducting any hearing under this section, the Office may:

(1) Issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, documents, and other records;

(2) Seek enforcement of such subpoenas in the appropriate district court of the United States; and

(3) Administer oaths and affirmations.

PART 406—ADMINISTRATIVE REVIEW

Sec.

Authority: Sec. 12, Pub. L. 98–575 (49 U.S.C. App. 2601 note).

§ 406.1 Hearings.

(a) Pursuant to section 12 of the Commercial Space Launch Act, the following are entitled to a determination on the record after an opportunity for a hearing in accordance with section 554 of Title 5, United States Code:

(1) An applicant for a license and a proposed transferee of a license regarding any decision to issue or transfer a license with conditions or to deny the issuance or transfer of such license;

(2) An owner or operator of a payload regarding any decision to prevent the launch of such payload;

(3) A licensee regarding any decision to suspend, modify, or revoke a license, or to terminate, prohibit, or suspend any licensed launch activity; and

(4) A person found by the Office to have violated a requirement of the Act, a regulation issued under the Act, or any term, condition or restriction of any license issued or transferred by the Office if the Office seeks civil penalties.

(b) An administrative law judge will be designated to preside over any hearing held under this part.

§ 406.3 Submissions; oral presentation.

(a) Determinations under this part will be made on the basis of written submissions unless the administrative law judge, on petition or on his or her own initiative, determines that an oral presentation is required.

(b) Submissions shall include a detailed exposition of the evidence or arguments supporting the petition.

(c) Petitions shall be filed as soon as practicable, but in no event more than 30 days after issuance of the Office's decision or finding under § 406.1.

§ 406.5 Administrative law judge's recommended decision.

(a) The recommended decision of the administrative law judge shall be reviewed by the Director, who shall make the final decision on the matter at issue. The Director shall make such final decision within thirty days of issuance of the recommended decision.

(b) The authority and responsibility to review and decide rests solely with the Director and may not be delegated.

SUBCHAPTER C—LICENSING

PART 411—POLICY

Sec.

Authority: Secs. 3, 5 and 6, Pub. L. 989–575 (49 U.S.C. App. 2601 note).

§ 411.1 General.

The Office of Commercial Space Transportation may issue and transfer licenses authorizing launches, the operation of launch sites, or both.

§ 411.3 Review procedures.

(a) The evaluation of license requests for unmanned launches involves two reviews, Safety Review and Mission Review, designed to address in the most effective and least burdensome manner the two general areas of Federal concern: (1) the efficacy of the proposed safety operations to support safe preparation and launch of a launch vehicle and any payload; and (2) significant issues affecting United States national security interests, foreign policy interests, or international obligations which might be associated with the proposed launch. These reviews may be conducted independently of each other and in whichever order, sequential or concurrent, is more appropriate to the needs of the applicant.

(b) Requests for licenses authorizing the operation of a launch site are reviewed on the basis of the applicant's capability to operate a facility where safety operations are conducted on a continuing basis as support for the launching of a specified class of launch vehicles.

§ 411.5 Safety approval.

(a) Applicants proposing to conduct all of their own safety operations at a private launch site must demonstrate that they possess the resources needed for safe preparation and launch of a launch vehicle and any payload to be carried by such vehicle. In these

circumstances, a comprehensive review of the applicant's proposed safety operations must be performed in order to determine whether safety approval can be granted.

(b) If an applicant proposes to launch from a Federal range, as the Act encourages, it is the Office's view that reliance on safety-related launch property and services found at these ranges is an appropriate means of assuring that the applicant's launch activities can be conducted safely. As a general matter, a commercial launch site operated under the authority of a license issued by the Office should also be capable of providing such an assurance of safety. If an applicant proposes to contract for the services of a Federal range or a private launch site operated under the authority of a license issued by the Office, safety approval will ordinarily be given once the applicant has been accepted by a range or site capable of handling the launch activity proposed. All launch licenses issued under these circumstances shall be conditioned by the requirements that the applicant:

(1) Comply with all specified safety requirements and procedures of the range or launch site in question and

(2) Inform the Office of and obtain approval for any planned or proposed deviations from or alternatives to such requirements or procedures.

§ 411.7 Mission approval.

(a) *General.* Mission approval is granted unless some element of the proposed launch poses a threat to U.S. national security or foreign policy interests, constitutes a hazard to public health and safety or safety of property, or is inconsistent with international obligations of the United States. The Office shall work with applicants to correct or eliminate any defect in a proposal which impedes granting mission approval.

(b) *Payloads.* A proposal to launch any foreign payload or a payload not covered by existing FCC or NOAA regulation must be reviewed in consultation with other appropriate Federal agencies in order to determine that the launch of such payload will not jeopardize public health and safety, safety or property, or any national security or foreign policy interest of the United States. The Office, when requested to do so, shall provide payload operators or owners with this determination in advance of a launch license request or request for mission approval. Subsequent reviews of payloads within the same category shall be considered on a routine basis and shall focus on new or distinctive elements of the specific payload to be launched.

§ 411.9 Information requirements.

The Office shall make available current compilations of the basic information an applicant is required to submit in order to initiate an appropriate review of any proposed commercial launch activity subject to the Office's authority. These information requirements are not intended to be all-inclusive and the submission of the required information does not, in itself, demonstrate the qualifications of an applicant. The nature of individual proposals may require the submission of additional information.

PART 143—APPLICATIONS

Sec.

Authority: Secs. 9, 10, 11 and 20 Pub. L. 98-575 (49 U.S.C. App. 2601 note).

§ 413.1 Scope.

The regulations in this part prescribe the application procedures common to licensing all commercial space launch activities. The regulations applying exclusively to launch licenses are contained in Part 415 of this subchapter.

§ 413.3 Pre-application consultation.

Applicants are encouraged to consult with the Office of Commercial Space Transportation at the earliest possible planning stages.

Such consultation may reveal potential problems with a proposal and allow changes to be made when they are less likely to result in significant delay or costs to the applicant.

§ 413.5 Application.

(a) *Form.* Applications shall be in writing and filed in duplicate with the Office of Commercial Space Transportation, S-50, 400 Seventh Street, SW., Washington, DC 20590. Attention: Applications Review Branch.

(b) *Types.* Applications to the Office may request issuance or transfer of a license authorizing a launch or the operation of a launch site. Applications may also be made, separately and in advance of a license application, requesting an approval or determination that must be secured before a license can be issued or transferred.

(c) *Signature.* Applications shall be signed as follows:

(1) *For a corporation:* By an officer authorized to act for the corporation in licensing matters.

(2) *For a partnership or a sole proprietorship:* By a general partner or proprietor, respectively; or

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

§ 413.7 Confidentiality.

(a) Information or data submitted to the Office may be designated as confidential by the person or agency furnishing such data or information.

(b) A request that information or data be treated confidentially should be made in writing at the time the information is submitted and should state the period of time for which confidential treatment is desired.

(c) A request for confidential treatment will be associated with previously submitted information to the extent that it is practicable in light of prior distribution of such information.

(d) Information requested to be treated confidentially must be clearly marked with an identifying legend such as "Proprietary Information" or "Confidential Treatment Requested." Where this marking proves impracticable, a cover sheet containing the identifying legend must be securely attached to the compilation of information for which confidential treatment is requested.

(e) Pursuant to section 9(c) of the Act, information for which confidential treatment has been requested, as provided above, or information that qualifies for exemption under section 552(b)(4) of Title 5, United States Code, will not be disclosed unless the Director determines that the withholding of such data or information is contrary to the public or national interest.

§ 413.9 Review of applications.

(a) Each application shall contain the information prescribed by the Office in order to initiate an appropriate review of the proposed launch activity. This information can be obtained by writing to the Office of Commercial Space Transportation, S-50, 400 Seventh Street SW., Washington, DC 20590, or by calling (202) 366-5770.

(b) The Office determines whether an application is substantially complete and, if so, accepts the application for review.

(c) Applications found by the Office to be incomplete or so speculative as to

make review inappropriate will be returned to the applicant with a statement of the reasons therefor.

(d) Once an application is accepted, the Office initiates an appropriate review in light of the specific action requested in the application. Pursuant to section 20 of the Act, the Office shall consult with the Department of Defense on all matters affecting national security and with the Department of State on all matters affecting foreign policy, including the issuance or transfer of each license.

(e) The Office makes a determination on an application as expeditiously as possible but, in the case of a license application, not later than 180 days after receipt of such application. If the Office has not made a determination within 120 days after receipt of such application, the Office informs the applicant of any pending issues and of actions required to resolve such issues.

§ 413.11 Modifications.

Applications may be modified, supplemented, or corrected by the applicant at any time prior to issuance of the Office's decision.

§ 413.13 Issuance of license.

The Office issues or transfers a license authorizing the conduct of commercial space launch activities by the applicant if the Office determines, after review, that the applicant has, and will continue to have, the abiltiy to comply with all requirements for a license, including the ability to conduct safe launch or launch site operations.

§ 413.15 Terms and conditions of license.

(a) Each license issued or transferred under this section shall specify the activities authorized by the license, the name of each person responsible under the license for the conduct of such activities, the period of time for which the license is valid, and such other terms and conditions as may be required to protect public safety, the safety of property, and national security and foreign policy interests of the United States.

(b) All licenses shall specify, as a condition of such license, that the licensee maintain an effective on-site means for verifying that the licensed launch activity conforms to representations made in the license application.

§ 413.17 Certain rights not conferred by license.

No license shall confer any proprietary, property, or exclusive right in the use of any airspace, Federal launch facility, or Federal launch support facility Issuance of a license does not affect the authority of the Federal Communications Commission under the Communications Act of 1934 (47 U.S.C. 151 *et seq.*) or the authority of the Secretary of Commerce under the Land Remote-Sensing Commercialization Act of 1984 (15 U.S.C. 4201 *et seq*).

§ 413.19 Substantial and significant changes in information furnished to the Office.

(a) Each applicant is responsible for the continuing accuracy and completeness of information furnished to the Office to support a pending application or which formed the basis for any approval, determination or licensing action by the Office. Whenever such information is no longer substantially accurate and complete in all significant respects, or whenever there has been a substantial change as to any matter of decisional significance to the Office, the applicant shall, as promptly as possible, submit a statement furnishing such additional or corrected information as may be appropriate.

(b) Willful false statements made in applications and documents relating to applications or licenses are punishable by fine and imprisonment, U.S. Code, Title 18, Section 1001, and by appropriate administrative sanctions, including license revocation and civil penalties.

PART 415—LAUNCH LICENSES

Subpart A—General

Subpart B—Safety Review

Subpart C—Mission Review

Subpart D—Environmental Impacts of Launch Activities

Authority: Secs. 6, 7, 8 and 9, Pub. L. 98-575 (49 U.S.C. App. 2601 note).

Subpart A—General

§ 415.1 Scope.

This part contains the procedures and information requirements which apply exclusively to launch license applications and supplements the general application procedures in Part 413.

§ 415.3 When a launch license is required.

(a) The launch of a launch vehicle from U.S. territory by any person, or from outside U.S. territory by any individual or any corporation, partnership, joint venture, association of other entity organized or existing under the laws of the United States or any state, must be authorized by a license issued under this part.

(b) The launch of a launch vehicle by a foreign corporation or other entity controlled by a United States citizen, as defined in section 401.5 of this Chapter, at any place which is both outside the United States and outside of the territory of any foreign nation when there is no agreement in force between the United States and a foreign nation which provides that such foreign nation shall exercise jurisdiction over such launch, must be authorized by a license issued under this part.

(c) The launch of a launch vehicle by any foreign corporation or other entity described in paragraph (b) of this section from the territory of a foreign nation, when there is in force an agreement between the United States and such foreign nation concerning the exercise of jurisdiction by the United States over such launch, must be authorized by a license issued under this part.

§ 415.5 Approvals required for a license.

A license authorizing an unmanned launch is issued or transferred after the Office grants an applicant both mission and safety approvals. These approvals may be requested separately and in advance of a license request, as provided in §§ 415.15 and 415.23 of this subpart.

§ 415.7 Incorporation of approvals.

(a) Any approval or determination made by the Office before a license has been requested, as provided in § 413.5 of this subpart, is made part of the record upon which the Office makes a decision to issue a launch license with conditions or to deny a launch license.

(b) An approval or determination remains valid, and the Office does not reopen any part of a review which formed the basis for an approval or determination, as long as the information submitted as part of the review and other matters of decisional significance to the Office remain accurate and valid.

§ 415.9 Standard conditions.

All launch licenses shall contain those conditions which the Office determines to be necessary and appropriate to protect public health and safety, the safety of property, and national security and foreign policy interests of the United States. Failure to comply with any license condition may be cause for revocation of the license or the initiation of other enforcement actions by the Office. Standard conditions in licenses include requirements for the licensee to do the following:

(a) Secure at least the minimum amount of third-party liability insurance specified by the Department;

(b) Adhere strictly to specified range safety regulations and procedures;

(c) Comply with requirements concerning pre-launch record keeping and notifications, including those pertaining to Federal airspace restrictions and military tracking operations; and

(d) Comply with Federal inspection, verification and enforcement requirements.

§ 415.10 Registration of space objects.

(a) In accordance with Article IV of the 1975 Convention on Registration of Objects Launched Into Outer Space, each licensee is responsible for registering all objects placed in space in the course of conducting activities authorized by its license, except for objects owned by a foreign entity. Registration of objects owned by a foreign entity is the responsibility of that foreign entity.

(b) Each licensee shall, within 30 days after launch, submit to the Office the following information concerning any vehicle or other object it has launched into outer space:

(1) The international designator of the space object(s);

(2) Date and location of launch;

(3) Basic programmed orbital parameters, including:

(i) Nodal period,

(ii) Inclination,

(iii) Apogee;

(4) General function of the space object.

Subpart B—Safety Review

§ 415.11 Scope.

Safety Review is the procedure for determining whether an applicant can safely conduct the preparation and launch of the proposed launch vehicle and any payload. This review focuses on the elements of an applicant's safety operations, including the proposed launch site, procedure, personnel, and equipment. A safety approval granted by the Office does not confer any approval or authorization an applicant or licensee must obtain from the operator of a Federal or licensed range, or create any presumption or inference that such approval or authorization will be granted.

§ 415.13 General standards for reviewing safety operations.

(a) *Launch Site.* The location, size and design configuration of the proposed site shall ensure that off-site persons and property are not exposed to an unreasonable risk of harm.

(b) *Procedures.* User and range operator procedures must be appropriate for assuring pre-launch check-out and validation of all launch safety systems (ground or flight); control of pre-launch and launch hazards to the public; trajectory flight safety analysis; and safe flight operations from ignition through impact for suborbital launches and through orbital injection or escape velocity for orbital launches.

(c) *Personnel.* Range safety personnel shall be qualified and possess appropriate training and experience.

(d) *Equipment.* Range safety equipment and instrumentation and vehicle safety systems shall be adequate and appropriate to support safe operations.

§ 415.15 When to request safety approval.

An application for safety approval may be made as a part of a launch license request or, in the alternative, in advance of a launch license request.

§ 415.17 Incorporation of safety approval.

A safety approval made by the Office under this part may be made part of a licensing record pursuant to § 415.7 of this Subpart.

Subpart C—Mission Review

§ 415.21 Scope.

Mission Review is the procedure for identifying significant issues affecting United States national interests and international obligations that may be associated with a proposed launch. Except for safety operations covered by §§ 415.11–415.17 of this part, Mission Review covers all aspects of a proposed launch, including any payload to be launched. For a payload not subject to FCC or NOAA regulation, the Office must determine whether to prevent launch of the payload because to launch it would jeopardize public health and safety, the safety of property, or any national security or foreign policy interest of the United States.

§ 415.23 When to request mission approval.

An application for mission approval, may be made as part of a launch license request or, in the alternative, in advance of a launch license request. Application for a determination on a payload not regulated by the FCC or NOAA may be made as part of or in advance of any other request.

§ 415.25 Incorporation of mission approval.

A mission approval or payload determination made by the Office under this part is made part of a licensing record pursuant to § 415.7 of this subpart.

Subpart D—Environmental Impacts of Launch Activities

§ 415.31 General.

In accordance with the requirements of the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*, (NEPA), the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA, 40 CFR Parts 1500–1508, and the Department of Transportation's Procedures for Considering Environmental Impacts, DOT Order 5610.1C [1], the environmental impacts of licensing commercial launch activities are required to be considered by the Office. The effects of most projected commercial launch activities are already addressed in the Office's programmatic environmental assessment or in environmental impact statements for existing launch sites. The Office will determine whether a proposed launch activity is adequately addressed in these documents. Applicants may be required to provide additional information concerning the environmental effects of a proposed launch activity.

§ 415.33 Environmental information.

Applicants will be required to submit environmental information concerning:

(a) Proposed new launch sites not covered by existing environmental documentation;

(b) A proposed new launch vehicle with characteristics falling measurably outside the parameters of existing environmental documentation;

(c) Proposed launches from established sites involving vehicles with characteristics falling measurably outside the parameters of the existing environmental impact statement covering those sites;

(d) A proposed payload that may have significant environmental impacts in the event of a launch accident; and

(e) Other factors as determined by the Office.

[FR Doc. 88-6910 Filed 4-1-88; 8:45 am]

BILLING CODE 4910-62-M

[1] This order is available from the Office of Commercial Space Transportation, Department of Transportation, S-50, 400 7th Street SW., Washington, DC 20590.

Federal Register

Monday
April 4, 1988

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of Airport Radar Service Areas; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 87-AWA-27]

Establishment of Airport Radar Service Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Airport Radar Service Areas (ARSA) at five locations: Cedar Rapids Municipal Airport, IA; Champaign University of Illinois-Willard Airport, IL; Chicago Midway Airport, IL; Columbus Air Force Base (AFB), MS, and Jackson Allen C. Thompson Field, MS. Each location, with the exception of Midway Airport, is an airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

EFFECTIVE DATE: 0901 UTC, May 5, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Gill, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

History

On April 22, 1982, the National Airspace Review (NAR) plan was published in the **Federal Register** (47 FR 17448). The plan encompassed a review of airspace use and the procedural aspects of the air traffic control (ATC) system. The FAA published NAR Recommendation 1-2.2.1, "Replace Terminal Radar Service Areas (TRSA) with Model B Airspace and Service (Airport Radar Service Areas)," in Notice 83-9 (48 FR 34286, July 28, 1983) proposing the establishment of ARSA's at Columbus, OH, and Austin, TX. Those locations were designated ARSA's by SFAR No. 45 (48 FR 50038, October 28, 1983) in order to provide an operational confirmation of the ARSA concept for potential application on a national basis. The original expiration dates for SFAR 45, December 22, 1984, for Austin and January 19, 1985, for Columbus were extended to June 20, 1985 (49 FR 47176, November 30, 1984).

On March 6, 1985, the FAA adopted the NAR recommendation and amended Parts 71, 91, 103 and 105 of the Federal Aviation Regulations (14 CFR Parts 71, 91, 103 and 105) to establish the general definition and operating rules for an ARSA (50 FR 9252), and designated Austin and Columbus airports as ARSA's as well as the Baltimore/Washington International Airport, Baltimore, MD (50 FR 9250). Thus far the FAA has designated 102 ARSA's as published in the **Federal Register** in the implementation of this NAR recommendation.

On October 8, 1987, the FAA proposed to designate ARSA's at Cedar Rapids Municipal Airport, IA; Champaign University of Illinois-Willard Airport, IL; Chicago Midway Airport, IL; Columbus AFB, MS; and Jackson Allen C. Thompson Field, MS (52 FR 37718). This rule designates ARSA's at these airports. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. Additionally, the FAA has held informal airspace meetings for each of these proposed airports. Section 71.501 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

Discussion of Comments

Two comments were received that addressed comments to all five locations. One of those supported all but Midway, recommending a TCA expansion in lieu of the ARSA, which will be addressed later. The other comment, from the Aircraft Owner's and Pilots Association (AOPA), objected to all of the proposed locations based on their objection to the ARSA program.

All comments objecting to the ARSA program were considered during the rulemaking for the ARSA rule which was published in the **Federal Register** on March 6, 1985 (50 FR 9252).

Champaign, IL

The majority of the objections to the Champaign ARSA focused on five items.

1. That Champaign qualified for an ARSA only due to the total airport operations, which includes touch and go landings. 2. That the ARSA will create a hazard by compressing traffic underneath the five- to ten-mile area. 3. That the ARSA will encumber the airport operations. 4. That the ARSA will overtax the already overburdened controllers. 5. That the ARSA will severely restrict the flight training program of the University of Illinois.

The FAA does not agree with the stated objections. First, Champaign qualifies for an ARSA based not only on the NAR criteria (Level Three Facility with a TRSA) but also the follow-on criteria, which is 75,000 annual instrument operations at the primary airport or 100,000 annual instrument operations at the primary and secondary airports. The airport operations count, while being indicative of a busy facility, does not qualify or disqualify a location for an ARSA. Second, due to the configuration of the ARSA, no pilot is forced to fly underneath the ARSA. It is anticipated that the only pilots who will choose to operate underneath the floor of the five- to ten-mile area will be those desiring to operate at airports that underlie this area. Pilots transiting the area who do not desire to participate may either choose to circumnavigate or fly over the top of the ARSA, since the ceiling of the ARSA is only 4,000 feet above airport elevation. Moreover, the concerns about compression beneath the five- to ten-mile area have not been substantiated at other ARSA's currently in place. Third, this group stated the ARSA would have a devastating impact on airport operations. The establishment of an ARSA will not change any methods that the tower may choose to sequence and separate pattern traffic. The ARSA will simply ensure that the air traffic facility has knowledge of all traffic operating at these critical altitudes in the vicinity of the airport. Fourth, these commenters stated that the ARSA was a threefold expansion of existing airspace, and that it would overload the already overtaxed controllers. This statement is factually incorrect. The ARSA is a reduction in size over the existing TRSA. The only expansion would be over the existing Airport Traffic Area, which is not a radar service area. As stated by these same commenters, 98 percent of the traffic already utilizes the TRSA services; therefore, the objection based on the controller workload is unfounded. Finally, the commenters objected because of their perception of the severe impact the ARSA would have on the University of Illinois training program. However, the FAA has historically shown that concerns of this nature are unfounded. The ARSA program has provisions for Letters of Agreement with organizations like the University of Illinois to minimize or eliminate any impact the ARSA may impose.

Several commenters objected to the proposed ARSA, but recommended that if it was instituted the floor of the five- to ten-mile area should be raised throughout or at least in the northeast

quadrant of the area. The altitudes recommended by the commenters were 3,000 feet MSL, 2,300 feet MSL, 2,600 feet MSL, and 2,500 feet MSL. The FAA finds that these recommendations have merit. The agency determined that it would not enhance safety to raise the floor in the entire five- to ten-mile area; however, in balancing the needs of the users and our needs for safety, we determined that raising the floor in the northeast quadrant to 2,400 feet MSL would be in the best interest of all concerned. We believe this will alleviate the concerns voiced by these commenters. The rule reflects that change.

Several commenters were critical of the comment period and recommended that we extend the comment period to May 1, 1988. The FAA believes the period for notice and comment was sufficient to permit full public comment on the proposed rule.

Several commenters stated that the proposal should not go forward because an impact study had not been completed. Under existing environmental regulations, the establishment of the Champaign ARSA as proposed and adopted does not require an environmental assessment.

Chicago Midway, IL

Several commenters objected to the Chicago Midway ARSA proposal because they believed it would be detrimental to their safety. The FAA does not agree. The ARSA program came about as a recommendation of the user groups to enhance safety. The program has been proven historically to be a safe method of operation.

Several commenters objected to the ARSA due to insufficient consideration of safety issues, inaccessibility to general aviation, and the inability of ATC to consistently handle the operations. The FAA finds that all safety issues were either addressed in the initial ARSA rulemaking or are discussed and studied during the open comment period. Regarding accessibility, the ARSA does not preclude any class or type of aircraft from operating in the ARSA; it simply requires that the pilot must first establish two-way radio communication prior to entry. The FAA finds it necessary to have knowledge of aircraft operating within close proximity to an airport when the airport reaches a certain level of activity.

Two commenters wrote in recommending that the FAA expand the O'Hare TCA in lieu of the ARSA proposal. The FAA considered this possibility initially, but based on existing criteria, Midway is not qualified for a TCA. Therefore, it decided to proceed with the ARSA for Midway.

One commenter submitted a comment stating that he tended to agree with those opposed but felt that the major problem with aviation today was poor pilot training/education. The FAA supports all efforts to train and educate pilots. However, this rule addresses comments received to the proposed ARSA. The comments concerning pilot education and training, therefore, are outside the scope of this rule.

A few commenters objected to the ARSA stating that it would be unsafe to fly underneath the floor and around the antennas. The FAA does not agree. First, it is not uncommon for pilots to fly around tall antennas rather than over. Second, the ARSA does not force anyone to fly underneath the ARSA floor in the 5–10 mile area. Pilots may choose to fly around a relatively small area or simply establish two-way radio to fly through.

Other commenters objected to the ARSA based on their perception that the ARSA would cause confusion due to overlap with the TCA; too many radio frequencies; no designated outer area; and no radio frequency for the ARSA printed on the chart. The FAA finds that it is important to have knowledge of all aircraft operating in a close proximity to the airport at these critical altitudes. There are already several locations at which there is an ARSA and a TCA that to date have not been problems. Additionally, there should be no confusion as to the frequency for communication in the ARSA because FAA is adding no new frequencies and the ARSA frequency will be charted as all others are.

Several commenters stated that the controllers at Midway were already understaffed and overworked and that the ARSA would just complicate this problem. The FAA does not agree. The staffing at Midway is adjusted to meet the changing demands of the work situation. The staff at Midway has been growing with the increasing demands placed on them by the users, and we anticipate that this will not overburden the existing staff. We do expect that as traffic continues to grow at Midway we will add staff accordingly to be able to meet the everchanging traffic demands.

One commenter suggested that we should place a TRSA rather than an ARSA at Midway. The FAA finds that the ARSA program, as recommended by the National Airspace Review (NAR), was established to replace the TRSA program because of many identified deficiencies. Therefore, most TRSA's will be replaced by ARSA's and the remainder would be abolished.

There were no site specific comments received for the remainder of the sites.

Regulatory Evaluation

Those comments that addressed information presented in the Regulatory Evaluation of the notice have been discussed above. The Regulatory Evaluation of the notice, as clarified by the "Discussion of Comments" contained in the preamble to the final rule, constitutes the Regulatory Evaluation of the final rule. Both documents have been placed in the regulatory docket.

Briefly, the FAA finds that a direct comparison of the costs and benefits of this rule is difficult for a number of reasons. Many of the benefits of the rule are nonquantifiable, especially those associated with simplification and standardization of terminal airspace procedures. Further, the benefits of standardization result collectively from the overall ARSA program, and as discussed previously, estimates of potential reductions in absolute accident rates resulting from the ARSA program cannot realistically be disaggregated below the national level. Therefore, it is difficult to specifically attribute these benefits to individual ARSA sites. Finally, until more experience has been gained with ARSA operations, estimates of *both* the efficiency improvements resulting in time savings to aircraft operators, and the potential delays resulting from mandatory participation, will be quite preliminary.

ATC personnel at some facilities anticipate that the process will go very smoothly, that delays will be minimal, and that efficiency gains will be realized from the start. Other sites anticipate that delay problems will dominate the initial adjustment period.

FAA believes these adjustment problems will only be temporary, and that once established, the ARSA program will result in an overall improvement in efficiency in terminal area operations at those airports where ARSA's are established. These overall gains which FAA expects for the ARSA sites established by this rule typify the benefits which FAA expects to achieve nationally from the ARSA program. These benefits are expected to be achieved without additional controller staffing or radar equipment costs to the FAA.

In addition to these operational efficiency improvements, establishment of these ARSA sites will contribute to a reduction in midair collisions. The quantifiable benefits of this safety improvement could range from less than

$100 thousand, to as much as $300 million, for each accident prevented.

For these reasons, FAA expects that the ARSA sites established in this rule will produce long term, ongoing benefits which will exceed their costs, which are essentially transitional in nature.

Regulatory Flexibility Determination

Under the terms of the Regulatory Flexibility Act, the FAA has reviewed this rulemaking action to determine what impact it may have on small entities. FAA's Regulatory Flexibility Determination was published in the NPRM. Some of the small entities which could be potentially affected by implementation of the ARSA program include the fixed-base operators, flight schools, agricultural operations and other small aviation businesses located at satellite airports located within 5 miles of the ARSA center. If the mandatory participation requirement were to extend down to the surface at these airports, where under current regulations participation in the radar services and radio communication with ATC is voluntary, operations at airports inside the core might be altered, and some business could be lost to airports outside fo the ARSA core. Because FAA is excluding some satellite airports located within the 5-mile ring to avoid adversely impacting their operations, and in other cases will achieve the same purposes through Letters of Agreement between ATC and the affected airports establishing special procedures for operating to and from these airports, FAA expects to eliminate virtually any adverse impact on the operations of small satellite airports which potentially could result from the ARSA program. Similarly, FAA expects to eliminate potential adverse impacts on existing flight training practice areas, as well as soaring, ballooning, parachuting, ultralight, and banner towing activities, by developing special procedures which will accommodate these activities through local agreements between ATC facilities and the affected organizations. For these reasons, the FAA has determined that this rulemaking action is not expected to affect a substantial number of small entities. Therefore, the FAA certifies that this regulatory action will not result in a significant economic impact on a substantial number of small entities.

The Rule

This action designates Airport Radar Service Areas (ARSA) at Cedar Rapids Municipal Airport, IA; Champaign University of Illinois-Willard Airport, IL; Chicago Midway Airport, IL; Columbus Air Force Base (AFB), MS, and Jackson Allen C. Thompson Field, MS. Each location designated, with the exception of Midway Airport, is a public airport at which a nonregulatory Terminal Radar Service Area (TRSA) is currently in effect. Establishment of these ARSA's will require that pilots maintain two-way radio communication with air traffic control (ATC) while in the ARSA. Implementation of ARSA procedures at these locations will reduce the risk of midair collision in terminal areas and promote the efficient control of air traffic.

For the reasons discussed above, the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Airport radar service 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—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

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.

§ 71.501 [Amended]

2. Section 71.501 is amended as follows:

Cedar Rapids Municipal Airport, IA [New]

That airspace within a 5-mile radius of the Cedar Rapids Municipal Airport (lat. 41°53'04" N., long. 91°42'31" W.) extending upward from the surface to and including 4,900 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 2,100 feet MSL to and including 4,900 feet MSL.

Champaign University of Illinois-Willard Airport, IL [New]

That airspace within a 5-mile radius of the University of Illinois-Willard Airport (lat. 40°02'23" N., long. 88°16'40" W.) extending upward from the surface to and including 4,800 feet MSL; and that airspace within a 10-mile radius of the airport beginning at the 340° bearing from the airport clockwise to the 060° bearing from the airport extending upward from 2,400 feet MSL to and including 4,800 feet MSL; and that airspace within a 10-mile radius of the airport from the 060° bearing from the airport clockwise to the 340° bearing from the airport extending upward from 2,000 feet MSL to and including 4,800 feet MSL.

Chicago Midway Airport, IL [New]

That airspace within a 5-mile radius of the Midway Airport (lat. 41°47'10" N., long. 87°45'08" W.) extending upward from the surface to 4,000 feet MSL; and that airspace within a 10-mile radius of the airport beginning at a line 2 miles northeast of and parallel to the Chicago Midway localizer course to Runway 31L clockwise to where the 10.5-mile arc of the O'Hare VOR intersects the 10-mile radius of the airport, thence via the O'Hare 10.5-mile arc, extending upward from 1,900 feet MSL to 4,000 feet MSL. This ARSA excludes any airspace contained in the Chicago O'Hare TCA.

Columbus AFB, MS [New]

That airspace within a 5-mile radius of Columbus AFB (lat. 33°38'36" N., long. 88°26'36" W.) extending upward from the surface to and including 4,200 feet MSL; and that airspace within a 10-mile radius of Columbus AFB extending upward from 1,500 feet MSL to and including 4,200 feet MSL.

Jackson Allen C. Thompson Field, MS [New]

That airspace within a 5-mile radius of the Allen C. Thompson Field (lat. 32°18'36" N., long. 90°04'28" W.) extending upward from the surface to and including 4,400 feet MSL; and that airspace within a 10-mile radius of the airport extending upward from 1,700 feet MSL to and including 4,400 feet MSL.

Issued in Washington, DC, on March 30, 1988.

Shelomo Wugalter,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 88-7312 Filed 4-1-88; 8:45 am]

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Federal Register

Monday
April 4, 1988

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Formula Allocations for the Rental Rehabilitation Program for Fiscal Year 1988 and Deadlines for Submission of Program Descriptions; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N-88-1784; FR-2499]

Formula Allocations for the Rental Rehabilitation Program for Fiscal Year 1988 and Deadlines for Submission of Program Descriptions

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

SUMMARY: This Notice announces the allocations of Rental Rehabilitation Program grant funds for cities with populations of 50,000 or more, urban counties, consortia of units of general local government, and States for Fiscal Year 1988. It also sets the dates by which Program Descriptions must be submitted to HUD for these potential grantees to be considered for actual grants based on these allocations. Finally, it describes an amendment to the Rental Rehabilitation Program made by the Housing and Community Development Act of 1987 that is effective immediately.

FOR FURTHER INFORMATION CONTACT: Mary Kolesar, Director, Rehabilitation Management Division, Room 7162, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC, telephone (202) 755-5970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Formula Allocations

The Rental Rehabilitation Program is authorized by section 17 of the United States Housing Act of 1937 (42 U.S. 1437o), hereafter referred to as section 17. The Program's interim regulations are published at 24 CFR Part 511. Section 511.30 contains the formula for allocating Rental Rehabilitation Program funds. Cities having a population of 50,000 or more, urban counties, consortia of units of general local government having a combined population of 50,000 or more, and States are eligible to receive formula allocations. The amount of rental rehabilitation grant funds available for allocation in Fiscal Year 1988 is $198,500,000. The total amount of funds available for Fiscal Year 1988 is $200 million, but $1.5 million of the $200 million is for technical assistance.

Appendix A to this Notice contains the formula allocations for cities, urban counties, and consortia that receive an allocation of $50,000 or more. Appendix B to this Notice contains the allocations for States. All allocation amounts have been rounded to the nearest thousand. Before these formula allocations are actually available to the city, urban county, consortium or State as grant funds, the prospective grantee must submit a program description to HUD for approval in accordance with §§ 511.20 and 511.21 of the interim regulations.

The eligibility of cities with populations of 50,000 or more and urban counties for formula allocations is determined by whether they were so classified for purposes of the Community Development Block Grant Entitlement Program (24 CFR Part 570) for Federal Fiscal Year 1987. The formula factors for allocating the Fiscal Year 1988 funds are the same as those used in prior fiscal years. Section 511.32 was suspended effective May 19, 1987 (52 FR 11466, April 9, 1987) and remains suspended. Thus, adjustments to potential grantees' formula allocations will not be made this year.

Legislative Changes

Sections 150 and 311 of the Housing and Community Development Act of 1987 (the 1987 Act) make several changes in the Rental Rehabilitation Program. Most of these changes require regulatory implementation, and HUD plans to publish an interim rule implementing those changes for effect, if possible, prior to final approval of program descriptions and making of Fiscal Year 1988 grants based upon the formula allocations published in this Notice. The process of submission and approval takes from 2½ to 4½ months after allocations are published, depending upon the type of grantee and whether the program description may be approved as received or requires amendment. Until the interim rule is effective, grantees must follow existing rules in expending Fiscal Year 1988 and prior year funds, except as stated below.

The one amendment to the Rental Rehabilitation Program that is deemed self-executing and was effective when the 1987 Act became law (on February 5, 1988) is section 150(c) of the 1987 Act. Section 150(c) amends section 17(c)(2)(E) of the United States Housing Act of 1937 to increase the maximum Rental Rehabilitation subsidy amount that grantees are permitted to approve for any project. Formerly, section 17(c)(2)(E) provided that the maximum subsidy amount per project was $5,000 per unit, except as otherwise determined by the Secretary in high cost areas. As amended by section 150(c) of the 1987 Act, section 17 provides that the maximum subsidy amount per project is the sum of: (i) $5,000 per unit for units with no bedrooms, (ii) $6,500 per unit for units with one bedroom, (iii) $7,500 per unit for units with two bedrooms, and (iv) $8,500 per unit for units with three or more bedrooms. The authority for increases in the maximum subsidy amount per project for high cost areas is not amended by the 1987 Act, and existing regulations (at 24 CFR 511.10(e)(2) (i) and (ii)) remain in effect for high cost area exception projects. In the interim rule with respect to the 1987 Act amendments, HUD will amend § 511.10(e)(2) to incorporate the new maximum subsidy per unit amounts as provided in the 1987 Act, but the 1987 Act gives grantees the discretionary authority to approve project subsidies up to the new maximum as of its effective date, February 5, 1988. This amendment is effective for all uncommitted funds that grantees currently have on hand from prior year grants as well as any grants they may subsequently receive, including Fiscal Year 1988 grants.

Two and Three Bedroom Requirements

Concerning the 1984 legislative amendments that the Secretary assure that an equitable share of funds be used to provide units for families with children, particularly large families requiring three or more bedroom units, the Department has determined for Fiscal Year 1988 that the three or more bedroom priority can be satisfied if at least 15 percent of the Rental Rehabilitation Program grant amounts expended nationwide are expended for rehabilitation of units of three or more bedrooms. The existing requirement in § 511.10(k) that grantees use at least 70 percent of their grant funds to provide two or more bedroom units, unless otherwise approved by HUD under the criteria in that section, remains in effect.

The Department reserves the right prospectively to establish a mandatory standard for each grantee for achievement of three-bedroom or larger units should the data (which will be continually available) indicate any substantial prospect that the Secretary will not achieve the mandated minimum within any 2-year period.

Deadline for Submitting Program Descriptions

Section 511.20(a) of the program regulations states that cities, urban counties and consortia eligible to receive a grant based on a formula allocation must submit a program description to the appropriate HUD Field Office within 45 days of written notification of their Rental Rehabilitation fund allocation, and that

States have 75 days from the date of written notification of their allocations to submit their program descriptions. HUD regards the date of written notification to all grantees to be the date of this Notice.

Thus, all cities, urban counties and consortia receiving a formula allocation must deliver their program descriptions to the appropriate HUD Field Office or have them postmarked no later than May 19, 1988 to be considered for a grant.

If a State elects to administer the Rental Rehabilitation Program in Fiscal Year 1988, it must notifiy HUD in writing of its intent to participate in the program by May 4, 1988 and must deliver its program description or have it postmarked by June 20, 1988 to be considered for a grant.

If a State chooses not to participate in the Rental Rehabilitation Program, eligible units of general local government located in the State that wish to participate in the HUD-Administered State Program must submit a program description to the responsible HUD Field Office within 45 days of the date stated in a written notification from HUD to such potential grantees of fund availability under the program for the fiscal year. These notifications will be directly issued by HUD Field Offices when it is known which States, if any, are not participating in Fiscal Year 1988.

Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

The Catalog of Federal Domestic Assistance program number is 14.230, Rental Housing Rehabilitation.

The collection of information requirements contained in this Notice have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520) and have been assigned OMB Control No. 2560–0080.

Authority: Section 17, United States Housing Act of 1937, 42 U.S.C. 1437, section 7(d). Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 29, 1988.

Jack R. Stokvis,

General Deputy Assistant Secretary for Community Planning and Development.

BILLING CODE 4210-29-M

Appendix A

RENTAL REHABILITATION PROGRAM
FORMULA ALLOCATIONS
FOR
CITIES, URBAN COUNTIES AND CONSORTIA

FISCAL YEAR 1988

STATE LOCALITY	$ IN THOUSANDS
ALABAMA	
BIRMINGHAM	489
DOTHAN	53
HUNTSVILLE	114
MOBILE	224
MONTGOMERY	205
TUSCALOOSA	126
JEFFERSON COUNTY	173
ALASKA	
ANCHORAGE	129
ARIZONA	
GLENDALE	71
MESA	109
PHOENIX	715
SCOTTSDALE	54
TEMPE	103
TUCSON	414
MARICOPA COUNTY	128
PIMA COUNTY	85
ARKANSAS	
FORT SMITH	79
LITTLE ROCK	185
NORTH LITTLE ROCK	60
PINE BLUFF	74
CALIFORNIA	
ALAMEDA	85
ALHAMBRA	93
ANAHEIM	228
BAKERSFIELD	115
BELLFLOWER	71
BERKELEY	282
BURBANK	104
CHULA VISTA	107
COMPTON	102
CONCORD	70
COSTA MESA	107
DALY	61
DOWNEY	74
EL CAJON	102
EL MONTE	123
ESCONDIDO CITY	76
FREMONT	69
FRESNO	314
FULLERTON	101
GARDEN GROVE	99
GLENDALE	226
HAWTHORNE	79
HAYWARD	86
HUNTINGTON BEACH	139
INGLEWOOD	167
LA MESA CITY	62
LONG BEACH	670
LOS ANGELES	5694
LYNWOOD	60
MODESTO	101
MONTEBELLO	57
MONTEREY PARK	51
MOUNTAIN VIEW	79
NAPA CITY	52
NATIONAL CITY	73
NEWPORT BEACH	72
NORWALK	55
OAKLAND	722
OCEANSIDE	88
ONTARIO	72
ORANGE	72
OXNARD	112
PALO ALTO	54
PASADENA	200
POMONA	103
REDONDO BEACH	76
REDWOOD CITY	66
RICHMOND	88
RIVERSIDE	171
SACRAMENTO	388
SALINAS	92
SAN BERNADINO	151
SAN DIEGO	1179
SAN FRANCISCO	1680
SAN JOSE	498
SAN MATEO	81
SANTA ANA	238
SANTA BARBARA	143
SANTA CLARA	83
SANTA MONICA	196
SANTA ROSA	90
SOUTH GATE	86
STOCKTON	222
SUNNYVALE	87
TORRANCE	106
VALLEJO	70
VENTURA	84
WHITTIER	66
ALAMEDA COUNTY	157
CONTRA COSTA	212
FRESNO COUNTY	208
KERN COUNTY	236
LOS ANGELES COUNTY	2006
MARIN COUNTY	200
ORANGE COUNTY	389
RIVERSIDE COUNTY	333
SACRAMENTO COUNTY	396
SAN BERNARDINO COUNTY	441
SAN DIEGO COUNTY	374
SAN JOAQUIN COUNTY	150
SAN MATEO COUNTY	223
SANTA CLARA COUNTY	203
SONOMA COUNTY	182
VENTURA COUNTY	132
COLORADO	
AURORA	94
BOULDER	125
COLORADO SPRINGS	218
DENVER	825
FORT COLLINS	95
GREELEY	79
LAKEWOOD	65
PUEBLO	115
ADAMS COUNTY	100
CONNECTICUT	
BRIDGEPORT	338
DANBURY	57
HARTFORD	402
MERIDEN	56
NEW BRITAIN	117
NEW HAVEN	353
NORWALK	77
STAMFORD	109
WATERBURY	182
WEST HAVEN	57
DELAWARE	
WILMINGTON	137
NEW CASTLE COUNTY	186
DISTRICT OF COLUMBIA	
WASHINGTON	1224
FLORIDA	
CLEARWATER	84
DAYTONA BEACH	113
FT LAUDERDALE	209
GAINESVILLE	144
HIALEAH	181
HOLLYWOOD	108
JACKSONVILLE	574
LAKELAND	62
MIAMI	918
MIAMI BEACH	438
ORLANDO	183
PENSACOLA	76
POMPANO BEACH	63
ST PETERSBURG	299
SARASOTA	64
TALLAHASSEE	174
TAMPA	355
WEST PALM BEACH	109
BREVARD COUNTY	90
BROWARD COUNTY	361
DADE COUNTY	833
HILLSBOROUGH COUNTY	231
ORANGE COUNTY	248
PALM BEACH COUNTY	252
PASCO COUNTY	81
PINELLAS COUNTY	179
POLK COUNTY	154

STATE LOCALITY	$ IN THOUSANDS
FLORIDA	
SEMINOLE COUNTY	102
VOLUSIA COUNTY	128
GEORGIA	
ALBANY	126
ATLANTA	858
COLUMBUS	219
MACON	196
SAVANNAH	240
COBB COUNTY	126
DE KALB COUNTY	294
FULTON COUNTY	170
GWINNETT COUNTY	60
HAWAII	
HONOLULU	747
IDAHO	
BOISE	95
ILLINOIS	
AURORA	68
CHAMPAIGN	102
CHICAGO	7079
CICERO	87
DECATUR	103
EAST ST LOUIS	136
ELGIN	53
EVANSTON	99
JOLIET	80
OAK PARK	62
PEORIA	146
ROCKFORD	142
SPRINGFIELD	121
WAUKEGAN	61
COOK COUNTY	663
DU PAGE COUNTY	201
LAKE COUNTY	121
MADISON COUNTY	183
ST CLAIR COUNTY	157
WILL COUNTY	62
INDIANA	
ANDERSON	66
BLOOMINGTON	104
EVANSVILLE	162
FORT WAYNE	177
GARY	190
HAMMOND	91
INDIANAPOLIS	747
MUNCIE	116
SOUTH BEND	107
TERRE HAUTE	77
LAKE COUNTY	75
IOWA	
CEDAR RAPIDS	88
COUNCIL BLUFFS	52
DAVENPORT	117
DES MOINES	221
DUBUQUE	63
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Appendix B

RENTAL REHAB ALLOCATION
STATE SUMMARY REPORT

88 RENTAL REHAB $198 5M (* DOLLARS IN THOUSANDS)

	METRO CITY #	METRO CITY AMOUNT*	URBAN COUNTY #	URBAN COUNTY AMOUNT*	CITY/COUNTY AMOUNT*	STATE AMOUNT*	CITY/COUNTY/STATE TOTAL AMOUNT*
ALABAMA	6	1,211	1	173	1,384	1,188	2,572
ALASKA	1	129			129	81	210
ARIZONA	6	1,466	2	213	1,679	315	1,994
ARKANSAS	4	398			398	935	1,333
CALIFORNIA	68	17,470	16	5,842	23,312	2,854	26,166
COLORADO	8	1,616	1	100	1,716	601	2,317
CONNECTICUT	10	1,748			1,748	957	2,705
DELAWARE	1	137	1	186	323	53	376
DISTRICT OF COLUMBIA	1	1,224			1,224		1,224
FLORIDA	18	4,154	11	2,659	6,813	1,553	8,366
GEORGIA	5	1,639	4	650	2,289	1,750	4,039
HAWAII	1	747			747	106	853
IDAHO	1	95			95	386	481
ILLINOIS	14	8,339	6	1,387	9,726	1,867	11,593
INDIANA	10	1,837	1	75	1,912	1,348	3,260
IOWA	8	797			797	816	1,613
KANSAS	4	667	1	73	740	709	1,449
KENTUCKY	3	851	1	153	1,004	1,073	2,077
LOUISIANA	8	2,337	1	268	2,605	940	3,545
MAINE	1	164			164	666	830
MARYLAND	1	1,712	4	1,209	2,921	494	3,415
MASSACHUSETTS	20	4,326			4,326	2,258	6,584
MICHIGAN	9	3,690	5	663	4,353	2,100	6,453
MINNESOTA	4	1,239	4	428	1,667	723	2,390
MISSISSIPPI	1	232			232	1,114	1,346
MISSOURI	6	2,083	1	360	2,443	1,010	3,453
MONTANA	2	149			149	356	505
NEBRASKA	2	545			545	349	894
NEVADA	2	337	1	261	598	109	707
NEW HAMPSHIRE	2	236			236	381	617
NEW JERSEY	12	3,499	12	2,612	6,111	1,296	7,407
NEW MEXICO	3	447			447	402	849
NEW YORK	18	24,661	9	1,832	26,493	2,440	28,933
NORTH CAROLINA	8	1,339			1,339	1,772	3,111
NORTH DAKOTA	1	81			81	222	303
OHIO	15	5,284	7	1,004	6,288	2,373	8,661
OKLAHOMA	4	953			953	1,019	1,972
OREGON	3	1,012	3	410	1,422	768	2,190
PENNSYLVANIA	11	5,119	12	2,448	7,567	2,484	10,051
RHODE ISLAND	4	703			703	489	1,192
SOUTH CAROLINA	4	480	1	148	628	1,116	1,744
SOUTH DAKOTA	1	85			85	275	360
TENNESSEE	6	1,995			1,995	1,000	2,995
TEXAS	30	7,593	3	396	7,989	2,785	10,774
UTAH	3	484	1	127	611	270	881
VERMONT						303	303
VIRGINIA	10	1,843	2	455	2,298	1,075	3,373
WASHINGTON	5	1,521	4	808	2,329	1,010	3,339
WEST VIRGINIA	2	192			192	654	846
WISCONSIN	7	1,692	1	97	1,789	1,192	2,981
WYOMING						229	229
GUAM							
PUERTO RICO	9	1,857			1,857	782	2,639
VIRGIN ISLANDS							
US TOTALS	383	122,415	116	25,037	147,452	51,048	198,500

[FR Doc. 88-7308 Filed 4-1-88; 8:45 am]

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LIST OF PUBLIC LAWS

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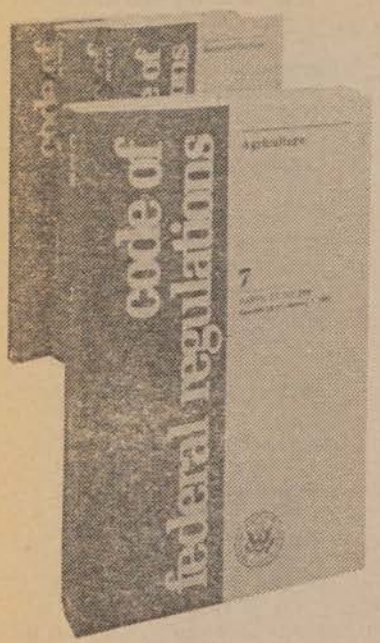
S.J. Res. 185/Pub. L. 100-272

To designate the period commencing on May 2, 1988, and ending on May 8, 1988, as "National Drinking Water Week." (Mar. 30, 1988; 102 Stat. 46; 1 page) Price: $1.00

S.J. Res. 255/Pub. L. 100-273

To authorize and request the President to issue a proclamation designating April 24 through April 30, 1988, as "National Organ and Tissue Donor Awareness Week." (Mar. 30, 1988; 102 Stat. 47; 1 page) Price: $1.00



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